

Toronto's "Harmonized" Comprehensive Zoning By-law: Quis Custodiet Ipsos Custodes?

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If you own property in Toronto and have development objectives in mind, the City of Toronto's harmonization of the many different 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

The land use planning system has become a highly complex and sophisticated regulatory control and it can have a fundamental effect on property values. With a draft harmonized by-law due to be set before City Council this spring, the Latin maxim attributed to Roman satirist Juvenal, "*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 is that professional body of civil service employees responsible for the current drafting and mapping exercise. There are a few paths that 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. Through inadvertence and passivity, institute changes that neither recognize existing uses and regulatory compliance nor protect "as of right" development potential that had previously vested.

The lowest common denominator of expectation from these guardians should be that no individual property has its rights impaired or diminished, whether that property and the investment in it conforms with existing zoning rights, enjoys legal non-conforming use protection or has development potential.

Even a status quo drafting objective should ensure that property owners throughout the City suffer no impairment to these attributes of ownership by "harmonization". But the 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 planning decisions that are taking place right now. Regrettably, only those owners with active applications (plans of condominium, consents, variances, site plan or building permit matters) are likely alert to the relevance of the advancing comprehensive rezoning process.

The guardians have a daunting task. By law, they are obliged to conform to the existing approved Official Plan policies and the Growth Plan for the Greater Golden Horseshoe. They are faced with a myriad 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.

And while the guardians have access to talented legal reviews, there is a world of difference between a lawyer's objective of preparing a zoning instrument that meets the tests of interpretative certainty and the planner's role in determining and setting out the desired zone category, on a property-by-property basis.

Some protections 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. However, in comprehensive zoning by-law updates, municipalities are reluctant to "grandfather" or zone to existing uses. To do so would set a new benchmark and risk making lawful any use infractions that may have developed over time even though they have never received public approval.

There is only limited protection for infractions to new regulations.

In its "harmonization" effort, the City of Toronto has sought to address both the issue of legal non-conforming use protection and contravention of regulatory standards by provisions relating to non-conformity and non-compliance in a variety of circumstances. But how these provisions apply to individual properties is worth investigating, by self-help or through your advisers.

Moreover, recent changes to the *Planning Act* make it essential that zoning issues are communicated now to Council, or appeal rights are forfeited by individual owners.

"Politics" may also play a role in the harmonization process. While the City has in past circumstances been denied the right to use zoning regulatory controls to effect political priorities (the infamous 45-foot height by-law in the downtown core being one example), the reality is that City Councillors are elected to govern. And the zoning by-law, including "harmonization" efforts, is a significant tool in the field of property development to advance governance priorities.

You are your own best guardian

Our public sector guardians cannot be expected, on a property-by-property basis, to analyze the myriad of variables that have resulted in existing conditions. For property owners with development objectives in mind, it is important that you review your property assets to ensure that harmonization properly and appropriately achieves at least the second path: a recognition of existing conditions, including vested and approved rights.

The City of Toronto has a sophisticated access portal to the proposed zoning by-law text, zone categories mapping and applicable regulations proposed on a property basis at <http://www.toronto.ca/zoning/index.htm>.

As of February 2010, the following timeline is proposed:

1. April 21, 2010: Proposed final Staff report that provides detailed responses to individual submissions is now scheduled to be considered by the Planning and Growth Management Committee;
2. April 28, 2010: City to hold Statutory Open House; and
3. May 9, 2010: Statutory Public Meeting before the Planning and Growth Management Committee.

If this schedule is followed, the Planning and Growth Management Committee recommendations on the City's new Draft Harmonized Zoning By-law will be considered by the full Council on June 8, 2010. If the by-law is enacted then, Notice must be sent out and a

20-day appeal period begins.

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