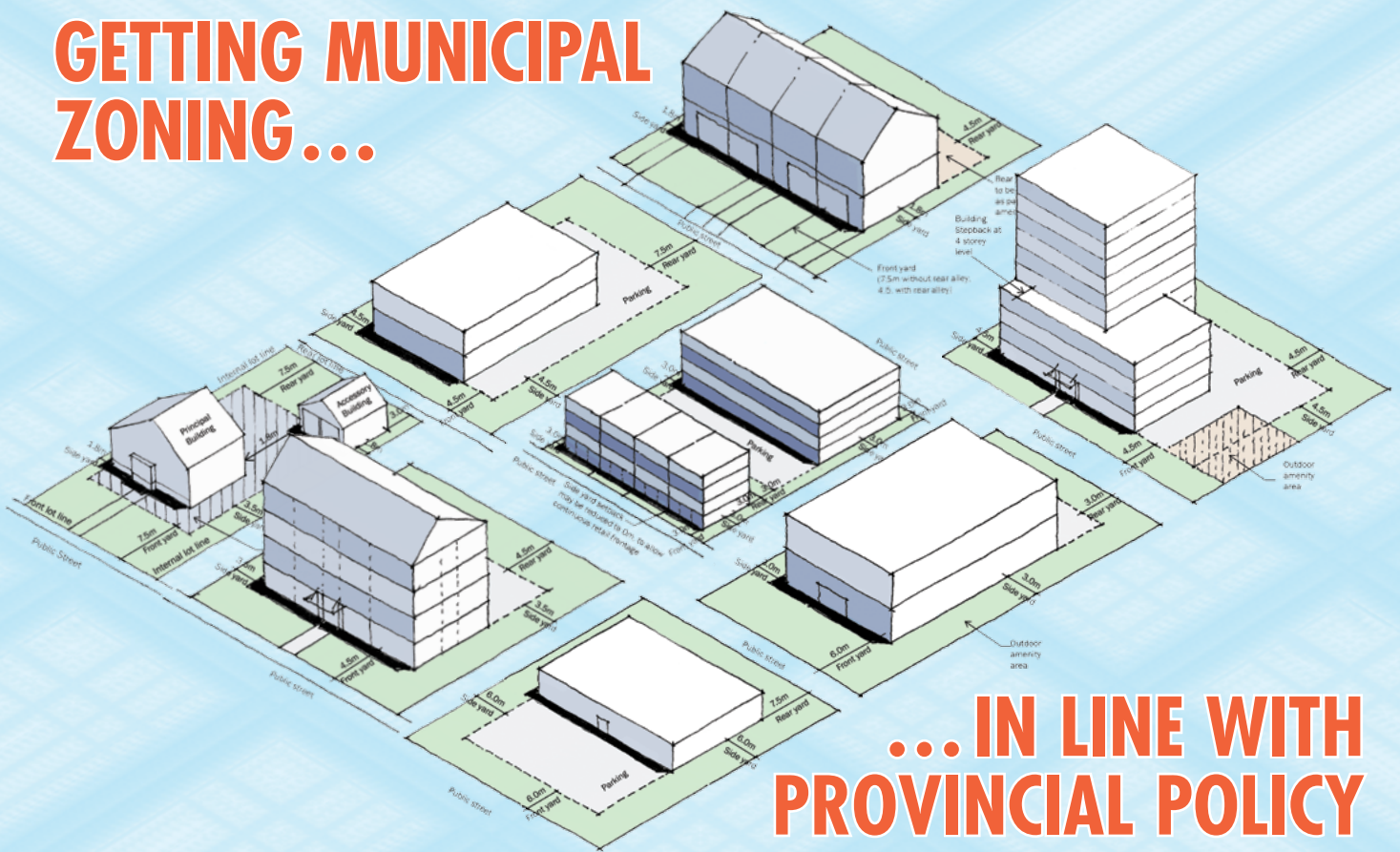


ONTARIO Planning JOURNAL

MARCH/APRIL 2013, VOL. 28, NO. 2

ONTARIO PLANNERS: VISION · LEADERSHIP · GREAT COMMUNITIES

GETTING MUNICIPAL ZONING...



... IN LINE WITH PROVINCIAL POLICY

- Creating a supportive zoning regime*
- Overlay zoning*
- Updating municipal by-laws*
- Form based zoning*
- Toronto comprehensive zoning by-law*
- The role of zoning in implementing the growth plan*
- Zoning for intensification*



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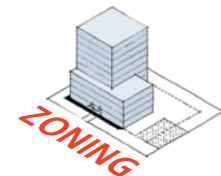
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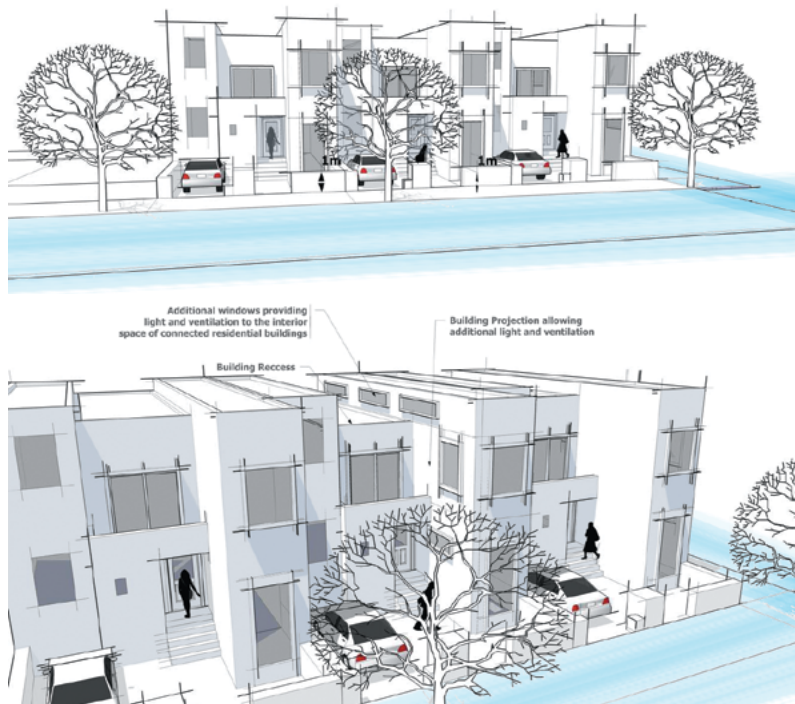


It's All in the Implementation

Creating a supportive zoning regime

By Jason Thorne, contributing editor

THIS ISSUE of the Planning Journal explores many of the choices and challenges that lie ahead for municipalities as they embark on this next step in bringing their municipal planning regimes in line with the new provincial policy framework.



As many growth plan conformity amendments to official plans are nearing completion, municipalities across the province are now turning their attention to their zoning by-laws. Without a complementary and supportive zoning regime in place, the ambitious goals that now exist in many official plans may never become a reality.

The release in 2005-2006 of the provincial *Growth Plan for the Greater Golden Horseshoe*, *Greenbelt Plan* and new *Provincial Policy Statement* set off a flurry of policy development activity in municipalities across the province, particularly those in the Greater Golden Horseshoe. Since that time, countless new municipal growth management strategies, land budgets, intensification strategies, official plans, secondary plans, and other documents have been prepared to implement the new provincial planning regime through policy.

But there was another significant provincial planning reform during that period. It involves the new requirement as set out in section 26(9) of the *Planning Act* to “amend all zoning by-laws that are in effect in the municipality to ensure that they conform with the official plan” no later than three years after an official plan comes into effect pursuant to a section 26 process. Many official plans are now approved or making their

final steps through the approval process, so municipalities are now turning their attention to their zoning by-laws.

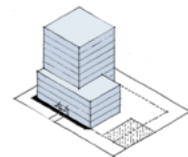
Zoning is where the planning goals and objectives of official plans get tied to specific land use permissions and restrictions that dictate what can actually get built on a given parcel of land.

The extent to which zoning by-laws will need to be updated to conform to official plans will be the subject of much debate. In addition, the legislative context for zoning in Ontario will create some unique challenges.

For example, there will be much discussion on how zoning can be formulated in such a way to support the evolution of complete, mixed-use communities. In addition, the extent to which zoning can be used as a tool to support intensification will require considerable thought. Similarly, implementing urban design policy through zoning is always a challenge.

Jason Thorne, MCIP, RPP, is a principal with the consulting firm planningAlliance as well as its affiliated architectural practice regionalArchitects. Jason is the OPJ contributing editor for provincial news and worked with the editor to bring together this zoning-focused edition.

Above: Drawings courtesy planningAlliance



Responding to Change

Overlay zoning

By Alison Luoma

Zoning is not an inherently flexible land use tool. In Ontario, it is structured such that it is neither conditional nor discretionary; the legislation simply does not provide for this. One of the challenges in implementing the provincial growth plan through zoning will be in developing zoning approaches that can respond to change in both highly urbanized environments and areas in transition. These are areas where land uses and built form may vary significantly between neighbourhoods or even on a lot-by-lot basis. In many cases, the planned function and vision for the area will evolve over time. Overlay zoning is one tool that has been used by a number of municipalities to respond to these very issues.

How Does It Work?

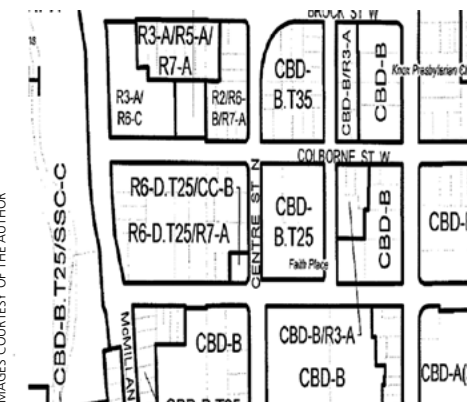
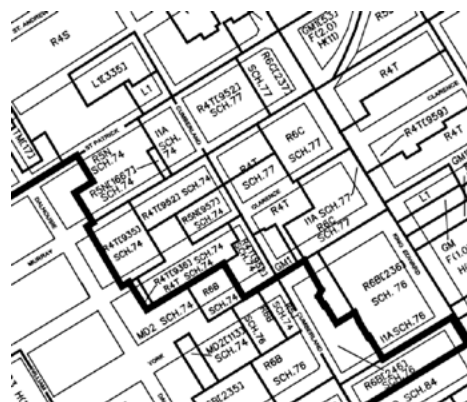
Traditionally zone structures group use permissions and development standards within a singular zone category that is then applied to a parcel(s) of land. The corresponding zone schedules are reasonably simplistic. Overlay zoning pulls apart these traditional zone structures by separating use permissions from development standards. For example, the by-law will establish a number of use zones that identify those uses that may be permitted within that zone category. Standards are applied based on a number of regulatory zones such as density, height, frontage, lot coverage, lot area and/or floor space index. The framework for these regulatory zones must be established in the text of the by-law with specific standards applied on the accompanying zone schedules. This approach can be as simple or sophisticated as needed depending on the size, land use characteristics and planning culture of the municipality.

No Singular Approach

Overlay zoning is flexible enough to be applied across all land use categories and varied built forms. The approach can be

customized to the needs of the municipality in a number of ways such as:

- Zone standards can be shown on the zone schedules or more specifically, across a set of zone schedules as required (e.g., City of Toronto)
- Regulatory sets of standards can be established that are then applied to the various use zones. Each regulatory set includes a full range of development standards and controls (e.g., Town of Newmarket)
- A core set of standards is included within the use zone and only certain of the zone standards (such as height and density) are varied as shown on the zone schedules (e.g., City of Oshawa, City of London)



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Top to bottom: City of Ottawa, Town of Newmarket, City of Oshawa

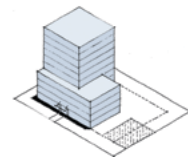
Mapping requirements

All of the information conveyed on the zone schedules applies either to a specific property (or group of properties), such as in the case of a downtown or urban core location, or to lands within the boundaries of a larger zone area, such as a stable, low-density area.

Regardless of the approach taken, refined, accurate mapping is an absolute necessity. The design, clarity and approach used for the mapping are critical to the success of the overlay mapping system. The scale of the mapping, number of maps, and how the maps overlap depends on the sophistication of the overlay zoning strategy being implemented, the amount of information being conveyed.

Overlay zoning can provide municipalities the scope to respond to growth plan requirements in a very tangible way.

Alison Luoma, MCIP, RPP, is a consultant with 17 years experience in providing zoning advice to private sector and municipal clients ranging from small rural municipalities to larger urban centres. She can be reached at alison@lehmanplan.ca.



Replace or amend?

