

## Protection provided by an OCP

From <http://www.annettemoen.com/greenway/keith-ferguson-paper.html>

*Local Government Act*, s.875. Municipalities are authorized to pass an OCP by bylaw under the *Local Government Act*, s.876. Note that once an OCP has been passed, all subsequent bylaws and works of that municipality must be consistent with it (*Local Government Act*, s.884(2)). Courts are slow to find such inconsistencies, however. For example, a court will only find a conflict between a zoning bylaw and a general statement of purpose in an OCP if there is "an absolute and direct collision" between them (Locke J. in *Rogers v. Saanich* (1983), 22 M.P.L.R. 1 (B.C.S.C), quoted in *Brooks v. Courtenay (City)* (1991), 78 D.L.R. (4<sup>th</sup>) 662 (B.C.C.A.)). Similarly: "In deciding whether a bylaw conforms with the official plan, a plan should be given a broad liberal interpretation" (Rogers, quoted in *Botterill v. Cranbrook (City)*, [2000] B.C.J. No 1658 (Online : QL), at para. 44).

So to ensure that uses/densities will not expand beyond those intended in the OCP one needs to include statements like – "all other uses are forbidden" in the zoning bylaw. To simply list allowed uses is not enough.

From <http://www.guildyule.com/news/papers/Legal%20News%20Dec%2005.pdf> :It has been held that a zoning bylaw will not be held to be invalid when it sets out a land use contrary to the OCP unless there is an absolute and direct collision between the OCP and the zoning bylaw.

**Thus it behooves a community to write explicit and absolute restrictions in their zoning bylaw since OCP's are usually silent on the specifics of zoning.**

More References:

[http://outlines.law.uvic.ca/courses/municipal/mun\\_spring04\\_curran\\_outline\\_keithand.doc](http://outlines.law.uvic.ca/courses/municipal/mun_spring04_curran_outline_keithand.doc)

[http://www.lgma.ca/upload/dcd92\\_May\\_06\\_Chapter\\_290.pdf](http://www.lgma.ca/upload/dcd92_May_06_Chapter_290.pdf)

<http://www.wcel.org/wcelpub/2006/14250.pdf>