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Zoning for a Better Toronto

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ZONING FOR A BETTER TORONTO

Why Zoning Matters: Toronto's zoning bylaw and how it affects you

Toronto is a city characterized by its ambition and inventiveness. The fact that this is an election year has brought forth an onslaught of different visions for the City's future. One less hotly-debated topic this summer has been the Zoning Bylaw project, which on August 27th, 2010 passed council after eight years of work. While it may seem like a somewhat dry topic, zoning is an important city building tool for a number of reasons, and it is worthy of more of the public's attention than it has thus far received. Strategic zoning can be used to revitalize flagging neighbourhoods, to mediate and shape neighbourhoods in transition, to fight the economic stratification of neighbourhoods, and to protect some of Toronto's most vulnerable populations. Zoning can also act as a source of municipal innovation, a mechanism by which to introduce novel planning ideas to the city landscape. The ultimate goal of zoning is to ensure "the best possible use of land," but just what constitutes "best possible use" should be considered by more than just planners and developers. The attention generated by the City of Toronto's complex and ambitious Zoning Bylaw project represents an opportunity to address many of these ongoing issues, and to consider how zoning can help enhance the future vibrancy, diversity and economic vitality of the city.

A ZONING PRIMER

The most elementary form of zoning divides land into three use types with different purposes: industrial, commercial, and residential. Within each of these three land types there are many subsequent distinctions that can be zoned: heavy industry must be set away from homes, but some light industry might be allowed to grow. Commercial properties take many forms, from Mom & Pop marts to big box superstores, and the locations in which they can be built and operated will depend on a variety of factors. In the nineteenth century, zoning's focus was specifically on land use that was perceived to be problematic. Comprehensive zoning, whereby even parcels of land thought to be uncontroversial or with no planned development are pre-zoned, became the norm for Toronto with the provincial Planning Act of 1946. Comprehensive zoning is seen as a way to protect property owners, whose major asset relies on the stability of the neighbourhood to retain its value from the threat of undesirable development nearby. Buying a house next to an empty tract of land is less of a gamble if your neighbourhood has been zoned exclusively for family homes.

Beyond the primary consideration of land use, zoning bylaws also take safety, environmental concerns, and community aesthetics and character into consideration. To ensure that a certain amount of rainwater goes back into the earth instead of storm sewers, front-yard parking is regulated—fifty percent of all yards must be "soft" landscaping rather than concrete. Tall building towers must be 25 meters apart in order to give surrounding buildings access to light and air. Any new structure going up in an older neighbourhood are be expected to conform to surrounding height and floor area ratios, and the number of parking spaces that must accompany a new building is decided based on the number of units. Zoning affects every aspect of development.

ZONING IN TORONTO

Few North American cities have as complicated a zoning system as Toronto. Owing to its long history of annexation and amalgamation, until this summer Toronto had 43 different zoning bylaws that varied across the City. Such a pastiche was problematic for a number of reasons. Maintaining 43 different regulation sets, both physically and electronically, was enormously inefficient for the Planning Office, and the bylaw boundaries were not aligned with the boundaries of the community council wards where most localized planning decisions are made. The electronic availability of the bylaws

differed area-by-area, so only some Toronto residents had easy access to the regulations that governed their neighbourhood. Other Ontario cities like Ottawa, Mississauga, and London have integrated their bylaws to account for municipal amalgamation. Simple facts have motivated Toronto's large-scale overhaul, and at its core the project is one of harmonization—introducing a single zoning framework that holds across Toronto and is accessible online. Since 2002, the City has been working to standardize this jumble of regulations into a single city-wide bylaw with the aim of enhancing both efficiency and accessibility for citizens.

That the harmonization process has been slow yet careful should not come as a surprise to anyone who has tried to read the complicated and nuanced zoning documents (a taste: “In addition to uses permitted in Clause 5.10.20.30, in the E zone, the following ancillary uses are permitted if they comply with the applicable regulations set out for the particular use in Clause 60.20.20.100 and in Chapter 150 Specific Land Use Regulation.”) This kind of language makes zoning sound both banal and neutral—it is hard to see much room for bias in such legalistic language. But linguistic neutrality cloaks the political nature of all zoning decisions. Zoning for a particular use is, by default, zoning against another type of use. All zoning is in some sense exclusionary, and in many cases those excluded tend to be disenfranchised populations. So how do we ensure that we are zoning for the right reasons in the right places? As a starting point, appropriate zoning considers present and possible future uses for land, the community, and the overarching vision and goals of the city.

