



# Municipal, Planning & Land Development Law Update

## WELCOME

Tuesday, May 10, 2022 | 9:00 - 12:00 p.m. EDT



# Ontario's Land Use Planning Update

**May 10, 2022**

*The information and comments herein are for the general information of the viewer and are not intended as advice or opinion to be relied upon in relation to any circumstances. For application of the law to specific situations, the participants should seek professional advice. The information was updated on May 9, 2022.*

**Presented by Denise Baker, Raj Kehar and Chantal DeSereville**

Contact details are listed at the end of the presentation.

For Lawyers: This program qualifies for 3.0 hours of substantive content by the Law Society of Ontario. This program does not qualify for professionalism.



# Agenda

- Land Use Planning and Development Update
  - Community Benefit Charges
  - Bill 109, More Homes for Everyone Act, 2022
  - Ministerial Zoning Orders
  - Inclusionary Zoning
- Case Law Update



# Community Benefits Charges: Legislative Background

- July 2020 - the Province enacted the *COVID-19 Economic Recovery Act, 2020* (“Bill 197”) which established the current CBC regime.
- September 2020 - the Province enacted Ontario Regulation 509/20 which is a *Planning Act* regulation that pertains to community benefit charges and parkland

# Community Benefits Charges: Transition

- Time periods:
  - **Transition Period for CBCs** will expire on the earlier of:
    - **September 18, 2022**; or
      - being two (2) years after the day subsection 1(2) of Schedule 3 of the *COVID 19 Economic Recovery Act* comes into force; or
    - **the day the municipality passes a CBC by-law.**
  - **Post-Transition Period** – the Transition Period has expired, and a municipality may have passed a CBC by-law



# Community Benefits Charges: Transition

- During the Transition Period municipalities can continue to pass s.37 by-laws and enter into s.37 agreements
- All s.37 funds need to be paid into a special account



# Community Benefits Charges: Transition

- Post-Transition Period, the section 37 height & density bonusing regime is fully eliminated
- However, if at any time prior to the Post-Transition Period, a municipality passed a s. 37 by-law, there are special rules that continue to apply to that by-law and the lands impacted by that by-law.



# Community Benefits Charges: Transition

- Specifically:
  - The s.37 by-law continues to be authorized by the *Planning Act* as does any s.37 agreement that is or may be entered into for the subject lands
  - The proposed development of the subject lands is not subject to a CBC
  - However, if s.37 bylaw is amended to remove the s.37 contribution requirement, the proposed development will be subject to a CBC





# Community Benefits Charges: Transition

- There are no transition provisions that apply to parkland contribution under section 42 of the *Planning Act* that arise because of the introduction of the CBC regime.
- This is because notwithstanding whether a municipality has passed a CBC by-law, a municipality may continue to seek a parkland contribution with respect to the same development at the “standard rate” or “alternative rate”. The restriction is no double dipping.

# Community Benefits Charges: Interplay with the Developments Charges Act

## Section 2(4) of the Development Charges Act:

- Water supply services
- Waste water services
- Storm water drainage and control services
- Highways
- Electrical power services
- Toronto-York Subway extension
- Transit services other than Toronto-York subway extension
- Waste diversion services
- Policing Services
- Ambulance Services
- Libraries
- Services related to long-term care
- Park and recreational services, but not the acquisition of lands for parks
- Services related to public health
- Child care and early years programs
- Housing services
- Services related to proceeding under the *Provincial Offences Act*, including by-law enforcement services and municipally administrated court services
- Services related to emergency preparedness
- Services related to airports, but only in the Region of Waterloo
- Additional service as prescribed



## Community Benefits Charges: Interplay with the Developments Charges Act

- For greater certainty, nothing in this Act prevents a community benefit charge under section 37 of the *Planning Act* from being imposed with respect to the services listed in subsection (4), provided that the capital costs that are intended to be funded by the community benefits charge are not capital costs that are intended to be funded under a development charge by-law.



# Community Benefits Charges

- The Council of a local municipality may by by-law impose CBCs for the capital costs of facilities, service and matters required because of development in the area to which the by-law applies



# Community Benefits Charges

- The CBC may be imposed only with respect to development or redevelopment, which requires:
  - a rezoning, minor variance, plan of subdivision, part lot control by-law exemption, consent, condominium approval, or building permit

# Community Benefits Charges

- A CBC may not be imposed with respect to:
  - Development of a proposed building or structure with fewer than five storeys at or above ground;
  - Development of a proposed building or structure with fewer than ten residential units;
  - Redevelopment of an existing building or structure that will have fewer than five storeys at or above ground after the redevelopment;
  - Redevelopment that proposes to add fewer than ten residential units to an existing structure; or
  - Such other types of development or redevelopment that is prescribed.



# Community Benefits Charges

- Before passing a CBC by-law, the municipality shall prepare a community benefits charge strategy that,
  - identifies the facilities, services and matters that will be funded with the CBC; and
  - complies with any prescribed requirements



# Community Benefits Charges

In preparing the community benefits charge strategy, the municipality is required to consult with such persons and public bodies as the municipality considers appropriate.