By Nick McDonald

As municipalities across the province prepare to update their zoning by-laws, one of the first practical issues to consider is whether a new by-law is prepared or whether the existing one is updated. This is already a significant issue when new official plans are prepared and many municipalities are now following the amendment approach to protect certain policies. This issue is considerably magnified with zoning by-laws, because they are legal documents and not an expression of municipal policy.

By-laws are typically updated in one of two ways. The first involves reviewing the existing by-law and making improvements to it without changing the basic structure or the

overall intent of the by-law itself. The second involves starting from scratch and determining very early on what the aspirations of the municipality are with respect to the by-law and how those aspirations can be implemented. Both approaches will achieve the same end result, but in different ways and with different consequences and implications. The decision to repeal and replace or amend will determine the level of effort, approach and products for any zoning process.

Each approach has its own benefits and risks. While many are similar, the following chart outlines the principle benefits of each. The table below assumes that no transition provisions would be included in a repeal and replace approach.

Approach	Benefits
Repeal & Replace	<ul style="list-style-type: none"> • Clear break with the previous by-law, establishing a fresh approach to land use regulations • Simpler exercise and prone to fewer errors and omissions • Provides a clear and understandable product for the public consultation process
Amend	<ul style="list-style-type: none"> • Preserves all previous minor variance approvals • Maintains continuity with the existing by-law and maintains the by-law history • Could limit the risk of appeal to the OMB

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Each approach also has inherent risks. There are a number of potential negative implications of each approach for a range of by-law administrative issues such as:

- What is the impact on minor variances that have been granted and of projects granted relief but not yet built?
- What becomes of existing legal non-conforming uses if the by-law is repealed and replaced?
- What happens to building permits and other development applications that are in progress?
- How will by-laws approved by council but not yet in force be impacted?

The following table provides a review of these and other issues with respect to the two approaches.

In general, repealing and replacing the current by-law with a new by-law is the best approach due to its transparency. Staff, council, other stakeholders and most importantly members of the public can understand the process and ensure that the products meet the municipality's expectations. In all other respects both approaches can appropriately address the administrative concerns noted.

Nick McDonald, MCIP, RPP, is the principal of Meridian Planning Consultants and has been involved in the preparation and interpretation of zoning by-laws in both urban and rural areas throughout his career. At the present time, Nick is project managing four comprehensive zoning by-law updates in Ontario and the preparation of a development permit by-law for a mid-sized city in Alberta.

Issue	Amend	Repeal & Replace
Minor Variances	All variances would continue, no matter how significant the amendment process. The land subject to the approved variances would remain in compliance with the municipality's by-law.	All previous variances would be terminated with passage of the new by-law. Unless the new standards approved for the development through the variance complied with the standards in the new by-law, the property would become legal non-complying.
Legal Non-Conforming Uses	The status of those uses that had been lawfully established prior to the passage of the by-law and had been in use on a continuous basis would not change.	There would be no impact on legal non-conforming uses as long as the use had been lawfully established and was in existence when the new by-law comes into effect.
Building Permit Applications in progress	Applications in progress would have to be considered and approved on the basis of the by-law that is in force and effect at that time. If a permit is issued under the existing by-law and the development would not meet the proposed provisions or standards of the new by-law, the development would become legal non-complying. Complete applications submitted prior to the passage of the by-law would be considered and issued on the basis of the current by-law.	Applications would have to be issued on the basis of the in force by-law and effect. If the development or construction does not meet the new standards of the by-law, the development would become legal non-complying.
By-laws approved but not yet in force	A major amendment to the by-law would require changes to most if not all by-laws that have been approved by council but are not yet in force. This would include by-laws passed concurrent with OPAs not yet approved and by-laws under appeal to the OMB.	By-laws not yet in force would be amended to 'fit' the new by-law. As with an amended by-law, the municipality would have to revise or amend the by-law prior to final approval.
Risk of appeal	Only those sections being amended would be open to appeal. As a major restructuring of the by-law's formatting and organization is required to meet the project objectives, most if not all sections of the by-law would be amended in some fashion, and therefore open to appeal.	The entire new by-law would be open to appeal. However, it can be argued at the OMB that only those standards and provisions that are being changed as a result of the repeal and replace exercise should be open to OMB review.
Complexity	A major restructuring of the by-law's format and organization would be required. Being highly complex process there would be greater probability for errors or omissions.	Once the approach and format is approved, the preparation of the new by-law is a straightforward process. As definitions, provisions, and standards are reviewed and approved, they are carried forward into the new by-law's framework and placed in the appropriate sections. The new by-law approach is therefore a much "cleaner" legislative process.

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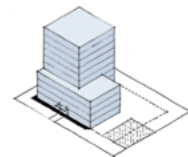
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Creating great communities

Form based zoning

By Elizabeth Howson

Big city, small town or rural community, regardless of where a planner works, the ultimate goal is to create great communities—complete communities as described in the growth plan, which are “thriving, livable, vibrant and productive urban and rural areas” and “foster community and individual well-being.” Until relatively recently this meant separating land uses because of concerns with land use conflicts—ensuring that the proverbial glue factory could not locate beside a single-detached residence. Now the objective is to create complete communities, so in many cases, although not all, mixed-use development is encouraged. However, regardless of the approach, the tools available to planners are limited, with the most significant being policy documents (e.g., official plans, secondary plans) and zoning by-laws, supplemented by site plan control, urban design guidelines, and plans of subdivision and condominium.

Policies and zoning by-laws worked well when the planning objective was focused on control of land use through separation, rather than the creation of true communities. They do not work well, particularly zoning, when the focus is less on land use and more on urban design.

To implement the official plan vision, planners need a tool which is like the policies themselves—general, flexible, conditional and subject to interpretation. To be effective, the tool must recognize that each area or site is different. It must provide a general framework to evaluate development and how it fits within the general policy context. Zoning is not that tool, as a regulation is by its very nature rigid, inflexible, non-conditional and black and white—the opposite of what is needed.

The ideal regulatory tool is the development permit by-law. It provides a general regulatory framework, but builds in the flexibility to respond to site-specific situations,

allowing for modifications to the regulations within specified limits without appeal. In some respects it also provides greater control, because this same flexibility allows the opportunity to establish the type of regulations, such as step backs and angular planes, which are generally left to policy

and design guidelines because they are difficult to apply given the rigidity of the normal zoning regime.

Despite the benefits of the development permit by-law and encouragement by the province, with a few exceptions they

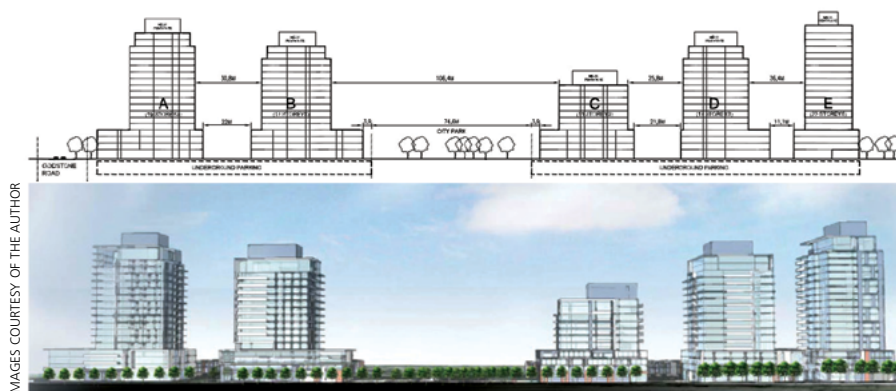
have not yet been accepted as normal practice in Ontario. The reasons are varied and include such issues as:

- Limited understanding among councils, the public and landowners
- Loss of ability to appeal once the by-law is in place
- Potential perceived loss of zoning rights by landowners
- Cost of preparing a new regulatory document, and one which requires additional supporting information and public review over and above that required for a new zoning by-law
- Difficulty of forecasting unintended consequences in such a different regulatory regime.

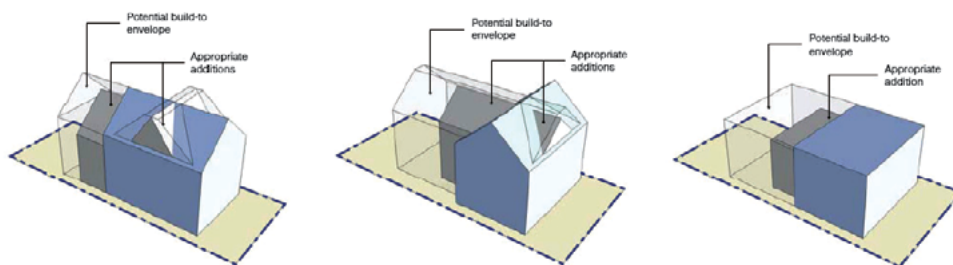
While still zoning and lacking the flexibility of a development permit by-law, form based zoning is an alternative that offers some of the benefits of a development permit by-law without all the issues. However it focuses much less on land uses and, as its title indicates, more on built form and the relationship of development to the street and

adjacent uses.

The key difference between traditional zoning and form based zoning is the change in the approach to permitted uses. The list



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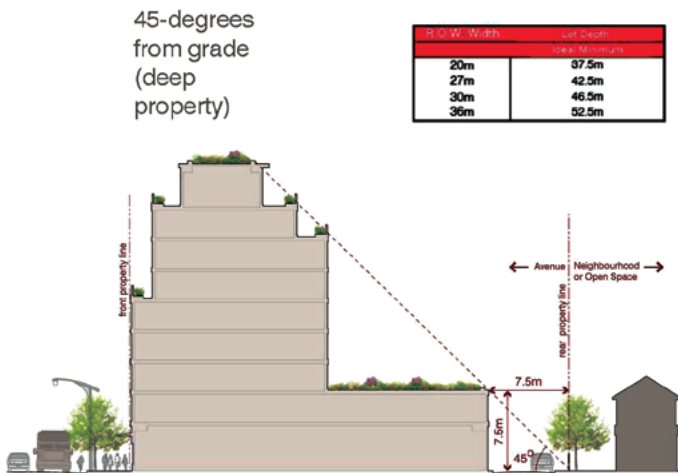
Images illustrate examples of building types and related standards

of uses should be very general, similar to, or the same as, the list of permitted uses in the land use policies of the official plan. For example retail commercial establishment or commercial use rather than a detailed listing of all possible examples.

In addition, the regulations are carefully calibrated based on the specific community vision, not simply establishing minimum areas, frontages and setbacks, but detailed design features. This includes the relationship between building façades and the street, the form and mass of buildings in relationship to each other and the scale and types of streets and blocks. Regulations are then tailor made to implement the vision.

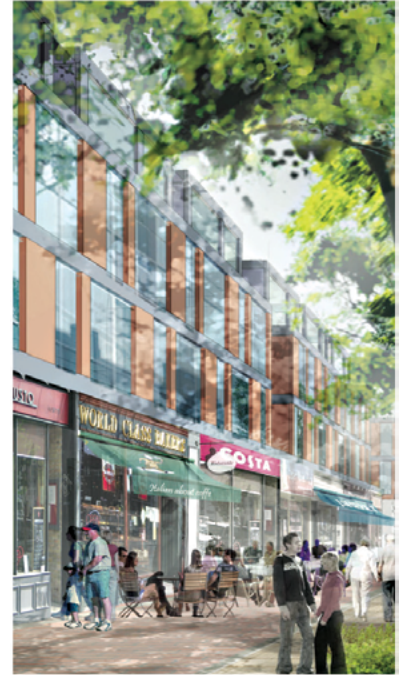
Community design policies should be developed and, in some cases, particularly in high density areas, urban design guidelines, to provide direction to the regulations. Where possible this background work should include consideration of existing building form through a range of techniques including such low-tech (and low-cost) approaches as site visits and photographs, as well as higher tech approaches including computer modeling of existing and proposed development. The types of issues that need to be taken into account through this process include:

- Building massing, not just height and density
- Maximum, as well as minimum (including in some cases no minimum), parking standards that reflect the potential



availability of transit and active transportation facilities and public parking facilities

- Maximum setbacks and other regulations related to the relationship to adjacent uses, including in high-density areas consideration of angular plane measurements and step back requirements
- Relationship to the street line, in particular an understanding of the design of the street cross-section, as well as the desired built form, as a basis for determining the minimum front yard and flankage yard setbacks as well as minimum height requirements.



Form based zoning is not the perfect answer, however the shift in emphasis from controlling land use to implementing a community vision,

means that it has greater potential for success. However, this success will still depend on working closely with the community in developing planning policies, as well as related zoning regulations. In addition, monitoring the results is essential to ensure the regulations are accomplishing what they are accomplishing what was intended and not creating unintended consequences.

Elizabeth Howson, BES, MCIP, RPP, is a partner with the firm of Macaulay, Shiomi Howson Ltd. This article is based on a presentation at the Oak Ridges District June 21st Summer Solstice which was jointly authored by Anne McLroy, B.F.A., B.Arch/MRAIC, MCIP, RPP, Brook McLroy Inc.