Toronto's Planning Division is committed to mixed-use development as an integral part of building sustainable, healthy neighbourhoods. The case for mixed-use zoning has been made extensively, most famously by long-time Toronto resident Jane Jacobs in her seminal *The Death and Life of Great American Cities* (1961). Jacobs argued that mixed-use zoning, whereby many land uses are permitted within a given area, encourages strong development around transit routes, reduces reliance on motor-vehicle use, and maintains the energy and safety of the central city. By allowing a broad range of uses in an area, residents of a neighbourhood are able to work, shop, and perform leisure activities in close proximity to where they live. With a variety of land uses comes a variety of operating hours, and more eyes on the street around the clock enhance the safety of a neighbourhood. Since the 1970s, the gradual departure of heavy industry from Toronto has meant that enforced land-use separation has become increasingly unnecessary, and zoning bylaws have been amended to encourage mixed-use development: Kensington Market and Yorkville are two examples of neighbourhoods that have thrived under mixed-use zoning.

The intersections of King and Spadina and King and Parliament are prime examples of the potential for mixed-use zoning to transform languishing areas of Toronto. They are also illustrations of the need for residents to be aware of and involved in zoning amendments. Historically, these two areas had been exclusively manufacturing districts, but beginning in the 1970s most industry moved outside of the downtown core. Inflexible historical bylaws that relegated the area to industrial use meant that abandoned factories could not be repurposed. In 1996 the City of Toronto designated both neighbourhoods as regeneration areas, permitting a wide variety of land uses such as residential, live/work spaces, retail, commercial, entertainment, and light industrial. Today the two neighbourhoods are truly mixed-use in character; full of condominiums, live/work spaces, bars, clubs, restaurants, and retail shops. The City notes that “employment activity in both areas has increased by 18 per cent since 1996, outpacing the city-wide growth rate of 11 per cent” and that almost 40% of neighbourhood residents walk to work (see “Regeneration in the Kings: Directions and Emerging Trends” for more). Despite these obvious enhancements to the area, there has been friction between the residents' association and nearby entertainment establishments in the King-Spadina neighbourhood. Loose zoning practices have successfully revitalized the area, but the nightclubs have brought loud music, large crowds, and street garbage. It is imperative that future residents understand the risks inherent in such zoning practices before moving in, and that current residents strive for balance in surrounding developments.

One example of this negotiation is the recent attempts to resolve land-use conflicts through bylaw amendments along Ossington Avenue. With a shift away from industrial use in the late 1990s, Ossington Avenue south of Dundas has become a hot spot for nightlife. While the bars and restaurants that set up shop have prospered, residents are often upset by the noise, garbage, vandalism, and parking congestion that have accompanied the entertainment boom. An additional consequence is that rents in the area have risen quickly, limiting the type of establishments that can afford to move in.

The extensive debates about the need for and nature of new rules for Ossington Avenue illustrate the serious impact of zoning decisions on the fate of a community. Ultimately, bylaws that attempt to slow the creation of new patios, dance floors, and establishments were put into place in an attempt to keep the neighbourhood liveable and manage the growth of nightlife businesses.

While much of Toronto thrives and land value continues to increase, it is still a city sharply divided along economic lines. Reports such as the Centre for Urban and Community Studies' "The Three Cities Within Toronto: Income Polarization, 1970–2000" (2007) and the Toronto Community Foundation's most recent edition of "Vital Signs" (2009) show powerful evidence of increasing disparity between neighbourhoods in the city. Aside from merely managing growth, zoning bylaws are an important planning instrument for encouraging social equality and discouraging income segregation. The City can leverage incentivized zoning policies and density bonuses (which allow developers to build beyond traditional density constraints in exchange for incorporating affordable housing) as consciously creative ways to offset exclusionary zoning practices. In New York City, a recently introduced bonus system allows for additional height concessions on new developments in exchange for a commitment to include affordable housing units, a public plaza, or a non-profit arts venture. These zoning tools are creative mechanisms with which to encourage affordable housing across the region.

Currently, Toronto offers zoning incentives on an ad-hoc basis through Section 37 of the City Planning Act, but does not have an official inclusionary zoning bylaw. Section 37 loosens zoning bylaw height and density restrictions for developers in exchange for certain community amenities such as additional parkland, non-profit arts, cultural, community or child care facilities, public art, transit improvements or rental housing (see Toronto Official Plan 2009). Its most famous use in recent years was during the development and planning phase for the West Queen West Triangle. Working with local community and artist groups, the City negotiated with developers Baywood, Veridoc, and Urbancorp to build community and arts facilities, include 190 affordable units in the Abell Avenue building, donate \$1.25 million to Toronto Public Health, and sell rental units to the not-for-profit arts non-governmental organization (NGO) Artscape at cost. While there is continuing discontent over the gentrification of the area, trade-offs acquired through Section 37 were in this case a realistic alternative to a "don't build" mentality, and they improved the neighbourhood's facilities while also easing tensions between developers and residents. Certainly, the collective imagination of Torontonians could incite similar improvements to developments across the city.

