Comedy in Three Acts: Municipal Policy and District Planning in Manitoba

Research and Working Paper No. 31

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by Earl Levin
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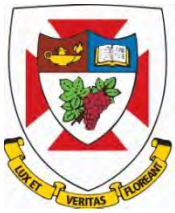

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TABLE OF CONTENTS

I. PROLOGUE

The term "comedy," according to Edward C. Ballard

> designates certain traits of man's relationship with his fellows. More or less as fate is to the tragic hero, so society is to the comic hero. The idea of the comic then, refers to some aspect of man's conflict with his group (political, familial, etc.) and its conventions, mores, ideals. But the same man is also part of that society; hence in struggling with it he is apt to trip himself. Comedy then is an ironic struggle with society.1

No more perceptive and fitting description could have been written about "planning" in Manitoba as it is performed in accordance with the script of the three Acts which relate to planning in that province: **The Planning Act,**[2] **The Municipal Act,**[3] and **The City of Winnipeg Act.**[4] In the same article, Ballard goes on to say:

> Taking comedy seriously for a moment, we can imagine the comic hero asking why man is involved in a Kafkaesque labyrinth of institutional red tape, conventional values, and conflicting ideals. The comic spirit responds that the evil of this situation is not an evil in itself. It is not a function of fate nor of cosmic order; rather it is a function of human and social order. Comedy manipulates this situation so that the hero appears as ridiculous (more or less harmlessly excessive) and could reform, or society appears as ridiculous and perhaps might be reformed, or the hero and society become self-aware, self-critical, and appropriately re-affirm their common ideals. Comedy thus tends to adjust the individual toward the actual, or the actual toward the possible, or both toward the ideal.

In the realm of municipal planning the "ironic struggle" which Ballard identifies as the distinguishing trait of comedy is not a struggle in which the issue is clearly articulated and the battle-lines firmly drawn. It is rather a silent struggle, which is continuously waged in the deepest layers of the municipal political sub-conscious, where it is never perceived as a struggle. Nor does the municipal political sub-conscious recognize any opposing contenders in this struggle. But perhaps it is not surprising that the municipal mind sees no contenders in this issue since it is the municipality itself, as a political institution, which is both protagonist and antagonist in this submerged and unacknowledged self-conflict; and the issue which it does not perceive but over which it is constantly tripping is the

issue of policy: the nature and role of the policy-making function of the municipal authority. There is a profound confusion about what is the proper sphere of policy for municipal government; at any rate there is in Manitoba, and that confusion is clearly evident not only in the provincial statutes which address the issue of municipal policy-making authority but also in the actual events which have flowed from those statutes in the form of planning activities at the municipal level. It is this unacknowledged conflict with itself in the sphere of policy which trips up the municipality as a governing authority, and the gap between the laws and political concepts on the one hand and the reality of the powers and motivations of municipal government on the other hand which gives the issue the character of an "ironic struggle" and, therefore, according to Ballard, a sense of the comic.

The instruments which most directly and explicitly relate to the municipal policy-making function in Manitoba are the provincial statutes and the municipal by-laws which deal with planning. Many municipal councils however do not know what their policy-making role is, or are not even aware that they may have one. But the concept of planning, and the legislation and by-lays of planning, impose such a role upon them, and do so on a scale and in a manner which municipal councils and provincial governments do not fully comprehend. They see planning from a particular point of view and in a special narrow context. They see it in terms of land-use control in the narrowest administrative sense. The planning concept, however, is much grander than what is perceived by the politicians and their legal counsel. Its central theme is development responsibility in the widest policy sense. The planning concept and its articulation in provincial legislation and municipal by-laws confer upon municipal councils the authority, indeed the responsibility, for policy-making of a scale and range which few councillors realize or are prepared to accept, and which few, if any, municipal councils have the financial resources or the political will to exercise.

A further source of conflict is the fact that the nature of planning and the nature of the law are incompatible over a significant part of the total range of their concerns, so that the concept of planning cannot be fully integrated into our legal system or adequately articulated in our legislation.

Planning is future-oriented, and thinks and speaks in terms of broad generalities and diffuse goals to be realized at some future time; the law is past-oriented and thinks and speaks in terms of details and specifics and practices which have evolved over a long passage of time. A great part of the law is based upon precedent cases and judgements, and events and actions which occurred in the past, all of which serve as the touchstones for the concepts of justice and the administration of the law in the present. Planning is concerned with anticipated events and actions which are as yet to occur, but which in fact may never occur, and desirable ideals which in fact may never be realized. Central to the law is the concept of individual, personal, justice, and much of it addresses the matter of restitution. These concepts are not part of the central ideology of planning which is concerned with ideals of societal good, and whose raison d'être is the pursuit of the improvement of the physical, economic, and social conditions of society as a whole. Most lawyers if pressed on the matter will admit that they do not fully understand what "planning" is all about, and that they feel very uncomfortable with a large part of planning legislation. It is significant in this regard that the area of planning with which lawyers are most frequently involved, and with which they are most familiar and comfortable is that of zoning, which touches the individual most closely and is almost entirely concerned with familiar and traditional legal issues, but which from the planning point of view is really only an administrative device of the planning function; and conversely, the area of planning in which there is the least connection with the legal system, the least involvement of lawyers, and which is the least understood and the most suspiciously regarded by them, is that of the development plan, which in fact represents the soul and essence of the planning idea.

If there is really such a difference in the perception of the planning function between the "planning" world on the one hand and the political and legal world on the other, and if the planning legislation is indeed obscure and contains serious anomalies, one may well ask how such a situation ever came about. One would think that as the planning function was incorporated into the formal administrative structure and operations of government, the discrepancies between the two worlds would have been resolved in the process, and the basis of the "ironic struggle" eliminated. One would expect that the

politicians - municipal councils and provincial cabinets - would have recognized the anomalies between the planning concepts and the political reality, and that lawyers in the employ of the municipal councils and the departments of the attorneys-general would have pointed out the improbability of incorporating those concepts within the law in clearly articulated and meaningful terms. But this did not happen.

It did not happen because, in effect, the right hand did not know what the left hand was doing. Frequently in comedy, the comic element arises out of a situation in which the various parties are unaware of each others intentions or movements or identities, or else they are mistaken or confused about them. And in the evolving planning scene, neither the politicians nor the lawyers ever fully understood planning in all of its aspects and implications; nor, on the other hand, did the planners fully understand all of the aspects and implications of the governmental and legal systems within which they had to operate.

The establishment of planning as a function of municipal government in Canada was largely the work of planning professionals and civil servants. These groups, not infrequently, have a different view of public issues than do the politicians. And although the planning movement enjoyed a fair amount of public support from as early as the turn of the century, there was actually very little planning legislation in Canada before 1945 other than that relating to zoning. The impetus for systematic planning was brought to Canada from abroad.[5]

Immediately upon the conclusion of World War II there was an unprecedented expansion of the population of urban centres in Canada, and there was the accompanying concern among political authorities that if this massive and rapid growth were to proceed without some kind of control, it would overtax their municipal resources and overwhelm their capacity to provide services, to avoid slums, and generally to cope with it. Planning was seen as the means of ensuring that the growth would not occur in a chaotic, wasteful, expensive and ugly manner, but rather that it would proceed in an orderly and attractive fashion in accordance with a plan. The idea of planning had of course been

around for some time prior to this, but the "urban explosion" gave that familiar idea a new impetus, meaning, and direction. There was at that time no cadre of trained professional planners in Canada. It was, therefore, inevitable that these would be imported from abroad while schools were being established in Canada to train Canadians in the appropriate skills. The first generation of municipal planning directors in Canada was mostly imported from Great Britain through the agency of Central Mortgage and Housing Corporation, on the advice of the Corporation's senior policy "think tank" known as the Advisory Group.

Since there was no established body of systematic planning law and practice in this country, and no indigenous precedent or experience to draw upon, except for some very rudimentary legislation which provided little more than zoning controls, the creation of the planning function was very largely in the hands of those imported professionals. It was inevitable that much of the planning which they sought to put in place reflected the ideas and practices with which they were familiar from their earlier European experience. It was probably inevitable that the municipal councils who employed them had no real understanding of what their planners were doing, what they were trying to achieve, what were the implications of these measures, or whether they were in fact appropriate to the local conditions which prevailed in their jurisdictions.

Much the same was true of the politicians in the provincial legislatures. If anything, they were even less sensitive to these questions than the municipal politicians. For the most part, municipal councils saw planning as a means of land-use control, and zoning represented the essence of that planning function. Provincial politicians saw the matter in the same light only they were one step farther removed than their municipal counterparts from the point of application of the zoning principle and practice. The majority of them were more concerned about rural issues than urban issues, and the control of the use of rural land was anathema to them. It is only in very recent years that the idea of rural land-use control has gained acceptance among provincial politicians. Provincial cabinets relied on the officials of the department of the attorney-general to ensure that any proposed planning

legislation was intra-vires. The lawyers were, quite properly, only concerned with the legalities of the legislation, leaving the policy implications to those whose responsibility it properly was - the politicians. But it is probably true to say that very few politicians at either the municipal or provincial level of the government were fully aware of those implications. What appeared to them to be the essence of the planning idea - land-use control and zoning - was, in terms of the central philosophical concept of planning, only a surface manifestation, an administrative device. They failed to understand the essential nature of planning, which was, and remains, the making and carrying out of policy, and the contingent vesting in the elected council of the full measure of policy-making authority.

It is probably also true to say that in the early formative years of the planning function in municipal government, the planners too were not fully aware of the implications of what they were proposing. Those who came from Britain - as many of them did - were not merely familiar with the notion of planning as a policy-making function, they were persuaded that this was its essential role. This notion was the basis of the whole of the philosophical and technical training they received in the British schools, and it was this view and persuasion which they brought with them to Canada. It was also this view which underlay and coloured much of the legislation and regulations which they drafted for enactment as the planning laws in their respective jurisdictions. What they were quite unfamiliar with, however, was the way in which a federal system such as the Canadian system of government works, and the nature and working of zoning as a planning instrument. In Britain, the system of government under which they lived and were trained was a centralized system, with the planning authority residing in Westminster, and the administrative control instrument they were accustomed to was that of "development control" which is a radically different instrument than zoning. The system of land ownership was also different enough to create confusion - hundred year leases of private land, and extensive public ownership of land were commonplace - as was public intervention in the economy and involvement in the market place, particularly in the field of housing. These ideas brought into the council chambers of Canadian municipalities were alien and disturbing. But then so was the phenomenon of explosive urban growth. And

although many members of councils may have felt that the powerful new forces of urbanization which were sweeping them along required unfamiliar measures to cope with them, many too were suspicious of these measures and were often exasperated by their advocates.

There was then some failure of understanding on all sides among those who were involved in the early stages of the establishment in Canada of the planning function in municipal government. There was frequently disappointment and frustration on the part of many planners (a substantial number of them eventually returned to Britain, having found that their ideas were out of place in the Canadian context), misunderstanding and suspicion, even resentment on the part of the politicians toward the planners; confusion in the mind of the public about the nature and role of planning; exasperation and disclaimers on the part of the lawyers with reference to much of the planning legislation; and legislation which is often obscure, rife with anomalies and contradictions, and often even meaningless and unenforceable.

During the forty years since the end of World War II and the beginnings of the present system of formalized systematic planning as an integral part of municipal government, many changes have occurred, many adjustments, revisions, and reconciliations have been made, but there still exists many of the misconceptions about the planning concept, and many anomalies and obscurities in the planning law, which continue to make the function of planning one of the most interesting and least understood functions in municipal government and in municipal life.