# Community Benefits Charges

- A community benefits charge by-law comes into force on the day it is passed or the day specified in the by-law, whichever is later
- Only one community benefits charge by-law may be in effect in a local municipality at a time



# Community Benefits Charges

- Amount of the CBC is capped at a maximum of 4% of the value of the lands on which the CBC is being charged
- Valuation date for the lands is the date of first building permit issuance
- Payment of the CBC is Applicable Law under the *Ontario Building Code Act*.




# Community Benefits Charges

- A municipality that has passed a CBC by-law may allow an owner of land to provide the municipality facilities, services or matters required because of development or redevelopment in the area to which the by-law applies (“In-Kind Contribution”)
- Before the In-Kind Contribution is provided, the municipality is required to advise the owner of the land of the value it will attribute to the In-Kind Contribution - how a municipality will determine this value is not specified
- The value of the In-Kind Contribution is offset against the amount the owner would otherwise be required to pay under a CBC

# Community Benefits Charges: Appeals

- The municipality is required to give notice of the passing of a CBC by-law in the prescribed manner and the notice shall contain the prescribed information
- No later than 40 days after the day the CBC by-law is passed, any person and/or public body may appeal the CBC by-law to the OLT by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons supporting the objection



# Community Benefits Charges: Appeals

- A CBC by-law comes into force on the day it is passed or the day specified in the by-law irrespective of whether the CBC by-law is appealed

# Community Benefits Charges: Appeals

While there are no specified grounds for an appeal stipulated in the *Planning Act*, or the associated CBC regulation, it is likely that an appeal of a CBC by-law may be on one or more of the following grounds:

- The legislative requirements have not been adhered to;
  - The CBC strategy inaccurately assesses the anticipated amount, type and location of development projected to occur within the area for which a CBC by-law will be imposed
  - The CBC includes costs that are not capital costs required because of growth
  - The CBC strategy inaccurately estimates the facilities, services and matters attributable to anticipated development
  - The benefit to existing, excess capacity or other adjustments have been inaccurately assessed
  - The facilities, services and matters being covered through the CBC are already recovered through a DC charge, capital grant or subsidy
- 
- The Clerk of the Municipality is to forward the appeal record to the OLT.

# Community Benefits Charges: Appeals

- The OLT shall hold a hearing on the appeal(s) and may:
  - Dismiss the appeal in whole or in part
  - Order the Municipality to repeal or amend the bylaw in accordance with the Tribunal's Order; or
  - Repeal or amend the by-law in such manner as the Tribunal may determine
- However, the OLT may not:
  - Increase the amount of a CBC that would be payable in a particular case;
  - Add, remove or reduce the scope of, an exemption provided in the by-law;
  - Change a provision for the phasing in of CBC in such way as to make a charge, or part of a charge, payable earlier; or
  - Change the date, if any, the CBC by-law will expire

# Community Benefits Charges: Appeals

- If the Tribunal repeals or amends a CBC by-law or orders the municipality to do same, the municipality shall refund with interest:
  - in the case of a repeal, any CBC paid under the by-law; or
  - in the case of an amendment, the difference between what was paid and what should be payable under the CBC by-law, as amended.





# Community Benefits Charges: Disputes

- The amount of a CBC payable in any particular case shall not exceed 4% of the value of the land as determined on the valuation date
- If the Owner disputes the amount, it shall pay the charge under protest and provide an appraisal to the municipality within 30 days



# Community Benefits Charges: Disputes

- The municipality may then provide the owner its appraisal within 45 days.
  - If the municipality does not do this, the owner's appraisal is accepted, and the municipality shall refund any amount of overpayment of the CBC immediately.
  - If the municipality does this, and the difference between the appraisals is less than five (5) percent, the higher appraised value of the lands prevails, and the municipality shall refund any amount of overpayment of the CBC immediately
- If the difference is more than five (5) percent, a third appraisal is produced from an appraiser on the approved list of appraisers the municipality maintains and that appraisal is provided to the owner within 60 days
  - Any difference between the value determined by the third appraisal and the CBC is to be refunded to the owner



# Community Benefits Charges: What Municipalities Are Doing

- Brampton's Housing Strategy and Action Plan was endorsed by City Council on May 19, 2021, recommending that tools such as inclusionary zoning, density bonusing and/or a Community Benefits Charge By-law be implemented.
- Guelph is considering implementing a CBC and is working towards September 18, 2022 to implement it. Draft by-law and strategy will be presented to Council for approval on July 11, 2022



# Community Benefits Charges: What Municipalities Are Doing

- Halton Hills is currently developing a new Development Charge Study/Bylaw and Community Benefits Charge Strategy/Bylaw.
- Hamilton intends to submit its CBC by-law and strategy to its respective council in June 2022. The draft CBC bylaw is available on the City's website.



# Community Benefits Charges: What Municipalities are Doing

- Oakville intends to hold a council meeting for the adoption of their new CBC by-law in July, 2022.
- Ottawa intends to submit its CBC by-law and strategy to its council in June 2022.



