A CENTURY OF ZONING
ABSTRACT
Zoning is (at least) a century old. Its history generally starts with the comprehensive zoning codes of Kitchener, for Canada, and of New York City, for the US. I try to remedy gaps in our historical understanding by looking at the earlier case of Westmount, Quebec, and by highlighting the political compromises of zoning pioneers. Historically, zoning was put before planning in the management of urban growth; politically, physical development was put ahead of social and economic development in addressing urban problems. We are still heirs to that legacy. But in the absence of adequate tools and policies, we have been using zoning creatively to address a variety of issues.

SOMMAIRE
Le zonage remonte à un siècle (au moins). Son histoire commence généralement par les codes de zonage détaillés de Kitchener, pour le Canada, et de la ville de New York, pour les États-Unis. Je tente de remédier à toute lacune dans nos connaissances historiques en examinant le cas antérieur de Westmount, au Québec, et en faisant référence aux compromis politiques des pionniers du zonage. Sur le plan historique, le zonage a précédé la planification en ce qui a trait à la gestion de la croissance urbaine; sur le plan politique, c’est l’aménagement physique qui a devancé le développement social et économique, pour résoudre les problèmes urbains. Nous en sommes toujours les héritiers. Toutefois, en raison du manque d’outils et des politiques appropriés, nous utilisons le zonage de façon créative pour régler diverses questions.

INTRODUCTION
I write these lines on July 25, 2016, a hundred years, to the day, after New York City adopted its famous "Building Zone Resolution" to control the use, height, and bulk of new buildings [Figure 1]. The resolution was hailed as a breakthrough at the time and served as model to many other cities on the continent, large and small. Many therefore see July 25, 1916, as the birthday of zoning in North America. In Canada, Kitchener is generally credited for being the first city to adopt a comprehensive zoning code. The final version of the Kitchener ordinance, after an appeal at the Ontario Municipal Board was passed on December 26, 1924.2

I would like to contribute to the centenary of zoning in two ways: by setting the historical record straight and by arguing that this anniversary should be an opportunity for a critical review and not just a cause for celebration. On the one hand, we know a lot about specific cases of comprehensive zoning in the 1910s and 1920s, but too little about the very beginnings of zoning at the turn of the twentieth century.2 On the other hand, despite the fact that, five decades ago, historian John Reps presented a “Requiem for Zoning” on account of its uselessness and harmfulness, we are still making a very intensive use of that controversial tool and are in fact inventing new uses for it all the time.4

THE FIRST ZONING REGULATIONS IN NORTH AMERICA
My research shows that the first municipality in North America that had a full set of zoning regulations was a small suburb of Montreal, and not New York. That suburb is Westmount, a wealthy community located on the southern slope of one of three hills at the centre of Montreal Island.5 Reading all of Westmount’s bylaws from 1874 to 1909,
one witnesses the incremental construction of a regulatory apparatus to manage urban development. Innovative municipalities did not suddenly adopt, let alone invent, zoning; they built up their land-use controls in a piecemeal fashion, cobbling together older forms of control, inherited from fire codes, nuisance regulations and permitting systems, and innovations inspired by external precedents or by local needs. Westmount made planning history on January 4, 1909, when it adopted a “Building By-law” which, together in a number of separate bylaws, contained a complete set of development controls as we know them today. The administration divided the municipal territory into a number of districts, assigned different land uses and housing types to each zone, and imposed variable standards as to setbacks, building height, land coverage and even project density. Westmount started on the path to zoning in the 19th century, and even though it had a later start than many other cities (it was first incorporated as the Village of Côte-Saint-Antoine in 1874), it progressed very quickly on that path. It established a zone reserved for detached and semi-detached single-family homes as early as 1897 and resorted to the floor area ratio (FAR) to regulate apartment construction as early as 1899. The city proved to be innovative not only in land-use regulation but also in a host of areas of municipal administration. Soon after adopting its zoning controls, it instituted a City Manager system (in 1913) and created a planning and design review board (in 1916), before any other city in Canada.