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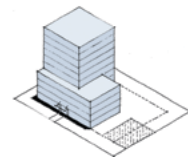
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The art of transition

By Joe D'Abramo

The requirement that any council-approved public work or by-law must conform to the official plan of a municipality was introduced to the *Planning Act* in 1955. It was this requirement that forced the province to incorporate the legislative abilities of municipalities to enact zoning by-laws into the *Planning Act* in 1959. Despite this conformity requirement in the *Planning Act*, official plans and comprehensive zoning by-laws have run separate but albeit parallel processes of review. The *Planning Act* requires official plans to be reviewed at least every five years. But zoning by-laws rarely get the same type of comprehensive review. However, in 2006, the province revised the *Planning Act* to require that zoning by-laws be amended to ensure they conform with the approved official plan no later than three years after a revision has been made. Nevertheless, comprehensive zoning by-laws have not undergone periodic and systematic review, similar to official plans, and perhaps for good reason. Unlike official plans, zoning by-laws directly affect property rights.

The City of Toronto is in the process of enacting a single city-wide zoning by-law where currently 43 comprehensive zoning by-laws exist. An attempt to accomplish this was made in August 2010, only to have the by-law repealed by city council in May 2011. This article explores the challenges and lessons learned with enacting a new comprehensive zoning by-law within the context of an existing built-out city.

Background

The existing comprehensive zoning by-laws date back to 1949 in the case of Etobicoke and 1952 in the case of Toronto and North York. The comprehensive zoning by-laws from the other former municipalities were enacted in the late 1950s and early 1960s. All have been amended, either by section or by introducing area-based amendments, but none has been entirely replaced, until now. After amalgamation it was decided to create a single zoning by-law for the entire city simply for the efficacy of managing, maintaining and working with one by-law as opposed to 43 (Scarborough operates with a community by-law concept accounting for 34 of the existing comprehensive zoning by-laws).

There are over 478,000 properties in Toronto, 99 per cent have been developed, and 43 zoning by-laws apply to them. In addition, approximately 44 per cent of the buildings were erected prior to the passing of any of the comprehensive zoning by-laws. Over the years, the existing comprehensive zoning by-laws were amended tens of thousands of times. Part of the challenge was to recognize all these area and site specific amendments. There were also concerns with what might become of the status of minor variances granted under the old zoning by-law provisions. These variances number well over 100,000.

2010 zoning by-law

A zoning by-law must be applied by a city's chief building official before a building permit is approved. The day after the 2010 citywide comprehensive zoning by-law was enacted, Toronto buildings division reviewed existing building permit applications under both the former and the newly-enacted zoning by-laws. There is clear case law requiring the chief building official to consider both new and old zoning by-laws and apply the more restrictive standard when processing building permits (*Philpott v. Corporation of the Town of Innisfil*, 2007 CanLII 65621 (ON S.C.D.C.) - 2007-03-28 Divisional Court - Ontario). According to this principle, building permit applications must comply with both the old and new zoning by-laws even if they are under appeal.

With the city issuing some 35,000 building permits a year, it is not surprising that this created an instant backlog in building permit approvals. It also had a ripple effect at the Committee of Adjustment when applicants for building permits learned their projects required additional variances to the new zoning by-law.

The 694 appeals to the 2010 comprehensive zoning by-law further exasperated the situation, as there were concerns that resolving these appeals would prolong delays in processing building permits and Committee of Adjustment applications. On May 18, 2011, Toronto council passed a by-law repealing the 2010 zoning by-law and directed staff to meet with the appellants and return with a revised version.

With the lessons learned from the experience of 2010 and from meetings with appellants, city staff developed a number of provisions to avoid a repetition of the difficulties of 2010.

Transition provisions

During the summer of 2011, city staff conducted 135 meetings with lawyers and consultants of appellants. A wide range of general and site specific concerns were identified. This article focuses on the concerns that relate to the transition from the old to the new zoning regime, including: treatment of pipeline development applications, recognition of variance and by-law permissions, treatment of existing buildings.

In response to these concerns, the city is proposing several transition provisions to avoid the inconvenience and confusion experienced after the 2010 by-law was enacted. These are explored further below:

1. Transition Protocol and Transition Clause will operate to allow development applications that are in the pipeline when the new zoning by-law is enacted to continue under the former zoning rules.

The Transition Protocol concept was introduced with the repealed by-law and continues in the new version. The protocol establishes criteria to determine whether to include a specific property in the new zoning by-law. The current in-force zoning by-laws will not be repealed, but will continue to apply where the new zoning by-law does not.

Sites that are part of a rezoning application or a site plan application are left out to avoid jeopardizing the approval timelines. Sites where the existing zoning is replicated in the new by-law would not conform to the official plan and are also left out. Areas subject to comprehensive plans and zoning by-law amendments are left out because re-writing these by-law provisions would be too challenging at this time. Eventually, the intent is to incorporate all properties within the new zoning by-law.

The Transition Clause determines how active applications for a zoning certificate, building permit, minor variance, site plan approval, consent to sever, draft plan of subdivision, plan of condominium, payment in lieu of parking agreement or part lot control exemption will be treated after the new zoning by-law is passed. If any of these complete applications were submitted prior to the enactment of the new zoning by-law, they will be reviewed, processed and approved under the former zoning rules.

The Transition Clause ensures that a dual review of existing applications for compliance under the new and former zoning by-laws will not be required. The new zoning by-law will apply only to new applications submitted after it is

enacted. The Transition Clause will be in effect for three years. This is the approach used by the City of Ottawa when it enacted its most recent comprehensive zoning by-law.

For example, if an application for a zoning certificate submitted under one of the former general zoning by-laws before the new zoning by-law is passed identifies required minor variances, the Transition Clause permits an application for these minor variances to be made after the new by-law is enacted and approved under the former general zoning by-laws. The subsequent building permit application would also apply only the former general zoning by-law in this situation.

Applications for site plan are included in the Transition Clause as well as the Transition Protocol as a safeguard. The Transition Clause allows a process initiated before the enactment of the new zoning by-law to continue under the former general zoning by-laws for a three year period.

2. Minor Variance Clause will allow most existing variances under the former zoning regulations to continue under the new zoning by-law.

The Minor Variance Clause will regulate how minor variances to the former general zoning by-laws will be treated when the Transition Clause is no longer in effect. It permits existing buildings with previously approved minor variances to apply and remain in force as if they were variances to the new by-law. In the case of minor variances approved but acted upon, they may be relied upon, but only if the provision varied has remained the same or becomes



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more permissive in the new zoning by-law. The Minor Variance Clause explicitly states that the definitions of the former general zoning by-laws will be used as needed to apply these minor variances in the context of the new zoning by-law.

3. Site Specific Exceptions will recognize site specific zoning permissions of existing buildings and those under construction as prevailing over the general rules of the new zoning by-law.

Chapter 900 will contain all the Site Specific Exceptions to the main text of the new zoning by-law. The introductory wording outlines three types of Site Specific Exceptions: site specific provisions, prevailing by-laws and prevailing sections. Site specific provisions are textual. Prevailing by-laws are references to amendments to the former general zoning by-laws. Prevailing sections are references to sections of the former general zoning by-laws. All three operate in place of any inconsistent regulations in the main text of the new zoning by-law. Both prevailing by-laws and sections are read in the context of the former general zoning by-laws, ensuring that they may rely on the applicable definitions in the former general zoning by-laws.

The Transition Protocol will operate to prevent the new zoning by-law from applying to properties with active site plan and rezoning applications that have not received a building permit. The Site Specific Exceptions recognize the permissions for existing buildings or those under construction. The new zoning by-law will apply to any new building or addition not regulated by a prevailing by-law or section.

4. Exemption Clauses (grandparenting provisions) will shield lawfully existing buildings from compliance issues with the new zoning by-law's regulatory standards.

The new zoning by-law will contain a series of grandfathering or exemption clauses. These clauses will apply to the building standards in the by-law including height, setbacks, gross floor area, lot area and lot frontage requirements. Each exemption clause provides that the condition of a lawfully existing building is the permitted zoning requirement for that building. The terms lawful and lawfully existing are defined in the new zoning by-law to clarify what is exempted by these clauses.

If a lawfully existing building is taller than the maximum

height permitted in the new by-law, the height of that existing building is the maximum permitted height limit for that building. Any new buildings or additions must comply with the zoning by-law requirements.

The definitions of lawful and lawfully existing are key to making the exemption clauses understood and effective in their purpose and intent.

Continuance of former general zoning by-laws

The enactment of the new zoning by-law will not repeal any of the existing general zoning by-laws. The continuance of these by-laws is necessary for a variety of reasons. They will regulate the properties that are not included in the new zoning by-law according to the Transition Protocol. Applications during the three year window created by the Transition Clause will be processed pursuant to them. Their definitions will be used to apply the permissions of minor variances, prevailing by-laws and prevailing sections. Finally, they can establish that an existing building is lawfully existing with a lawful regulatory standard.

Conclusion

The meetings with the representatives of appellants of the repealed 2010 by-law helped city staff understand the concerns related to the continuance of zoning permissions in the context of the in-force general zoning by-laws. One key difference between the 2010 and the new version of the City of Toronto's comprehensive zoning by-law will be the manner in which it addresses these concerns regarding development applications, minor variances, site specific zoning amendments and existing buildings. The proposed transition provisions will ensure that the post-enactment period of the new citywide zoning by-law is fair and manageable.

Joe D'Abramo has worked as a city planner in Ontario for 34 years, most of this time with the City of Toronto. Currently, D'Abramo is acting director of zoning & environmental planning and is responsible for preparing Toronto's city-wide zoning by-law, as well as environmental planning initiatives including the Toronto Green Standard and Green Roof By-law.



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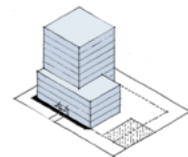
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Implementing the Growth Plan

The role of zoning

By Bob Lehman

The *Planning Act* provides for a land use planning system that is led by provincial policy. The legislation provides for three key planning instruments to implement both provincial and local planning policy—official plans, zoning by-laws and site plans. As such the use of these instruments is appropriately structured to reflect the planning needs, context and culture of each municipality.

To what degree can a municipality rely on its official plan alone in considering zoning compliance to provincial policy? Assuming approval of an official plan constitutes certainty that it complies with the provincial plan, does a municipality have to look beyond to the growth plan for direction in preparing amendments to its zoning by-law?

Typically planning considerations of zoning changes only deal with the official plan policies of the municipality. The planning analysis of conformity of zoning amendments deals with upper-tier plans or *Provincial Policy Statement* only on rare occasions in which the issues may touch on very specific elements of provincial policy. And in most of these cases the consideration is undertaken to confirm that the local policies are supported by the provincial interest.

So it would appear that the answer to those undertaking zoning by-law reviews is that the review should be directed and structured to implement the local official plan, provided it has been approved and thus conforms to the growth plan.

Legislative context

The *Growth Plan for the Greater Golden Horseshoe Act* requires each planning authority to amend its official plan to conform to the growth plan. The resulting amendments must be adopted within three years of the date the growth plan came into effect. The growth plan came into effect in June of 2006, thus the required date for official plan amendments was June of 2009. While there is no specific direction that requires implementation of the growth plan through zoning, the *Planning Act* sets a deadline of three years to amend all zoning by-laws to ensure that they conform to the official plan.

The significance of this structure is that it is cascading—the official plan is amended to conform to, or be consistent with, the *Provincial Policy Statement* and plans, and then the zoning by-law is amended to conform to the official plan.

The combined effect of the provisions of the growth plan and the *Planning Act* was to set a date of June 2012 for all zoning by-laws to be amended to conform to the growth plan conformity amendments to official plans. This has been considerably delayed by a variety of factors.

Local context

The substance of official plans, and the relationship between official plan policies and their implementing zoning by-laws is

a matter that can vary significantly depending on the nature and planning culture of a municipality. The degree of variation is both necessary and appropriate considering that land use planning deals with all aspects of life, the economy and the environment.

Some municipalities structure their planning documents such that virtually every new development requires a change to the zoning by-law. Others pass by-laws that effectively mirror official plan permissions and pre-zone lands, relying on site plan approval to exercise design control. There is no right or wrong to these methods, they all respond to the planning culture and circumstances of the community involved.

Understanding the role of zoning in implementing the growth plan is more about the role of zoning in a municipality's planning culture than it is about the policies of the growth plan. This is illustrated in the following examples.

Municipality A has a planning/political culture of strong involvement of the citizenry, many long term ratepayer groups, individuals who monitor council meetings, local press that regularly writes about planning issues. In this situation a planning culture has developed that assumes and supports community input and involvement in planning decisions.