# Community Benefits Charges: What Municipalities are Doing

- Richmond Hill intends to complete their CBC by-law in parallel with their Parkland Dedication by-law update and Development Charges update by September 18, 2022.
- Mississauga is conducting a CBC review and will be presenting its draft strategy and bylaw for Council approval on June 22, 2022.



# Community Benefits Charges What Municipalities are Doing

- Toronto currently has a CBC framework in development.
- The draft bylaw and CBC strategy are available on the City of Toronto's website.

# Community Benefits Charges

## What Municipalities are Doing

*Table 12. Estimate of Potential CBC Revenues, 2022-2031*

Area	% of Units <sup>1</sup>	2022-2031 Apt. Units	Average Land Value / Unit <sup>1</sup>	Average CBC / Unit at 4% Cap	Total CBC Revenue at 4% Cap
Etobicoke	9%	11,192	\$76,500	\$3,060	\$34,247,520
North York	23%	28,603	\$120,400	\$4,816	\$137,752,048
Scarborough	12%	14,923	\$57,300	\$2,292	\$34,203,516
Toronto & East York <sup>2</sup>	27%	33,577	\$136,100	\$5,444	\$182,793,188
Downtown (TOcore)	29%	36,064	\$222,100	\$8,884	\$320,392,576
<b>Total</b>	<b>100%</b>	<b>124,360</b>	<b>\$142,609</b>	<b>\$5,704</b>	<b>\$709,388,848</b>

*Note (1): Based on City of Toronto development pipeline data.*

*Note (2): Excluding Downtown (TOcore).*





# Bill 109 – *More Homes for Everyone Act, 2022*

- Received Royal Assent on April 14, 2022.
- Amends several pieces of legislation including the *Planning Act*, the *City of Toronto Act, 2006*, the *Development Charges Act, 1997*, the *New Home Construction Licensing Act, 2017*, and the *Ontario new Home Warranties Plan Act*.
- Our analysis focuses on the amendments to the *Planning Act*, and the *City of Toronto Act, 2006*
- Some of these amendments came into effect on the day Bill 109 received Royal Assent. Most others will come into effect on either July 1, 2022 or January 1, 2023.



# Bill 109 – *More Homes for Everyone Act, 2022*

- New Rules regarding Community Benefits Charges By-laws and Parkland Contribution
- Refund of Application Fees
- Expansion of Appeal Rights to the Minister's Decision on Official Plan Amendments
- Amendments to Site Plan Control
- Amendments to Subdivision Control
- Increased Powers for the Minister



# Bill 109 – *More Homes for Everyone Act, 2022*

- **New Rules regarding Community Benefits Charges By-laws and Parkland Contribution**
- CBC by-law must be reviewed to determine whether there is a need for revision.
  - The CBC by-law expires if a resolution isn't passed declaring if a revision is needed. This resolution must be passed within 5 years of the by-law having been passed, and every 5 years thereafter.

# Bill 109 – *More Homes for Everyone Act, 2022*

(Continued...)

- The designation of development lands as a transit-oriented community results in them being subject to a maximum parkland contribution of:
  - 10 percent of the lands or the value of the lands if the lands are 5 hectares or less in area; or
  - 15 percent of the lands or value of the lands if the lands are greater than 5 hectares in area.
- The Minister of Infrastructure may identify lands within a transit-oriented community as encumbered. Once identified, such lands must be conveyed to the local municipality for park or other public recreational purposes. This conveyance is to be counted towards the parkland contribution requirement.

# Bill 109 – *More Homes for Everyone Act, 2022*

- **Refund of Applications Fees:**

	<b>No Refund</b>	<b>50% Refund</b>	<b>75% refund</b>	<b>100% Refund</b>
<b>ZBA</b>	Decision made within 90 days	Decision made within 91 and 149 days	Decision made within 150 and 209 days	Decision made 210 days or later
<b>OPA/ZBA</b>	Decision made within 120 days	Decision made within 121 and 179 days	Decision made within 180 and 239 days	Decision made 240 days or later
<b>SP</b>	Decision made within 60 days	Decision made within 61 and 89 days	Decision made within 90 and 119 days	Decision made 120 days or later

Note: Decision for SP is an approval decision.

# Bill 109 – *More Homes for Everyone Act*, 2022

- **Expansion of Appeal Rights to the Minister's Decision on Official Plan Amendments**
- A new right to appeal the Minister's decision on an OPA, provided that the OPA is not:
  - an amendment that has been referred by the Minister to the OLT for a recommendation; and
  - a revision that is adopted in accordance with s. 26 of the *Planning Act*.
- Currently there is no appeal right in respect of a Minister's decision on an OPA where the Minister is the approval authority.

# Bill 109 – *More Homes for Everyone Act, 2022*


- Amendments to Site Plan Control
  - Municipalities must delegate authority to approve site plan applications to a designated authorized person (officer, employee, or agent of the municipality). At present, municipal council may, but is not obligated to, delegate its authority to approve site plan applications.
  - A new complete application process for site plan applications. Similar to the complete application process for OPA applications and ZBA applications.
  - The timeline to appeal a site plan application for non-decision is increased from 30 days to 60 days.



