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Brownfield Act Overhaul

Submitted by the Greater Barrie Chamber of Commerce

Issue

***Brownfields Statute Law Amendment Act*, 2011** and companion regulations came into full effect as of October 1, 2004. This legislation was designed to remove barriers relating to regulatory liability, financing and planning and in fact had the complete opposite effect.

Background

The 1996 Guideline for use at Contaminated Sites in Ontario served as the forerunner to the current Record of Site Condition (Brownfields Regulation) and was established to remove barriers relating to regulatory liability, finance and planning and promote the redevelopment of brownfield sites. The legislation has evolved over time and more recently has seen an extensive revision to the Regulation which came into force in 2011. While filings from 2004 to 2011 were challenging; the most recent revisions have basically stifled the intended goals of this legislation.

The entire process is covered in red-tape. The legislation prohibits Municipalities from issuing any Building Permit pending the issuance of Provincial approval of the RSC where a more sensitive land use is contemplated. The process demands legal interpretations, legal surveys, technical interpretations and often considerable environmental sampling to characterize the Site Condition to Ministry standards. This arduous site screening process has significantly increased redevelopment costs and timelines to achieve these prescriptive standards.

In the extreme, winter maintenance salt spread across sidewalks and parking lots is a *de facto* contaminant which can suspend any redevelopment until resolved. Yet there is essentially no reasonable remediation technique to abate salt concentrations above Provincial Standards. A protractive risk assessment process must be undertaken which results in no meaningful change to the Site Condition once completed; but is costly to pursue and inevitably stalls any development for months or longer.

PBM Realty Holdings acquired a Brownfield site (unbeknownst to us) in 2004 redevelopment into a Residential condominium site and we have still not received final approvals to proceed. The cost of this process has nearly double the cost of the land acquisition! To go in to the details of process would take much longer than I could possibly write in this letter however it would illustrate the complete and utter ridiculous expectations the MECP has imposed on developers.

Even more infuriating is the fact that MECP requirements associated with this process have also evolved over time. The winter maintenance issue noted above was not originally requested by the MECP in 2011 when the new regulations were introduced; but over time have been advocated by the MECP in the site evaluation process such that it is now a new evolved standard. The same has occurred with several other processes (e.g., gasoline assessments and historic construction materials including granular fill).

PBM Realty Holdings retained competent professionals who evaluated the site and then submitted their work only to be informed by the MECP that their standard of care was insufficient and resubmission would be required. Furthermore, this back and forth between the consultants and the MECP occurs over multiple submissions that appeared to delve into trivial

information items. The statement made was that the professional conducting the study has no ability to exercise discretion in the application of the prescriptive standards. Furthermore, the MECP has been adverse to providing meaningful guidance since it could be construed as directing the study. Thus, confusing and vague language citing regulatory phrases is issued over a common sense discussion between experts as occurs in most other MECP consultations. Within the environmental consulting community it is generally recognized that multiple document submissions are the norm to address MECP expectations for RSC submissions.

As can be expected each additional information request can result in significant costs to acquire solicited information and more importantly increase timelines to complete the submission. If risk assessment is employed then there is the understanding that the risk assessment portion of the submission will easily take more than a year to complete. As this is a step-wise process, it is common that submitted documents reach "stale date" thresholds in the legislation of 18-months and must be updated because of the length of time for the RSC exercise. If a new leaseholder on the surrounding lands commences business over this 18-month time period; then it is conceivable that a new site evaluation work could result; placing the entire process on hold pending this new assessment.

At the conclusion of this process a series of documents are issued by the MECP including a Certificate of Property Use (CPU) which often imposes very restrictive site development conditions. For example, any changes to the site development plan can conceivably result in re-evaluation and at a minimum requires MECP Director approval for any and all changes regardless of their nature. As a result, the MECP has unwittingly become a partner in the site development process.

PBM Realty Holdings realizes the worth of the Brownfield legislation; but would suggest that the reasonableness of the process has been lost.

Recommendations

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Overhaul the Brownfields Act completely.