There is a widespread failure to recognize that the planning process is the political process. This is as true at the municipal level of government as it is at the provincial or federal. The factors which obstruct or divert its flow are the same as those which affect any socio-political process: conflicting perceptions, values and commitments deriving from the differences in culture, training, customs and practices of the various parties to the issue; the inertia of the political bureaucracy deriving from its vested interest in maintaining its credibility and thereby protecting its entrenched position; the use of "stonewalling" as a device for avoiding political

decisions on issues arising out of defective policies thereby avoiding the distasteful and possibly even politically dangerous admission of a policy mistake and perhaps having to re-open the political debate on the matter; and not least the economic interests which separate the contending parties in any issue.

There are innumerable instances in the political life of municipalities in Manitoba, as indeed, in all of the other provinces, which demonstrate the operation of these forces in the political process, and reveal the equivocal nature of the policy-making function at the municipal level of government. The text for this paper is taken from the Manitoba experience. The particular episode to be discussed is that of the attempt by the Rural Municipality (R.M.) of Stanley to withdraw from the Morden Stanley Thomson Winkler Planning District of which it is a member, and the events which were consequent upon that attempted withdrawal. Before entering into the discussion of that specific issue it might be helpful as background information to say something about district planning and about the R.M. of Stanley in order to understand its relationship to the Planning District.

District Planning is a device which has been established in Canada since the 1950s. It emerged during that immediate post-war period when urbanization was proceeding apace and the economy generally was booming, and provincial and municipal governments alike were looking for and experimenting with various means of exercising some control over growth. A broad variety of measures was adopted - city planning departments as part of the formal structure of civic administrations, new types of zoning by-laws and regulations, metropolitan forms of government, extra-territorial jurisdiction, regional governments, mainly in Ontario, and planning districts, mainly in Alberta. All of these measures sought to address the problems of rapid physical growth, the use of land, and the extension of services to a proliferating urban population and the rural municipalities affected by that general expansion. These problems were generally regarded as "planning" problems and the measures devised to deal with them were regarded as planning measures. The planning district idea, of which Alberta was one of the first and most active proponents, arose out of the realization that the vigorous growth being experienced in the post-

war period affected not only the principal growth centre which was almost invariably an urban centre but also the surrounding rural areas, and that the most effective measures for coping with those problems seemed to require the joint action of the affected municipalities. In Ontario the measures adopted to provide for such joint municipal action were metropolitan government for the urban municipal boroughs of Toronto and regional government for other areas where rural municipalities were involved. In Manitoba the measure adopted was metropolitan government for the municipalities comprising Greater Winnipeg with extra-territorial jurisdiction over an area extending into the surrounding rural municipalities for a distance of five miles from the metropolitan boundary. At that time there was no legislation enabling the creation of planning districts in Manitoba. In Alberta and Saskatchewan, however, the provincial legislation did make such provision: two or more municipalities were enabled to join together to prepare a plan of development for their mutual benefit, and to deal jointly with problems such as roads and traffic, land use, building construction, trunk sewer and water systems, zoning and building by-laws, and similar issues of physical development in which they had a mutual interest.

In Manitoba, provision for district planning was introduced in The Planning Act of 1975. There had been a provincial planning statute in Manitoba - The Town Planning Act - since 1916. This Act had been amended from time to time since its first establishment, but none of these amendments was a major change. In May of 1975, however, the government of Premier Ed Schreyer introduced Bill 44, the Bill for a new Planning Act, containing major changes in planning concepts and planning functions among which was the provision for District Planning. The changes which were made in the provincial planning statute between 1916 and 1975 point to some of the fundamental anomalies and misfits between the reality of the planning process and the ideology of the planning concept.

The debate in the legislature over the present Planning Act, when it was introduced in the Manitoba legislature in May of 1975, reveals some of the characteristic confusions which surround the planning concept. The intent of the new legislation was to replace the then existing Act which had been in

force, although marginally amended from time to time, for the preceding 60-years. In presenting the Bill (No.44) for second reading, the Hon. Howard Pawley, Attorney-General stated:

> The present Planning Act is basically a planning service Act rather than a Planning Act, and thus does not reflect the planning practices and principles that are envisioned in modern planning procedures....The most serious shortcoming is the failure of the existing Planning Act to provide a mechanism for co-ordinated provincial and municipal land-use policies....The Act does not distinguish between long-range development plans and existing short-term zoning plans. This has allowed leeway for municipalities to adopt zoning plans almost exclusively. There is therefore little real planning in the sense of adopting policies and objectives as guidelines for future development. There is also failure to adopt long-range development plans....The involvement of the province in the municipal planning service has been increasingly one of administrative procedure rather than one of planning and policy....6

The Minister had obviously been well briefed by his staff. His speech clearly set out the basic tenet of the planning ideology that the planning function is properly a policy-making rather than an administrative function (and the administrative role had so far been dominant under the existing legislation). This marks a milestone in the evolution of the planning concept as embodied in Manitoba's Planning Act. It is the first time that policy-making is overtly identified as the purpose of the municipal planning function throughout the province, although as we shall see a little later on, that role had been specified for the Metropolitan Development Plan of Metro Winnipeg some seven years earlier. The Planning Act of 1975 is also noteworthy because for the first time in the province it introduces the notion that the concerns of municipal policy-making extend beyond the realm of simple land-use and physical development control into the realm of social and economic concerns, although, again, something similar had earlier been accorded Metro Winnipeg's development plan. The extent to which this idea departed from the traditional provincial planning ideology is great, but the effect on planning practice had been negligible. Municipalities have virtually completely ignored this wider field of policy concerns and have continued to pursue their planning activities within the relatively narrow traditional limits of land-use zoning and development control.

This is not surprising. From the beginning the purpose for which provinces created municipal governments was to provide municipal services. Quite properly the provision of local municipal services was seen as best performed by a local authority rather than by the more remote provincial authority which had broader concerns affecting the province as a whole to worry about. But municipal services are mainly concerned with land rather than with people: sewer, water, roads, snow clearing, garbage pick-up, and the rest are all services provided to property. The main portion of municipal revenue is derived from taxes on property, and the purpose of raising those property taxes is to enable the municipality to provide those services to those properties. Such a scheme imposes few demands of a policy-making nature on a municipal council. Most of the municipal services, particularly in rural areas, can be provided virtually on an ad hoc basis as the need arises and require few if any initiatives of a policy nature. Accordingly municipal government is essentially an administrative rather than a policy-making activity. And in fact, since 1916, municipal planning has taken the form of the control of the use of land and of building construction through the administration of the zoning and building by-law, and the regulation of the subdivision of land.

It is therefore not surprising that although the Planning Act of 1975 provided for municipal policy initiatives on economic and social issues, few such initiatives have been taken. Nor is it altogether simply a matter of inertia and stuck-in-the-mud habit. The fact is that although the Act allows such initiatives of policy, municipalities have no sources of revenue which such policies would surely require and no supporting statutory authority for enforcing and carrying out such initiatives. In these areas, therefore, the policy-making role still remains with the senior governments; the municipalities remain administrative authorities dealing in the main with land-related issues.

This quick glance at the role of municipal government is admittedly somewhat oversimplified. Through the years many changes have occurred. Municipal responsibilities have evolved, new ones have been assumed, old ones transformed, revenue sources enlarged. But the central core of the municipal

responsibility still remains property and the essence of municipal planning still remains the control of the subdivision and use of the land and the construction of buildings. And the mind of the municipal councillor remains set in that traditional mold.

So does that of the provincial legislator. Even though The Planning Act of 1975 broadened the base of municipal policy-making authority, I suspect that none of the members of the legislature, including those of the government itself, realized the full implications of what the Act provided. My suspicion is based on the fact that although the Minister, in introducing Bill 44 to the legislature, described the municipal objectives of the Act in terms of planning policy, he spoke only of land-use policy and made no mention of economic and social policy which the same Act specifically included within its definition of "development plan." It is a matter of considerable curiosity that the entire debate on Bill 44 centred on the issue of land-use and completely ignored the authority for social and economic policy initiatives which Bill 44 was proposing to confer upon municipal councils. The anomaly between the Minister's description of the goals of municipal planning policy and the goals of the development plan as defined in the Act is one instance of the gap which exists in the minds of politicians, and perhaps also of the general public, between the concept of municipal planning as creative developmental policy and the concept of planning as an administrative land-use control activity.

In presenting Bill 44 to the Manitoba Legislature, the Hon. Howard Pawley set out the following municipal objectives of the Bill:

1. The encouragement of municipalities to plan together in planning districts or regions, and adopt development plans as a statement of long-range policies and objectives respecting land-use for the district or region.
2. To provide the means to implement district and municipal development plans by way of fiscal support and regulatory measures of land-use and subdivision control....7

Clearly, the Minister was thinking of municipal development plans only in terms of land-use and subdivision control. It is also clear from the debate which followed his presentation that the members of the Opposition also understood planning to be a matter of land-use zoning. For example, Mr.

Jorgensen, the member for Morris, in his speech in the debate on Bill 44 observed:

> I would have thought, sir, that in the light of the kind of experience that we have now before us, experience gained in other countries - and indeed in other parts of Canada, the Niagara Peninsula, Los Angeles, even Vancouver more recently, that there would have been some effort in this Bill to focus on one fundamental problem that we are facing now, and will be facing in greater magnitude in years to come, and that's the question of land-use. There is, sir, no direction in this Bill insofar as land-use is concerned. Actually when you think of the kind of planning that should be involved in Bill 44, it should be nothing more than an expression of what is already taking place, for example, in the City of Winnipeg. The City is zoned; there are areas in which industry will develop; there are areas in which the service industries will develop; there are park areas. That is a form of the planning intended to make the best use of the land that is available within the City of Winnipeg. I would have thought that a Planning Act would be nothing more than an extension of that kind of Planning.8

For Mr. Jorgensen The Planning Act ought to have been a zoning by-law for Manitoba, or perhaps a land-use plan although one suspects that he did not understand the difference between those two types of instruments. The Planning Act introduced by Mr. Pawley was of course a planning enabling Act, much like the City of Winnipeg Act in its Part XX. Its purpose was to allow the municipal authority to adopt and enforce planning measures, not to have the province do so in the areas of local jurisdiction. One suspects that Mr. Jorgensen did not appreciate that difference either.

The views expressed by Mr. Frank Johnston, the member for Sturgeon Creek, do not indicate any clearer conception of what The Planning Act (or indeed of the planning function) was all about. During his speech he said:

> Mr. Speaker, I know that the members on the other side and the Minister will, and his staff, will jump right out of their chairs, when I say that this is a step to regional government, and there's no question about it. The only way that this bill could possibly make sense or could operate, the only way you could operate it efficiently without battles between people, would be regional government....So, Mr. Speaker, our Party does believe in the concept of planning. Our member from Morris has made it very clear that we believe in land-use. We cannot take good productive land with the food producing land

> out of circulation. There is no question that we have to have those protections, and when we have we will be admired by other provinces. But the principle of control over the destinies of these areas is there; it is not a bill that gives them their own freedom.9

Mr. Johnston, too, saw the concept of planning in terms of land-use, and particularly of the control of the use of agricultural land. But he also saw in it something that lay beyond merely zoning and development control, he saw in it the threat of the absorption of the rural municipalities of the province into a system of larger government units - regional governments - with the loss of local municipal identity, autonomy, and authority. Whether these fears were genuine or merely political expressions one cannot say. But one can say that they were not well-founded. Mr. Johnston had the example of planning districts, long-established in Alberta, and of regional government, commonplace in Ontario, both systems functioning with free local government participation in provinces solidly Conservative, which should have afforded Mr. Johnston a considerable measure of reassurance. Bill 44, of course, did not propose regional government. It was a long way away from that concept, and Mr. Johnston either misunderstood the nature of the Bill, or else was simply saying the kinds of things which are expected from and customary to Her Majesty's Loyal Opposition. Nevertheless, he did catch a glimpse of something which is common in all political affairs and whose shadow he saw cast over the debate. In all undertakings of a political nature there are winners and there are losers. In those enterprises which purport to seek the greatest good for the greatest number, there are inevitably those who will find themselves among the lesser number and who will have to bear the pain of the lesser good. Planning requires the surrender of the right to complete independence. Inter-municipal or joint municipal planning requires the surrender of certain aspects of individual municipal authority. Mr. Johnston was right in his perception of the implications of Bill 44 for the restriction of the autonomy of action of individual municipalities. However, it seems odd that he did not find the restrictions which would be imposed by land-use zoning and development control equally disturbing, that in fact he welcomed them. And of course his perception of the regional government implications of Bill 44 went beyond what was warranted by the proposed legislation.

