
Land Acquisitions: Three Unique Ontario Land Use Controls to Consider

Real estate developers in Canada and the United States will all be familiar with the due diligence issues that are common to most jurisdictions during the development land acquisition phase, such as the need to confirm zoning permissions and market feasibility. However, each Province and State will have its own unique variety of land use controls, some of which may fall below the radar of the development community but nevertheless can have a major impact on a property's development potential. Ontario is no exception and this article flags three of its lesser known land use controls which should be considered when evaluating a possible development land acquisition in Ontario.

1. Endangered Species Act

(<http://ontariolanddevelopment.com/2013/01/01/land-acquisitions-three-unique-ontario-land-use-controls-to-consider/>)

Under the Endangered Species Act, the Province maintains a list of Species at Risk in Ontario (the "SARO List"). Once an endangered or threatened species is added to the SARO List, a variety of legislative provisions come into play, the overall goals of which are to protect species at risk and their habitats, and to promote the recovery of species at risk.

A site that provides habitat for a species at risk will typically be subject to very significant development constraints, as the Act prohibits any damage or destruction of species at risk habitat.

It bears noting that the SARO List includes not only mammals, but also various species of at risk trees and reptiles. In the Region of Waterloo, for example, the Jefferson Salamander and the Butternut Tree are two at risk species whose habitat has been

identified on quite a number of sites proposed for development with significant resultant constraints.

Qualified biologists can assist a developer in determining if a site contains habitat for any species at risk and, if so, in assessing the extent of the development constraints.

2. Records of Site Condition under the Environmental Protection Act

In Ontario, what is known as a Record of Site Condition ("RSC") must be registered with the Ministry of the Environment prior to changing the use of a property from industrial or commercial use to residential or parkland use.

An RSC is a document that summarizes the environmental condition of a property as determined by a "Qualified Professional" after conducting a Phase I Environmental Site Assessment, a Phase II Environmental Site Assessment (if appropriate), and confirmatory sampling (in the case of site cleanup).

The aim of this requirement is to ensure that contaminated industrial or commercial sites are not converted to more sensitive residential or parkland uses without first being properly remediated or risk assessed.

The effect of the RSC requirement is that any former industrial or commercial site in Ontario is unavailable for residential or parkland use until someone invests the time and money needed to obtain and register an RSC for that site.



3. Heritage Act

Ontario's Heritage Act is intended to protect heritage properties and archaeological sites. It provides a framework for municipalities to designate individual heritage properties or to designate entire areas as Heritage Conservation Districts.

Once designated as a heritage property through the passing of a municipal by-law, a property becomes subject to restrictions on alterations which will affect heritage attributes. Before making such changes, an owner must obtain written consent from the municipal Council to such alterations.

An owner must also obtain written consent from the municipal Council prior to demolition of any building or structure on a designated property.

Developers will therefore find that heritage designated properties are more challenging development candidates than non-designated properties.

About the Author

David Sunday, B.A., J.D.

David Sunday is the Group Leader in the Municipal, Land Use and Development Law Group at Sorbara, Schumacher, McCann LLP, one of the largest and most respected regional law firms in Ontario.

Practice Groups:

Municipal, Land use and Development; Corporate and Commercial

This article is intended only to inform and educate. It is **not legal advice**. Be sure to contact a lawyer to obtain legal advice on any specific matter.