

Overcoming Legal Barriers to Development

Landowners and developers must anticipate and meet market demands, but they face legal and regulatory barriers when they try to do so. Following is an overview of 5 development trends, and the planning and other legal barriers applicants may encounter:

1. Converting Employment Lands

Owners will continue to press for the use of former industrial sites for residential condominiums and big box retail. Pressure for big box use may accelerate with the entry of more US chains to Canada. If such lands have been designated as an "area of employment" in an official plan, municipal council decisions concerning such uses may be final, due to a recent amendment to the Planning Act. Applicants must meet more stringent standards to complete environmental site assessments (ESA) to obtain Records of Site Conditions (RSC) as of July 1, 2011.

2. Reducing Parking Requirements

Applicants want to build projects in Toronto and the GTA despite onerous access and parking requirements. The Ministry of Transportation controls access within 150 feet of a provincial highway, and may require extensive highway and signal improvements. Municipalities continue to set parking requirements based on GFA and uses, which may be uneconomic and exceed demand, particularly if underground. Developers cannot appeal MTO access requirements, but can appeal municipal parking standards, and may succeed by providing spaces for auto sharing, and multiple use of parking spaces for complimentary uses such as offices and restaurants.

3. Generating Renewable Energy

Applicants will continue to build wind turbines and erect solar panels, at least as long the provincial government continues to provide higher tariffs for electricity from renewable sources. The new Green Energy Act, 2009 was intended to transfer responsibility to regulate renewable projects from municipalities to the Ministry of Energy. Despite this objective, several

host municipalities have attempted to pass by-laws or resolutions which conflict with provincial law. Municipal by-laws which conflict with provincial legislation or approvals are without any effect, according to the Municipal Act.

4. Developing in the Greater Golden Horseshoe

The Growth Plan will likely be the subject of several hearings at the OMB, commencing in 2012. Private sector applicants have challenged the Growth Plan with respect to provincial population targets which restrict development in lower tier municipalities in Durham and Niagara Regions. Other owners have questioned a recent provincial amendment which sharply limits growth in many communities in Simcoe County. Applicants may press their case through negotiations and submissions to the Provincial Facilitator, as well as preparing for OMB hearings.

5. Recognizing Municipal Financial Constraints

As a result of the recent economic slowdown, all Ontario municipalities are facing budgetary constraints. The pressures are most severe in municipalities like Toronto, Mississauga and Barrie which contain few or no remaining greenfields. Toronto developers along the approved Eglinton LRT and proposed Shepherd subway will almost certainly face steep new development charges or be subject to tax-increment financing (TIF). Developers and builders prepared to consider alternative funding programs for transportation, schools, recreation facilities and other public infrastructure will be at an advantage.

Ron has more than 20 years of experience helping applicants get development approvals. In December 2010, Novae Res Urbis again named his firm, MacDonald Sager Manis, one of the "Top 20 development law firms in Toronto."

The material set out above does not constitute legal advice. If you want advice on making an oral or written presentation to a municipal council, or on an appeal to the OMB, please contact Ron at: rkanter@msmlaw.ca or 416.361.2619