Every shadow has its bright side, which was no doubt the side insistently perceived by Mr. Pawley and his colleagues in this matter of planning. It is the side seen by those who view human nature as fundamentally good and rational and who believe that all differences in human affairs can be resolved through reasonable discussion and the exercise of good will. I suspect that it was this view which drew the support of Mr. Pawley and his colleagues for the Bill. They were probably confident that if a mechanism for reasonable discussion and joint action were provided through a provincial statute, the bright side of the shadow would shine upon the contemplated planning districts and their district plans. I also suspect that the planning officials on the staff of the government who first broached the idea to the Minister and outlined the draft legislation shared this view but were also motivated by ideological considerations and professional desire not to be outdone in their field by their counterparts in other provinces, and not to be regarded as backward in the use of planning techniques, without much thought given to the question of their appropriateness in the local Manitoba situation.

Mr. Steve Patrick, member for Assiniboia, spoke in the debate in a vein similar to that of his colleagues:

> From the point of view of bringing the bill in and having some legislation in respect to land use, I think its great, its overdue....10

And Mr. George Minaker voiced the same thoughts:

> While we support an overall plan for the land use in our province, we cannot support a bill that will give complete control and role to the government and its cabinet.11

All of the speakers raised questions about the Bill which touched on a variety of matters ranging from the concern about the introduction of a third level of government in the form of regional government, to the expanded power of the cabinet, to the question of compensation for landowners who are prevented from developing their land for the most lucrative returns, to the role of the local citizens and their representatives in the planning process. Some of the comments were sharply relevant, and indicated familiarity with many aspects of the planning process. But they all held one persuasion in common. In reading through the debate on Bill 44 as reported in Hansard, one is struck by the virtually unanimous view that the Planning Act was intended to control land-

use. There is no need here to provide further quotations from the record but every member of the Opposition who spoke in the debate attacked the Bill for its shortcomings which in their view were many and varied, but all of them were of the opinion that planning is a good thing because it does something which is very important, particularly for the interests of agriculture and the rural community, and that is it controls land use. There was no hint in anything that was said in the debate that any of the speakers looked upon a development plan as anything other than a device for the control of land use. There was nothing to suggest that anyone saw the sphere of development over which a development plan might have control and authority as extending beyond the use of land into the realm of social and economic affairs and even into the realm of culture and life style. Or if they did, it did not occur to any of them that such a wider ambit of possible development plan intervention was a matter serious enough to warrant their comment.

In the light of this limited and specific understanding of the role of the development plan which emerges from the debate on The Planning Act, it is somewhat surprising to find "development plan" defined in The Planning Act under Section 1(m) as follows:

> "development plan" means a plan, policy and program or any part thereof approved under this Act, covering any area of land defined therein, designed to achieve stated objectives, and <u>to promote the optimum economic, social, environmental and physical conditions of the area</u>, and consisting of the texts, maps, or illustrations describing the program and policy (emphasis added).12

How did this come to pass? How is it that The Planning Act states that a development plan shall mean a plan, policy and program designed to promote not only the optimum environmental and physical conditions of the area but also the optimum <u>economic</u> and <u>social</u> conditions? And given the views expressed in the debate on the Bill not only by the government spokesmen but also by the opposition, is it not odd that there is no specific reference to land use in the definition? Doubtless the provision for the promotion of the optimum environmental and physical conditions of a designated area subsumes within itself the control of land use, but it goes some considerable distance beyond mere land use control; and the inclusion of the promotion of the optimum

economic and social conditions of the area takes the development plan right out of and well beyond the realm of land use.

That definition was in the Bill when it was introduced for debate in the legislature. The members of the legislature, if they read the Bill, must have read that definition of "development plan" spelled out in the very first section. Yet no one found it appropriate to ask why such a much broader mandate was provided if the objective, in the Attorney-General's own words, was to encourage municipalities to "adopt development plans as a statement of long-range policies and objectives <u>respecting land use</u> for the district or region," and to provide "the means to implement district and municipal development plans by way of...<u>regulatory measures of land use and subdivision control</u>."

Economic and social planning were, and presumably still are, fundamental tenets in the conceptual framework of the social democratic political philosophy. Presumably then the members of Mr. Schreyer's government would have seen nothing untoward in the inclusion of those concerns in the definition of a development plan. Why then was the Attorney-General completely silent on that point in his presentation and defence of the Bill in the legislature? But even more puzzling is why the members of the Conservative opposition did not question the extension of the municipal planning mandate into areas from which it had hitherto been excluded. Perhaps it was because the notion that land use is the sum and substance of planning was so firmly entrenched in their minds that no other possibility could catch and hold their attention. Perhaps, on the other hand, they were aware of the wider mandate proposed, but perceived it as nothing more than the traditional conservative perception of the role of government in the field of economic and social policy - creating the climate favourable for private sector economic initiative in the one, and providing welfare assistance for widows and orphans and the deserving poor in the other. Or again, it is possible that they may not have been unduly disturbed by the fact that what was proposed was a significant departure from the principles of the provincial planning legislation which had previously prevailed because the legislation had been gradually evolving in this direction for some time.

Various explanations are possible for the ubiquitous silence on the proposed extension of municipal planning into the realm of economic and social policy. My own view is that the members of the legislature either were not fully aware of the proposal, or saw it only as related, almost as a corollary, to land use planning, that is, that land use planning in itself was expected to have contingent salutary economic and social effects. It is also my view, however, that this is not what the departmental planners had in mind.

A brief overview of the changes in the concepts of "planning" and "development plan" will indicate how these ideas have evolved from their original rigid restriction to land use and building, to their later much wider application.

The notion of "planning" was first legally recognized in the statutes of Manitoba in 1916, in The Town Planning Act. Its subtitle described it as

> An Act Relating to Planning and Regulating the Use and Development of Land for Building Purposes.13

The Act provided that

> A town planning scheme may be prepared in accordance with the provisions of this Act with the general object of securing suitable provision for traffic, proper sanitary conditions, amenity and convenience in connection with the laying out of streets and use of land and of neighboring lands for building and other purposes.14

"Planning" under this Act had the strictly limited meaning of land-use planning. It was, moreover, a static concept. The town planning scheme represented what was deemed to be the suitable lay-out of streets and the appropriate use of land. It was a photographic snap-shot of the ideal condition, and it was expected that the actual conditions on the ground would be transformed into that ideal condition through the adoption of the planning scheme. There is no suggestion here that a planning scheme is a statement of policy or of long-range goals towards which the planning process is expected to move. The town planning scheme was a blue-print for physical development, and it was thought that, as with an engineer's or an architect's blue-print for a road or a building, the physical aspects of a community could be fashioned in accordance with that plan. It is a common error in the concept of physical planning to assume that because land and buildings are physical in

nature the uses to which they are put are also physical in nature or at least can be regarded as integral with the land and buildings which house them. It is fairly easy to devise and enforce regulations to control the layout and specifications of street systems, and the subdivision of land and the height and bulk of buildings. These are all physical characteristics which are readily amenable to regulation. The uses to which land and building are put are not of the same physical nature. They are socio-economic in nature and are considerably more difficult to control. That is why the bulk of zoning and other planning appeals are on issues affecting the use of land and buildings rather than the land and buildings as such. But even in physical planning terms, the 1916 legislation was very simple in its intent, restricted in its application, and elementary in its concept of planning.

The legislation continued virtually unchanged in this form until 1964 when the title of the Act was changed from The Town Planning Act to The Planning Act, its purpose was widened to allow the provincial government to assist municipalities in preparing planning schemes, and the meaning of planning scheme was not so much broadened as more fully explained. The Act was described as

> An Act Respecting The Provision Of Planning Services To Municipalities And Agencies Of The Government And For The Preparation Of Planning Schemes For Regulating The Use And Development Of Lands And Buildings.15

A "planning scheme" under this new Planning Act was now defined as

> ...a statement of policy with respect to the use and development of land and the use, erection, construction, relocation, and enlargement of buildings within a defined area and includes an amending planning scheme, an initial planning scheme, and a partial planning scheme.16

The concept of a planning scheme as a statement of policy had now made its first appearance, nearly 50 years after the first planning legislation, but the substance and content of a planning scheme remained virtually unchanged:

> A planning scheme may be prepared in accordance with this Act with the general object of securing suitable provision for vehicular and pedestrian traffic, proper sanitary conditions, public safety, personal well-being, amenity and convenience in connection with the laying out of subdivisions, streets,

> roads, and the use and development of land and of neighboring lands for building and other purposes.17

All of these provisions continued in place until the major amendment of The Planning Act in 1975, which introduced the much broader sphere of planning concerns indicated in the foregoing discussion. But that new provision in The Planning Act for municipal involvement in economic and social issues had already been in existence for about 15-years in another statute of the Province of Manitoba. When the province created the Metropolitan Corporation of Greater Winnipeg in 1960, the Act which established the Metropolitan government[18] set down the following definition of a plan:

> "plan" shall mean the Metropolitan Development Plan for which provision is made in Section 79.

And Section 79 provided that

> 1. After the coming into force of this Part, the metropolitan council shall, subject as herein provided, as soon as is practicable, cause to be prepared, approved and by-law establish, a plan with the object of promoting the orderly growth and economic development of the metropolitan area and the additional zone in the manner most advantageous to, and that will best promote those amenities that are essential to, or desirable for, the well-being of the inhabitants thereof, and may alter and enlarge the plan as council may deem to be desirable from time to time (emphasis added).19

The salient point in Section 79 is that for the first time in the statutes of Manitoba dealing with planning, the law extends the area of planning concern far beyond the limits of merely physical planning which hitherto had prevailed. The law prescribed that the Metropolitan Development Plan should be "a plan with the object of promoting the orderly growth and economic development of the metropolitan area and the additional zone...." And eleven years later, in 1971, when the municipalities of Metropolitan Winnipeg were amalgamated into a single city under The City of Winnipeg Act, the name of the Metropolitan Development Plan was changed to The Greater Winnipeg Development Plan which was defined as follows:

> "Greater Winnipeg development plan" means a statement of the city's policy and general proposals in respect of the development or use of the land in the city and the additional zone, set out in texts, maps, or illustrations, and measures for the improvement of the physical, social and economic environment and transportation.20

A plan was now a statement of policy which included, among other things, measures for the improvement of the social and economic environment. Economic conditions as a legitimate planning concern pre-dated by about 15-years the notion contained in the new version of The Planning Act of 1975 that a development plan should seek to promote the optimum economic and social conditions as well as the physical conditions of an area. This broader purview of municipal planning policy had its introduction in the Metropolitan Winnipeg Act of 1960 which included the promotion of economic development as an objective of the development plan; it was given a new orientation by The Planning Act of 1964 which defined a plan as a statement of policy; it was further enlarged by The City of Winnipeg Act of 1971 which included measures for the improvement of the physical, social and economic environment as part of the development plan; and it found its present full expression in The Planning Act of 1975 which defined a development plan as a plan, policy, and program designed to promote not only the optimum physical and environmental conditions but also the optimum economic and social conditions of an area.

