

COMMITTEE OF THE WHOLE OCTOBER 22, 2001

BILL 56, THE BROWNFIELD STATUTE AMENDMENT ACT 2001
REGION OF YORK PLANNING COMMITTEE INFORMATION REPORT

Recommendation

The Commissioner of Planning recommends that this report BE RECEIVED for information purposes.

Purpose

To update Council on Bill 56 the Brownfield Statute Amendment Act 2001, which is proposed provincial legislation addressing redevelopment of brownfield sites.

Background - Analysis and Options

The Region of York has circulated to the City a copy of the attached information report adopted by Regional Council on September 6, 2001 on Brownfield Development. Bill 56, The Brownfields Statute Law Amendment Act 2001 is designed to encourage and promote the infill, intensification and the redevelopment of brownfield sites in Ontario. Bill 56 received first reading in the Legislature on May 17, 2001 and second reading on June 28, 2001 and at the time of preparing this report is at the Committee stage.

Conclusion

Staff will continue to monitor the progress of Bill 56, the Brownfield Statute Amendment Act 2001 at the Province. Should Bill 56 receive royal assent staff will report back to Council as may be necessary in order to address any required revisions to the City's "*Policy and Procedures for Dealing with Contaminated or Potentially Contaminated Sites*" and to address any other related City policy matters, programs or initiatives which the legislation may affect.

Attachments

1. York Region Planning Committee Information Report on Brownfield Redevelopment (Brownfields Statute Law Amendment Act 2001) August 29, 2001, as adopted by Regional Council on September 6, 2001

Report prepared by:

Eric Taylor, Senior Planner Environmental ext. 8214
Bianca Bielski, Manager of Development ext. 8485

Respectfully submitted,

MICHAEL DeANGELIS
Commissioner of Planning

JOANNE R. ARBOUR
Director of Community Planning

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**INFORMATION REPORT ON BROWNFIELD REDEVELOPMENT
(BROWNFIELD STATUTE LAW AMENDMENT ACT 2001)**

The Planning and Economic Development Committee recommends the adoption of the recommendations contained in the following report, August 20, 2001, from the Commissioner of Planning and Development Services, subject to Recommendation No. 2 being replaced with the following:

"2. The Ministry of Municipal Affairs and Housing be advised that York Region supports in principle the legislative changes proposed by the Brownfield Statute Law Amendment Act, 2001, and requests the following amendments be considered:

- Providing a municipality with the same level of protection from liability arising from "any inaccuracy contained in the Record of Site Condition that is filed in the Registry" that is provided the Province.
- Having owners submit a Record of Site Condition to the area/region municipality when they submit one to the MOE.
- Consideration be given to a longer period of time than two years for protection from orders for a municipality when it becomes an owner of a property under the Municipal Sales Tax Act. Two years is insufficient time to complete all the steps necessary for a municipality to sell the property.
- Expanding the costs to which tax assistance can be applied for under the Municipal Tax Act to include the same costs permitted under Section 28 of the Planning Act. Changes to the Municipal Act regarding financial assistance are not as inclusive as what is covered by Section 28 (7) of the Planning Act.
- Extending immunity to officers, directors, or managers of corporations."

1. **RECOMMENDATIONS**

It is recommended that:

1. This report be received for informational purposes.
2. The Ministry of Municipal Affairs and Housing be advised that York Region supports the Legislative changes proposed by the Brownfield Statute Law Amendment Act, 2001.
3. The Regional Clerk forward a copy of this report to the area municipalities and the Ministry of Municipal Affairs and Housing.

2. PURPOSE

The purpose of this report is to:

- Identify the new measures that are provided for by the Province's Brownfield Statute Law Amendment Act, 2001 (Brownfield Act);
- Identify the impact of the new legislation on York Region; and,
- Identify how the legislation may be utilized as a part of York Region's Smart Growth Strategy.

3. BACKGROUND

On May 17, 2001 the Minister of Municipal Affairs and Housing announced that the Province of Ontario would proceed with new legislation intended to promote the cleanup of brownfields as part of its Smart Growth Strategy.

Seven Acts are proposed to be amended by the Brownfields Act. They include:

- Education Act;
- Environmental Protection Act;
- Municipal Act;
- Municipal Tax Sales Act;
- Ontario Water Resources Act;
- Pesticides Act; and,
- Planning Act;

The new legislation provides:

- amendments to the Environmental Protection Act that reduces liability from future environmental orders to stakeholders of brownfield redevelopment sites;
- tax incentives promoting rehabilitation of brownfield sites; and
- an amendment to the Planning Act that streamlines the Community Improvement Plan process, which encourages brownfield redevelopment.