This community involvement is reflected in the planning process in Municipality A, which is structured to require virtually all land use changes and development proposals to go through a public planning approval process. In this manner there are no surprises, all can provide input to decisions that may directly or indirectly impact their interests. Council recognizes that while the process may be lengthy, the more community involvement and the more public the process the better the decision—a perspective that believes in the value and benefits of informed community decision-making.

In Municipality A the zoning by-law reflects existing uses with very little as-of-right permission for changes in density or height. During its growth plan conformity exercise the boundaries and permissions for height and density in the Urban Growth Centre became a major issue. In addition, the potential permission for intensification at a smaller scale was the subject of many submissions and deputations to council. Further, staff advised council that the capacity of key underground services was unknown and that allowing substantial intensification as-of-right was not appropriate and an unnecessary risk.

Eventually the official plan was adopted with policies that implemented intensification in its many forms with specific targets and locations to direct growth. The OP policies are clear that change is encouraged subject to an extensive series of conditions and criteria, most of which cannot be judged without a specific development proposal. Thus Municipality

A, in subsequently reviewing its zoning by-law decided that without knowing if a development could meet the OP criteria the implementing zoning would have to be structured to allow minimal change, thus allowing the municipality to consider each application in the context of the OP criteria. As a result there was little change to the zoning by-law.

In Municipality B the planning culture is focused on the long-range vision for change. For a variety of reasons there is only modest public involvement in planning decisions, usually only by those directly impacted. Council has a tradition of placing much discretion in the hands of staff and sees planning approvals as a means of economic development.

Staff and council rely on site plan approval as the operative planning tool for implementing the official plan. Much emphasis is placed on good urban design, visual compatibility and an efficient process. The existing zoning by-law had as-of-right permissions in the downtown core and in several growth nodes that were well in excess of the existing built form.

Through the growth plan implementation process the official

plan for Municipality B specified the height and density of future development in the areas where growth was anticipated. The zoning by-law implementing the plan has granted these permissions as-of-right, providing the certainty that council believes will attract the right kind of development. Council also sees the advantage of not having a lot of OMB hearings, as appeal rights on the site plan approval process are restricted to the applicant.

Both municipalities have implemented the growth plan in a manner that meets the tests of the *Planning Act* and the *Growth Plan for the Greater Golden Horseshoe*. Each has done so in a manner that reflects the local planning culture—the community's collective decision-making process.

Bob Lehman, FCIP, RPP, is a planning consultant and the Chair of the College of Fellows of CIP. He has written over 40 comprehensive zoning by-laws and is currently assisting Niagara Region, Oakville, St. Catharines and Fredericton in zoning-related issues.

Zoning for Intensification

Practical considerations

By Nick McDonald

This article discusses some key considerations that municipalities should keep in mind as they wrestle with one of the key objectives of zoning by-law reviews—supporting and encouraging appropriate intensification. While not stated in the *Planning Act* provision that requires municipalities to update their by-laws, the underlying rationale was in large part to encourage, if not require, municipalities to enable higher densities in appropriate locations. This is one of the central features of provincial policy, which has now become a core element of most official plans, and it must now be considered as municipal by-laws are updated.

As the following discussion illustrates it is important to consider some practical realities before embarking on a zoning by-law review.

The case against pre-zoning

The easiest way to support intensification through zoning would be to pre-zone identified intensification areas and manage applications through a site plan approval process. If this was to actually occur, the number of very long public meetings would be greatly reduced and there would be much less to do at the Ontario Municipal Board. However, municipal councils would lose control over individual applications.

Once lands are pre-zoned for intensification, the ability of an elected council to control how development occurs becomes very limited. There is no mechanism in the *Planning Act* to permit only less than what is allowed through as-of-right zoning. Every application would become a site plan control matter and while it is recognized that councils sometimes get involved in site plan applications, they are not appealable to the Ontario Municipal Board, except by the applicant. In addition, there is no prescribed process to obtain public input, to take the

views of surrounding residents and others into account.

Additionally, the uniqueness of the urban landscape, much of which evolved organically, mitigates against pre-zoning. Given that intensification will be occurring primarily in older established areas, it is often very difficult to pre-conceive how development could occur when many of the lots and frontages are irregular and not uniform. In addition, one part of the same street may be more appropriate for intensification than another.

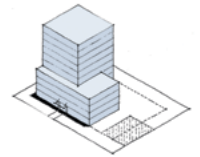
Avoid the creation of legal non-conforming and legal non-complying situations

In most cases, it is anticipated that municipalities will modernize their by-laws through an updating process, which will primarily involve upgrading the terminology and mapping. It is anticipated that many of the zone standards will remain unless there is a compelling reason to change them.

One of the underlying reasons for this cautious approach is to avoid the creation of a number of non-conforming and non-complying uses that can occur when standards are changed. While less of an issue if standards are being relaxed, it is prevalent where standards are being made more restrictive, and can be confusing when a new standard is put in place that is perceived to be more restrictive.

Landowners, lenders and others generally do not like to find out that the use on their properties are a legal non-conforming use and/or the buildings and structures do not comply with the zoning by-law. As a result any expansion to that use or the building or structure would, at a minimum, require approval of the Committee of Adjustment.

To address these situations provisions may be used that 'grandparent' legal non-complying situations to make them



complying. However, even in cases like these, a determination still needs to be made whether it was legal in the first place. Another approach is to broaden use permissions to make them so general that anything that is 'commercial' is permitted in a commercial zone. However, the larger the municipality the bigger this issue becomes, because the number of zoning exceptions to consider may run into the thousands and the work alone on the rationalization of the exceptions will consume considerable amounts of time.

Protecting stable neighbourhoods

While it is recognized that provincial policy generally supports intensification and maximizing the use of existing infrastructure, these policies do not require municipalities to consider redevelopment of existing stable neighbourhoods. Instead, it is the intent of the province, as articulated in the growth plan and *Provincial Policy Statement*, to direct intensification to urban growth centres, transit and intensification corridors, major transit station areas and other major intensification areas. This means there is no expectation that all other areas are required to intensify, unless a municipality decides it would be appropriate to do so.

Often, decisions on whether intensification or redevelopment should be permitted in existing residential areas are based on whether the proposed development is compatible with adjacent development and whether the character of the adjacent development and area is affected. However, there are many cases where older zoning standards end up being the basis for making a decision. These standards may, for example, permit smaller lot frontages or smaller side yards than what exist. Thus

there is a need to consider how these standards should also be updated if the character of an existing neighbourhood is to be protected.

Of all the zone standards, lot frontage has a particularly significant impact on character. If the minimum required lot frontage in a zoning by-law is less than what actually exists, the opportunity will then exist to create new lots that are much smaller in size. In cases like these, the zoning by-law becomes the determining factor. As a consequence, this is one of the first zoning standards that should be reviewed.

There is often a need to modernize other zoning standards as well to bring them in line with contemporary thinking with respect to stable neighbourhoods. This means that the location of buildings, driveways and other elements of development on a site and in the neighbourhood are important considerations. It is often the architectural style and the bulk and massing of a proposed development that has the most important impact on the character of a street, area or neighbourhood. Elements of the architectural style include building height, rooflines, building materials, floor levels and architectural features such as columns and porches. Some of these elements can be controlled through zoning, others are more difficult to codify.

Building massing is always an issue in established neighbourhoods, because many replacement houses are much larger than the older ones in these neighbourhoods. Many municipalities attempt to control massing by restricting lot coverage or the floor area ratio or both. While floor area ratios and lot coverage provisions do have an impact on the massing of a home on a street, these provisions do not take into account the different lot frontages and lot depths that may exist. In addition, calculating the floor area ratios is sometimes challenging since only floor areas are included in the calculation. Spaces that may extend from one floor to another in the interior of a home such as an atrium are excluded, as are attic spaces and mass above grade that may be part of a cellar.

There should be a simpler way to control the massing of buildings on a street. This could be accomplished by establishing a standard that relates to the amount of the front lot line that is faced by a building. Such a provision would recognize the varying lot frontage conditions that may exist generally and would provide for more open space on larger lots than on smaller lots in a manner that is proportionate to the lot frontage. Standards may also include regulating the pitch of the roof, restricting the depth of a dwelling and controlling the projection of the garage.

Summary

This article has presented a few of the key considerations that municipalities will need to think about when deciding how best to update their zoning by-laws to implement provincial policy. Clearly there is a need to think through these issues before embarking on a zoning by-law review so that the intent of the process is articulated before it begins.

Nick McDonald, MCIP, RPP, is the principal of Meridian Planning Consultants and has been involved in the preparation and interpretation of zoning by-laws in both urban and rural areas throughout his career. At the present time, Nick is project managing four comprehensive zoning by-law updates in Ontario and the preparation of a development permit by-law for a mid-sized city in Alberta. ◆



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Participatory planning in action

By Beverley Hillier



Coming into effect January 6th, 2012 with no objections from the general public, stakeholder interest groups or the development industry, the City of North Bay's new official plan was heavily shaped by a participatory planning process. As a result it reflects the community's vision for the city. The culmination of about seven years works by city staff, the plan was written completely in house. It is supported by a number of background studies, which guided and justified policy development.

One of the unique aspects of the new official plan is that the City of North Bay fully embraced the concept of participatory planning throughout the entire plan development process. Not satisfied with simply meeting the minimum consultation requirements of the *Planning Act*, the city sought to engage the public in meaningful dialogue that allowed residents to shape the plan at all stages. This desire for a high level of public participation is reflected in its title—uPlan North Bay.

North Bay recognized that gaining meaningful input from the public would require concerted outreach efforts from the beginning of the process, not after it had been written. This involved engaging the public through a variety of different formats: public meetings, online surveys, charrettes and advertisements that invited interested parties to contact staff directly.

As part of the consultation efforts a 19-member Sustainable Community Advisory Committee comprising representatives of external organizations was established. FoTenn Consultants Inc. was engaged to moderate and lead this committee

enabling city staff to listen instead of leading the conversation or debating various topics.

The advisory committee developed a vision for the community. With council's endorsement, this vision of a healthy community championing the goals of balance and sustainability became the focal point of the plan. Staff continued to consult with the committee throughout the official plan process, hosting regular meetings and providing drafts of the official plan for its review and comments.

Additionally, extensive consultations occurred with stakeholders throughout the region. This included city staff, other government organizations (i.e., other municipalities, First Nation, provincial ministries, Conservation Authority), not-for-profit groups and property owners.

After multiple drafts and continued consultations, the new official plan was adopted by council in September 2009 and submitted to the Ministry of Municipal Affairs and Housing for review. The ministry made only 54 modifications, about half of which were suggested by the city, before approving the plan in December 2011. The 20-day appeal period ended on January 5, 2012 with no objections received.

The City of North Bay's new official plan is a substantial achievement. Based on wide-ranging consultations, the plan reflects a vision to guide sustainable growth and development for the next 25 years. It advances the public policy framework and attempts to balance various

Above: When North Bay's Official Plan was written, the community was consulted extensively (Photo courtesy Pietro Carello, City of North Bay)

community needs and objectives including economic growth, environmental protection and enhancement and social equity.

Today North Bay faces challenges that were not imagined when the original plan was developed in the 1970s. Similar to other communities in Northern Ontario, the city struggles with an aging population, slow population growth and increased demand for hard and soft services. It encompasses vast amounts of rural landscape as well as an urban area with many natural heritage features. It is challenged to ensure that the current amenities are protected and enhanced for future generations.

Through the participatory planning process it was evident that people are proud to call North Bay home and are excited about what the next 25 years will bring.

Beverley Hillier, MCIP, RPP, is planning services manager for the City of North Bay. She can be reached at 705.474.0400 ext. 2403 or by email at beverley.hillier@cityofnorthbay.ca.



PHOTO: TOURISM NORTH BAY

North Bay waterfront

Supporting Transit

New Ontario guidelines

By Robin Kortright, Jeannie Lee, Craig Lametti



To support the province's direction toward more transportation choices and compact communities the Ministry of Transportation undertook a significant update and expansion of the 1992 Transit-Supportive Guidelines. Released in January 2012, the [2012 Transit-Supportive Guidelines](#) is a distillation of transit-friendly land use planning, urban design and operational practices, drawing from experiences in Ontario, elsewhere in North America and abroad.

In 1992, the Ontario ministries of Transportation and Municipal Affairs and Housing first published the Transit-Supportive Land Use Planning Guidelines. Planners across Ontario used the guidelines when drafting official plan policies, creating transportation master plans and designing individual developments.

While the principles outlined in the guidelines continued to be relevant 20 years later, much has changed in the intervening years. New policy frameworks—the 2005 *Provincial Policy Statement* and the *Growth Plan for the Greater Golden Horseshoe*—have been put in place, ideas about how to manage growth, encourage more livable and walkable communities and develop sustainable, multi-modal transportation networks have matured and lessons from a generation of transit-supportive communities made an update timely.