The pressures which moved the legislation along this course were, I would guess, exerted by the staff officials as a principle of planning ideology rather than by the politicians as a measure of government policy. I have no direct evidence to support this view but there is circumstantial evidence which suggests that it was probably so. The speeches on both sides which were made during the debate on Bill 44, to which I have already referred, indicate that the politicians regarded the proposed legislation as an administrative measure for the control of land-use rather than as an instrument empowering municipal governments to formulate and carry out wide-ranging policies affecting the physical, environmental, social and economic aspects of the lives of their constituents. None of the speakers made reference to the Bill in these terms. Although minor amendments had been made to the Act since it was established in 1916, Bill 44 was the first major overhaul of the legislation. During the 60-years of its regime there was little change in the legislation, but there had been some profound changes in the concepts of planning. Many of these new ideas in the field of planning were simply specific adaptations of more general social ideas which came out of the counter-culture movement of the 1960s and 1970s. But there was little

opportunity to incorporate them into The Planning Act until the NDP came to power in 1969 and undertook a major revision of the planning legislation. The planning officials undoubtedly were waiting during that long period of legislative quiescence for the right moment to arrive in which they could bring the legislation into line with current planning concepts. That opportunity first presented itself in 1969 and 1970 when the newly-elected NDP government turned its attention to the issue of Metropolitan Winnipeg, and engaged as its senior consultants to advise them on the contemplated amalgamation of the Metro municipalities, Meyer Brownstone and Dennis Hefferon, both of whom were in tune with the radical movement in the fields of municipal government and municipal planning. As is customary, the preparation of the initial draft of the legislation was the responsibility of the staff officials, and it was at this point that the concept of municipal planning was widened to include economic and social policy which was incorporated into the draft legislation.

The planning ideology of the time was consonant with the political ideology of the NDP so that there was no political resistance presented to the ideas of the officials on this specific point. It may perhaps be a mistake to extrapolate from this situation to that of the overhaul of The Planning Act in 1975, but I think not. I am confident that as in 1969-1970, the officials took the initiative in incorporating the concept of district planning in the revised Act, and the government went along with it because it was not inconsistent with the NDP's political ideology. I am also satisfied that neither the officials nor the politicians were fully aware of the social and legal complications to which the notion of district planning could lead.

The district planning provisions of The Planning Act are contained in Part III entitled District Planning. Section 13(1) provides that

> There may be established, as herein provided, planning districts, consisting of the whole or parts of 2 or more municipalities and in respect of each district, a planning board having the powers and duties set out in this Act. 21

The duties of the board of a planning district are set out in Section 24(1):

> A district board is responsible for the preparation, adoption, administration and enforcement of a district development plan or basic planning statement or any amendment thereof; and in

addition it is responsible for the administration and enforcement of

a) the zoning by-law or a planning scheme of any municipality within the district;
b) the building by-law of any municipality within the district; and
c) the by-law for minimum standards of maintenance and occupancy of buildings of any municipality within the district.22

Other duties of the board are set out in Section 24(2) but these are not of present concern to us. And the purposes of a development plan are set out in Section 27(1), but here too, perhaps only the first paragraph need be noted for our present interest:

27(1) The purposes of a development plan are

a) to serve as a framework whereby the district or the municipality and the community as a whole may be guided in formulating development policies and decisions...23

The Act provides financial assistance for the preparation of a district plan and the operation of a district board and it seems quite clear that the Schreyer government and its planning officials regarded this Act as an up-to-date and very progressive piece of planning legislation.

With the adoption of The Planning Act, the officials of the Municipal Planning Branch embarked on a vigorous campaign of organizing the entire province (except the City of Winnipeg) into a network of planning districts. As already indicated, the planning function in Manitoba lagged behind that of other provinces, and, as I have already suggested, the zeal with which the administration pursued the vision of a comprehensive provincial district planning system was inspired more by its appeal as a planning theory and a planning measure already in place in other planning jurisdictions than by any manifest need for such a sophisticated apparatus of control arising out of real conflicts and problems of development in Manitoba. The rate and scale of development throughout the province was not of such magnitude as to require so elaborate a mechanism to cope with it. I have no doubt that in most rural municipalities there was so little development and so little conflict arising

out of development as to require virtually no controls whatever. And where there was development I am persuaded it was of such an order as could have been controlled by the local council itself. However, a grand idea like a comprehensive planning district system covering the whole of the province had a powerful appeal for the provincial planning staff in terms of its promise of activity and status for them, and it was also attractive to the government because it sounded echoes of co-operative involvement in the solution of mutual problems among the ordinary people, a note entirely harmonious with an important leitmotif in social democratic ideology.

As the Municipal Planning Branch's program of organizing planning districts proceeded, the administration's attention was drawn to the south-central reaches of the province. This is one of the richest and most productive agricultural areas in Manitoba. It is dotted by a number of prosperous towns such as Carman, Morden, Winkler and Altona, and many agricultural villages which are not only agricultural service centres but also centres of farm residences and farm operations. In certain significant respects this settlement pattern is unique in the province and derives from the Mennonite history and heritage of the area. A large proportion of the population of this sector of Manitoba is of Mennonite background. Their forebearers came from Russia, although the Mennonite faith first arose in Switzerland and spread to the Netherlands and Northern Germany and only thence to Russia and other parts of Europe.

In the late 19th Century a large number of Mennonites came to Canada from Russia on the promise that they would be allowed to pursue their own religious faith and practices without interference from the government. Many of these found their way to Manitoba where they were invited to settle on two reserves, the East reserve, around Steinbach, and the West reserve, the area between the Red River and the Pembina Hills along the U.S. border. They brought with them the traditional village settlement pattern which had prevailed in agricultural Russia and with which they were familiar. This was a pattern of linear development strung out along both sides of the village road. Each farmer was allotted a strip of land on which to build his house and barn. Strips of land for farming were assigned to each farmer and pasture land was held communally.

The church and school were traditional centres of the community and eventually each village had a store-post office and a machinery repair shop. Although changes have occurred over the past 100-years, this original basic settlement pattern is still to be found in the agricultural villages of the area.

Perhaps even more important than the physical imprint of the Mennonite heritage on the area, for our present purposes, is the cultural imprint. The movement of the Mennonite faith from country to country since the 16th century was not due so much to the indigenous arising of that belief in successive places as it was to its being carried there by the faithful fleeing persecution and seeking a safe haven wherever they could find it. When they were offered sanctuary by the Canadian government, which was seeking agricultural immigrants, they gladly forsook the steppes of Russia for the prairies of western Canada. And they brought with them not only their village settlement pattern but also the system of values and practices which comprised their religious faith and their way of life.

The first Mennonites belonged to a church organized in Zurich, Switzerland, in 1525. The members called themselves Swiss Brethren. The name Mennonite came from Menno Simons (1496-1561), a Roman Catholic priest who believed that the Reformation leaders had not reformed the church enough and who became the leader of the Anabaptist movement in the Netherlands and northern Germany in the 1530s. The basic creed of the Mennonites was drawn from the Sermon on the Mount, in the New Testament, which they read literally and took to mean the forbidding of war, swearing oaths, or holding offices that required the use of force. They believed that church and state should be separate and that baptism and church membership should be given only to those who voluntarily gave up sin. They baptized only persons who proved their goodness in their daily lives.

The early Mennonite reserves in Manitoba were untouched by any outside influences. They enjoyed complete autonomy. They collected their own taxes, carried out local improvements, ran their own schools, established their own villages and hamlets and maintained their strict system of moral and religious sanctions through the local church. They avoided contact with the outside and

shunned involvement with the government of the day and any of its agencies. For a long time they even avoided sending their children to any public schools, seeking employment outside their community, borrowing money, mortgaging property, taking insurance, and even adopting the dress or learning the language of the world around them. It was a fundamental tenet of their credo that one's ultimate shelter and protection lay in the Lord and in the Kingdom of Heaven. Man-made institutions simply came between one and the Lord as obstructions to spiritual communication. Secular government rules by force; the Mennonite law was the law of Christian love as set out in the Sermon on the Mount.

Much of this has changed with the passage of time, although some sects, like the Amish, have perhaps changed less than others. But even though the original fundamental tenets of the Mennonite faith are no longer as rigidly observed as they once were among the Mennonites of Manitoba, nevertheless much still remains in both the letter of their practices and the spirit of their beliefs. They are now businessmen and professionals and farmers and technicians and salesmen and workers who in almost every respect are indistinguishable from their counterparts of other persuasions, but the imprint of their Mennonite culture and their history is still strong upon them. Their traditions still show through in their way of life. Their beliefs still emerge intermittently during the course of their daily mundane affairs. And in times of stress or crisis, the faith and the traditions of their forefathers are called upon as a powerful support. As might be expected, the traditional way of life with its practices and beliefs are more strongly present in the rural agricultural enclaves of this part of the province such as the Rural Municipality of Stanley than they are in the urban commercial towns such as Morden and Winkler.

II. The Play

It was into this environment of an agricultural economy, modest non-agricultural development, limited slow-paced urbanization, a farming population whose background of religion and culture disposed them against secular authority and bureaucratic control that the officials of the Municipal

Planning Branch made their enthusiastic incursion in 1976 brandishing the district planning legislation like the symbol of some profound ideological truth in which alone could be found the solution to the severe problems of development which beleaguered the municipal councils and their populations. Their first task was to persuade the municipalities that they were indeed suffering from these mutual problems, and a series of meetings was held in the year following the establishment of The Planning Act, with representatives of the Towns of Morden, Winkler, and Roland, and the Rural Municipalities of Stanley and Thompson to reveal to them the problems from which they were suffering but of which they were not aware, and to persuade them of the mutual advantages they would enjoy in dealing with these problems through the agency of a planning district voluntarily entered into by these participants.

A joint planning information meeting was held at the Winkler Arena on December 29th, 1976. The Councils of the five municipal corporations attended this meeting along with representatives of the Municipal Planning Branch of the provincial government and the general public. It was agreed at this meeting that each municipality wishing to join the proposed planning district should pass a resolution to that effect and forward it to the Provincial Planning Committee by February 1st, 1977.

The Towns of Morden and Winkler and the Rural Municipality of Thompson duly passed such resolutions, but the Town of Roland and the Rural Municipality of Stanley resolved not to participate in a planning district.

On April 22nd, 1977 the resolution to form a planning district to be known as the T.W.M. Planning District was referred to the Municipal Board in Accordance with the terms of The Planning Act. However, before the Municipal Board proceeded with the hearing, the Towns of Morden and Winkler, dissatisfied with Stanley's refusal to join the district, each passed a resolution seeking to annex a large area of land in the R.M. of Stanley on the grounds that they required the land in order to control planning in the area.

Among the lands included in the annexation application was a strip of land known as "the corridor." Provincial Trunk Highways #3 and #14 merge to form a

single major arterial at a point about 2-miles west of Winkler. This arterial is a major east-west highway which runs through both Winkler and Morden. The two towns are about six miles apart on the highway. "The Corridor" is the strip of land fronting on the highway between the two towns. It is 1/2-mile wide on the north side of the highway and 1 1/4-miles wide on the south side and contains 6,043-acres. Because the highway is a provincial trunk, and because an important town lies at either end of the corridor, this strip of land is probably the most capable of attracting investment and development in the entire area of the proposed planning district. In spite of these advantages, however, the overwhelmingly dominant use of the land in the corridor in 1978 was agriculture, and the relatively small amount of commercial and industrial development attests to the modest rate of urbanization in this part of the province. The following Table is taken from the publication entitled Corridor Study, prepared in 1978 by the M.S.T.W. Planning District Board as a background study to the planning district development plan. It is Table 3.3 on page 14 of that document:[24]

Land Use In The Corridor

	Estimated Acreage	% of Total
Rural Residential	113.0	1.9%
Commercial	56.9	0.9%
Industrial	47.9	0.8%
Institutional and Public*	9.1	0.2%
Rights-of-Way	450.1	7.5%
Morden Experimental Farm	615.0	10.1%
Agriculture	4,756.1	78.6%
Total	6,043.1	100.0%

Note *Institutional and Public refers to Manitoba Hydro Substation, the Thresherman Museum, and the Mennonite Church Monument Site.