Key elements of proposed changes to environmental legislation include:

- Requiring mandatory environmental site assessment and cleanup, if necessary, to prescribed standards where there is a land use change from industrial/commercial to residential/parkland, or other land use changes prescribed by regulations;
- Enabling regulations to provide clear rules for site assessment, cleanup, and standards for contaminants based on proposed land use;
- Requiring the acceptance of a site specific risk assessment by the Ministry of the Environment and allowing for conditions to be placed on the use of a property;
- Providing liability protection from future environmental orders for municipalities if taking actions for the purpose of a tax sale;
- Providing liability protection from environmental orders for secured creditors while protecting interest in a property;

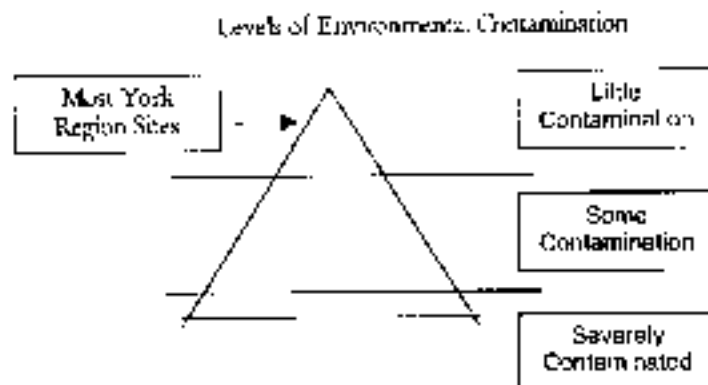
- Providing liability protection from future environmental orders for owners who follow the prescribed site assessment and cleanup process which includes filing a record of site condition to the site registry and using a certified site cleanup professional.

3.1 How York Region is Affected

Brownfield sites can be classified based upon the level of environmental contamination. These brownfield sites exist in every town, city, province/state, and country around the world and typically follow a hierarchy. The bottom of the pyramid represents the most contaminated, the top the least contaminated, and the middle represents an environmental condition most brownfield sites are in.

The majority of brownfield sites in York Region are former commercial or industrial sites, such as old fuel stations, auto body shops, wrecking yards, and under utilized strip plazas. The sites within York Region generally fit into the top portion of the pyramid (see Figure 1)

Figure 1



In January 2000 the Regional Planning Commissioners of Ontario recommended a standard process for evaluating development applications on known or suspected contaminated sites. Their recommendation was released as an advisory document and is schematically depicted in Appendix 1 attached to this report. It is expected that once the Brownfields Act comes into effect, evaluation/processing of development applications on contaminated sites would follow the process established by the Act. Among other things, the Act provides detailed requirements for Records of Site Condition, Site Assessments, and Site Condition Standards.

4. ANALYSIS AND OPTIONS

4.1 Implications of Brownfield Statute Law

York Region's growth management policies promote the increased use of existing infrastructure, the preservation of green spaces and agricultural land through the use of intensification and infill development within the Region's urban areas. The Brownfield Statute Act is intended to serve as a tool by which Ontario's municipalities can encourage intensification and infill development through the redevelopment of vacant, abandoned and/or idled industrial and commercial sites within the existing urban boundary.

Brownfield redevelopment can offer a wide array of significant environmental, economic, social and fiscal benefits. Brownfield redevelopment encourages community building by developing lands that are vital components of our neighbourhoods, Regional corridors and centres. Such redevelopment can improve our soil and water, and also protect human health for those sites that have significant contamination. The costs of acquiring these sites and their associated property taxes are relatively low. These sites may already be serviced, have other relevant infrastructure in place and development costs may be relatively lower than greenfield development.

4.2 Challenges To Brownfield Development

Brownfield redevelopment is a difficult and complex process due to environmental liability, financing and the planning process. Most redevelopment projects face problems associated with the site cleanup process. Property owners, lending institutions, municipalities and the Province are reluctant to invest in this process because they can be held liable for any impacts of the contaminants even after the appropriate remediation process has been followed.

Financing has historically been another obstacle associated with brownfield redevelopment. The lack of local financial tools, incentives and public-private partnerships may make a project uneconomical and inhibit potential economic benefit that could be gained from redevelopment. Additionally, the development industry views the current planning approval process for contaminated sites to be lengthy and time consuming.

4.3 Impact of the Legislation

The amendments made to the various Acts by the Province appear to be comprehensive and provide clarity to the development industry. The amendments provide tools, which can be utilized by both the private and public sectors in the development of brownfields. The greatest obstacle to overcome when dealing with brownfield redevelopment, as opposed to greenfield development, is making the cost, and the liability of the two development options equal. The uncertainties of cleanup costs and liability issues have always hampered the redevelopment of brownfields.

4.3.1 Liability

The proposed amendments to the Environmental Protection Act clarify and limit the liability for an order respecting site clean up associated with the redevelopment of brownfield sites. Property owners who follow the cleanup process prescribed by Bill 56 are provided protection from future

environmental orders. The Act also makes provisions that protect municipalities, secured creditors, receivers, trustees in bankruptcy, fiduciaries and property investigators from future environmental orders. By addressing this liability issue the Provincial government has offered increased comfort and assurance for those developers, landowners and financial institutions willing to venture into this process.