At the same time, Ontario made transit ridership growth a priority through its Dedicated Gas Tax Program, which provides funding directly to municipalities to deliver and expand transit services. Since 2003, the Ontario government has invested more than \$10.8-billion in public transit, including about \$4.7-billion in GO Transit. Over a hundred communities across the province are served by 95 public transit systems. In 2010, there were

771 million passenger trips on municipal transit systems in Ontario, a 20 per cent increase since 2003.

The [2012 Transit-Supportive Guidelines](#) is a comprehensive reference tool for professionals involved in land use planning and the delivery of infrastructure. It offers a broad range of planning, design and operational strategies to enhance the transit-supportiveness of Ontario towns and cities. The strategies range from larger community-wide approaches, such as community structure and regional mobility planning, to district and site-specific approaches, such as the layout of local streets and open spaces and the design of buildings as well as ways of responding to the unique characteristics of specialized uses such as employment or retail areas.

The broad range of topics included in the guidelines

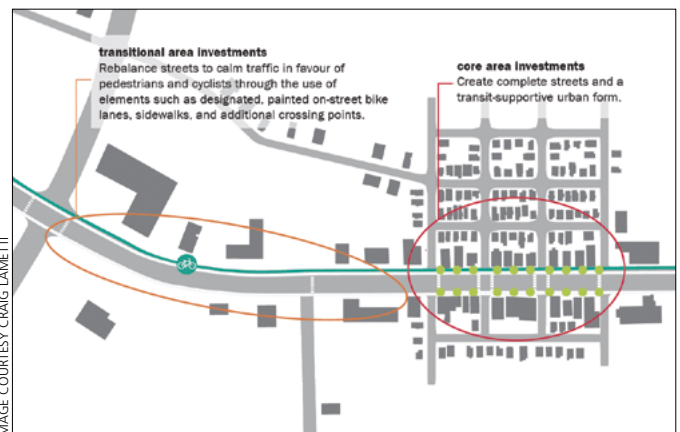


IMAGE COURTESY CRAIG LAMETTI

Target district and site level strategies to reflect different needs between settlement outskirts and core

Built-Up Areas

1.1.4 The retrofit of built-up areas through intensification and infill development combined with street and open space improvements can enhance overall mobility and in particular, the efficiency of transit service. Where larger redevelopment opportunities exist, a pattern of streets, blocks, buildings and open spaces that is supportive of transit should be established.

Built-up areas are those areas that have already been developed within the established settlement area, but may not be designated as higher-density nodes or corridors. These areas constitute the largest proportion of the settlement area and in many communities are where the majority of people live. Built-up areas have a wide variety of characteristics, from low-density residential neighbourhoods to industrial lands, and vary in the degree to which they are transit-supportive.

In many cases, intensification and infill consists of small changes, such as the addition of second units. Larger opportunities may include former industrial or commercial properties that are underutilized or vacant. Redevelopment of these lands may be complicated by potential environmental contamination. However, efforts to reuse and redevelop such brownfield locations are encouraged, as they are often in strategic locations, with infrastructure in place that can support a variety of potential uses. Other opportunities may be found in post-war neighbourhoods, where high rise apartment towers often provide a critical mass of existing transit users. These towers generally sit on large land parcels that have significant intensification potential. The sites frequently lack sufficient pedestrian amenities and direct routes to transit. Sensitive site redevelopment and street-related infill projects such as town houses and mixed-use, mid-rise buildings can greatly improve the pedestrian experience and add new transit users to the area.

Stable built-up areas are important to the quality of life in our towns and communities. Preserving the function of built-up areas while encouraging incremental changes that support transit ridership will help maintain desired characteristics while supporting more comprehensive community-wide measures in support of transit.



Strategies:

- built-up areas** 1. Protect the positive qualities of built-up areas while supporting ongoing change such as sensitive infill that can enhance the transit-supportive nature of these areas. (M)
2. Encourage sensitive infill development through:
 - policies supporting the creation of second units in low-density residential areas that can help to raise overall neighbourhood densities; and/or
 - the retrofit or redevelopment of existing uses such as strip malls or other automobile-oriented uses to establish a more transit-supportive urban form. (M) (D) (S)
3. Assess brownfields and greyfields for potential redevelopment. These properties are often located in built-up areas near transportation networks. Cleaning and rehabilitating these lands for productive uses, such as offices and recreation centres, can contribute to revitalizing neighbourhoods and building more sustainable communities. (M) (D)
- larger opportunities** 4. Plan larger redevelopment areas using a transit-supportive pattern of built form and land use (Section 2.4) with a local street and block network (Guideline 2.2.1) that can enhance connections to transit services. (D) (S)
5. Situate transit generating uses such as shopping centres, higher-density housing, employment uses or institutions close to existing or planned transit routes. (M) (D)
- enhancing connections** 6. Improve pedestrian and cycling infrastructure to increase convenient and comfortable access to transit. This is particularly important in post-war suburban neighbourhoods and employment areas where densities are low and distances between uses are greater. (M) (D) (S)
7. Create additional street connections where possible that can help to minimize travel distances to transit. When new street connections cannot be made, mid-block pedestrian connections can minimize walking distances for transit users. (M) (D) (S)
- planning strategies** 8. Coordinate transit routes between municipalities and plan them so that they serve neighbourhood focal points such as main streets or key clusters of activity to shorten travel distances to transit service and optimize efficiency. (M) (D)
9. Municipalities should establish guidelines for infill development, secondary plans and/or district plans for larger redevelopment opportunities to ensure that new development is compatible with surrounding uses and supportive of transit (Implementation: The Planning Process). (M) (D)



Typical suburban strip malls place large areas of surface parking between transit stops and their retail services. The redeveloped strip mall beside a planned rapid transit corridor in Mississauga, above, has been re-oriented to support transit ridership by locating uses adjacent to the transit stop.



Kaufman Lofts is an example of brownfield redevelopment in Kitchener. A former footwear manufacturing building, the re-located building now contains residential units and commercial space.

Recommended Resources

- A Practical Guide to Brownfield Redevelopment in Ontario (Ontario Ministry of Municipal Affairs and Housing)
- Brownfields Catalogue (Ontario Ministry of Municipal Affairs and Housing)
- Infill Development - Strategies for Shaping Livable Neighbourhoods (Municipal Research & Services Center of Washington)
- Infill Development Guidelines (City of Toronto)

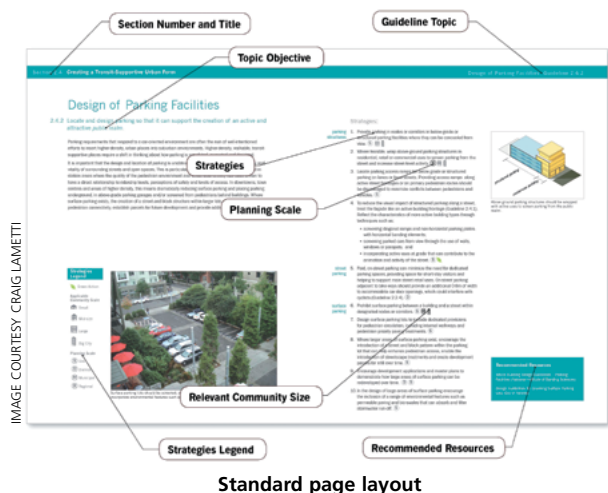
provides a basis for improved communication and awareness of opportunities and constraints which can be critical in building more transit-supportive communities. For example, recognizing that the creation of transit-supportive communities requires both supportive land use patterns and the effective delivery of transit service, the document incorporates a new chapter on transit improvement guidelines. This provides advice on a whole range of topics not usually found in a land use and planning guideline, including opportunities to improve system operations, fare collection and quality of service, all of which are paramount to improving the user experience and increasing ridership.

While focus is often given to encouraging the transit supportiveness of larger urban centres, the 2012

Transit-Supportive Guidelines is intended to inform planners working in communities of all sizes. The document includes a range of topics specifically targeted to small and mid-sized communities, including planning of rural settlement areas, creating and expanding transit service areas and implementing demand responsive transit services. Several in-depth case studies are also included illustrating innovative transit-supportive initiatives undertaken by smaller centres and rural areas. Throughout the document strategies intended primarily for larger communities and those intended for smaller municipalities are identified for easy reference.

Since the publication of the original 1992 guideline, the internet has changed the way planners and designers access information. The updated guideline has been designed with this in mind and includes active links throughout. This allows users to travel through the document much as they would a web page, with active links taking them to different sections of the document and between related sections. A built-in link to the table of contents is included on each page. Additionally, recommended resources and case studies for each topic area are linked directly to external websites and other sources of information so the guideline can act as a living reference document for practitioners.

Robin Kortright is a senior policy advisor with the Ontario Ministry of Transportation's provincial planning office. Jeannie Lee is a senior policy advisor with the Ontario Ministry of Transportation's provincial transit Policy office. Craig Lametti, MCIP, RPP, is a senior associate with Urban Strategies Inc. a planning and urban design firm based in Toronto.



Above: Sample guidelines (Image courtesy Craig Lametti)

A rocky future

By George McKibbin

In 2012, Joint Boards decided two contentious aggregate extraction applications in the Niagara Escarpment, a United Nations World Biosphere Reserve. These involved the Walker Quarry in Clearview Township, Simcoe County¹ and the Nelson Quarry in Burlington, Halton Region.² The Nelson application was refused while the Walker application was approved in a split decision.

The Nelson Joint Board comprised one Ontario Municipal Board and two Environmental Review Tribunal members. Two Ontario Municipal Board members made the Walker majority decision while an Environmental Review Tribunal member dissented.

The decisions' environmental tests are very different in terms of how they apply the *Niagara Escarpment Planning and Development Act*, the *Niagara Escarpment Plan*, and the *Provincial Policy Statement*. Much can be learned from these decisions by comparing these tests.

Nelson Joint Board

The Nelson decision's logic is elegant: "Under the Niagara Escarpment Plan's regime of development control, compatibility must be measured in the context of the capacity of the physical development to co-exist with other features and functions of the natural environment."³ Of concern was Jefferson Salamander habitat, an endangered species.

"The introduction of change to the natural environment does not necessarily indicate an incompatibility. The issue is whether the environment will be protected with such change.... The Joint Board views protection of habitat as having three elements:

1. Direct protection by prohibiting development within the habitat;
2. Indirect protection by prohibiting development outside the habitat that would negatively affect the habitat; and
3. Corrective protection that attempts to restore habitat that has been degraded."⁴

The board found that extraction within habitat suitable for Jefferson salamander, even though outside habitat mapped by the Ministry of Natural Resources, did not achieve direct protection. Where indirect protection is concerned, the proponent's Adaptive Management Plan sought to provide corrective measures if the various assumptions applied to surface and groundwater analyses were not achieved.

In part because the applicant didn't have the landowner's permission to monitor known salamander ponds on adjacent private lands, the Joint Board found that "Nelson has not made sufficient provision for the protection of these unique ecological and environmentally sensitive areas in the event that Nelson's

projections are wrong."⁵ The Nelson board found that the *Niagara Escarpment Plan* "offers an additional aspect of environmental protection through its own special legislation and plan...⁶ and a "broader approach to protected habitat"⁷ consistent with the *Provincial Policy Statement*.

Walker Joint Board

The Walker proposal involved several natural feature issues. The majority decision concludes: "natural heritage issues are a significant part of this appeal... There is little definitive guidance in the *Niagara Escarpment Plan* regarding what constitutes protection, when impact is not minimized, and the amount of area that needs to be preserved."⁸

In contrast, section 2.1.3 of the *Provincial Policy Statement* prohibits development in significant threatened and endangered species habitat and provincially significant wetlands. Section 2.1.4 is more permissive where other natural features are concerned.

"The relevant provisions of the *Niagara Escarpment Plan* do not prohibit development in those types of natural features.... and they provide little guidance about the extent of these areas that can be disturbed, or more importantly the way to evaluate the significance of potential impacts. The *Provincial Policy Statement* provides such guidance."⁹

The majority decision "finds that the natural heritage policies in the *Provincial Policy Statement* do not conflict with the policies in the *Niagara Escarpment Plan*. There is no impossibility of dual compliance. The relevant policies of the *Provincial Policy Statement* simply give more specific direction that can be used to implement the relevant

sections of the *Niagara Escarpment Plan*."¹⁰ The majority decision approves the applications with significant amendments and conditions.

The dissenting decision takes a different approach. This member finds that the *Niagara Escarpment Planning and Development Act* and the *Niagara Escarpment Plan* do provide direction and "give definitive guidance"¹² on the maintenance and enhancement of the Niagara Escarpment.