# Bill 109 – *More Homes for Everyone Act, 2022*


- Amendments to Subdivision Control
  - The Minister may prescribe matters that are not permitted to be imposed as conditions to subdivision approval.
  - An approval authority may deem a subdivision application that lapsed within the past 5 years to not have lapsed provided that such subdivision application had not previously been deemed to not have lapsed.





# Bill 109 – *More Homes for Everyone Act, 2022*

- **Increased powers for Minister**, who can now:
  - Issue orders using the Community Infrastructure and Housing accelerator.
  - Suspend the time period for filing non-decision appeal of OP or OPA where Minister is approval authority.



# Bill 109 – *More Homes for Everyone Act, 2022*

(Continued...)

- Refer all or part of an Official Plan to the OLT for a recommendation or decision.
- New powers to make regulations regarding:
  - the type of securities that can be used to secure municipal requirements as part of the approval process.
  - reporting requirements for municipalities and planning boards regarding planning matters.



# Ministerial Zoning Orders (“MZOs”)

- Allows the Minister to exercise any of the powers conferred upon councils by sections 34, 38, 39, 50(4) of the Planning Act.
- Not appealable
- Do not have to be consistent with the PPS (Unless in the Greenbelt) or conform to local Official Plans
- Prevails in the event of a conflict with a Zoning By-law or Interim Control By-law



# Ministerial Zoning Orders (“MZOs”)

*114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town),*  
2001 SCC 40, at para 38



# Ministerial Zoning Orders (“MZOs”)

- Use has increased: 44 MZOs between March 2019 and March 2021, whereas previously approximately 1 a year. In 2017 and 2018, none.



# Ministerial Zoning Orders (“MZOs”)

- Enhanced powers under Bill 197:
  - The Minister may, in an order that applies to land outside of the Greenbelt:
    - provide that site plan approval does not apply to any part of the land described in the order;
    - require that a person who owns all or any part of the land described in the order enter into one or more agreements with a municipality in which all or part of the specified land is situate dealing with various site-plan adjacent matters;
    - Pass inclusionary zoning by-laws in respect of all or part of the land described in the order.



# Community Infrastructure and Housing Accelerator

- “Community Infrastructure and Housing Accelerator” – under s.34.1 added to the *Planning Act* – New type of Ministerial order introduced by Bill 109.
  - Requires council resolution and formal request explaining project rationale, approvals sought, and consultations held.
  - Does not replace current MZOs under s.47 of the *Planning Act*.
  - Not appealable



# Community Infrastructure and Housing Accelerator: Proposed Guidelines

- Identifies certain priority developments for which s.34.1 orders could be employed:
  - Community infrastructure providing public services for matters such as health, long-term care, education, recreation, socio-cultural activities, and security and safety
  - any type of housing, including community housing, affordable housing and market-based housing
  - buildings that would facilitate employment and economic development, and
  - mixed-use developments.





# Inclusionary Zoning in Toronto

Key instruments:

- OPA 557
- ZBLA 941-2021
- Implementation Guidelines
- Various OPAs seeking to designate PMTSAs