4.3.2 Financial Tools

The new legislation has introduced financial tools that will level the "playing field" between greenfield and brownfield development through the use of tax increment financing (TIF) tools, in the form of grants and loans. The form of tax increment financing (TIF), as outlined in the Brownfield Act, is based on the ability that a municipality has to fully utilize the municipal portion of the property taxes to promote the redevelopment of brownfields. Under the new Act, the municipality has the authority to grant property tax incentives/posponements to owners and developers who are willing to undertake the redevelopment process. The tax "assistance" can not only be offered during the rehabilitation period but also during the development period. Additionally, the education portion of property taxes can be frozen or cancelled during the rehabilitation and development period provided approval is received from the Province.

Appendix 2 attached to this report provides an example of tax increment financing.

The premise behind the property tax and education tax "assistance" is that once these properties have been rehabilitated there will be environmental benefits and the financial costs will be recovered. These sites will no longer pose an environmental problem and the money granted or loaned to the developer will be recovered through a future increase in property tax assessment. At the same time it is important to note that this form of tax assistance is not open ended, there are limitations. The limit of the financial assistance is to be no greater than the total cost of rehabilitating the site.

4.4 Planning Process

Previous Provincial policies focused on insuring that redevelopment of brownfield sites did not have any adverse effects from their reuse, thus redevelopment of contaminated sites was not viewed as a priority, but rather a source of concern. This created a view amongst developers that the redevelopment of brownfields was not only a lengthy process but also one that was discouraged by the government, and in turn forced developers to look for other development opportunities.

The Province has now developed a positive policy statement indicating that the redevelopment of brownfields is beneficial to all parties involved. The amendment proposed to Section 28 of the Planning Act, Community Improvement Plan (CIP), illustrates the importance the Province now places on the redevelopment of Brownfields. Bill 50 proposes to remove the necessity of the Minister's approval of Community Improvement Plans if financial assistance is not being requested, whether it is for specific sites or entire municipalities.

The amendment to the Planning Act also supports Provincial Policy Statement 1.1.2.9) which promotes land use patterns that provide opportunities for redevelopment, intensification and revitalization in areas that have sufficient existing infrastructure.

4.5 Possible Improvements to The Statute

The proposed legislation is beneficial and thorough. Its applicability in York Region is limited simply because there are few contaminated sites. Contaminated sites in York Region are likely to be comprised of individual parcels, not extensive areas, and often only a portion of a parcel is affected by contamination.

The City of Hamilton and the Urban Development Institute/Ontario have provided the Province with a list of suggested improvements to the legislation. Some of the suggested improvements include:

- Providing a municipality with the same level of protection from liability arising from "any inaccuracy contained in the Record of Site Condition that is filed in the Registry" that is provided the Province.
- Having owners submit a Record of Site Condition to the area/region municipality when they submit one to the MOE.
- Consideration be given to a longer period of time than two years for protection from orders for a municipality when it becomes an owner of a property under the Municipal Sales Tax Act. Two years is insufficient time to complete all the steps necessary for a municipality to sell the property.
- Expanding the costs to which tax assistance can be applied for under the Municipal Tax Act to include the same costs permitted under Section 28 of the Planning Act. Changes to the Municipal Act regarding financial assistance are not as inclusive as what is covered by Section 28 (7) of the Planning Act.
- Extending immunity to officers, directors, or managers of corporations.

The above noted changes would further support brownfield development and clarify parts of the legislation.

5. FINANCIAL IMPLICATIONS

Financial implications incurred by the Region may include short-term deferral of potential tax revenue from the tax increment financing offered to the owners/developers of brownfield redevelopment projects. In the long run the Region will benefit through increased tax assessment of these properties.

6. LOCAL MUNICIPAL IMPACT

Brownfield redevelopment impacts the local municipalities in a positive way by increasing infill, promoting intensification, and making use of existing infrastructure that reduces the costs of providing consultancy services to a broader area. If tax increment financing incentives are utilized to redevelop brownfield sites that would not be redeveloped without the incentives, area municipalities

will defer property tax revenues by taking a longer term view as these properties are rehabilitated and their property values increase.

7. CONCLUSION

Bill 55, The Brownfields Statute Law Amendment Act (2001) is designed to encourage and promote the initial investigation and the redevelopment of brownfield sites in Ontario. The Act provides financial and legislative tools, which can be used by municipalities to encourage the development of brownfields and level the "playing field" between brownfield and greenfield development.

The proposed amendments to the various Acts will allow municipalities to pass by-laws that can provide municipal tax assistance to owners/developers of brownfield sites. A municipality can offer incentives in the form of tax increment financing to the redevelopment of a specific site; however, the total sum of the grant or loan cannot exceed the total cost of rehabilitating the property.

(A copy of the attachments referred to in the foregoing is attached to this report and is also on file in the Office of the Regional Clerk. A copy of the slide presentation is also on file in the Office of the Regional Clerk.)