"While my colleagues acknowledge the primacy of the *Niagara Escarpment Planning and Development Act* and the *Niagara Escarpment Plan*... on key issues they do not utilize the [act and plan] they apply the policies of the *Provincial Policy Statement* and the provisions of the *Planning Act*."¹¹

The dissenting decision finds "the area in and around the proposed quarry" to be a "strong functioning natural heritage system"¹³ and "a unique ecological area with its hub, or the glue

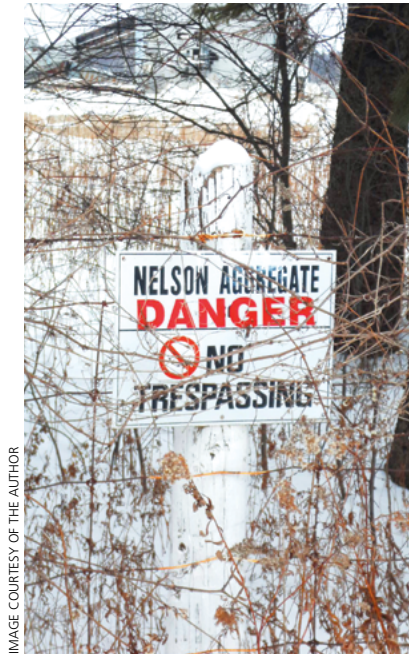


IMAGE COURTESY OF THE AUTHOR

that holds together the many natural features, functions and systems being the provincially significant woodland.”¹⁴

The dissent then applies the purpose and objectives of the act and plan, including the plan’s designation and development criteria policies, to the application and finds the purpose, objectives and specific plan designation and development criteria are not met.

Ontario approved the *Niagara Escarpment Plan* in 1985 and the *Provincial Policy Statement* natural heritage policies in the mid ’90s. Created in different times for different ends, reconciling these policies is demanding.

In 2011, OPPI awarded the Niagara Escarpment Plan its prestigious Leonard Gertler Award of Distinction while the Ministry of Natural Resources received a Communications/Public Education Award for the Natural Heritage Reference Manual, used to implement the *Provincial Policy Statement*. Planners helped develop both. Hopefully the profession can advise decision-makers on how to work with both documents and reconcile the challenges these decisions present.

George McKibbon, MCIP, RPP, AICP, CEP, drafted this paper and Mark Dorfman, FCIP, RPP, Steven Rowe, MCIP, RPP, and Anthony Usher, MCIP, RPP, provided incisive, helpful reviews. George is an environmental planner with McKibbon Wakefield Inc. He is also a member of CIP’s Healthy Communities Committee and OPPI’s Nominating Committee.

Endnotes

- ¹ Office of Consolidated Hearings, Case No.: 08-094, Walker Aggregates Inc., Dated June 18th 2012.
- ² Office of Consolidated Hearings, Case No.: 08-030, Nelson Aggregate Co., Dated October 11 2012.
- ³ Barlow v. Niagara Escarpment Commission, 2010 Carswell Ont 10792 (Niagara Escarpment Hearing office), also Ibid, Nelson, page 9.
- ⁴ Ibid, Nelson, page 21.
- ⁵ Ibid, Nelson, page 29.
- ⁶ Ibid, Nelson, page 19.
- ⁷ Ibid, Nelson, page 20.
- ⁸ Ibid, Walker, page 12.
- ⁹ Ibid, Walker, page 12.
- ¹⁰ Ibid, Walker, page 13.
- ¹¹ Ibid, Walker, page 166.
- ¹² Ibid, Walker, page 166.
- ¹³ Ibid, Walker, quote taken from a Commission witness statement, page 167.
- ¹⁴ Ibid, Walker, page 166.

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Legalizing second units

By Nadia Ali and Sandeep Agrawal

While the literature on the role of housing in the socio-economic integration of new immigrants is abundant, there is a dearth of literature on how second units—also known as accessory or basement apartments, secondary suites and in-law flats—contribute to immigrants’ integration in Canada. The research presented here attempts to help fill this gap in the literature by beginning to explore the role of second units in immigrants’ socio-economic integration into Canadian society.

This study focuses on the role of second units—which the Ontario Ministry of Municipal Affairs and Housing defines as self-contained residential units with kitchen and bathroom facilities within dwellings or within structures accessory to dwellings—in the provision of affordable housing for new

.....

New immigrants alluded to networking and mentorship by homeowners as another benefit of second units. Homeowners often gave free guidance and orientation in job-seeking and connected them with community members and resources.

.....

immigrants in the City of Mississauga. Second units were previously illegal in the city; however, with the passage of *Strong Communities through Affordable Housing Act, 2011*, which came into effect January 1, 2012, the Province of Ontario now allows the legalization of second units in municipalities across the province.

The act amended various sections of the *Planning Act* to facilitate the creation of second units by requiring municipalities to establish official plan policies and zoning by-law provisions that allow second units in all single-family homes as well as in ancillary structures. The act also allows the Minister of Municipal Affairs and Housing to make regulations authorizing the use of second units and prescribing standards.

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Data for the study was collected through structured interviews with randomly selected 15 second-unit renters and 10 second-unit homeowners in the Heartland area of Mississauga. The properties were mostly semi-detached dwellings on residential streets. The area is minutes away from the major employment and shopping district of Heartland Business Centre. The proximity to entry-level jobs and utilities as well as convenient access to transit have given rise to the development of second units in the area, most of which are occupied by immigrants. All renter respondents lived with spouses and one or two young children of 10 years of age or less; none lived with extended family members or doubled up with friends. Most of the homeowners interviewed for the study were Canadian-born.

Findings from this research provide valuable insights into the benefits of second units to immigrants and the challenges municipalities face in regulating them.

Benefits

Affordability was regarded as the primary benefit of second units by respondents. When comparing them to other housing types renters interviewed said that second units allowed them to live independently, are better suited for families, are located in relatively more established and safer residential neighbourhoods and are relatively less costly.

Renters regarded living in second units as being especially helpful because they did not have to sign a lease and could easily leave on a month’s notice as opposed to traditional rental apartments. However, they said second units were difficult to find because they are not well advertised and usually found through word of mouth. Respondents said they considered living in a second unit as a transitional phase of their lives and offered an opportunity to save money to buy their own property.

New immigrants also alluded to networking and mentorship by homeowners as another benefit of second units. Homeowners often gave free guidance and orientation in job-seeking and connected them with community members and resources.

Second units were considered to be equally beneficial to homeowners. The owners interviewed said units provided additional income, which generally assisted with housing expenses such as mortgage payments and house maintenance.

Challenges

Because second units tended to be illegal until recently, many lack functional spaces and amenities and do not meet fire

and safety provisions. Renters interviewed frequently mentioned lack of ventilation and proper cooking facilities as a serious issue. They also raised concerns about the absence of a fire alarm system, making units fire and safety hazards. Some also complained about the absence of separate entrances to their units and the lack of sunlight, which can result in long-term health issues, particularly among small children and women who spend much of their time at home.

Renters interviewed commented on the poor condition and maintenance of the units. However, they were often hesitant to ask for repairs and upgrades to the units for fear of getting evicted.

Next steps

The passing of the *Strong Communities through Affordable Housing Act, 2011* is an opportunity for the City of Mississauga to address many of the issues that hinder second units from being suitable living spaces.

Mississauga should review its policies and by-laws to ensure second units have independent access, appropriate ceiling heights, ventilation, sunlight and an independent washroom and kitchen. Fire and building code inspections must become routine.

Financial incentives should be explored to encourage homeowners to bring existing second units up to code and to increase the stock of second units. Examples can be found in the cities of Santa Cruz and Daly City in California. Santa Cruz waives the building permit fee if

homeowners commit to rent the unit to a low-income tenant at a reasonable cost. As an incentive, it also reduces the fees for water connection and for modifying fire sprinklers. Daly City minimizes the application fee and fast-tracks the approval process. It also encourages new second units through its low-interest loan program for low-income homeowners if they agree to lease the unit to low-income people for at least five years.

Second units are a valuable type of affordable housing for new immigrants, so it is important that existing units are legalized. An online database and interactive map could then be created to more easily locate the units. The Town of Newmarket, for example, registers its second units and locates them on an online interactive map.

Owners of second units should be encouraged to participate in city programs aimed at offering immigrants relevant information and services.

Stable, secure and affordable housing is a prerequisite for immigrants' successful settlement and integration. While a small sample, this research clearly indicates the need for municipalities to embrace the tools available to them to encourage and regulate the provision of safe, healthy and well maintained second units.

Nadia Ali, MCIP, RPP, recently graduated from the Master's program in Urban Development at Ryerson University. Sandeep Agrawal, MCIP, RPP, is a professor and graduate director at Ryerson University and can be reached at sagrawal@ryerson.ca.

LAKELAND DISTRICT

Benefits of mid-rise buildings

By David J. Stinson

The City of Barrie sponsored a World Town Planning Day event this year to explore the use of mid-rise buildings and whether this is the best form of development in urban centres to achieve intensification. Forty-two people came out to hear Moiz Behar from MBPD and Les Klein of Quadrangle Architects present some of their work and engage in the ensuing dialogue.

The main advantage of mid-rise buildings is that they are easier for the public to accept as increased densities without the use of high-rise heights. Adverse shadowing is reduced, there is more sunlight, views and vistas are not blocked, and it is more human-scaled and pedestrian-friendly. The notions that mid-rise buildings cannot be constructed because of the cost of underground parking, land assembling requirements, viability of at-grade retail, NIMBYism, or approval difficulties were readily dismissed by citing the many examples of successful projects. It is not that there aren't barriers, but most are bureaucratic; such as out-of-date policies requiring excessive parking or the lack of any as-of-right provisions. As a way to encourage such developments, it was recommended that municipalities exempt mid-rise buildings from any requirements they might impose under the height/density bonus provisions in section 37 of the *Planning Act*.

Behar and Klein also referred to the

importance of design review panels, not to judge the subjective art of architectural style, but to consider whether or not a building actually contributes to its context.

Thanks to Ross Cotton and the City of Barrie Planning Department for organizing this timely and informative event.

David J. Stinson, MCIP, RPP, A.Ag., is the OPPI Recognition Representative for the Lakeland District and is a partner in Incite Planning. He can be reached at dave@inciteplanning.com.

SOUTHWEST DISTRICT

Student Scholarship Trust Fund

By Jeff Leunissen

Planners in the Southwest District are able to award two \$1,000 scholarships annually. This year two fund raising events were held—the annual holiday get together and the Bonspiel in Ayr. To be eligible, students must attend a recognized planning school within the Southwest District. This year's winners are both from the University of Waterloo—Dily Huang (Bachelors Program) and Caitlin Port (Masters Program). Congratulations to both.

Jeffery Leunissen, MCIP, RPP, is the City of Stratford development services manager.



Jeff Leunissen

OBITUARIES

Raymond “Ray” J. Simpson, 1945–2012

Ray was an amazing one-of-a-kind friend and mentor. He died suddenly, unexpectedly and immediately from a heart attack on December 12th.

Ray founded Hemson Consulting in 1983, building the firm's planning policy practice until his recent retirement. He developed new methods that synthesize planning policy and real estate market knowledge with demographics—methods that are now the industry standard for long-term forecasting and regional planning. Ever the innovator, Ray saw cities as works in progress.

Many will remember Ray for his generosity, honest opinions, new book recommendations and great sense of humour. He always loved a good debate, whether it was with a municipal council, a roomful of university students, a young employee or around the dinner table. He is missed.

Stephen Rodd, 1928 -2012

Stephen Rodd, valued faculty member of the University of Guelph School of Rural Planning and Development for many years died September 6, 2012.

In the words of former school director David Douglas, “Stephen was not only a very committed and diligent teacher, a highly informed and respected environmental planning advocate, and a community activist, he was a civil, gentle and highly principled person.”



Ray Simpson

Olympic medals for land use planning?

By Leo F. Longo

The London Games of the XXX Olympiad captured the imagination and enthralled hundreds of millions of viewers worldwide this past summer. The drama of such athletic competition...the “thrill of victory and the agony of defeat”...never fails but to inspire citizens cheering on their nation’s competitors striving to be the best in the world.

When I was in London this autumn well after the conclusion of the games, a British friend of mine gave me a small book entitled *1,227 QI Facts to Blow Your Socks Off*. If you are like me, you will have no idea that QI is a very popular BBC television series that takes the form of a quiz show where comedians are asked to answer questions involving unusual facts.

While breezing through the book’s entries I came upon the following statement at page 41: “Between 1928 and 1948, 12 Olympic medals were awarded for Town Planning.”

Somewhat incredulous, I decided to look further into what I assumed was a factoid. This article presents the results of my research.

“Art competitions” formed an official part of the modern [Olympic Games](#) from 1912 to 1952. Medals were awarded for works of art inspired by [sport](#) and were divided into five categories: [architecture](#), [literature](#), [music](#), [painting](#) and [sculpture](#).