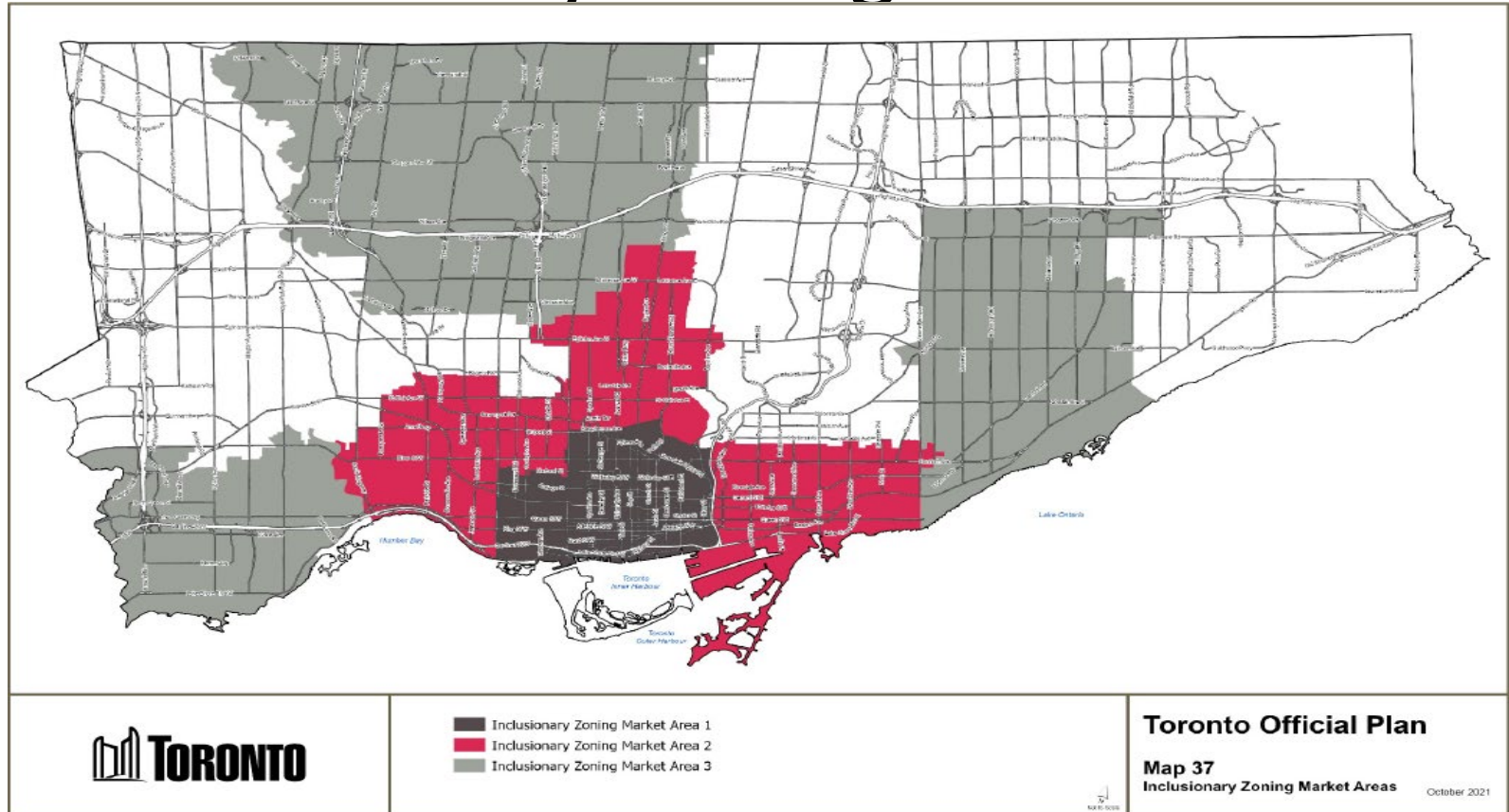


# Inclusionary Zoning

Developments subject to new affordable housing requirements:

- New developments containing residential units
- Located in one of the “IZ Market Areas” located on Map 37 of OPA 557
- Subject to the inclusionary zoning by-law
- Within a PMTSA

# Inclusionary Zoning: OPA 557



# Inclusionary Zoning: OPA 557

- IZ Market Area 1
  - if a condominium development is proposed,
    - a minimum of 10 percent of the total new residential gross floor area shall be secured as affordable ownership housing; or,
    - a minimum of 7 percent of the total new residential gross floor area shall be secured as affordable rental housing

# Inclusionary Zoning: OPA 557

- IZ Market Area 2:
  - if a condominium development is proposed,
    - a minimum of 8 percent of the total new residential gross floor area shall be secured as affordable ownership housing; or,
    - a minimum of 6 percent of the total new residential gross floor area shall be secured as affordable rental housing;

# Inclusionary Zoning: OPA 557

- IZ Market Area 3
  - if a condominium development is proposed,
    - a minimum of 7 percent of the total new residential gross floor area shall be secured as affordable ownership housing; or,
    - a minimum of 5 percent of the total new residential gross floor area shall be secured as affordable rental housing.



# Inclusionary Zoning: OPA 557

- Annual increases beginning on January 1, 2025 through to January 1, 2030

# Inclusionary Zoning

- ZBLA distinguishing between affordable rental housing and affordable ownership housing
- Affordable rental housing unit means a dwelling unit where the total monthly shelter cost is the lesser of:
  - at or below the average City of Toronto rent, by dwelling unit type, as reported annually by the Canada Mortgage and Housing Corporation; or...





# Inclusionary Zoning

- 30 percent of the before-tax monthly income of renter households in the City of Toronto as follows:
  - (A) studio units: one-person households at or below the 50th percentile income;
  - (B) one-bedroom units: one-person households at or below the 60th percentile income;
  - (C) two-bedroom units: two-person households at or below the 60th percentile income; and
  - (D) three-bedroom units: three-person households at or below the 60th percentile income.

# Inclusionary Zoning

Affordable ownership housing unit means a dwelling unit where the purchase price is at or below an amount where the total monthly shelter cost is no more than 30 percent of before-tax monthly income as follows:

- (A) studio units: households earning at or below the 30th percentile income;
- (B) one-bedroom units: households earning at or below the 40th percentile income;
- (C) two-bedroom units: households earning at or below the 50th percentile income; and
- (D) three-bedroom units: households earning at or below the 60th percentile income



# Inclusionary Zoning

- The affordable housing shall be secured at affordable rents or affordable ownership prices for a period of at least 99 years from the date of first residential occupancy of the unit



# Inclusionary Zoning: Net Proceeds from Sale

- If sold within 99 years, the City will receive up to 20% of the net proceeds of the sale.
- If sold at market price after the 99-year affordability period, the City will receive 50% of the net proceeds of the sale.



