



Blaneys on Building

This newsletter is designed to highlight new issues of importance to the development and construction industry. We hope you will find it interesting, and welcome your comments.

Feel free to contact any of the lawyers who wrote or are quoted in these articles for more information, or call the heads of our Real Estate or Architectural/Construction/Engineering Services Groups:

Andrew Heal
Chair, ACES Group
416.593.3934
aheal@blaney.com

Brett Tkatch
Chair, Real Estate Group
416.593.3969
btkatch@blaney.com

“The purpose of the (City of Toronto Harmonized Zoning By-law)... is to collapse the many zoning by-laws regulating development across the entire City largely into one consolidated zoning regime.”

CITY OF TORONTO PROPOSED NEW ZONING BY-LAW

Tammy Evans and Marc Kemerer

The following article represents a brief overview of the significant initiative of the City of Toronto in respect of revamping the City's zoning regime. This initiative will impact the development of properties within the City.

City of Toronto Harmonized Zoning By-law

The City of Toronto has recently released a revised version of its proposed new Zoning By-law (the “By-law”). The purpose of the By-law is to collapse the many zoning by-laws regulating development across the entire City largely into one consolidated zoning regime. The text of the By-law along with the interactive zoning map can be viewed on-line at Toronto.ca/zoning.

The volume of maps contained within the proposed new By-law are key to determining the provisions of the By-law that will apply to a particular site and to determine what new zoning category now defines the site's development potential.

With respect to existing zoning permissions, as proposed, the By-law will not apply to sites in: the *Centres*; where there are potential official plan conformity concerns; in the process of being developed, and; that are subject to site-specific zoning applications for this current session of

City Council. Chapter 900 of the proposed By-law sets out the site specific amendments and Chapters 950 and 955 are dedicated to certain zoning by-laws which will remain. The latter category will continue to be in force although it is as yet unclear the extent to which these will indeed prevail where a conflict arises with the proposed new By-law.

Of particular note, minor variances already secured for a particular site will not automatically be grandfathered, which could result in the loss of development rights previously granted through the Committee of Adjustment or OMB processes.

Comprehensive performance standards are set out for each zone category. For example, residential zones will be divided up into low, medium rise and high-rise residential zones, each of which will be divided into sub categories, the regulations for which accord to the particular typology. New definitions in the By-law will be significant to the development industry, such as for *gross floor area*, and new regulations are stipulated with respect to parking, bicycle parking and loading requirements.

The By-law will impact most properties within the City's boundaries and give rise to significant changes to the existing zoning for developed properties. There are a number of mistakes cur-

“Regulations affecting Tall Buildings (12 storeys or more) in the City of Toronto are now included in the proposed new zoning By-law...”



Tammy Evans is a commercial real estate partner in the Firm with significant experience in all aspects of condominium development.

Tammy may be reached directly at 416.593.2986 or tevens@blaney.com.

rently found within the mapping system, which is not surprising given the scale of the By-law project. Accordingly, we strongly recommend that the By-law be reviewed in detail to determine how it will affect a property and whether it accurately sets out the zoning for that property.

The By-law is scheduled to go before City Council for final approval at Council's meeting of 6-7 July 2010. Prior to that date there will be a series of other meetings and open houses, including a statutory public meeting on 16 June 2010.

Of significant importance for development properties, in order for a property owner to appeal the application of the By-law, the owner (or its agent) must have made oral or written submission to City Council before Council adopts the proposed By-law. We would be happy to review with you the impact of the By-law on any property and to communicate your concerns to the City on your behalf. ■

MORE ON CITY OF TORONTO NEW ZONING BY-LAW AND OTHER DEVELOPMENT INITIATIVES

Tammy Evans and Marc Kemerer

The following article represents a brief overview of other significant planning initiatives on the part of the City of Toronto. These initiatives will impact the development of properties within the City.

**Regulations in City of Toronto
Proposed New By-law - Tall Buildings**
Regulations affecting Tall Buildings (12 storeys or more) in the City of Toronto are now included in the proposed new zoning By-law scheduled for final approval at City of Toronto Council

meeting of 6-7 July 2010. Tall Buildings will be permitted as-of-right in the areas of *Downtown Toronto* (including the *Central Waterfront*) with a height limit of 46 metres or more and will be subject to regulations around minimum heights (base building and the floor-to-floor first floor heights), setbacks, tower floor plates and separation distances between two or more towers on the same lot.

The Tall Building Design Guidelines currently being used by the City to review applications form the basis for these zoning changes. Not all of the Guidelines criteria are included in the By-law. Toronto City Council recently voted to continue the use of those Guidelines until they can be fully implemented (as revised) in the Spring of 2011. This will be of particular import where tall buildings are not permitted as-of-right.

The Avenues and Mid-Rise Buildings Study

As with Tall Buildings, the City is in the process of reviewing the typology of mid-rise buildings (5-11 storeys) along Toronto's *Avenues* (important corridors along major streets where re-urbanization is anticipated and encouraged). City planning staff in a report dated 4 May 2010 have set out a proposal to use Mid-Rise Building Performance Standards developed by external consultants retained for that purpose as a tool for evaluating mid-rise development applications over a two year period. Indeed some of those Standards are now included in the proposed new zoning By-law. At the end of that period staff would report back on incorporating these Standards in guidelines, policies or further new as-of-right zoning.

