



Toronto's "Harmonized" Comprehensive Zoning By-Law: Who Will Guard the Guardians?

April 15, 2010

By Ian James Lord

If you own property in Toronto or have development objectives in mind, the City of Toronto's harmonization of pre-amalgamation zoning by-laws into a single comprehensive zoning by-law is a process you'll want to follow carefully.

Draft By-law due this Spring

With a draft harmonized by-law due before City Council on June 8, 2010, for enactment, the Latin maxim "quis custodiet ipsos custodes?" (who will guard the guardians?) has never been more appropriate.

For the vast majority of owners, the "guardian" of your property rights and values are the City employees responsible for the current drafting and mapping exercise. There are paths these guardians can take:

1. Embrace provincial policy in shouldering Toronto's role under the Growth Plan for the Greater Golden Horseshoe by accommodating pre-zoning and enhanced development rights in priority Official Plan designations; or
2. Maintain the status quo by retaining existing development rights, albeit with "harmonized" use permissions and regulatory language; or
3. Institute changes that neither recognize existing uses and regulatory compliance nor protect "as of right" development potential.

The drafting process is a complex one, and there are no guarantees that existing rights won't be affected.

Your Rights are at Stake

It is the property owner who reaps the benefit or the burden of the harmonization planning decisions.

The guardians are faced with a history of different approaches to use definitions, zone categories, regulatory measures, standards and built-form realities and uses. They are subject to influence through public participation, board decisions of which they are aware, Councillor priorities, interest groups, staff, budget and information constraints.

Some protections are in place. The Planning Act, in zoning terms, protects lawful existing uses from changes occurring in zoning by-law amendments that fail to recognize those uses, for so long as those uses continue. But municipalities are reluctant to "grandfather" existing uses as it risks making lawful any use infractions that may have developed over time. And there may be totally inadequate protection for infractions to new regulations.

In its "harmonization" drafts to date, the City has sought to address both the issue of legal non-conforming use protection and contravention of regulatory standards in a limited variety of circumstances. How these provisions apply to individual properties is worth your investigation.

Recent changes to the Planning Act make it essential that your zoning issues are communicated now to Council, or appeal rights are forfeited.

You are your Own Best Guardian

It is important that you review your property assets to ensure harmonization properly and appropriately achieves a recognition of existing conditions, including vested and approved rights.

The following timeline is proposed:

1. April 21, 2010: Final Staff report scheduled to be considered by the Planning and Growth Management Committee;
2. April 28, 2010: City to hold Open House; and
3. May 9, 2010: Statutory Public Meeting before the Planning and Growth Management Committee.

If followed, recommendations on the City's new Draft Harmonized Zoning By-law will be considered by the full Council on June 8, 2010. If enacted, a 20-day appeal period begins.

Ian Lord is a Partner at WeirFoulds LLP, Toronto, recognized as one of Canada's leading counsel, litigators and facilitators in dispute resolution involving land development problems.