# Inclusionary Zoning: Exemptions

1. Development or redevelopment containing less than 100 new residential units and less than 8,000 square metres of new residential gross floor area;
2. Development that will be owned and operated by a non-profit housing provider with 100% ownership interest;
3. Development that will be owned and operated by a non-profit housing provider in a partnership in which:
  - The non-profit housing provider has an ownership interest that is greater than 51%; and
  - A minimum of 51% of the dwelling units will be affordable housing units;
4. Student residences, retirement homes, nursing homes, and residential care homes



# Inclusionary Zoning: IZ Agreements

- For development or redevelopment subject to an Inclusionary Zoning By-law, one or more agreements that are registered on title to the lands shall be entered into with the City securing various obligations with respect to the provision of affordable housing.



# Inclusionary Zoning

- No parking spaces are required for affordable housing units



# Inclusionary Zoning: OPA 557

- The requirements for affordable housing outlined in OPA 557 will not be applied by the City until the later of:
  - September 18, 2022; or,
  - Approval of a Protected Major Transit Station Area by the Minister pursuant to the Planning Act.





# Inclusionary Zoning: PMTSAs

- OPA 482
  - Protected Major Transit Station Areas, for the Finch West Transit Station Area and Sentinel Transit Station Area
- OPA 524
  - 16 final Protected Major Transit Station Areas within the Downtown Plan
- OPA 570 (still in draft)
  - Proposes 57 additional PMTSAs



# Case Law Update

# Complete Applications for Site Plans:

**Mississauga OP - 19.4.5** Some or all of the following studies, reports and/or documents may be required as part of a complete application submission **for an official plan amendment, rezoning, draft plan of subdivision or condominium or consent application**, dependent on the type of application, the property location and adequacy of services.

**Toronto OP - Complete Applications -** Applications to amend the Official Plan, to amend the Zoning By-law and applications for Plan of Subdivision, Plan of Condominium or Consent to Sever **will comply** with the statutory complete application submission requirements of the *Planning Act* and the requirements identified in Schedule 3.

In addition, applications for Site Plan Control Approval **should satisfy** the submission requirements identified in Schedule 3.

**Burlington OP - For an application for Official Plan Amendment, Zoning By-law Amendment, plan of subdivision, or consent ...**, City Council may require the provision of additional supporting information or material required to allow full consideration of the application.



# Complete Applications under the *Planning Act*

- *Top of the Tree Developments Inc. Re* 2007  
CarswellOnt 7921



# How the Tribunal has Addressed Approved but Appealed Official Plan Policies:

- Lakeshore Burlington Inc. v. Burlington (City) 2021 CarswellOnt 15391
- Pine Street Burlington Corp. v. Burlington (City) OLT-22-001942



# Recent Costs Cases

- QueensCorp Mona Road Inc. v. Mississauga (City)  
PL170371
- Yonge MCD Inc. v. Richmond Hill (Town) OLT-22-003009



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# Municipal Law Update

**May 10, 2022**

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**Presented by Bruce Engell, Sylvain Rouleau, Jeff Cowan**

Contact details are listed at the end of the presentation.

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# Don't Like the Decision?

- *What Now? Reviews, Appeals and Judicial Reviews*
- *Standard of Review: Jurisdiction, Question of Law, Mixed Fact and Law and Procedural Fairness*
- *Kroetsch v. Hamilton & Roozbuilt v. Jamieson*
- *The Vavilov approach*



# Kroetsch v. Hamilton

- *Challenge to an IC report and Council Reprimand from Chair of City's LGBTQ Advisory Committee*
- *No internal review available; no appeal rights*
- *Divisional Court on Judicial Review*
- *Jurisdiction – reasonableness standard*
- *Procedural Fairness – no standard of review*



# Roozbuilt v. Jamieson

- *Challenge to an TLAB Chair's review reversing Member's decision.*
- *Appeal with leave on question of law— incorrect standard of review and procedural fairness*
- *Correctness on standard of review*
- *Procedural Fairness – no standard of review*

# 0070.3.1 Bond

- *subdivision agreements and other similar agreements.*
- *Regulations for Owners to stipulate the type of surety bond they will give to a municipality to secure an obligation imposed by a municipality.*
- *Replace LCs*
- *Likely to parallel forms from construction industry*
- *Demand vs Default Instruments.*



# Municipal Case Law Update

# You had it and you lost it

- *Chahal v. The Corporation of the Town of Caledon*
- Continuing a legal non-conforming use.
- How much is too much?
- Left with nothing.



# But you were told you could do that

- *Mawhiney v. Norfolk County*
- Purchase of a property for a specific use.
- Does that make the use legal?
- Left with nothing.

# But they told you it was fine

- *Charlesfort Developments Limited v. Ottawa (City)*
- Planning the use of a property.
- Can you rely on the information provided?
- Left with increased costs of construction.





# Municipal Property Tax Update

Current Assessment value cycle:

2017-20 now 2017-2023. What next?

COVID impact: valuation and refunds



# Municipal Property Tax Update

Assessment Review Board case law:

- Highest and Best Use (HABU)
- Disclosure
- Increased assessments on appeal



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# Expropriation Update

*Legislative changes, Expropriation Costs, and Priority Transit Projects*

**May 10, 2022**

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**Presented by Sean Foran and Micah Goldstein**

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# Key Enactments

- *Building Transit Faster Act, 2020;*
- *Accelerating Access to Justice Act, 2021;*
- *Public Transportation and Highway Improvement Act; and*
- *Transit-Oriented Communities Act, 2020*



# *Building Transit Faster Act:* Five Priority Transit Projects

- i. The Ontario Line;
- ii. The Scarborough Subway Extension;
- iii. The Yonge North Subway Extension;
- iv. The Eglinton Crosstown West Extension;
- v. The Hamilton Light Rail Transit (LRT) line.