The corridor lies in the Rural Municipality of Stanley, and in spite of the fact that only about 104 of its over 6,000 acres were in commercial and industrial use, they provided a substantial part of the municipality's revenues and represented a not inconsequential part of the non-farm investment and development in the area. In addition to these losses the proposed

annexation threatened other significant losses for Stanley because other parts of the rural municipality were included in the town's annexation application:

- Stanley's residents who lived in the areas to be transferred to the towns would suffer an increase in their tax assessments, since assessments were higher in the towns than in the rural municipality.

- Stanley would suffer a loss of "easy" revenue, i.e. revenue from Inter-Provincial Pipelines, the Research Station, the lagoon, the airport, the golf courses, the Town of Morden pumphouse, the veterinary clinic.

- The Rural Municipality would have to pay taxes to the Towns for their workshops, located on lands earmarked for transfer.

- The R.M. would lose 60 out of 324 sections of land in the municipality.

- The R.M. would lose grants for school transportation.

- Livestock operations might be curtailed because of being located within the corporate limits of the town.

- The R.M. provided water to its residents free of charge. Proposed transfer to the town of the lands containing the wells would mean charges for the water to be paid by the R.M. residents.

- Shade trees provided free for farmers by the P.F.R.A. would no longer be available to farmers if their lands were transferred into the corporate limits of the towns.

Other items of loss could be listed but the foregoing are probably enough to explain why there was a great fear of the annexation threat on the part of the residents of the R.M. of Stanley. Coupled with this fear was the deep-seated hostility of the farming population toward government interference and bureaucratic control of any aspect of farm life. Farmers generally have a strong sense of independence and resent and resist any attempts to direct or regulate their operations, but in Stanley this stance of opposition to external intrusion common among farmers was reinforced by the traditional attitudes deriving from the Mennonite faith.

The officials of the Municipal Planning Branch were committed to the idea of district planning, and the government generally was favourably disposed

toward it. The town councils of Morden and Winkler were eager to establish a planning district because they were interested in controlling development in the area to the advantage of the towns and a planning district would provide them with the necessary instrument of power. Although the Rural Municipality of Thompson would also be a member of the district board, the towns could count on its support going to them rather than to Stanley. Since The Planning Act provided that all questions at a board meeting be decided by a majority vote (Sec.21(1)) the towns would be assured of control of development in the district. The towns in fact were in a no-lose position: their desire for development control would be realized either through the establishment of the planning district or through the proposed annexation, and they were quite confident that the government and its agencies would support them in either case. The R.M. of Stanley on the other hand was in a no-win situation; they would either have to join the planning district or lose a substantial area of land together with the revenues it generated and other benefits which were attached to it.

The towns realized the advantage they enjoyed and exploited it in the fullest measure. They refused to meet with the R.M. council or its solicitors in spite of the efforts of the latter to establish contact and negotiate a resolution of the problem. They remained adamant in their position on their annexation application until the very last moment before the Municipal Board was to hear the application, scheduled for May 17th, 18th and 20th, 1977, and the anxieties of the Rural Municipality had been exacerbated to the limit of their endurance. A meeting between the councils of Stanley, Morden and Winkler was finally arranged for May 16th. At this meeting the Mayors of the two towns played out their powerful hands: there would be no abandonment of the intent to annex - it was too late for such a move, the hearing being scheduled for the next day - but they were prepared to reduce their demands if the R.M. of Stanley would join the planning district. The Mayor of Winkler produced a resolution to that effect, already prepared, including the listing of the lands comprising the reduced annexation. The reeve of Stanley went on record as being opposed to such a resolution but clearly Stanley had lost the battle. At a meeting of the Stanley council on May 20th it was confirmed that Stanley would join the M.S.T.W. Planning District, and 1387-acres of its

territory would be annexed by the Town of Morden, and over 2715-acres would be annexed by the Town of Winkler. There was some small comfort to be drawn from the fact that "the corridor" was not included in the annexation spoils.

Dismay over the outcome of the affair was common among the residents of Stanley but they were quite unprepared for the further consequences of membership in the planning district. When it became known that the R.M. would have to adopt a building code, a basic planning statement, and a zoning by-law, all of which imposed severe restrictions on their individual freedom to act, they began to see the full implications of membership and they raised a storm of protest. They organized themselves into an association called the Property Owners Association to mobilize public opinion against the M.S.T.W. Planning District.

In May of 1980 the council of the R.M. of Stanley gave first reading to a proposed zoning by-law. This provoked a massive protest and more than 100 property owners attended the M.S.T.W. board hearing of the by-lay on June 19th 1980 to voice their violent objections. Residents picketed outside of the M.S.T.W. Planning District offices carrying placards with such slogans as:

> We have been sold out!
> Take MSTW and shove it!
> Stanley, we won't take it any more!
> No Joe we won't go!

The demonstrators raised such a disturbance that the police had to move in and threaten to make arrests. Objectors filed written submissions urging the council to withdraw from the M.S.T.W. Planning District. The protest was overwhelming. The council agreed to re-draft the zoning by-law, but the protests against the planning district continued. The Property Owners Association and other residents continued to demand the complete and unconditional withdrawal of Stanley from the M.S.T.W. Planning District. In July 1980 the council was confronted by 50 property owners demanding the drafting of a withdrawal resolution. It was agreed, however, that before drafting such a resolution council should meet with the Minister of Municipal Affairs and the Minister of Labour and their officials. But feeling were aroused to such a pitch that the property owners seriously discussed boycotting the towns and withholding their provincial taxes. The proposed

meeting with the provincial Ministers and officials was held in August 1980. At this meeting the representatives of the provincial government urged Stanley to remain in the planning district long enough to complete the development plan already in preparation. They pointed out that such a plan was strongly advisable in any case and that government grants and services were available for its preparation as part of the district plan. If Stanley were to withdraw and seek to have such a plan prepared independently it would be very costly to the R.M. in terms of consultant's fees. The R.M. councillors were persuaded of the wisdom of this approach and agreed to remain in the district for the time being. Many of Stanley's residents, however, failed to see the wisdom of this approach and felt that the council was going against the wishes of the majority of the people.

At about this time the regular municipal elections, scheduled for October 1980, were beginning to loom over the horizon and because of the M.S.T.W. issue, promised to be very much livelier than usual. The Property Owners Association girded themselves for a vigorous campaign based on the following platform, as advertised in the Pembina Times newspaper:[25]

STANLEY NEEDS

A

NEW COUNCIL

That Will

1. Govern in the interests of the Rural Residents.
2. Present petition to take the municipality of Stanley out of the M.S.T.W. Planning District.
3. Eliminate regimentation of the people.
4. Properly look after the maintenance of roads.
5. Stop wasting and spending tax dollars unwisely on unnecessary programs.

The advertisement went on to exhort the voters of Stanley to elect council members who will guard the interests of the rural community and who will be the servants, the voters being the masters. It also advised that the advertisement was "sponsored and paid for by the Property Owners Association (not tax dollars)." Planks 3,4 and 5 of the platform and the exhortation which followed were fairly typical of the conservative sentiments which prevail in a farming community but there is no ambiguity or fuzzy ideological

cant about the first two planks in the platform. The intent of the campaign was given graphic visual representation by one candidate for council, Harry Enns, who painted the legend on the tail-gate of his pick-up truck, carrying it wherever he drove, which read: M.~~S~~.T.W.[26]

An interesting side-light on Mr. Enns is the fact that he was a fairly recent arrival in Stanley from Ontario, who from the very first intimation of a planning district spoke out against it, arguing that it was the same thing as the regional non-representative local governments that had been foisted on the people of Ontario. One wonders whether it was from this source that Mr. Frank Johnston, the member for Sturgeon Creek, drew the inspiration for his speech in the debate on Bill 44. During the entire course of the protest movement against the M.S.T.W. Planning District, Harry Enns was actively involved, calling upon Stanley council to ask the provincial cabinet to change the boundaries of the district so as to exclude Stanley or to dissolve the district entirely, or at the very least to hold a referendum on the issue.

In the municipal election of October 1980, the voters of Stanley elected a council on which a majority of the councillors was opposed to the M.S.T.W. Planning District. They returned:

- **Reeve George J. Froese**, who defeated pro-M.S.T.W. Reeve Warkentine
- **Harry Enns**, who defeated pro-M.S.T.W. Joe Olafson
- **Tony Hoeppner**, who defeated pro-M.S.T.W. new candidate Elmer Evenson
- **Abe Enns**, an incumbent councillor continuously opposed to M.S.T.W.

However, three pro-M.S.T.W. councillors retained office:

- **Dave Wall**
- **Peter Goertzen**
- **Bob Cram** (by acclamation).

Immediately upon taking office Reeve Froese advised the other members of the M.S.T.W. Planning District Board that he advocated Stanley's withdrawal and would attend the meetings of the board only as an observer. In December 1980 the council of Stanley considered a resolution calling upon Stanley to remain as a member of the planning district, but agreed to defer the vote on this resolution until February 1981 at which time, it was felt, more

information would have become available about the operation of the planning district to permit a more knowledgeable vote. Meanwhile Reeve Froese and Councillor Harry Enns were to continue to attend the board meetings as observers. When the deferred vote on the resolution was eventually held on February 10th 1981 there was widespread surprise and more than a little consternation to see that Harry Enns, the erstwhile implacable opponent of the M.S.T.W. Planning District, the prophet of regional government doom, the champion of the farmer's right of personal freedom and municipal autonomy, voted for Stanley to remain in the district. He explained his change of heart on the grounds that it would cost the municipality $50,000 to have a plan prepared independently and he now felt that they should have a plan. His vote added to those of the three pro-M.S.T.W. councillors gave the "ayes" a majority and council was committed to remain in the district. Had he voted "nay" consistently with the position upon which he had been elected, the vote would have been split 3-3, and Reeve Froese would have decided the issue with his negative casting-vote. Stanley council would then have been formally committed to withdrawal.

From that time to the end of their term in office, Harry Enns, Peter Goertzen, Robert Cram and Dave Wall voted together en bloc on all questions of planning and the planning district. Reeve George Froese and councillors Abe Enns and Tony Hoeppner were consistently in the minority.

The electors in Harry Enns' ward were incensed over his pro-M.S.T.W. stance and presented a petition to the Stanley council at its meeting of March 26, 1981 demanding his resignation. The council replied that it had no power to expel a member on such a petition. The electors called upon Harry Enns to resign for breach of his election promises but he refused.

Confrontations between the pro- and anti-M.S.T.W. advocates continued both in council and among the residents of Stanley. Petitions to unseat Harry Enns and to submit the M.S.T.W. issue to a referendum were presented with regularity but each was defeated by the prevailing 4-2 distribution of votes on council. In February 1982 a series of public information meetings was held on the draft development plan. Council approved the draft by the same 4-2

margin. At the end of October, 1982, the Municipal Board opened its hearing to approve the development plan and to consider any objections to it.

The Red River Valley Echo issue of November 3rd 1982 carried the following story headline and report of the Municipal Board's public hearing on the proposed M.S. T. W. Planning District Development Plan:

MASSIVE OPPOSITION FROM STANLEY RESIDENTS

Stanley R.M. Reeve George J. Froese, in a personal submission led off the massive opposition to the development plan at the hearing in Winkler Monday.

He described the proposed development plan as "an anti-development plan for Stanley. There are so many restrictions embodied in the plan that it will curtail rather than enhance development."

It would, said Froese, deny the individual freedom of property owners and taxpayers, a denial which is wrong, and cited it as one of the reasons he was strongly opposed to the development plan.

Froese suggested it has become obvious during the existence of the M.S.T.W. planning district that it is very devisive and is disrupting peace and harmony in the larger community.

"The Majority of Stanley people prefer no planning in M.S.T.W." He said this was demonstrated by the many signed petitions (including over 1,000 signatures on petitions asking for a referendum, which was denied by Stanley council).

