

Toronto reconsiders 'infamous' zoning bylaw

BY GLENN KAUTH
Law Times

Toronto's long-running effort to move amalgamation forward with a comprehensive zoning bylaw continues after council voted to send last year's new set of planning rules back for reconsideration recently.

At the time it took effect, municipal and planning lawyers said property owners would need to be vigilant about protecting their rights under the new bylaw. It appears that's exactly what happened after the City of Toronto found itself facing 694 appeals before the Ontario Municipal Board.

The move to rescind what Aird & Berlis LLP partner Eileen Costello calls a now "infamous" bylaw certainly surprised a lot of people. But she notes the effort was worthwhile given the desire to have a common set of rules following amalgamation of the city's six former municipalities 13 years ago. "It was a laudable undertaking by the city," she says. "They were faced with a situation where they had bylaws for all of the former municipalities. There really was a maze of local regulations."

The comprehensive zoning bylaw enacted last year was largely about establishing a common language for describing the city's land-use standards. It set, for example, a citywide calculation for density based on a floor-space index rather than gross-floor area. But the actual density limits would

continue to vary throughout the city.

The bylaw also set a common definition for measuring height. But while that sounds relatively mundane, things weren't so simple. In some cases, the changes meant a property owner might not be able to get a minor variance from the zoning rules.

The big problem, according to Costello, was the lack of a meaningful transition period for implementing the new rules. So some property owners might have obtained a minor variance while the old bylaw was in effect but found themselves unable to get a permit to actually make the modifications once the new rules took hold. As a result, someone might have later ended up having to seek a height variance and face neighbours and a committee of adjustment once again in order to build an extension to a house in accordance with the new standards.

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"Basically, the harmonized bylaw ended up collapsing under its own weight," says **Barnet Kussner, a leader of WeirFoulds LLP's municipal, planning, and development practice.**

Kussner notes his firm acted for about 25 clients who appealed the bylaw's provisions. In his view, while people will always be unhappy with changes to the rules, the goal now should be to minimize appeals

to the OMB through a revised version. "I certainly tend to advise my clients that they should as much as possible try to get in on the ground floor," he says, noting the city has sent out notices to parties that appealed the bylaw offering to meet with them and hear their concerns. "This is going to be a much more fulsome opportunity to shape the policy."

Tom Wall, a City of Toronto lawyer who handles appeals before the OMB, notes the one-hour meetings will take place throughout June, July, and August.

"We're looking at the issues they've raised and determining whether or not they're viable," he says.

Following the meetings, staff will send the appellants a proposed solution to see if it resolves their complaints. The resulting report would then be subject to a public meeting in October. The idea, Wall notes, is to come up with a proposal for a revamped comprehensive zoning bylaw that would address the concerns and "diminish as many appeals as possible." The new version would go before



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council for approval by February.

"We'll have to see. It's a pretty short time frame," Wall responds when asked if the process is feasible.

The city's move to fix the comprehensive zoning bylaw was certainly a shocker for many people, but the appeals it created were not. Last year, one lawyer predicted it would result in a "minefield" of legal challenges.

But as Costello notes, there has been a side benefit to the city's decision to go back to the drawing board in the face of the 694 OMB appeals given that the

board no longer has to schedule those cases. "Suddenly, you can get a quick hearing," she says.

Her hope, then, is for a set of rules that includes a transition period. As well, she'd like to see more consistency from staff in how to interpret the bylaw, something she says people weren't getting up until now. In the meantime, she's advising clients to act quickly now that the old zoning bylaw provisions are once again in effect for the time being. "Get your applications in for your building permits now," she says. **LT**

Online toxics database planned

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implement this regime," says Finney, who nevertheless wonders about the resources available to Toronto Public Health to do things like provide a map for residents to track chemicals where they live.

The idea, however, was to give residents information on toxic substances that may affect them and provide a push for businesses to reduce their use and emissions through, for example, pressure from the public. So far, Whate says the plan is to make the information available through some sort of online database. Still, he notes the city would like to go beyond that.

At the same time, Whate defends the program against concerns about the cost. "There are benefits to tracking," he says, noting that businesses can take advantage of the new information they have on their use of chemicals by finding ways to reduce it and save money. **LT**

SUBSTANCES REQUIRING DISCLOSURE

- Acetaldehyde
- Acrolein
- Benzene
- 1,3-Butadiene
- Cadmium
- Carbon tetrachloride
- Chloroform
- Chromium (hexavalent)
- Chromium (non-hexavalent)
- 1,4-Dichlorobenzene
- 1,2-Dichloroethane
- Dichloromethane
- Ethylene dibromide
- Formaldehyde
- Lead
- Manganese
- Mercury
- Nickel compounds
- Nitrogen oxides
- Particulate matter
- Polycyclic aromatic hydrocarbons
- Tetrachloroethylene
- Trichloroethylene
- Vinyl chloride
- Volatile organic compounds

Source: City of Toronto

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