



TAB 8



The Six-Minute Environmental Lawyer 2014

Municipal Environmental Requirements – Navigating the Interface between Planning Approvals and Environmental Conditions

John Zingaro, Legal Counsel, Real Property, Commercial and Development Law,
The Corporation of the City of Brampton

October 22, 2014

Municipal Environmental Requirements – Navigating the Interface between Planning Approvals and Environmental Conditions

John Zingaro, Legal Counsel, the Corporation of the City of Brampton, Real Property, Commercial and Development Law, October 22, 2014

Part 1 – What can municipalities ask for? Answer: A lot

- Municipal powers with regards to development approvals and the taking/acquisition of land
 - Section 41 of the Planning Act – Site Plan
 - Consultation and Application processes
 - Development and Construction cannot occur unless site plan approval is issued
 - Municipality to approve plans or drawings
 - Conditions of approval may include conveyances of land for various purposes “to the satisfaction of and at no expense to the municipality”
 - Section 51 of the Planning Act – Subdivision
 - Consultation and Application processes
 - Municipality must consider:
 - the health, safety and welfare of the present and future inhabitants of the municipality
 - matters of provincial interest (s. 2 Planning Act)
 - protection of ecological systems
 - orderly development of safe and healthy communities
 - protection of financial and economic well-being of municipalities
 - protection of public health and safety
 - Expropriations Act
 - Clean up costs are relevant for the purposes of determining compensation
 - Land Acquisitions Generally – Municipality as purchaser
 - Contract
 - Environmental condition of lands impacts value

- Municipalities maintain land acquisition/disposal policies – prohibition on bonusing i.e. paying above Fair Market Value
- Municipal statutory powers/obligations/considerations with regards to development approvals and land acquisitions;
 - Environmental Protection Act, Building Code Act
 - Requirements for Records of Site Condition with regards to changes in use
 - Certificates of Property Use
 - Building Code and applicable law requirements
 - Planning Act
 - A purpose of the Planning Act is to promote sustainable economic development in a healthy natural environment
 - An Official Plan must contain policies to manage and direct physical change and the effects on the natural environment – it must also be consistent with the Provincial Policy Statement (PPS)
 - Public works may NOT be undertaken and by-laws may NOT be passed unless they conform to the Official Plan
 - A municipality must have regard to matters of provincial interest, the PPS
 - A decision of a municipal council, in respect of the exercise of any statutory authority that affects a planning matter must be consistent with the PPS
 - PPS
 - Contaminated sites must be assessed and remediated as necessary prior to any activity on the site associated with the proposed use such that there will be no *adverse effects*
 - Various Municipal Plans and Documents (i.e. Strategic Plan, etc.)
 - Most municipalities have business plans and/or strategic plans which guide all aspects of the municipal corporation
 - Most if not all municipal strategic plan note protecting or enhancing the “natural environment” as a core strategic pillar or objective
 - Strategic plan documents inform and guide all municipal policies and decisions
 - Section 11(2) Municipal Act, 2001
 - Municipal authority includes by-law making power with regards to
 - “Health, safety and well-being of persons”
 - “Economic, social and environmental well-being of the municipality”

- “Financial management of the municipality”

Part 2 – Why do municipalities ask for as much (or as little) as they do?

- What are the municipal corporate objects – what is our business?
 - Adjectives often used by municipalities in describing their mission/purpose
 - Liveable, healthy, safe, successful, environmentally responsible, leadership, City of choice
- Who is the municipality’s customer?
 - Primary customers
 - Residents, taxpayers, voters
 - Secondary customers
 - Businesses, developers
- Who is responsible to the customer?
 - Council
 - Corporation
 - Staff
- Municipal Liability with regards to contaminated sites and offsite migration – risk considerations
 - Fault and no fault – Kawartha Lakes (City) v. Ontario (Director, Ministry of the Environment), 2013 ONCA 310
 - Municipal liability in negligence?
 - Potential Plaintiffs

Part 3 – Resolving the What (Part 1) and the Why (Part 2) – the How

- How does a municipality respond given its mandate and authority?
 - Risk averse – imposition of development conditions; refusal to issue development approvals and/or permits
 - Application of most stringent requirements
 - Broad interpretation of powers and mandate
- Possible results of a risk averse approach
 - Clean site (is there such a thing as too clean?)
 - Delay
 - Added expense
 - Refusal
- Steps to mitigate against Delay and/or Refusal
 - Early and productive consultation/problem solving