One vulnerable population who would benefit greatly from enhanced attention to zoning is Toronto's rooming house dwellers. Rooming houses, a form of supportive housing that serve many low-income singles at risk of homelessness, are currently only legal in the former City of Toronto (downtown). Neither Scarborough nor East York has specific policies regarding the keeping of roomers and boarders, and they are permitted only in the Long Branch area of Etobicoke, and not at all in North York. This restrictive zoning has not succeeded in preventing rooming houses from existing. A black market in rooming houses means that in many neighbourhoods, there is no oversight to ensure that fire safety or basic hygiene and space needs are being met. The first step towards having these units regulated by city standards is to legitimize them via permissive zoning. Without regulation, the health, safety and dignity of some of our most vulnerable Torontonians remain at risk. Though zoning is only one of many tools that support the safe provision of single room occupancy units, it is a crucial step toward identifying and regulating illegal units. The new zoning bylaw has not addressed this.

While precise questions about floor space and density control or industrial land may not strike a chord with voters, there are many ways that zoning affects the lives of Torontonians. The discussion surrounding the Zoning Bylaw Project is a unique and timely opportunity to interject a range of competing ideas about the future of our city alongside the limited yet effective ability of zoning to facilitate a more equal and innovative Toronto. The run up to the mayoral election is an opportunity for us to push leaders to consider more innovative zoning possibilities, and to ensure that future zoning both reflects and works for Toronto in the twenty-first century. The last date for filing a Notice to Appeal to the Ontario Municipal Board (OMB) in respect of all or part of the new Zoning Bylaw (#1156-2010) is September 30th.

POLICY IDEAS

Pursue more creative and incentive-driven zoning decisions

Creative zoning means allowing for flexibility to encourage innovation and spur economic growth. For instance, under the new planning bylaw, any community home built for seniors “must have been constructed more than 5 years prior to it being used as a seniors community house” (section 150.30.40). The goal behind this strategy is to encourage the refurbishment of existing buildings. Yet the prescriptive nature extends beyond encouragement—it is coercive. Such inflexible regulating eliminates the creation of new spaces catering to Toronto’s aging baby boomer population, who will increasingly seek supported independent living in the coming years.

The creative use of incentivized zoning should also be encouraged to help neighbourhood development and increase affordability. New York City, which has been at the forefront of incentivized zoning policies for decades, recently started the Food Retail Expansion to Support Health program (FRESH) which uses a combination of zoning and tax credits to incentivize small-scale grocers to set up shop in neighbourhoods lacking fresh food. Seattle uses incentive zoning to encourage affordable housing, historic preservation, and public space while facilitating increased density in the downtown core. In Edmonton there are new, more flexible zoning policies to encourage property owners to develop mixed-use properties on arterial roads via construction reimbursements and grants (“Edmonton Development Incentive Program”). Incentivized zoning has proved effective in many cities for many purposes, and it could become a central part of the planning of new developments in Toronto.

Officially adopt an inclusionary zoning policy

Incentivized zoning can be used to increase the availability of affordable housing, but such programs must go hand in hand with an official inclusionary zoning policy. Inclusionary zoning is popular (albeit controversial) in the United States, where it is used as an ordinance that requires a given share of new construction be affordable for people with low to moderate incomes. It was developed as a response to exclusionary zoning, which prevented low and middle-income housing developments by mandating large lot sizes, extensive landscaping, or expensive architectural features.

Such a policy would compliment a push for more flexible and creative incentive-driven zoning (our first recommendation) and would help to increase the number of affordable housing units in the city. This policy would help to offset rising residential costs by increasing the availability of affordable housing units at a rate similar to new residential development in the City of Toronto. This spring, Parkdale-High Park MPP Cheri DiNovo introduced a private members bill to amend the Planning Act so that municipalities can require inclusionary housing in new developments. Such policies send a positive message, affirming the City’s commitment to neighbourhood diversity and affordability, but the policy will do little without a committed interest in its success. Moving forward, Toronto must consider ways to formalize its commitment to building new affordable housing.

Officially incorporate rooming houses as legal throughout the City of Toronto

Formally recognizing rooming houses as legitimate throughout the City of Toronto is a critical step toward ensuring that the mix of affordable housing in the city is well-maintained and safe. Low-income singles frequently rely on them as a step in transitioning out of poverty, and they will only benefit from formal regulation (such as fire inspections) if they are registered and licensed by the city. As it stands, rooming houses have yet to be addressed by the new zoning bylaw. This is an issue worthy of political discussion during the election.

SOME KEY QUESTIONS ON ZONING:

To better understand the positions of the candidates on topics related to zoning, consider asking them questions such as:

How might zoning help facilitate your long-term goals for the City of Toronto?

How does the new zoning bylaw align with your policy platform?

Where do you disagree with the new zoning bylaw?

What other municipal jurisdictions do you look to for zoning-related inspiration and policy ideas?

When was the last time you encountered zoning or a zoning issue as a constituent of Toronto? Describe it? How was it resolved?

What is one of the leading zoning issues in your ward of residence?

ACKNOWLEDGMENTS

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