

Commercial Real Estate Law

August 2010

Toronto's Harmonized and Comprehensive Zoning By-law

If you own property in Toronto and have a development proposal in mind, the City of Toronto's harmonization of 43 different pre-amalgamation zoning by-laws into a single comprehensive zoning by-law is a process you should be following closely. It is happening now and will likely be completed before the end of August 2010.

On July 29th, the City released the latest draft harmonized zoning by-law (the "New By-law"). The text and maps of the New By-law are available on the City of Toronto's website at <http://www.toronto.ca/zoning>. While the document is easier to navigate than the previous 43 zoning by-laws, making zoning determinations remains a technically complex task.

A draft of the New By-law was initially released in May 2009 for discussion purposes, and then revised documents were released in April and May 2010. Further revisions based on public consultation and input have been incorporated into the revised New By-law released in July 2010. City staff is scheduled to present a final draft of the New By-law to Council for approval at its meetings on August 25 and August 26, 2010.

Approval of the New By-law will likely occur at one of the above meetings and if not in the ensuing weeks to ensure enactment of the New By-law before the fall municipal election. Opportunities to make submissions on the New By-law can be made at the public open house meeting on August 11, 2010 and at the statutory public meeting on August 19, 2010. If a person or public body does not make oral submissions at the public meeting or make written submissions to the City Clerk before the proposed New By-law is adopted by Council, the person or public body is not entitled to appeal the approval to the Ontario Municipal Board and may not be added as a party to a hearing before the Ontario Municipal Board unless, in the opinion of the Board, there are reasonable grounds to do so.

How Will the New By-law Impact Real Property in Toronto?

The land use planning system has become a complex and sophisticated regulatory control – at both the municipal and provincial level – and often has a fundamental effect on

property and development values. City of Toronto staff suggest that the harmonization process has sought only to maintain the status quo by retaining existing development rights, while "harmonizing" use permissions and creating a common regulatory language across the City.

The underlying purpose of the New By-law was to harmonize existing zoning standards rather than create new standards. However, the New By-law does create new standards in the following areas:

- New built-form requirements within various zones;
- New minimum heights in commercial and residential zones;
- New parking and loading standards;
- New requirements that all dormant land in employment zones be landscaped;
- A revised definition of gross floor area; and
- New restrictions on retail and ancillary office uses in employment zones.

The new standards noted above may well have a significant impact on some properties.

The latest draft of the New By-law contains transitional provisions to protect existing development permissions and active development applications which recognize that various sites are already at certain stages in the development approval process. If you are currently in the midst of developing your property, it is important to determine if your site qualifies for one of the exceptions contained in the transitional provisions of the draft New By-law.

What Should You Do To Protect Your Existing or Future Development Rights?

It is impossible for City staff to assess the impact of the harmonization process on each and every property in the

City. The burden of determining if the New By-law will have an impact on existing or proposed development rights is the responsibility of the land owner. As noted above, only those persons who make either oral or written submissions at the public meetings will have any opportunity to affect an amendment to the New By-law prior to final approval or maintain the right to appeal the New By-law to the Ontario Municipal Board.

One would expect that no individual property will have its rights impaired or diminished, whether that property conforms with existing zoning rights, enjoys legal non-conforming use protection or has development potential as provided under the current zoning by-law. However, given the extent of the harmonizing task, the New By-law may institute changes to the zoning on your property that neither recognizes existing uses and regulatory compliance nor protect “as of right” development potential that had previously vested.

As a result, there are no guarantees that existing rights will not be affected. Regrettably, only those owners with active development applications (condominium plans, consents, variances, site plan or building permit matters) are likely aware of the relevance of the on-going comprehensive rezoning process that is soon coming to an end. Even if you are not currently in the midst of developing your property, but have future plans to do so, you may still have to protect your rights now.

At law, the City and its staff are obliged to reconcile the existing approved Official Plan policies to the requirements of different uses, zone designations, regulatory compliance, standards and built-form realities. In the end, the City is subject to influence through public participation, board decisions which are brought to their attention, political priorities, interest groups and information constraints. As such, it is critical for landowners in the City of Toronto to review the New By-law and to determine its impact on their land holdings. City of Toronto staff has indicated that they intend to prepare a report to Council before August 19, 2010 outlining any additional changes to the draft New By-law resulting from concerns raised by way of written submissions or in meetings with stakeholders.

The Commercial Real Estate Group at Pallett Valo LLP can assist you in evaluating the impact of the New By-law on your property and its future development potential, as well as in formulating written submissions that may result in amendments to the New By-law that protect your property’s development potential and/or maintain a right of appeal. There is a tight timeline for action, so don’t wait. We note the following critical dates:

July 29 – Draft By-law Released

August 11 – Public Open House

August 19 – Statutory Public Meeting

August 25-26 – Finalized Draft of By-law Presented to City Council

David Forgione is a member of the Commercial Real Estate Practice.

Pallett Valo LLP Commercial Real Estate Practice

Murray Box mbox@pallettvalo.com
Direct Dial: 905.273.3022 Ext. 240

Pamela Green pgreen@pallettvalo.com
Direct Dial: 905.273.3022 Ext. 265

Ray Mikkola rmikkola@pallettvalo.com
Direct Dial: 905.273.3022 Ext. 276

David Forgione dforgione@pallettvalo.com
Direct Dial: 905.273.3022 Ext. 291

Cameron Paulikot cpaulikot@pallettvalo.com
Direct Dial: 905.273.3022 Ext. 286

Liana L. Turrin lturrin@pallettvalo.com
Direct Dial: 905.273.3022 Ext. 249

This article provides information of a general nature only and should not be relied upon as professional advice in any particular context. For more information about Commercial Real Estate Law, contact a member of our **Commercial Real Estate Practice** at **905.273.3300**.

If you would like additional copies of the bulletin, or know of anyone who would be interested in joining our mailing list, please contact our Marketing Coordinator at **marketing@pallettvalo.com**.