# “Expropriation Streamlining Changes”

- Hearings of Necessity are eliminated for Priority Transit Projects
- Authorities can remove structures and landscaping elements (Trees and shrubs) without expropriating
- The authority can conduct preview inspections and testing without expropriating
- A separate compensation regime is created for the removal of structures and landscaping elements



# Existing Regime for the Hearing of Necessity

- Inquiry may be requested
- Inquiry hearing is scheduled before the Tribunal
- The Tribunal issues a non-binding Report
- The approving authority need only consider the report, and then:
  - Approve
  - Not approve
  - Approve with modifications





# Hearings of Necessity Eliminated

- Alternative process may be established
- 30-day comment periods have been provided

# Pros and Cons of Eliminating the Inquiry

- Pros:
  - Non-binding decisions
  - Adds time to the expropriation process
  - The expropriation almost inevitably proceeds
- Cons:
  - Province could already dispense with Inquiries
  - The extra time for Inquiries is routine and predictable
  - The Inquiry provides some accountability to owners
  - The possibility of the Inquiry may influence the authority's decisions
  - The inquiry requires the authority to define/refine the scope of its work

# Bypassing other Requirements

- The *BTFA* authorizes the Minister to “bypass” the requirement to expropriate in certain circumstances by authorizing the Minister to
  - remove obstructions from privately owned land;
  - remove dangers to a priority transit project; and
  - to conduct a “preview inspection” if the land is located at least partly on a transit corridor or within 30 metres of transit corridor land.



# Removal of Obstructions and Dangers

- Removal of:
  - A Structure
  - Tree, shrub, or hedge
  - A prescribed thing
- Removal of Danger
- Loss of compensation for hindering, obstructing or interfering



# Preview Inspection

- Preview inspection to conduct due diligence
- “Testing” allowed



# Compensation and Interest

- The *BTFA* sets out a process for determining compensation for
  - obstruction removal,
  - danger inspection and removal, and
  - preview inspection
- Interest
- Determination by the OLT
- Costs

# Expropriations Act Amendments

- Bill 245 enacted a number of significant amendments to the *Expropriations Act*. The three most important changes are:
  - (i) Hearings of Necessity are further curtailed;
  - (ii) the Board of Negotiation is eliminated and has been replaced in its functions by the Ontario Land Tribunal. With this change, mediation is no longer a precondition for arbitration proceedings; and,
  - (iii) the interest rate of 6% on unpaid compensation can be changed to a prescribed rate



# Hearings of Necessity

- Once the amendment is proclaimed, the Hearing of Necessity procedure will not apply if the government makes Regulations providing for alternative process, e.g. owner comments





# Board of Negotiation

- Board of Negotiation Eliminated and replaced by the Tribunal
- Mandatory Pre-arbitration Mediation Eliminated

# Statutory Interest

- Amendment not yet proclaimed in force
- Currently:
  - 6 percent simple interest per annum
  - Interest reducible below 6 percent or up to 12 percent for delay
- Amendment:
  - Interest to be set by Regulation



# Provincial Highway Exemption

- Hearings of Necessity no longer apply to expropriations of land under the *Public Transportation and Highway Improvement Act*
- *Not yet in force*: Regulations passed under the *Expropriations Act* for owners to make comments will not apply with respect to *PTHIA* expropriations
- The Minister of Transportation may establish its own process for receiving comments



# Transit-Oriented Community Development

- Overview:
  - The Ontario government has introduced the Transit Oriented Communities Development (TOCD) Program
  - It is aimed at facilitating partnerships with the private sector for the construction and operation of station sites with integrated higher-density development
  - Private parties that partner with the Province to build TOCDs may benefit from the streamlined processes for obtaining necessary permits and planning approvals
  - Lands can be expropriated for TOCD if agreement is not reached



# *Transit-Oriented Communities Act, 2020*

- Designation of “transit-oriented community land”
- Lands can now be expropriated by Metrolinx for development-related purposes as part of a priority transit project
- May bypass requirements under the *Expropriations Act* to offer expropriated lands back to owners when land is not needed
- Expropriation on an expedited basis
- The Minister of Transportation and Infrastructure Ontario may enter arrangements with private parties for Transit-Oriented Community Development



# Application

- For priority subway projects in the GTA, Metrolinx and Infrastructure Ontario have been negotiating with private parties for Transit-Oriented Community Development
- Projects may be expedited through rezoning and site plan approvals through Ministerial Zoning Orders under s. 47 of the *Planning Act* or by regulation under the *Building Code Act*



# Project Specific Environmental Processes

- Exemptions to the *Environmental Assessment Act* by regulation with respect to:
  - The Ontario Line Project
  - The Bradford Bypass Project
- Lands being acquired/expropriated without having completed environmental assessments



