



## Updates on City of Toronto Planning Initiatives

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At its meeting of 25-27 August 2010, City of Toronto Council approved the following significant planning initiatives:

### **The City's Comprehensive Zoning By-law 1156-2010 (the "By-law"):**

After a number of revisions to address specific sites and to exempt yet more whole areas (notably industrial areas and schools/university sites) the By-law remains in a fractured state of completion - interestingly now being touted by some as the "Swiss cheese by-law". The By-law continues to be plagued with mapping issues and issues with the new definitions/standards for gross floor area, parking and loading, etc. In an attempt to resolve the confusion over the status of existing permissions obtained through the minor variance process, Council did add the following provision to the By-law: "All minor variances in effect prior to the enactment of this by-law shall continue to apply and remain in force". It remains unclear however how successful this "protection" will be on implementation, particularly since Council also requested that the Chief Planner come back with proposed amendments to protect against "non-compliance with the By-law". As we have advised previously, all landowners are strongly encouraged to review the wording and mapping for the proposed by-law that may apply to their particular site to ensure that development rights currently enjoyed are not lost. The deadline for filing appeals of the By-law to the Ontario Municipal Board (OMB) is **30 September 2010**.

### **Official Plan Amendment No. 94 (By-law 1033-2010):**

OPA 94 will require that the impacts of reduction or elimination of existing commercial space in *Mixed Use Areas* (areas containing a broad range of commercial, residential and institutional uses) be considered through any rezoning process. In an effort to protect local retail options, the end result of this policy is that any new development may be required to replace/retain existing commercial space. Property owners in designated Mixed Use Areas should review this policy as it will have an impact on (re)development rights. The deadline for filing appeals of OPA 94 to the OMB is also **30 September 2010**.

### **Percent for Public Art Programs:**

The Percent for Public Art Program Guidelines have been used by City staff since 2006, primarily through section 37 agreements, but also through minor variance and subdivision approvals. City staff have required that developers dedicate one percent of the total building cost to public art, either in the form of an installation *in situ* or toward the City's general budget for public art. By formally adopting these public art guidelines, Council will entrench what was previously a voluntary practice on the part of developers. Council further requested that the Chief Planner review the City's Public Art policies as part of the upcoming City Official Plan review "with a view to making them a

mandatory feature of all significant development public and private, including multiple residential buildings”.

**Additional Site Plan Control Powers By-law (By-law 1034-2010):**

In granting the City the power to regulate matters of exterior and sustainable design, the Site Plan Control by-law tracks the City’s Official Plan Amendment No. 66 (s 41 of the *Planning Act* allows the adoption of such additional site plan powers only if the municipality has official plan policies in place to permit this). By way of background, OPA 66 was adopted by Toronto City Council at its meeting of 27 and 28 January 2009, appealed to the OMB and then approved by the OMB pursuant to a settlement between the City and the appellants. This by-law enables the City to require drawings showing exterior materials, façades, doors and roofs. Coloured elevation drawings to a scale of 1:50 are required for development applications submitted after 1 November 2010 involving five storeys or more. The sustainable design elements tie directly into Tier 1 of the Toronto Green Standard adopted by City Council in October of 2009 (discussed in the June 2010 issue of *Blaneys on Building*).

**Building Permit Applications**

Council adopted changes to Toronto Municipal Code 363, Building Construction and Demolition, to address incoming changes to the building regulatory regime through Bill 124 with respect to determining whether a building permit application is (in)complete. As of 1 January 2011, Chief Building Officials are required to determine whether an application is (in)complete within 2 business days of filing of such application with the municipality. The City will now move from the current voluntary system of determining compliance (known as PAL) to requiring that applicants for a building permit obtain a zoning certificate prior to submitting a complete building permit application. Such a certificate will set out whether the application meets all required applicable law approvals. The current fee structure is also be amended under this new program.

At that same meeting, Toronto City Council also considered the following matters:

**Establishing a local Appeal Body for Committee of Adjustment:**

Pursuant to section 8.1 of the *Planning Act*, a municipality may establish an appeal body to hear appeals from the Committee of Adjustment. In their report on this matter, staff recommended that City Council endorse the establishment of an appeal board for minor variance and consent applications subject to City Staff providing a detailed cost recovery analysis. Council received the report for information. Of note, a local appeal body established by City Council could significantly change the way in which such appeals are heard, as these currently proceed to the Ontario Municipal Board. We will be tracking the progress of this initiative.

Heritage Conservation Districts (HCDs): Council directed that staff report back on a series of policies and terms of reference for designating Heritage Conservation Districts pursuant to the *Ontario Heritage Act* (OHA) after community consultations have been undertaken on the draft policies. The new policies and standards are intended to provide consistency and clarity to the process of studying and designating HCDs by establishing a series of comprehensive requirements that go beyond the minimum requirements of the OHA.

On other planning related matters:

**Units Targeted to Households with Children**

At its meeting of 16 June 2010, the City of Toronto Planning and Growth Management Committee referred the proposed Official Plan Amendment to Encourage the Development of Units for Households with Children back to the City’s Chief Planner. This will delay consideration of the policy until well into 2011, which is good news for the residential development industry as this proposal as drafted does not correspond well with existing or near future market demand.

### **HST on Planning Applications**

Blaney McMurtry LLP has recently canvassed municipalities in the greater GTA area to determine which municipalities charge the new Harmonized Sales Tax (HST) for planning application fees as of July 1, 2010. As suspected, there is inconsistency in response and application across the GTA. Municipalities who have responded that they will charge the new HST for planning applications fees include King, Newmarket, Markham, East Gwillimbury, Clarington and Kitchener. Within the City of Toronto there is no uniform approach - Scarborough Community Planning charges the HST, whereas the other districts within the City of Toronto do not. For the full list and further information on this matter please contact us. ■

Disclaimer: the above is intended as a source of general information and should not be relied on for specific legal advice. This information does not establish a solicitor-client relationship between you and Blaney McMurtry LLP. We would be pleased to discuss the issues raised above with you in the context of your particular circumstances.