The tripartite topography of Westmount and the town’s self-identification as a well-managed bourgeois suburb made the municipality a “natural” for zoning. District 1, the southernmost part of Westmount, literally on the other side of the tracks, was open to all land uses and housing types, including manufacturing and apartments. District 2, the flat section north of the tracks and on the lower part of the slope, welcomed townhouses and other types of single-family homes and, on a small number of designated streets, also was open to commercial development. District 3, on the upper part of Westmount (the hill), was reserved for detached and semi-detached single-family homes. Physical elevation corresponded to social standing; although some attractive, stone-face “terraces” were built in the lower-lying portion of Westmount, overall, as one went up from the escarpment overlooking working-class Saint-Henri and up to the summit, one went (and one still goes today) from a more urban and commercial environment in the south to a more suburban and exclusive one in the north.

In short, by 1909 Westmount had a coherent, spatially comprehensive set of regulations, with all the basic elements of a modern zoning code. But by way of a Master Plan, it only had a homologated plan of existing and projected streets.

**LEARNING FROM NEW YORK CITY**

The case of New York City stands in sharp contrast to that of Westmount. The differences are obvious. When it adopted its first zoning ordinance in 1916, New York City had a population of about five million people and a land area of nearly 800 square kilometres. At the time it passed its Building By-law of 1909, Westmount had about 13,000 residents, occupying an area of four square kilometres. New York City was a teaming metropolis and the main gateway for immigration into America, a primate city with a rapidly growing Central Business District, in which the invasion of the skyscraper and of the tenement caused headaches to property owners and public officials. Westmount was a residential suburb of the English-speaking bourgeoisie, a refuge from congested, corrupt Montreal. New York City was much older than Westmount, but it went from a diverse system of building codes,
housing codes and private deed restrictions to a comprehensive zoning ordinance in only a few years, under the pressure of property owners in fashionable business districts.11

Despite all their differences, New York City and Westmount shared a desire to tame the forces of urban development and resorted to zoning to do so. Another similarity is noteworthy, too: both Westmount and New York City adopted zoning without adopting planning. Neither city drafted a Master Plan or instituted a Planning Commission before moving ahead with land-use regulation. As historian Mel Scott noted, although theory prescribes planning before zoning, historically, zoning preceded planning.12

Rather than being the expression of long-range planning and reformist policies, New York City’s 1916 resolution was a working compromise between policy-makers and real-estate owners and developers; it gave modest planning powers to the former and imposed few constraints on the latter. American zoning was built on a deeply rooted belief among politicians and judges in the virtue of laissez-faire and in the sanctity of private property.13 By controlling the location, type, and density of buildings, zoning gave officials a means to regulate real-estate development and prevent negative externalities, but it was too weak a tool to make a real difference in urban living conditions. Although the planning agenda had been pushed forward by a coalition of radical and conservative progressives, the adoption of the 1916 zoning resolution signalled the parting of their ways, most planners choosing the conservative route, turning planning into the “mediation of territorial politics,” and leaving pro-active government intervention, let alone social and economic reform, to others.14 Westmount’s 1909 ordinance was clearly conservative in intent, aiming primarily to shape the community according to bourgeois norms and to preserve property values.

THE CREATIVE HISTORY OF ZONING

Despite its origins in conservative real-estate regulation, zoning today is strongly on the minds of progressive planners. Like any tool, zoning can be used and indeed has been used in different ways by different people acting under different circumstances. Its history is evidence of planners’ inventiveness.

As we saw, zoning has served to design the built environment, regulating the shape of structures and their relation to the public domain; it has served to protect property values, preventing injurious development from intruding in established residential or commercial areas; and it has served to insulate families from “undesirable” neighbours, segregating the population by income and therefore also by race or ethnicity via regulations on building use, housing type and/or dwelling size.15 But zoning has also been used to secure public health and safety by setting standards to guarantee access to light and air and reduce the risk of fire transmission. It has been applied to increase municipal revenue by allowing the construction of tax-generating floor area and to lower municipal expenditures by prohibiting or minimizing the settlement of activities or populations that require higher levels of services. Last but not least, zoning has helped to protect built and natural heritage by limiting or guiding change in sensitive areas.16

The diversity of purposes has grown further in recent years, as the political mandate of planners has broadened, especially in larger cities. An increasing number of municipalities make project approval conditional on the inclusion of affordable units and/or the payment of “linkage fees” to fund the production of such units by third parties.17 Cities also impose all manners
“If zoning is often perceived by the public as a boring topic and a heavy bureaucratic burden, it is in fact a practice in which planners display resourcefulness and creativity in the pursuit of the public interest.”