# Expropriation Costs

*Shergar Development Inc. v. City of Windsor* (2020) Ontario  
Court of Appeal

- Expropriation in 1998
- Labyrinthine proceedings brought by Shergar in court and at the OMB
- During compensation arbitration City increased its offer to Shergar – offer rejected
- City beat offer





# Expropriation Costs

## Decision

- After rehearing, Board preferred City's appraisal advice
- Compensation awarded was less than City's latest offer of compensation
- Shergar ordered to pay costs from the date of that offer
- Board's decision upheld by Ontario Divisional Court and Court of Appeal

# Expropriation Costs

## Reasoning

- *Expropriations Act*, s. 32: provides for costs incurred for determination of compensation to be paid by expropriating authority to owner
- 85% Threshold – for entitlement to costs as of right, compensation must amount to at least 85% of the “amount offered” by the “statutory authority”
- Before *Shergar*, common approach was that the “amount offered” was the statutory offer under s. 25 of the Act, aka the “Section 25 offer”
- *Shergar*: “amount offered” is not restricted to the Section 25 offer. It can refer to subsequent offers made by statutory authority
- Also, principles of Rule 49 offers to settle in court proceedings can apply to offers made by statutory authority

# Expropriation Costs

## Key Takeaways

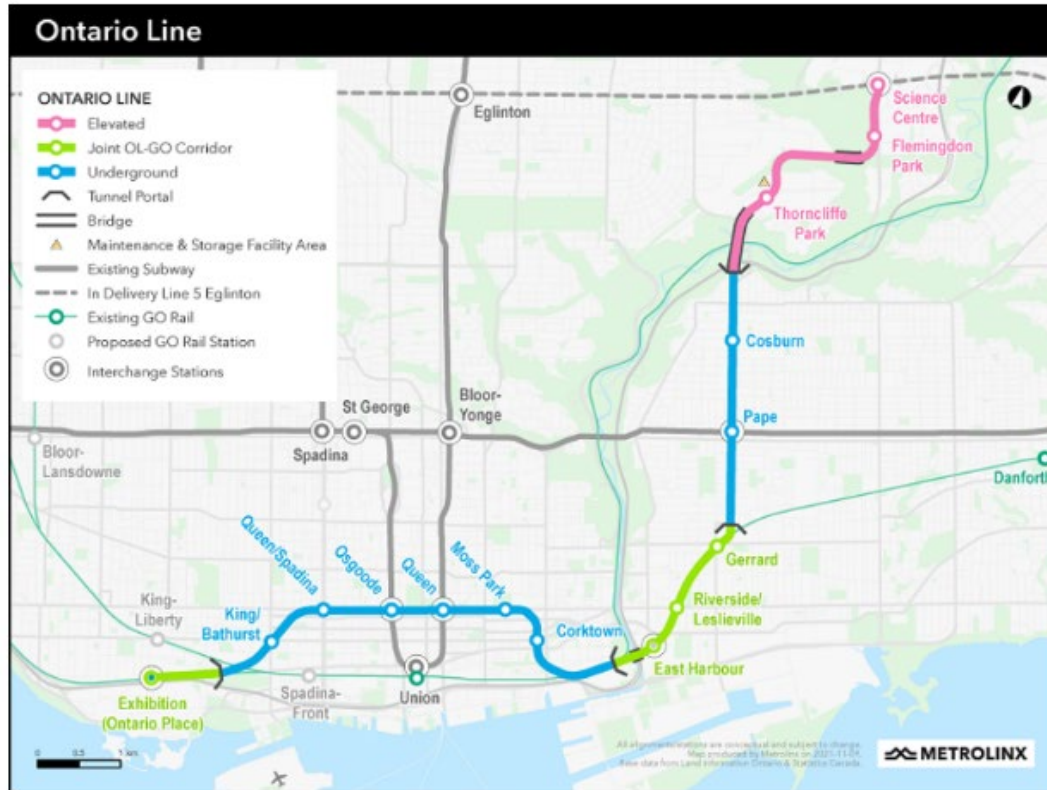
- 85% threshold not restricted to Section 25 offer
- Authorities can increase offers of compensation as they learn more
- Subsequent offers carry cost consequences
- Consistent with what Court of Appeal described as a balance between the Act's objectives of (i) full compensation to the owner; and (ii) just determination of compensation in expeditious and cost effective manner
- Where 85% threshold not met, the Tribunal retains a discretion on the award of costs



# Priority Transit Projects

- (i) The Ontario Line;
- (ii) The Scarborough Subway Extension;
- (iii) The Yonge North Subway Extension;
- (iv) The Eglinton Crosstown West Extension,
- (v) The Hamilton Light Rail Transit (LRT) line.

## (i) The Ontario Line



## (ii) The Scarborough Subway Extension



# (iii) The Yonge North Subway Extension



## (iv) The Eglinton Crosstown West Extension





## (v) The Hamilton Line – Highway 6 South



All alignments, stations, locations, names and quantity of stations are conceptual and subject to change.



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# Q&A

Thank you for joining us!

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