Froese added that the district was brought in "in a deceptive way and imposed on the people against their will and wishes." Referring to Stanley council's lack of response to petitions, the Reeve said "elected representatives should be servants, not masters of the people."

In his presentation, Froese said the plan discouraged residential settlement in Stanley, and suggested there was no provision for subdividing an existing farmstead from the rest of the farm where the farmer wishes to will the property to members of his family, or for him to sell or dispose of part of his property if in dire need. There is also no provision for appeal once a ruling had been made, he said.

The Reeve was also upset that new residential settlements could not be located in Stanley, and suggested that it was taking away people's choice and forcing them to move to Winkler or Morden...."The pioneers who built this country had no problem with central planners. They did their own planning

> without outside interference, in a country structured with a lot of small communities. Freedom for the individual was their goal. The M.S.T.W. development plan, Stanley component, is not worthy of support, and will destroy rather than enhance development in Stanley municipality" concluded the Reeve.
>
> Haskett farmer G.G. Elias said the residents of this community "have battled with this M.S.T.W. central planning program for more than three years" even though the residents of Stanley have repeatedly conveyed a clear message that they do not want any part in the program. He said Stanley residents were betrayed by their own councillors, who reneged on election promises of withdrawing from the planning district, and suggested there was a grandiose scheme to remove all power from the people....[27]

The newspaper report then went on to list the names of ten people who made oral presentations and indicated that there were others, as well as many written presentations which were submitted to the board. Support for the plan of course was voiced by councillors and residents of the two towns, as well as the R.M. of Thompson and by officials of the government.

The M.S.T.W. Development Plan was approved on December 15th, 1982 by Order-in-Council No.1457.

The new zoning by-law, drafted to conform with the provisions of the new development plan, was presented to the council of the R.M. of Stanley in May 1983, for their first reading. Again the by-law was given first reading by the same 4-2 majority vote and again objections were filed against the by-law but were unheeded and the matter was soon placed before the M.S.T.W. Planning Board "For speedy approval of the by-law in order to ensure passage before the municipal elections in late October" the Pembina Times reported on August 24, 1983. "Opponents to the Planning District will likely be mounting strong campaigns to unseat the four planning supporters on the six-member council and should anti-planning candidates gain control of council, it is unlikely they would proceed with the passage of the zoning by-law if the present council did not complete it."

The M.S.T.W. Planning District Board met on September 1st, 1983 to consider the objections to the Stanley zoning by-law. They dealt expeditiously with

the objections and returned the by-law to the R.M. council without any revisions. The R.M. council gave third reading to the proposed regulation on September 22, 1983, by the same 4-2 majority, and the zoning by-law became law. It was one of the last acts in office performed by the group of four.

The next municipal election took place in October 1983. The voters of Stanley returned to office a council with a majority of members who had campaigned on a platform of withdrawal from the planning district. Their election to office constituted a mandate to take the municipality out of the district. The councillors who were elected on this platform were Reeve George Froese and Councillors Jake Enns, Abe Enns, John Brooks and Tony Hoeppner. Two incumbents who had continuously supported the planning district were also returned to office - Robert Cram and Peter Goertzen. At its inaugural meeting on November 9, 1983, the new council of the R.M. of Stanley passed a resolution to withdraw from the M.S.T.W. Planning District and refused to appoint any representatives to the Planning District Board. Councillor Cram attempted to have the motion tabled until the council had discussed the ramifications with the provincial government but there was no seconder for the motion. Council approved a resolution authorizing the reeve to retain solicitors to assist the municipality in its application to withdraw from the planning district. In due course solicitors were appointed and the withdrawal procedure was launched.

On looking back over the events surrounding the establishment of the M.S.T.W. Planning District and the opposition to it, a number of aspects of the affair emerge as of particular interest for the light they throw not merely on "planning" in general but on the identity of planning and government in the realm of policy. Mr.Pawley spoke of The Planning Act as a means of land-use control. So did his colleagues in the government. So did the members of the opposition. Mr. Pawley also spoke of district planning as a means whereby municipalities could "plan together...and adopt development plans as a statement of long-range policies or objectives respecting land-use for the district or region." As it turned out, however, the issues surrounding the establishment of the M.S.T.W. Planning District went far beyond those of land-use. Land-use was of course involved as it is in

virtually every concern of a municipal council. Even such matters as welfare payments which on the face of it may seem remote from any question of land-use are hedged round with restrictions concerning the occupation of premises and the use made of those premises. The M.S.T.W. affair, in spite of the speeches during the debate on Bill 44, did not revolve around any issue of land-use. At its centre it was essentially a struggle for politico-economic power and it had important overtones of culture-conflict. The towns saw in the planning district an opportunity to take control of the development potential of the area and to enlarge their revenue base. Their formal public position was that they were only concerned about "planning" in the area and it was this concern for planning which motivated them to advocate the creation of the M.S.T.W. Planning District and to threaten annexation as an alternative. The specific politico-economic advantage for them which would result from such an arrangement was lost in the widespread diffusion of the feeling that planning somehow would be of general benefit to all who were involved in it, although exactly what benefits it would bring was not precisely identified. The Rural Municipality of Stanley saw the planning district proposal as threatening the demise of their local government autonomy; coupled with the annexation threat it put their own revenue base in serious jeopardy.

Stanley acted ineptly in the M.S.T.W. affair and would have been well advised to retain competent professional help at the outset. There were defensible positions from which they could have resisted the pressure to join the planning district. When he introduced Bill 44 in the legislature the Hon. Howard Pawley, referring to the district planning proposal observed:

> The Government recognizes that some municipalities may prefer to establish land-use policies on their own. If so, they can continue planning as they do at present.[28]

The fact is that a Partial Planning Scheme had been in effect between the R.M. of Stanley and the Town of Morden since 1962, under which Morden was the Responsible Authority with planning jurisdiction over that part of Stanley covered by the Scheme. This arrangement had been working with little friction since that time and probably would have continued to do so but for the introduction of the planning district provisions in The Planning Act of 1975. Moreover, Section 13(1) of The Planning Act stipulated that planning districts

could consist of "the whole or parts of 2 or more municipalities" which reinforced the legitimacy of the partial planning scheme between Stanley and Morden. It is of significance that when Stanley indicated that they would consider being part of a partial M.S.T.W. Planning District, the Department of Municipal Affairs officials rejected the suggestion on the grounds that it was against departmental policy to establish partial districts. Since entry into a planning district was purely voluntary, and since municipalities were free to continue their planning activities on the prevailing basis, and since departmental policy was clearly in violation of the provisions of the statute, and since a partial planning scheme was already in existence, Stanley was in a fairly strong position to repel any attempt to coerce them into joining the M.S.T.W. Planning District. They undoubtedly would have had to appear before the Municipal Board on the matter of the town's annexation application, but probably would have been able to satisfy the Board that the town's land demands were grossly in excess of their requirements, which indeed they were. They might even have had to surrender an even smaller area than they finally did by negotiating the issue with the towns. In the end Stanley was not only forced to join the planning district but also to give up an excessive amount of land to the towns.

But the dispute over the establishment of the M.S.T.W. Planning District involved more than what was superficially apparent. There were throughout the entire affair powerful undercurrents of hostility which ran deeper than the main current of confrontation over jurisdiction and tax revenue. One could sense the extreme tensions beneath the formal surface relations, arising out of cultural and personal antagonism. The members of the Stanley council were all farmers and there clung about them not only the aura of the soil and their farm animals but also the atmosphere of their Mennonite culture which seemed to cling even to the councillors who came from a different cultural background. The town councillors were all businessmen who reflected in their dress and speech and attitudes a more urban life-style and a more secular orientation, even those from a Mennonite background. Stanley councillors, and through them the Stanley residents they represented, were regarded by their antagonists in the confrontation as wrong-headed, benighted, stubborn, introverted and reactionary. Nor was this perception limited to the towns-

folk. Don Alexander, reeve of the R.M. of Thompson, who was himself a farmer, during a meeting of the M.S.T.W. Planning District Board of which he was the Chairman, referred to the residents of Stanley as "people with rubber heads and holes in their ear-drums."

Differences in the objectives and perceptions among the parties were not limited to the members of the councils of the towns and the rural municipality. One must presume from the fact that three, and subsequently four Stanley councillors favoured membership in the planning district that the Stanley residents whom they represented also favoured it. Even after the housecleaning election of 1983, two pro-M.S.T.W. councillors retained their seats on the Stanley council. And at the level of the provincial legislature, opinions and perceptions were widely varied among the bureaucrats, the members of the government and the members of the opposition. As is commonplace in the realm of politics and government, each party to the affair had its own hidden agenda which was not necessarily in accord with the others, but the weight of the bureaucratic commitment to what was essentially a theoretical concept and the government's ideological disposition carried events toward their culmination in the establishment of the M.S.T.W. Planning District.

Pursuant to the resolution of the Stanley council of November 9, 1983, the legal firm of Walker, Pandya and Cristall was engaged to represent the R.M. in its action to withdraw from the planning district. From the beginning of 1984 until the end of September the R.M.'s solicitors attempted to make contact with the solicitors of the M.S.T.W. Planning District Board, in order to arrange a meeting with a view to arriving at some mutually satisfactory resolution of the differences between the Board and Stanley. But to no avail. The towns simply made themselves unavailable. Stanley in the meantime continued in its resolve to withdraw from the planning district, and their solicitors pursued the preparation of their case. When it became clear that Stanley was serious in its intent to withdraw, the towns once again adopted the tactic of annexation and each passed a resolution to annex a large tract of Stanley's territory. This time the amount of land sought was enormous - a total of over 14,000-acres which included "the corridor." The first indication that Stanley had of this move by the towns was a report in the

Pembina Times of October 3, 1984, to the effect that the towns of Winkler and Morden had held a joint conference to announce that each of their councils had held a special meeting on the preceding Saturday at which each had adopted a resolution to apply for the annexation of certain lands from the Rural Municipality of Stanley. They justified their action on the ground that since Stanley was resolved to withdraw from the district they had no alternative but to annex the land if the district was to enjoy proper planning.

The Municipal Board of Manitoba, on December 3rd, 1984, opened their hearing on Stanley's application to withdraw from the planning district. The hearing lasted for several days with strong, often emotional arguments being presented on both sides. Stanley offered several alternative compromise proposals, even agreeing to remain in the M.S.T.W. Planning District under certain conditions, but some of the conditions were unacceptable to the towns and some unacceptable to the provincial bureaucracy. No decision was made by the Board at the close of the hearing nor was any expected. The procedure followed by the Board is to hold a hearing, then consider the evidence over as long a period as it may require, and then make its report and recommendations to the Minister. There was then, at the close of the hearing, no indication of what the Board might eventually recommend.