The centrality of zoning in planning can be traced back to the beginning of the 20th century. For a century now, urban policy-setting has much too often been reduced to deal-making with developers. Regional or metropolitan approaches, investments in the public realm, and provincial or federal mandates in growth management need to receive a much more important place in our policy arsenal. There is movement in that direction. But for the foreseeable future, zoning will remain both the unpopular bread and butter of planning and, paradoxically, the expression of our profession’s idealism and ingenuity.

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NOTES
7 City of Westmount, By-law 190, “Building By-law of 1909, January 4, 1909 (City of Westmount Archives). Left in separate ordinances were regulations on building lines (which were part of the homologated street plan) and on the bulk of apartment buildings [about which more to follow].
8 Zoning by housing type was first enacted...
in Bylaw no. 75 “Respecting the Erection of Buildings above the Level of Montrose Avenue and to Regulate the Class of Houses to be Erected in that Locality,” March 1, 1897 (City of Westmount Archives). Use of the floor area ratio started with the adoption of By-law No. 103 “Concerning Building Areas and for Other Purposes,” April 4, 1899 (City of Westmount Archives). The idea of the F.A.R. was raised in New York City during discussions leading to the adoption of the 1916 zoning resolution, but it was not put on the books until 1961. See Raphaël Fischler, “The Metropolitan Dimension of Early Zoning: Revisiting the 1916 New York City Ordinance,” *Journal of the American Planning Association*, 64(2): 170-188, 1998.

7 A full list of innovations that the city claims to its credit as “firsts” in Québec, in Canada, or in the world can be found at http://westmounthistorical.org/local-history. One of the mayors of Westmount was William Dough Lighthall, who co-founded the Union of Canadian Municipalities [see Donald A. Wright, “W.D. Lighthall: Sometime Confederation Poet, Sometime Urban Reformer,” Master’s Thesis, Department of History, McGill University, 1991].

8 This distinguishing scheme was soon successfully contested by developers, who were given permission to erect apartment buildings on east-west thoroughfares such as Sherbrooke Street, along the base of the hill. Further densification was allowed in the 1960s and subsequent years, when high-rise condominiums and office buildings were put up in the southeast part of the municipality, near Montreal’s downtown. Still, the exclusive nature of much of Westmount’s urban environment has remained clear and unchallenged to this day, and so has Westmount very keen attention to the quality of individual buildings, public facilities, and urban amenities.


11 The planners who gave New York City its first comprehensive zoning code were “ultra-conservative” in their approach to the rights of property owners and the powers of government (Frank Backus Williams, *The Law of City Planning and Zoning* [New York: The Macmillan Company, 1922], p. 274).


14 Zoning policies can of course help to pursue a variety of goals at the same time. See for example the new zoning regulations applied in Toronto in the 1990s to revitalise old areas where new development and historic preservation had to go hand-in-hand (Andrea Gabor and Frank Lewinberg, “New Urbanism! New Zoning”, *Plan Canada*, 38(4): 12-17, 1997.


17 One way of facilitating redevelopment is to make land assembly easier. This can be done by “graduated density zoning,” under which densities are raised as the size of the parcel increases. See Donald Shoup, “Graduated Density Zoning,” *Journal of Planning Education and Research*, 28(2): 161–179, 2008.

18 Vicki Been has explored the difficult relationship between community benefits agreements, which are voluntary contracts between developers and community groups, and municipal zoning regulations in “Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?” *The University of Chicago Law Review* 77(1): 5–35, 2010.


20 In a recent OMB decision, board member Marc C. Denhez bemoans the prevalence of “Let’s-Make-a-Deal Planning” in Ontario. See “Shoreline Towers Incorporated v. Toronto (City), 2016 CanLII 58081 (ON OMB), http://canlii.ca/t/gt87p, retrieved on February 24, 2017, par. 318.

21 The figures in the map indicate the maximum ratio between the height of a building at the building line and the width of the street.