

Update

Municipal, Planning and Property Tax

December 10, 2009

Treatment of Existing Zoning Permissions Under the City of Toronto's Draft New Zoning By-Law

Background

The City of Toronto is in the process of preparing a new zoning by-law. By-law text and an interactive zoning map are available for review on-line at <http://www.toronto.ca/zoning/>, although these materials are dated (released in May). Revised materials will be released by City staff in the near future.

While City staff have indicated that the emphasis is on harmonization rather than new standards, as indicated in a previous Goodmans update, the draft by-law establishes new standards of note regarding tall buildings, parking and loading, minimum heights in commercial residential zones, large-scale stand-alone retail uses in employment zones and the definition of gross floor area.

The purpose of this update is to provide guidance regarding the City's stated approach to "transition issues", such as site-specific zoning by-laws, prevailing by-laws, minor variances and in-progress applications. While some have suggested that the draft new zoning by-law will remove existing development permissions, the stated intent of City staff is to preserve the rights and restrictions

found in site-specific zoning by-laws, although the specific mechanisms to incorporate existing development permissions are not yet available for review.

Given that City staff have not finalized the proposed approach to "transition issues", a review at this time of the potential impact of the current draft on a particular site would not be an efficient use of resources. Instead, the next version of the draft zoning by law, when it is released by City staff, should be reviewed carefully to ensure that existing development permissions are appropriately protected. The City's statutory public meeting for the new by-law is not scheduled to occur until March 2010, at the earliest.

Transition Issues

1. Existing Zoning Permissions

One of the major challenges in drafting the new zoning by-law is the question of how to deal with existing site specific amendments. City staff have proposed three mechanisms for addressing this issue:

- a) "Holes" in the New Zoning By-law – The new zoning by-law would not be applied to properties, in which case the old zoning would continue to apply. This will create what City staff call "holes" in the zoning map, such that a property would not be regulated by the new zoning by-law.
- b) Site-Specific Exceptions – Site-specific zoning by-laws in force before passage of the new zoning by-law may be incorporated as an exception in Chapter 900 (Site Specific Amendments) of the new by-law, in which case the site-specific zoning would be written in the format and use the terms of the new zoning by-law.
- c) Prevailing Zoning By-laws – Alternatively, site-specific zoning by-laws in force before

Goodmans^{LLP} Update

passage of the new zoning by-law may be included on a list of prevailing by-laws in a chapter of the new zoning by-law. Prevailing by-laws would continue to be in force and prevail over the new zoning by-law to the extent of any conflict.

2. Minor Variances

To date, City staff have taken the position that minor variances will not automatically be “grandfathered” into the new zoning by-law and have advised that a building permit is the best protection for an approved minor variance. This should raise concerns for sites that enjoy development permissions through a minor variance(s), especially for variances that have not been implemented.

3. In-Progress/Pipeline Applications

A significant concern is how to incorporate new approvals into the new zoning by-law. City Staff have not yet outlined a consistent approach to the treatment of development proposals at various stages of the planning process. Some applicants waiting for approvals may be forced to appeal the new zoning by-law as a precautionary or protective measure.

4. Existing “Permission” and “Restrictive” Exceptions

There are approximately 800 site-specific and area-specific exceptions from the zoning provisions of former City of Toronto By-law 438-86. Any exception that applies to 10 or more properties will be carried forward into the new zoning by law as “area-specific” exceptions shown on the zoning map. All other exceptions are intended to be carried forward as prevailing by-law exceptions.

Next Steps

A key issue will be to ensure that the new zoning by-law appropriately incorporates existing development permissions. However, such an analysis is premature until the City releases the next draft of the new zoning by-law, which should confirm the City’s approach to the issues raised in this

update. At that time, we would be pleased to review the impact of the draft new zoning by-law on existing or future uses, as well as assist you with any representation to the City required to preserve your appeal rights.

Suggested Schedule for New Zoning By-law

February 11	Presentation of New Draft to Planning and Growth Management Committee
March	Open House
March/April	Statutory Public Meeting
April	Council Consideration of New By-law

Please do not hesitate to contact one of the members of the Goodmans Administrative Law Group:

Ian Andres iandres@goodmans.ca	416.597.5160
Anne Benedetti abenedetti@goodmans.ca	416.597.5929
Mark Blidner mblidner@goodmans.ca	416.597.6294
David Bronskill dbronskill@goodmans.ca	416.597.4299
Jennifer Drake jdrake@goodmans.ca	416.597.4143
Roslyn Houser rhouser@goodmans.ca	416.597.4119
Robert Howe rhowe@goodmans.ca	416.597.5158
Allan Leibel aleibel@goodmans.ca	416.597.4131
Catherine Lyons clyons@goodmans.ca	416.597.4183
Melissa Muskat mmuskat@goodmans.ca	416.597.6297
Mark Noskiewicz mnoskiewicz@goodmans.ca	416.597.4136
Anna Selchen aselchen@goodmans.ca	416.849.6922
Michael Stewart mstewart@goodmans.ca	416.597.6284