Over those years, while the rules of the art competition varied the core of the rules remained the same. All of the entered works had to be inspired by sport and be new. Similar to the athletic events at the Olympics, gold, silver and bronze medals were available to be awarded to the highest ranked participants in each arts category, although not all medals were awarded in each competition.

Until 1928, the architectural division of the arts competition was not divided into categories. The 1928 Amsterdam Games first introduced a separate “town planning” category. Olympic medals were also awarded in discrete town planning

competitions in 1932 (Los Angeles), 1936 (Berlin) and 1948 (London).

Over 120 submissions were tendered under the town planning category in the initial competition in 1928; 14 of them from Alfréd Hajós of Hungary alone! The number of town planning submissions dramatically dwindled over the three remaining games: 10 in 1932; seven in 1936 and five in 1948.

The Olympic medalists in town planning are shown in the table below.

No Canadian ever entered the Olympic arts competition for town planning.

As an aside, two Canadians were recipients of Olympic art competition medals. In 1932 Robert Tait McKenzie was awarded a bronze medal in the Mixed Sculpturing: Medals and Reliefs competition for his “Shield of the Athletes.” John Jacob “Jean” Weinzweig won a silver medal in 1948 in the Mixed Music: Instrumental and Chamber category for his “Divertimenti for Solo Flute and Strings.”

The arts competitions were discontinued after the 1952 Helsinki Games. The 151 medals that had been awarded over the years in the arts competition have since been officially stricken from the Olympic record books and do not count toward any country’s current total medal counts.

While Olympic glory can no longer be attained for good land use planning, national and local recognition remains an achievable goal with the CIP’s Awards for Planning Excellence and the OPPI’s Excellence in Planning Awards, both in a variety of categories.

Let us always recognize and salute the best in the land use planning profession.

Leo Longo is a senior partner and member of the Municipal Law Practice Group at Aird & Berlis LLP. He also co-teaches a graduate level course at Ryerson University’s School of Urban and Regional Planning.

Year	Gold	Silver	Bronze
1928	Alfred Hensel – GER Nuremburg Stadium	Jacques Lambert – FR Versailles Stadium	Max Laeuger – GER Hamburg City Park
1932	John Hughes – GBR Liverpool Recreation Centre	Jens Klemmensen – DEN Stadium & Park Design	André Verbeke – BEL Marathon Park Design
1936	Werner & Walter March – GER Reich Stadium	Charles Downing Lay – USA Brooklyn Marine Park	Theodor Nußbaum – GER Köln Town Plan
1948	Yrjö Lindegren – FIN Varkau Athletic Centre	Edy Knuper & Werner Schindler – SUI Gymnastics Training Centre	Ilmari Niemeläinen – FIN Kemi Athletic Centre

Two complementary approaches to sustainability

Urban Sustainability – Reconnecting Space and Place
Edited by Ann Dale, William T. Dushenko and Pamela Robinson
284 pages
University of Toronto Press, 2012

Toward Sustainable Communities – Solutions for Citizens and their Governments (4th edition)
By Mark Roseland
363 pages
New Society Publishers, 2012

Reviewed by Glenn Miller

Two new books on sustainability offer the practitioner different but equally valid windows into the complex but frustrating world of sustainable development. Complex because even seemingly successful solutions require caveats; frustrating because debating the issues nearly always raises more questions than answers.

Urban Sustainability – Reconnecting Space and Place is a collection of essays edited by Ann Dale, William T. Dushenko and Pamela Robinson. Dale (among other accomplishments) is Canada Research Chair in Sustainable Community Development at Royal Roads University. Dushenko is Academic VP at Yukon College. Robinson teaches at Ryerson’s School of Urban and Regional Planning, and along with Nina Marie Lister, is one of two members of OPPI whose writings are included in the book. Their contributions are also among the most accessible essays in this compilation.

Robinson provides a well-rounded critique of the work of Waterfront Toronto, citing the importance of robust principles to guide the path to sustainability and the value of meaningful public engagement. Lister entertains the reader with a fascinating riff on maps and map-making.

“The act of mapping is very much a social activity,” she points out, concluding that the process of working with the people who

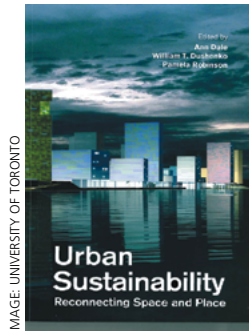


IMAGE: UNIVERSITY OF TORONTO

live in a place to create a map can sometimes be more important than the product. This insight was well known to map makers in ancient times, Lister suggests.

Another chapter that appealed to me was by Rodney McDonald, a transplanted Winnipegger, whose Toronto-based company provides practical advice on how to plan and construct sustainable buildings—a “necessary component of sustainable communities.” His insights into the factors that produced Manitoba Hydro’s award-winning ultra-green building demystify arcane building codes and highlight how inspired government actions can help shift market thinking in a positive way.

Toward Sustainable Communities – Solutions for Citizens and their Governments is a beautifully crafted book that author Mark Roseland freely admits he thought long and hard about before embarking on the 4th edition. Conscious that sustainability is a growth industry, he not only appreciates the irony of this insight but wanted to ensure that the product would be relevant and well-used. He needn’t have worried: this is an excellent addition to anyone’s bookshelf.

The sub-title—Solutions for Citizens and their Governments—underscores his belief that many of the answers to dealing with global climate change will come from empowering an engaged public to prod open-minded governments to take action.

When the first edition was published 20 years ago, few people were thinking about sustainable communities. With each edition, the book’s fundamental purpose and content has been radically revised. Roseland calls his latest edition a “book plus”—a term that reflects the growing importance of web-based learning networks. The book is designed to expand the reader’s “sustainability toolbox.” Roseland also offers a “community capital analytical framework” that encourages the user to leverage all the elements of sustainability—natural, physical, economic, human, social and cultural capital that result in “community actions.”

Roseland practices what he preaches. As Director of the Centre for Sustainable Community Development at Simon Fraser University, he has been involved from the outset in *Univercity*, the sustainable community being built on Burnaby Mountain adjacent to the university. The project embodies the principles espoused in the book. Roseland is content to let the project’s achievements speak for themselves.

Glenn Miller, FCIP, RPP, is vice president, education and research with the Canadian Urban Institute. He can be reached at gmillier@canurb.org.

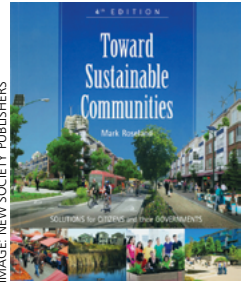


IMAGE: NEW SOCIETY PUBLISHERS

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Independence of expert witnesses

By Eric K. Gillespie and Erin Wallace

The admission of expert evidence is an exception to the general rule barring opinion evidence, which allows a witness to testify only to the facts within his or her knowledge, observation and experience. As previously discussed in this column, expert witnesses are required to have specialized knowledge, skill or experience that allows them to provide opinion testimony.

The issue of qualifying an expert came up again recently in a 2012 decision by the Ontario Municipal Board entitled *Citizens Coalition of Greater Fort Erie v. Niagara (Regional Municipality)*, [2012] O.M.B.D No. 593 (QL) (“Fort Erie”). In this case, there was a proposed development of a 332-hectare site for a motor vehicle track facility within the Town of Fort Erie. The subject site was on prime agricultural land and included a licensed quarry. In order for the plan to be implemented it required amendments to the regional and town official plans, as well as the town’s zoning by-law. In discussing the issue of expert witness qualification the board appropriately outlined that:

Qualifying a witness to provide independent expert opinion evidence to the Board requires two key lines of inquiry: whether the witness possesses the necessary expertise and whether the witness is independent.

...

The decision to qualify a witness is not automatic and no witness possesses a right to qualification. The decision is a discretionary one on the part of the Board in any given hearing. (para. 27 & 28)

One of the appellants in the matter, the Preservation of Agricultural Lands Society (PALS) had called a Dr. Gayler to be qualified as an expert witness in land use planning. The board drew an interesting and important distinction between the knowledge and qualifications of the witness (his expertise) and his background (his independence). The board concluded that although Gayler had the necessary expertise, he was not sufficiently independent. Gayler had been a member of PALS since 1996. The board held that “a witness cannot, at one and the same time, be qualified as an independent expert to give opinion evidence while that same witness is a member of an advocacy group that is an appellant and a party in these proceedings.” (para. 42) This would violate the general rule at common law that expert opinion evidence must be fair, objective and non-partisan.

Following a request by PALS for reconsideration under



Eric Gillespie

section 43 of the *Ontario Municipal Board Act*, the executive chair in correspondence dated December 6, 2012 states that the issue of whether or not Gayler should have been qualified to give expert opinion evidence is now open for possible reconsideration by the OMB. Rule 115.01 of the *Board’s Rules of Practice and Procedure* provides that “the Chair may exercise her discretion to rehear or review a decision only if satisfied that a request raises a convincing and compelling case that the Board violated the rules of natural justice or procedural fairness, or made an error of law or fact such that the Board would likely have reached a different decision.” A motion is scheduled to decide whether a re-hearing is warranted on the issue of “whether the Board improperly excluded opinion evidence when the Board declined to qualify Dr. Gayler to provide opinion evidence.”

In her letter, the executive chair references a recent decision of Justice Lederman of the Ontario Superior Court of Justice in *Henderson v. Risi*, 2012 ONSC 3459 as being of potential assistance to the determination of this issue. In that case, the plaintiff commenced an action for business losses which it alleged incurred as a result of a company’s bankruptcy. The trustee in bankruptcy was a member of the same accounting firm as the defendant’s proposed expert who was tendered to give expert evidence as to irregularities in the books, etc.

The court ultimately determined that the issue of the expert’s institutional independence was best left as a matter of weight, after the reliability of the expert could be assessed through the hearing of the evidence, and not a matter of admissibility. The court, however, made a distinction between a witness who may lack institutional independence and one who may be involved in personal advocacy. In doing so it referred to a decision by the Newfoundland Court of Appeal in *Gallant v. Brake-Patten* 2012 NCLA 23, which states:

When expert evidence is challenged on the basis that it is biased or partial, it is important to identify the nature of the alleged bias or partiality. Legal advocacy, containing legal analyses and argument, legal interpretations and conclusions, which masquerades as expert evidence is distinctly different from expert evidence which is alleged to be biased or partial on the basis of the expert witness having a connection to a party or an issue in the case.

...

When there is an allegation that a witness is biased or partial because the witness has a connection with a party or a matter in issue, the courts have treated the issue as one which goes to weight rather than admissibility.

This issue has also been addressed in *Wynberg et al. v. Ontario* (S.C.J.), [Toronto court file No. OOCV184608CM,

June 2, 2003, unreported *per* Kiteley J.]. These and other cases may well inform the ultimate decision of the board on this question. Stay tuned for future articles as the OMB reviews this matter...

Eric Gillespie and the other lawyers at his Toronto-based firm practice primarily in the environmental and land use planning area. Erin Wallace is an associate at Gillespie Law. Readers with suggestions for future articles or who wish to contribute their comments are encouraged to contact Eric at any time. He can be reached at egillespie@gillespielaw.ca.

CONTINUOUS PROFESSIONAL LEARNING

Don't be afraid!

By Bob Forhan

As you know, the OPPI membership confirmed a new by-law in November 2012, which instituted “mandatory Continuous Professional Learning” as of January 1, 2013. There is a [CPL guide](#) available on the OPPI website, but we would also like to highlight certain facts here, to help reduce the anxiety that some of you may be needlessly feeling.

While the CPL requirement is now in place, 2013 is a

transition year. That is, members are expected to undertake and report on CPL activities, as outlined in the guide. Come 2014, members will be advised as to whether they met the requirement or not. However, no one will be penalized, fined, or have their membership revoked for failing to meet the requirement. Mandatory CPL will really kick in for the 2014 calendar year.

A CPL Reporting Module was designed as part of the new OPPI website and database, but was not quite ready to be implemented along with the rest of the system. By the time you read this, or very soon thereafter, the module will be ready for you to start using and getting used to. Just go the OPPI website and log on with your password. The module itself is user-friendly and anyone who is using the CIP system will find it similar.

In the next few issues of the journal, more key facts about the mandatory CPL program will be highlighted—all of them reasons not to be afraid!



Bob Forhan

Bob Forhan, MCIP, RPP, is the Director of Professional Practice and Development on OPPI Council. He is the sole proprietor of a professional planning practice and teaches a land use planning studio at the School for Urban and Regional Planning at Ryerson University. Bob can be contacted at bob.forhan@rjforhanassociates.com.