There was, however, still the matter of the annexation to be faced. Annexation proceedings come under the jurisdiction of the Municipal Act. Annexation applications are heard by the Municipal Board which then reports to the Minister of Municipal Affairs. The hearing on the applications by the Towns of Winkler and Morden was scheduled for April 1st, 1985. Ever since the announcement by the towns at the beginning of October 1984, of their intention to move against Stanley with a second annexation threat, the council and the residents of the R.M. were greatly distressed, remembering as they did their recent annexation experience. Priority in the statutory proceedings had to be accorded to the Municipal Board hearing on Stanley's application to withdraw from the M.S.T.W. Planning District since the R.M.'s resolution had preceded by almost a year the town's new annexation application and the machinery for hearing the withdrawal application was already in motion; in fact the Municipal Board hearing on Stanley's withdrawal was held only two months after

the town's announcement of their intention to annex. The town's annexation intention not only generated extreme distress in the R.M. but also introduced a very considerable ambiguity in the political positions of the parties to the dispute and uncertainty in the implications of the possible findings of the Municipal Board. If the Municipal Board were to recommend that the R.M. of Stanley should not be allowed to withdraw from the M.S.T.W. Planning District but must continue to participate as a member, would the towns still persist with their intention to annex? Would there be any point in pursuing their intention, since its motivation was allegedly to secure planning in the district which the continuation of the M.S.T.W. Planning District would itself secure? Clearly the decision of the Municipal Board would have a major influence on the annexation issue and logically all dealings on that issue should be suspended until the Board had decided on the withdrawal application. But there was no telling how long the Board might take to arrive at a conclusion. It was not unknown for the Board to take several years to render a decision on matters which had come before it. It was neither in the town's interests vis-a-vis annexation nor the R.M.'s interest vis-a-vis withdrawal to suffer a prolonged period of waiting. Nor did such a hiatus serve the interests of the M.S.T.W. Planning Board in terms of its ongoing planning role. Nevertheless, such indeed seemed to be the prospect. Again, however, the R.M. was in the unhappiest position. If they were refused permission to withdraw from the planning district they might possibly not have to lose any land through annexation, but they would have to continue in the hated planning district and the chances were strong that they would in fact also have to give up some land to boot. If they were allowed to withdraw there was no doubt that they would lose a great deal of land. They were truly in a quandry. The outlook was gloomy indeed.

But a ray of hope shone through the gloom from a rather unexpected quarter. In pondering the dilemma the planning consultant to the R.M.'s legal advisors was struck by the fact that there seemed to be a curious anomaly in the provincial statutes relating to the case. Normally all annexations in the Province of Manitoba proceed under the Municipal Act. But the case in hand was not normal inasmuch as all the parties involved were members of a planning district for which a district development plan had been prepared and

established and was still in effect. This was the first time in the history of Manitoba that an application for annexation had been filed by members of a district planning board who were parties to a district development plan against another board member and party to the plan, and in which the subject lands lay entirely within the planning district and were entirely covered by the provisions of the district development plan. Following established practice the annexation application was made to the Municipal Board under the provisions of the Municipal Act. The anomaly which suddenly seemed to be perceived lay in the fact that the monumental change in the land jurisdiction proposed by the annexation application might constitute a radical change in the district development plan, and under The Planning Act, only the district planning board has responsibility for changing a development plan, as prescribed in Section 24(1) quoted above. If the proposed changes in land jurisdiction did in fact constitute a proposed amendment of the development plan then the application should have been made to and heard by the M.S.T.W. Planning District Board and not the Municipal Board. Since the M.S.T.W. Planning District still existed, and since the R.M. of Stanley was still a member, and since the Municipal Board had not yet rendered its decision, there was the very distinct possibility that the annexation application could be attacked and defeated under the provisions of The Planning Act.

The point was more than merely legalistic. It involved much more than the question of whether one board or another had jurisdiction over annexation procedure. At issue here were the most basic principles of the planning concept and the philosophical foundations of The Planning Act. If it was the government's intention to vest the planning district board with the responsibility for "the preparation, adoption, administration and enforcement of a district development plan...and any amendment thereof," as prescribed in Section 24(1) of the Act, and if a district development plan were "a plan, policy and program or any part thereof...designed to achieve stated objectives and to promote the optimum economic, social, environmental and physical conditions of the area...," as defined in Section 1(m) of the Act, then one must conclude that the government intended the district board to be not merely the major but the sole policy-making authority in the district (next to the government itself since the development plan required ministerial approval).

In any case that is clearly the purport of the legislation. One must also therefore conclude that in this circumstance a quasi-judicial body like the Municipal Board would not have the authority to usurp the jurisdiction of the district planning board and subvert its policies through its authority in the area of annexation under the Municipal Act. The Municipal Act had been established and was in force many decades before The Planning Act of 1975, and before the introduction of district planning. It is clear that the drafters of The Planning Act intended to vest the policy-making authority in the district planning board created under the new Planning Act. It is also clear that either they inadvertently missed the anomaly between that authority and the annexation authority, or what seems to me to be very much more likely, the drafters (who are lawyers) simply did not see that there was any connection between the two. After all, annexation had come under the Municipal Act for many years and really had nothing to do with policy-making; it was simply a matter of deciding whether certain lands should be allowed to be taken from one municipality by another. The lawyers, I believe, missed the whole policy implications of the new Planning Act.

The legal advisors of the R.M. of Stanley gave the matter careful study and came to the conclusion that the proposed annexation did in fact constitute a proposed amendment of the M.S.T.W. District Plan. Having satisfied themselves that they were on strong legal grounds the R.M.'s solicitors advised the towns of Morden and Winkler as well as the Municipal Board that they intended to put the matter before the courts. The Municipal Board not wanting to deal with a question that might be sub judice convened a meeting of the parties to the annexation dispute in their Board offices on March 26, 1985. The solicitors, on both sides, presented their arguments. Those representing the R.M. held that the proposed annexation was an amendment of the development plan and therefore the Municipal Board had no jurisdiction. Those for the Towns argued that it was not an amendment of the development plan but simply a matter of land transfer, and in any case the Municipal Board clearly had jurisdiction under the Municipal Act. The members of the Municipal Board listened to the arguments, retired to consider their position, and returned to advise the disputants that they found that there could be triable questions

raised by Stanley's solicitors and adjourned the annexation hearing sine die- without setting any date for a future hearing.

The solicitors for Stanley initiated court proceedings and on July 16, 1985, a court-appointed Referee sat to hear the legal arguments on both sides. The statement of claim filed by Stanley's lawyers set out an extended number of claims and was hurriedly drafted. The lawyers for the towns moved that the statement of claims be struck out entirely as not disclosing any reasonable cause of action, or alternatively as being frivolous, vexatious and embarrassing. They argued that the Municipal Act was the only statute with jurisdiction over annexation, and that once annexation had been carried out, the district planning board could amend its development plan in any way it saw fit. The Referee rendered his judgement on July 31, 1985. He ordered the statement of claim to be struck out, but with leave for Stanley to file an amended statement of claim, claiming first a declaration that the annexation of the land pursuant to The Municipal Act affects the operation of the development plan by-law and any other relief properly consequential thereon, and secondly that the annexation will be a breach of an agreement between Stanley and the towns. The latter was a reference in the statement of claim that when Stanley agreed to join the M.S.T.W. Planning District and to give up some of its land to the towns there was a verbal agreement that the towns would seek no further annexations unless absolutely necessary. Stanley claimed in the statement of claim that the new annexation application was a breach of that agreement.

We are not here concerned with the legal niceties of the statement of claim or of Referee Cantlie's order. The statement may have been faultily drawn and Referee Cantlie may well have exceeded the bounds of established judicial principles in ordering the statement to be amended in a particular way, as he directed. Nor is it central to our concern that Referee Cantlie saw that there might be some merit in Stanley's claim, and allowed the statement to be amended for re-submission. What is of pointed interest to us is the fact that Referee Cantlie, a member of the bar, appointed by the Court of Queen's Bench to hear argument on the case and to decide on its legal merit, ordered that the statement be amended to claim that the annexation of the land pursuant to

The Municipal Act affects the operation of the development plan by-law. This, of course, was not at all what the statement claimed. The operation of the development plan by-law was not at issue. The claim which the statement made, among others, was that the development plan was a statement of policy and only the planning district board under Section 24(1) of The Planning Act had jurisdiction over the plan, and that the proposed annexation constituted an amendment of the plan and in that circumstance The Planning Act was the statute of jurisdiction. At issue in effect was the question of whether the district planning board was the statutory policy-making authority in the planning district, or whether it was subordinate to other appointed quasi-judicial boards in its policy-making responsibility. The lawyers of the towns did not recognize this as the central point of the issue. Even if they had they were constrained by their legal position to argue that the Municipal Act had jurisdiction and there was no legal basis for Stanley's position.

Referee Cantlie missed the point entirely. Indeed it was apparent from some of the statements he made and questions he asked during the hearing that he was quite unfamiliar with The Planning Act and had only the vaguest notion of the planning concepts embodied in it. It was also apparent that he had never read the M.S.T.W. Development Plan.

Mr. J.S. Walker, Q.C. who was conducting the case for Stanley submitted an amended statement of claim to the Court of Queen's Bench which was heard by Mr. Justice J. Monnin on November 7, 1985. In addition to claiming that Referee Cantlie erred when he directed that an amended statement of claim be filed because that was in effect an instruction as to how and what to plead, the amended statement of claim asked for declaratory judgements on a number of questions so as to determine whether they constituted grounds for trial.

On January 6, 1986, Judge Monnin pronounced judgement, in the course of which he summarized the questions raised in the statement of claim as grounds for possible litigation:

> 1. Is the course of conduct of the defendants [i.e. the Towns] contrary or not to <u>The Planning Act</u> or to the development plan?

2. What is the role of the planning board in an annexation application before the Municipal Board?

3. Does the Municipal Board or the District Planning Board have jurisdiction to deal with annexation?

4. Does the Municipal Board have a role to play in annexation proceedings in municipalities which operate under a district planning scheme?

5. Does the annexation process commence under The Planning Act or The Municipal Act?

6. Whether the agreement entered into by the parties to the planning district is valid and binding and whether an application for annexation is in breach thereof?

Continuing in his judgement, Judge Monnin stated:

> I could probably easily reduce the number of triable issues set out by plaintiff simply by rephrasing them and, in fact, combining them but by doing so I would find myself in breach of the principle that a court should not redraft a pleading simply because it is not well done. I find that the learned Referee's order, in fact, properly identifies the issues which should be tried in this matter as the learned Referee has in fact condensed what the plaintiff has stated to be six issues. I find that the plaintiff has a triable issue and having so found I am loath to interfere with the pleadings as they stand and will not. However plaintiff would be well advised for the sake of clarity and trial efficiency to amend his statement of claim and redraft it with a view to achieving the direction which the learned Referee set out in his order.29

Judge Monnin incidentally did find that certain paragraphs in the statement of claim should be struck out and ordered them to be struck out.

Again, what is of interest to us here is that Judge Monnin found that the "learned Referee's order, in fact, properly identifies the issues which should be tried in this matter...." It must of course be recognized that an annexation under The Municipal Act would have an impact on the development plan - how could it not? Whether it would interfere with the operation of the development plan is quite another question - it may not interfere at all with its operation - and I believe that both the learned Referee and the learned Judge were wrong in identifying this as the question to be tried. It seems that their starting premise was the authority of The Municipal Act over all matters of annexation and the question to be tried was that of its impact on

the development plan. I suggest that such a view of the matter is a clear indication of the legal mind-set accustomed to a long established statutory procedure, unable to recognize the completely new context within which this particular annexation was proceeding, viewing it simply as another annexation like all others which had preceded it, and unfamiliar with planning concepts and the implications of the authority vested in the planning district board under its policy-making responsibility. The question to be tried was surely not whether the annexation of the lands under The Municipal Act would interfere with the operation of the development plan but rather whether The Planning Act and the development plan replaced The Municipal Act as the statutory authority in matters of annexation within a planning district, and therefore, what is the sphere of municipal policy-making authority.

