



TAB 8



The Six-Minute Environmental Lawyer 2014

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

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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