“Condominium developers will be required to enter into a Metropass Purchaser Agreement with the Toronto Transit Commission as a condition of condominium approval.”



Marc Kemerer is a municipal partner in the Firm, with significant experience in all aspects of municipal planning and development.

Marc may be reached directly at 416.593.2975 or mkemerer@blaney.com.

Other initiatives of the City affecting the development of mid-rise buildings on the Avenues (in addition to those set out below) include: the City’s new Sign By-law 196-2010 (Municipal Code Chapter 694), in effect as of 6 April 2010, which regulates the type, size, location and other characteristics of signs; the expansion of the mandate of the City’s Design Review Panel, which reviews development proposals from an urban design standpoint, to include applications for development on the *Avenues*; the City’s Streetscape Manual, which focuses on design quality within the public right-of-way, and; the proposed changes to the City’s development charges regime whereby such charges may be reduced for intensification projects on the *Avenues*.

TTC Metropasses Required for New Condominium Units

Toronto City Council, at its meeting of 30 November 2009, enacted a new policy requiring that developers building condominium buildings of more than 20 units in the mixed-use growth areas (*Downtown* and *Central Waterfront*, the *Centres* and the *Avenues*) provide a one year prepaid Metropass per each new condominium unit on occupancy. The City advises that this new policy will be implemented through the condominium approvals process and will apply to any development application leading to the approval of a condominium development submitted to the City after 28 April 2010. Condominium developers will be required to enter into a Metropass Purchaser Agreement with the Toronto Transit Commission as a condition of condominium approval.

Further, the Metropass, which is anticipated to cost approximately \$1200 per unit, is to be provided by the developer to the purchaser at no cost. The City proposes to impose a “no-charge back” requirement as a condition of condominium approval as a means of enforcing this requirement and evidence of payment for the TTC passes will be required to be provided at the condominium registration stage.

As this new policy was not approved as an amendment to the City’s Official Plan, and has no specific grounding in statutory requirements, developers may want to consider appealing this particular condition of approval (once issued) to the Ontario Municipal Board. In fact, one developer has indeed appealed this particular condition to the OMB in connection with one of its projects. We will be following this appeal closely as the outcome will impact the implementation of this policy for other developments.

Official Plan Amendment (OPA) to Encourage Development of Units for Households with Children

City staff are recommending adoption of official plan amendments to:

- (a) include the term “dwelling units suitable for households with children” in official plan policy 3.2.1.1 requiring the provision of a full range of housing; and
- (b) introduce a new area specific policy to require that any new developments in the *Downtown* containing 100 or more dwelling units construct 10% of those units as dwelling units containing three or more bedrooms. For the purposes of the policy, such units may contain less than three bedrooms

“In May of 2009, Toronto City Council adopted a by-law to require and govern the construction of green roofs on new development.”

if constructed in such a manner that they can be converted to three or more bedrooms.

The proposed policies, which will go again before the City’s Planning and Growth Management Committee at its meeting of 16 June 2010, have met with considerable opposition from the development sector on the basis that there is no market demand for such units and these are not affordable within the *Downtown* area and thus will be out of the reach for average families with children. Moreover, other options exist to act as an incentive to builders, including: reduced charges (LTT, parks levies, development charges, etc.) related to such units and the use of Section 37 funds to secure such housing.

Of significant importance to note - in order for a landowner to appeal the OPA, the landowner (or its representative) is required to have made either oral or written submissions to City Council prior to the adoption of the new OPA.

Green Standards

As of January 31, 2010 the City requires that new planning applications, including zoning by-law amendments, site plan approvals and draft plans of subdivision, meet “Tier 1” environmental performance measures as those are set out in the Toronto Green Standard (TGS) adopted by City Council. Billed by the City as a “key strategy of the City’s Climate Change Action Plan”, the TGS represents a 25% energy efficiency improvement over the Model National Energy Code for all new buildings. The standards apply to low rise non-residential, low-rise residential and mid-highrise (any use) developments. Developers will be obligated to

submit to the City a completed TGS checklist and an Energy Report satisfactory to the City as part of the application process.

Developers may also choose to meet Tier 2, which is a voluntary higher level of environmental performance, in exchange for a refund of 20% of the development charges applicable for the site that would be required to be paid to the City.

Green Roof By-law

In May of 2009, Toronto City Council adopted a by-law to require and govern the construction of green roofs on new development. Those requirements and standards and the exemptions to them are set out in City of Toronto Municipal Code, Chapter 492, Green Roofs. The requirement to construct a green roof applies to residential development with a height of more than 6 storeys (20 m) and with a minimum gross floor area of 2,000 sq m as of 31 January 2010 and to new industrial development as of 31 January 2011. The scale of the obligation to provide a green roof will depend on the size of the development. Developers should discuss these requirements early on in the planning stage with City staff to ensure that these requirements are addressed. ■

EXPECT THE BEST

**Blaney
McMurtry**
BARRISTERS & SOLICITORS LLP

2 Queen St. East, Suite 1500
Toronto, Canada M5C 3G5
416.593.1221 TEL
416.593.5437 FAX
www.blaney.com

Blaneys on Building is a publication of the Real Estate and ACES Groups of Blaney McMurtry LLP. The information contained in this newsletter is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.

We welcome your comments. Address changes, mailing instructions or requests for additional copies should be directed to Chris Jones at 416 593.7221 ext. 3030 or by email to cjones@blaney.com. Legal questions should be addressed to the specified author.