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HARDY STEVENSON AND ASSOCIATES

Crossing the line

Dear Dilemma,

I am an RPP who recently moved to Ontario to set up my own firm. So of course all my clients are new to me. In several situations, other planners have accused me of breaching the Professional Code of Practice by “supplanting” them. I will describe the situations below, and ask you—what the heck is “supplanting” and am I guilty of it?

A: An individual hired me. Planner Z later contacted me and said that they had always done that individual’s planning work, and had expected to be assigned this project as well.

B: An individual approached me and said that Planner Y had already done some work on the file, but the firm was dissatisfied with that work. I was hired to carry forward the file. Planner Y later contacted me and advised that he had not been paid.

C: I heard that an individual needed to hire a planner, and the individual was considering the well-known local names, such as planner X; I contacted the individual and pointed out that I had unique qualifications to take on the file; they hired me.

D: I heard an individual was talking with Planner W about a particular project; I contacted the individual and pointed out that I had unique qualifications to take on the file; they hired me.

—Confused

Dear Confused,

Section 3.11 of the code states that a member shall “not attempt to supplant another Member once the planner has knowledge that definite steps have been taken toward the other’s employment.” The dictionary defines “supplanting” as “usurping the place of, especially through intrigue or underhanded tactics.”

What you need to know first and foremost is that only the OPPI Discipline Committee can make a finding as to whether the code has been breached in any particular case. However, my comments follow.

In situation A, it appears unlikely you “supplanted” Planner Z. There are many situations where a client feels comfortable with a planner and will use the planner’s services for a number of files. However, for a planner to expect (or hope) to receive work from a client on all files is not relevant. From time-to-time a client will mix it up, try someone new, or perhaps the client feels that the planner is unable to do the new assignment. In any event, I suggest that whenever you are approached by a potential new client, make it your professional protocol to get to know the client, find out what planners the client has used in the past, and if the client has informed them that they intend to seek someone else for the assignment. You can also pre-empt a phone call from your professional colleague by contacting them directly to let them know you have been approached by one of their clients to do work on a new assignment.

In situation C again, it appears unlikely you supplanted the

other planner. It appears the individual was on a search for a planner. It is normal for clients to meet with at least two or three planners to get to know them and understand their respective qualifications to undertake an assignment. You were hired, congratulations!

In situation D you may have crossed the line. It would depend on whether the client had taken definite steps to employ the other planner, and on how far you went to convince the client to hire you. For instance, if you were too forceful, you may have breached sections 3.9 and 3.10 of the code (falsely or maliciously injuring the professional reputation, prospects or practice of another member, or offering ill-considered or uninformed criticism of the competence, conduct or advice of the member).

Situation B can be tricky. Many professions that prohibit “supplanting” also include specific language about not taking on a file when a fellow professional has an outstanding invoice on the same matter. Our code does not contain such language, but as a matter of professional courtesy and to avoid potential ethics complaints (by the other planner), many planners avoid taking on such files. I suggest in future, you ask the potential new client whether or not the planner that has been working on the file has been paid in full and that all reasonable steps to terminate the relationship have been taken.

Professionally Yours,
—Dilemma

Through this regular feature—Dear Dilemma—the Professional Practice and Development Committee explores professional dilemmas with answers based on OPPI’s Professional Code of Practice and Standards of Practice. In each feature a new professional quandary is explored—while letters to Dilemma are composed by the committee, the scenarios they describe are true to life. If you have any comments regarding the article or questions you would like answered in this manner in the future please send them to Info@ontarioplanners.ca.

URBAN DESIGN

A consultant’s perspective

By Christian Huggett

I’d like to share three observations I’ve made on the practice of urban design through my experience as a consultant working in planning, urban design and architecture in Toronto and the surrounding municipalities over the past 10 years. These observations are primarily relevant to urban design practice in urban areas, but carry weight on the practice of urban design in general.

Challenging urban sites

Many larger Canadian cities are reaching maturity due to a convergence of a number of issues: The strong Canadian

economy makes domestic and foreign investment attractive. High-rise condominiums are popular both for investment and as a place to live. The city is experiencing a renaissance as a place for people to live, work and play. This has meant that the easier sites have already been developed and the newer proposals are on lots that are more challenging. Some are irregular shapes making parking or servicing difficult, others contain heritage structures or have contamination issues, some simply don't allow for conventional building types, and many sites have a combination of these characteristics. Often, these sites are the untouched remnants from the previous waves of development due to their design challenges, and are part of the "missing teeth" in the realization of a complete streetscape.

As a result, strategic urban design, good architecture and flexible planning approaches are essential to the realization of each complex site's potential. All three disciplines must be intertwined if we are to remain creative in the assessment and design of challenging sites. The ability to think beyond in-force (and sometime archaic) zoning by-laws, traditional approaches to development assessment or strict rules about heritage preservation in order to realize development on these sites is paramount.

The influence of architecture on urban design

Urban design has emerged as a new discipline out of the complexity of coordinating architecture at an urban planning scale and the segmentation of generalist roles. It was a subset skill of architects and planners and engineers for centuries, but only recently is it recognized as a separate profession. However, in all cases a good understanding of architecture is an essential element of good urban design. Fundamental to the implementation of good urban design is a solid understanding of how buildings work, what makes them viable (financially, economically, dimensionally), what are the trigger points and *Building Code* regulations that govern the building's performance, and, how the proposed building and landscape relates to its surroundings.

This intelligence must be carried into planning documents and guidelines in order to achieve the building types, sizes and shapes sought, and it must be understood by urban design practitioners. Too often building types are recommended or idealized, with sizes or controls (i.e., strict angular planes) that can inhibit or derail the potential for good projects to occur. Ambiguous statements about what makes good urban design can make their practical application difficult to understand and implement. A good design framework requires both rigour and flexibility: rigour in design parameters and the language used to describe desired conditions and flexibility to allow for creativity in implementation.

Future transit corridors and expansions

A significant part of speculative land development occurring in the GTA is located around transit corridors, particularly subway and LRT extensions (e.g., Yonge and Spadina subway extensions and the Markham and Toronto LRTs). This results from a complex and overlapping combination of policies in the growth plan and the greenbelt plan, and the emergence of the condominium as a profitable and desirable building type. In turn, this speculation and construction creates tremendous development pressures on lands surrounding these significant

infrastructure projects. Communities of five to 20,000 people are being planned within walking distances of each new transit station, in combination with opportunities for work and recreation. These intensification areas offer the potential to create more complete communities; they create the mobility and land use mixture to help reduce auto dependency.

Planning studies generally support a 25-30 year horizon for the full build-out of these lands, although construction of significant infrastructure and developments can be expected within the first 10 years. The Sheppard Subway extension (to Don Mills) is an example of this. Significant development has already occurred along Sheppard Avenue, but not all lands will redevelop, and some lands are easier to redevelop in earlier phases.

Urban design has a strong and essential role to play in the evolution of our communities. Planners conversant in design add a valuable dimension to the discourse of city-building.

Christian Huggett, MCIP, RPP, is an associate designer and planner at &Co Architects in Toronto. He is a member of OPPI's Urban Design Working Group, the Council for Canadian Urbanism (CanU), and is a former OPPI Toronto Council member. You can reach him at Christian@andco.com.

HERITAGE

Downtown Façade Improvements

Investing in community

By Michael Seaman, contributing editor

Although one would think that the pending arrival of a new Wal-Mart nearby would be cause of concern for traditional downtowns, there's no such pessimism in downtown Grimsby these days. Yes the first shovels are about to go into the ground for a brand new Wal-Mart box mall in nearby Winona, on the eastern edge of Hamilton, but the historic Grimsby commercial area at the base of the Niagara Escarpment is seeing an upsurge of positive investment and improvement, thanks to a progressive approach to downtown revitalization; adapting to change by capitalizing on Downtown Grimsby's unique strengths.



Michael Seaman

Downtown Grimsby is the heart of this Niagara West community; it's the place where people meet and gather and is in many ways the glue that knits the community together. The continued health of the downtown is very important in maintaining a functional and strong community in Grimsby.

A key strength of Downtown Grimsby is its position at the western gateway to Niagara Region, at a pinch point between



Grimsby Chamber before



Grimsby Chamber after

the landmark Niagara Escarpment feature of Grimsby Peak, and Lake Ontario through which passes the western end of the Niagara Wine Route and Queen Elizabeth Way. This setting provides the downtown with beautiful natural scenery, tourist amenities and the potential to tap into the millions of visitors who pass by on the QEW each year. While there's no desire to see downtown Grimsby overwhelmed by tourists, it is recognized that by tapping into some of that vast market that passes through the town each year is a key opportunity for its future success.

In April 2010, Grimsby Council adopted a community improvement plan for downtown prepared by GSP Group and RC I Consulting. It focussed on a number of components including gateway features, way-finding signage, streetscape improvements, pedestrian crossings, public squares, parks and trails, public art, parking and enhancement to the built environment.

To achieve the vision outlined in the CIP, eight incentive programs were created to encourage private sector development, rehabilitation and redevelopment in the downtown: Commercial/Mixed Use Building Façade Improvement Grant Program; Residential Conversion/ Intensification Grant/ Program; Residential Conversion/ Intensification Loan Program; Property Revitalization (Tax Increment) Grant Program; Development Charge Exemption Program; Urban Design Study Grant Program; Environmental Site Assessment Grant Program; and a Brownfields Tax Assistance Program. Most of the programs require matching

funding from business owners and are supported in part through the Region of Niagara's Smarter Niagara Incentives Program.

In Grimsby it was recognized that façade improvement was the principle area of need. Tired looking façades resulting from years of basic and deferred maintenance with limited concern for aesthetics had left a building stock that had seen better days. Council approved a Downtown Façade Improvement program and committed \$50,000 towards over two years to a maximum of \$5,000 municipal funding per project (plus \$5,000 in regional funding).

The most successful project has been the revitalization of the Old Grimsby Fire Hall, now the home of the Grimsby Chamber of Commerce. When the program began, the building barely resembled its historic fire hall self. A 1960's stucco storefront had been installed along with slider windows and cascade awnings. Set back from the street to accommodate its historic function it was possibly one of Downtown Grimsby's most non-descript buildings. Enter a new and enthusiastic owner with a sense of history and a willingness to invest in façade improvement, and little by little the Old Fire hall was transformed over the fall of 2012 back to its historical appearance. No, it's not a fire hall anymore but the building owner and the principle tenant, the Chamber of Commerce saw the potential in the historic façade with its big fire hall doors to create unique, welcoming and adaptable office space. The results are stunning. On November 6, 2012 a sizable crowd gathered on the streets of downtown Grimsby



Teddy's before



Teddy's after

to celebrate the grand-reopening of the Old Fire Hall – the new Chamber of Commerce.

It is clear that Grimsby council's investment in downtown is already paying off and will do so again and again. Making the historic core a more attractive place for new investment and development it will ensure that this historic centre of the community continues to be successful for years to come.

Wal-Mart may be coming to the area but for Downtown Grimsby it's not a cause for concern. Thanks to progressive planning, business and municipal leadership. The historic commercial centre of this West Niagara Town is well positioned to adapt to future shifts in economic activity and continue to be heart of the community.

Michael Seaman, MCIP, RPP, is Town of Grimsby planning director.

MEMBERSHIP OUTREACH

Hire a student for the summer

Fan the flame

By Kay Grant

Searching for the right summer experience or that first job is often a daunting prospect for a young professional, brimming with bright ideas, but unaccustomed to the delicate art of networking or the rigours of job hunting, or simply unsure of what to do next

now that school has ended. But summer employment is a perfect opportunity to figure out what kind of planning work appeals, one's preferred place to practice and the kind of employer a young professional wants to work for.

OPPI's Membership Outreach Committee is in the unique position of extending a welcoming arm to aspiring planners, helping to ease their transition into employment and supporting their professional development. As committee members engage with students, they are frequently astounded by the diversity of backgrounds, seemingly boundless enthusiasm and the impatience students express to begin working in their chosen profession.

Visits to Ontario's planning schools also provide an opportunity to watch the flame spark as students yearn to contribute to the planning profession and to change the world around them. We encourage you to continue to fan this flame by hiring a planning student for the summer.

As spring is almost upon us, we urge you to consider the possibility of hiring a student/intern this summer. In our efforts to expand our membership, the only way the Institute can survive and thrive is if we continue to instil passion and inspiration in student planners and young professionals.

Our request is simple: Go fan that flame!

Kay Grant has been a planner with the Town of Niagara-on-the-Lake for over four years. She is Western Lake Ontario District's representative on OPPI's Membership Outreach Committee.

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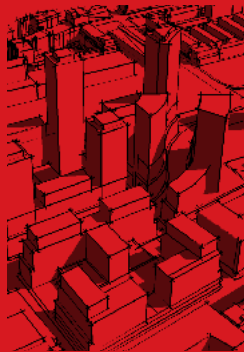
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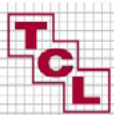
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