Fortunately, Mr. Walker, being allowed by Judge Monnin to exercise his own discretion in the matter of amending his statement of claim, did so, but not "with a view to achieving the direction which the learned Referee set out in his order." Immediately on the pronouncement of Judge Monnin's judgement the solicitors of the towns filed appeals but Mr. Walker pressed on with his pursuit of a trial and to that end filed on February 21st, 1986, an amended statement of claim in the court of Queen's Bench. Rather than reducing the claim to that suggested by the Referee Cantlie and Judge Monnin however, he asked for:

a) A declaration that the Town of Winkler and the Town of Morden are in breach of the terms of the agreement that was made between the parties and a declaration that such an agreement is legally binding and not an agreement that was ultra vires of the Municipal corporations.

b) An injunction against the town of Winkler and the Town of Morden restraining each of them from acting in breach of said agreement between the parties.

c) A declaration that in matters such as a proposed change to a Planning District Development Plan By-law, including boundary changes, as is being proposed by the Defendant Towns of Winkler and Morden in this case, the Planning District has jurisdiction under the Planning Act, and in matters affecting a Municipal Development Plan, where the municipalities involved are not members of a Planning District, the Municipal Board has jurisdiction under The Municipal Act.

d) A declaration that the undertaking of the Defendant Towns of Winkler and Morden, as described herein, and in particular the respective resolutions of each of the Councils, is in effect a proposed amendment to the existing Development Plan By-Law No. 2-82 of the Planning District Board, and as such must be determined by the procedure set out in the Planning Act SM 1986 C.29-Cap P80, and not merely according to the annexation provisions of The Municipal Act.

e) A declaration that the actions of the Defendant Towns of Winkler and Morden, as described herein, and particularly their respective resolutions of Council seeking annexation of lands which is contrary to Development Plan By-Law No.2-82 of the Planning District constitutes a contravention of the said By-Law and the provisions of The Planning Act.

f) A restraining order to stop the Town of Winkler and the Town of Morden from carrying on any undertaking that is inconsistent or at variance with the Development Plan By-Law in effect in the area.

g) A declaration determining whether the resolutions passed by the Defendants seeking further lands or any requests for obtaining further lands from a member municipal corporation within a Planning District established under the Planning Act is governed by either:

i) the provisions of the Planning Act; or
ii) the provisions of the Municipal Act; or
iii) the provisions both of the Planning Act and the Municipal Act, and if both of these Acts are applicable then what is the proper procedure to be followed.

h) Any further and alternative relief which this Honourable Court may deem just to grant.

i) Costs of this action.[30]

A statement which in my view clearly and properly sets out the issues.

Before a trial on the basis of Mr. Walker's statement of claim could proceed, the appeal launched by the solicitors for the towns had to be heard. That hearing was held in the Court of Appeals on September 15, 1986, nearly eight months after Judge Monnin's judgement, against which the towns were appealing. Again both sides presented their arguments and the court adjourned

until further notice pending the judge's consideration of the arguments and his arriving at a judgement.

1986 was a municipal election year in Manitoba. Before the learned judge of the Court of Appeal had had time to gather his thoughts, October 22nd - election day - was upon the province and the electors of Stanley, as of all municipalities, went to the polls to choose their council for the next three years. In what seemed to many to be the hurling of a political thunderbolt the electors of Stanley threw out every one of their anti-M.S.T.W. Planning District councillors and replaced then with a full slate of pro-M.S.T.W. members. Councillors Cram and Goertzen were once more returned to office and this time were joined by five others who shared their view that Stanley should remain in the planning district.

At the present time the Stanley council has not taken any formal steps to retract its application for withdrawal from the M.S.T.W. Planning District. Nor have the Towns taken any new or further action on their applications for annexation. Nor has the Municipal Board as yet made any report to the Minister on the hearing on Stanley's withdrawal which it held on December 3rd, 1984 - more than three years ago. Nor has the Court of Queen's Bench shown any movement in the direction of a trial on the statement of claim of February 21st, 1986. Presumably the Municipal Board is waiting to see whether the courts will simplify the issues facing the Board by deciding the questions of jurisdiction raised during the withdrawal and annexation arguments. And presumably the courts are waiting for the municipalities to set in motion the litigation machinery. And presumably the municipalities - the Towns of Morden and Winkler and the R.M. of Stanley - are in no great hurry to take any action at all being quite content, for the time being at any rate, to allow matters to continue in a state of suspended animation. There are indications that they are now quite comfortable with one another. Stanley has resumed its active participation on the M.S.T.W. Planning District Board, and there are rumours that there are informal discussions occurring on the withdrawal by each of their respective applications and stopping all actions before the Municipal Board and the courts.

III. EPILOGUE

It is interesting to speculate on the reasons for the dramatic change of heart of the Stanley electors with respect to their membership in the M.S.T.W. Planning District. Perhaps some explanation may be found in the legal and other costs of the proceedings in which it seemed no progress was being made and which seemed to have no prospect of ever coming to an end. Perhaps the acrimony of the confrontation which had so bitterly divided the community had brought relations so low that the depressed and exasperated residents were desperate for a reconciliation and saw a changed approach to the planning district as a means to that end. Perhaps the hostilities over the planning district were really feelings toward certain personalities who championed the opposing points of view rather than deep differences over the principles involved. Perhaps there was something of all of these in the affair. It would make an interesting subject for sociological or political studies research.

But what is truly regrettable about the present situation is the very strong possibility that the fundamental government/policy-making/planning issues which lay at the heart of the matter may never be resolved. If Stanley's statement of claim of February 21st, 1986, does not lead to a trial, and if the points raised in it are not decided then the entire concept of planning at the municipal level in Manitoba, its relationship to policy-making and to the general function of municipal government, and even to provincial governments in terms of what that government intended to achieve in the realm of municipal planning may never be clarified. The planning bureaucracy will have remained unchallenged in its self-serving theory that a comprehensive province-wide web of planning districts is a good and achievable idea; the provincial government will be able to continue complacent about its success in establishing social democratic institutions in the province seemingly without really understanding what it has put in place; the Municipal Board will be relieved of the need to make some very difficult decisions on the matters that have been put before it; the legal fraternity will be able to continue in its wonted way in matters relating to The Municipal Act and The Planning Act without having to address such marginally legal matters as municipal policy-

making with which it is in large part uncomfortable; municipal councils will be able to continue to think of planning as a land-use control activity without seriously considering their possible role in social and economic policy; the Planning Act will continue to offer, silently and unrecognized, an open door to unexplored uplands of municipal creativity and enterprise, through which no municipality will be drawn to pass; and the world will continue to muddle along as it usually does, improvising short term solutions for the long-term problems which beset it. Perhaps the next time round the electors of Stanley will return a council which is opposed to continuing membership in the planning district; or perhaps a member of some other planning district may want to withdraw or may be threatened with annexation, and a new series of proceedings will be set off. In the meantime of course the Towns of Morden and Winkler with the support, undoubtedly, of the R.M. of Thompson, will determine the decisions of the M.S.T.W. Planning District Board and control the development and investment and therefore the new revenue sources which come into the district, thus achieving their original "planning" objective. Such is the stuff as planning, and government, are made on.

I have dwelt at length and in detail with the M.S.T.W. Planning District affair - perhaps overly long and in too much detail. But I felt it necessary to do so in order to provide some sense of the variety and complexity of the forces at play in what, after all, may properly be regarded as a fairly typical event in the political life of any community. The M.S.T.W. episode, although it had some special characteristics, nevertheless ran a course which seems to me to be customary in the political process at whatever level of the socio-political system it occurs, and indeed whatever may be the issues involved. I think it epitomizes the equivocal and precarious nature of planning as a policy-making activity at all levels of government but particularly at the municipal level. Policy is made in the clash of differing viewpoints, in the conflicts of the political process. At the municipal level of government, however, there is a special circumstance which complicates and beclouds the nature of policy issues. It is the dominant presence of the provincial government in all matters of municipal concern. This ubiquitous presence makes it difficult to distinguish provincial policies from municipal policies as was the case in the M.S.T.W. affair. The idea of planning

districts as embodied in the Planning Act was clearly a provincial policy; that identity was confused beyond recognition when it became an issue of policy at the municipal level as embodied in the M.S.T.W. Planning District. It is ironic that both of these instruments were intended to serve the interests of the society involved but the society involved does not see them in that light. The notion of municipal policy-making as an ideal is still locked in Ballard's "ironic struggle with society." And the M.S.T.W. episode exhibits the characteristics which according to the philosopher Ballard are essential to a sense of the comic. Certainly it has the elements of mistaken identity, plots and subplots, protagonists working at cross-purposes, fickleness and betrayal which are the common stuff of all drama whether comedy or tragedy. What it lacks at present is a final resolution. The play has not yet worked itself out to a denouement.

Nor is it likely to. It is not really in the interests of any of the major actors in the play to resolve the matter and bring it to a proper conclusion. The only interest which would be served by such a resolution would be the clarification of the issue of what is the proper sphere of policy for municipal government, and none of the actors seems to be interested in that aspect of the affair.

The irony in the "ironic struggle" is compounded by the fact that the municipalities involved, which have the greatest stake in the issue of municipal policy-making authority, are not concerned about it. The people of the R.M. of Stanley were generally hostile to any imposition of outside laws and regulations. They did not need or even recognize the relevance of municipal policy-making to the pursuit of their customary life-style. It was sufficient for them if their municipal council addressed itself merely to the simple provision of basic services. Nor were the towns concerned with policy in terms of long-range concepts of social and economic development. Their concern was the immediate acquisition of the revenue-producing land of the "corridor." To the practical politicians of the municipal councils the important issues are the bread-and butter issues of everyday political life, the issues which bear upon the acquisition and retention of political power. Philosophical or abstruse questions of political ideology such as the nature

and role of the municipal government's policy-making function, particularly in the sphere of economic and social policy, they are quite content to leave to others to decide, or indeed even to leave unasked and unanswered. And I would say that in the context of the low-density, slow-growth, agricultural society in which the M.S.T.W. episode occurred they are quite right.

But the issue of the policy-making function of municipal government touches a wider realm than the M.S.T.W. Planning District. A decision on the question of whether the Municipal Board or the Planning District Board has jurisdiction over the annexation application of the Towns of Morden and Winkler would go to the very heart of the concept of Planning in Manitoba and would profoundly affect the philosophical basis of the statutes which govern the planning function in that province.

NOTES

1. Edward C. Ballard, "Sense of the Comic," in Dictionary of the History of Ideas (New York: Charles Scribner's Sons, 1973), 467 ff.

2. The Planning Act. SM 1975 C29. Cap.p.80.

3. The Municipal Act. SM 1970 C100. Cap M.225.

4. The City of Winnipeg Act. SM 1971 C105.

5. In Europe, particularly in Germany and Britain, planning had been practiced for many years, although the statutory basis for the system of planning now in operation in Britain was not established until 1947, under the Town and Country Planning Act of that year.

6. The Honourable Howard Pawley as quoted in Hansard, 20 May 1975, p. 2750 ff.

7. Ibid.

8. Warner H. Jorgensen as quoted in Hansard, 2 June 1975, p. 3300.

9. J. Frank Johnston as quoted in Hansard, 5 June 1975, pp. 3519, 3520.

10. Steve Patrick as quoted in Hansard, 5 June 1975, p. 3521.

11. George Minaker as quoted in Hansard, 5 June 1975, p. 3538.

12. The Planning Act. SM C29 Cap P80 1975 Sec.1(m).

13. The Town Planning Act. SM 6 George V 1916.

14. Ibid., Sec. 1.

15. The Planning Act. SM 1964 C.39, Sec. 1.

16. Ibid., Sec. 2(k).

17. Ibid., Sec. 13.

18. The Metropolitan Corporation of Greater Winnipeg Act. SM. Chapter 40 1960 8 and 9 Elizabeth II.

19. Ibid. Sec. 79(1).

20. The City of Winnipeg Act. SM Chapter 105 1971.

21. The Planning Act. SM C29 Cap P80 1975 Sec. 13(1).

22. Ibid., Sec. 24(1).

23. Ibid., Sec. 27(1).

24. Corridor Study (MSTW Planning District Board 1978).

25. Pembina Times, 8 October 1980.

26. Pembina Times, 15 October 1980.

27. Red River Valley Echo, 3 November 1982.

28. Pembina Times, 24 August 1982.

29. Justice J. Monnin, Judgement pronounced 6 January 1986 in The Queen's Bench (Manitoba) Suit No. 85-01-02280.

30. Walker, Pandya Law Offices, Statement of Claim in The Queen's Bench, Winnipeg No. 85-01-0220, 21 February 1986.