

## Keeping an eye on municipal developments

Municipal governments have broad powers to regulate many aspects of commercial operations, including land use and zoning regulations, business licencing, and billboard and signage regulations. Commercial real estate owners need to understand how their operations can be affected by changes to municipal regulations.



GO TO [WWW.CANADIANLAWYERMAG.COM](http://WWW.CANADIANLAWYERMAG.COM) TO WATCH WEIRFOULDS LLP LAWYERS TALK ABOUT THIS QUIZ.

a new comprehensive zoning bylaw. The company has no current plans to sell or reconfigure its existing sites, but management is concerned that 1) this new bylaw may affect current operations, by compelling the company to modify its existing sites to comply with the new bylaw, and 2) this new bylaw may affect the redevelopment potential of the sites (and by extension the resale value of the property). What do you tell your client?

- a) The new zoning bylaw will not affect either.
- b) The new zoning bylaw may affect 1, but not 2.
- c) The new zoning bylaw may affect 2, but not 1.
- d) The new zoning bylaw will affect both.

**2** Your client intends to build and operate a fitness facility in Ontario. The company is incorporated in Ontario and has a Master Business Licence issued by the province. It has already obtained the necessary building permits to renovate the building and plans to open its doors to the public soon. There is no mention of fitness facilities in the municipality's licensing bylaw. The company asks you if it needs any other municipal approvals to operate. Does it?

- a) No. It has an Ontario Master Business Licence and a building permit, and fitness facilities do not require a municipal business licence in this municipality.
- b) No. However, the snack bar inside may require a municipal business licence.
- c) Yes. Although there is no specific requirement for a fitness facility to be licenced, it must still obtain a general business licence to carry on any business in the municipality.
- d) Yes. The Ontario Master Business Licence will only suffice where the local municipality has not adopted a municipal licensing bylaw.

**3** Your client has purchased a commercial building. There is a billboard on the roof of the building, operated by one of the large ad companies, which provides supplementary income to the property. Soon after closing a municipal bylaw officer serves your company with a "Notice of Violation" stating

the sign is erected contrary to the municipality's bylaws. He threatens to charge your company for having illegally erected the sign and to seek fines against your company upon conviction. He orders the sign be removed within 30 days. How should your company respond?

- a) Refer the bylaw officer to the previous owner who erected the sign. Your company did not erect the sign and therefore did not violate the bylaw.
- b) Split the fines with the previous owner. As the previous owner erected the sign and your company currently maintains it, you will both be jointly and severally liable for any fines upon conviction.
- c) The previous owner is liable for the fines for having erected the sign illegally, and your company will be responsible for bringing the property into compliance with the bylaw by removing the sign.
- d) Your company, as the owner at the time the violation was observed, can be fined and is responsible for ensuring the sign is brought into compliance.

**4** You have just received a notice from the local municipality stating that the neighbouring property owner has applied for a "minor variance" from the zoning bylaw in order to permit redevelopment at its site. The requested variance is to permit an addition to the building that will be closer to the property line than is normally allowed by the zoning bylaw. Your company has several concerns about how the neighbour operates his business, and how the proposed redevelopment may impact your site. From the following list, which are legitimate planning concerns you can raise at the hearing?

- a) The proposed development will attract more undesirables to the area.
- b) An independent economic impact study shows the proposed redevelopment may lead to a net loss of jobs in the municipality.
- c) A shadow from the new building will be cast over your employee "break area" out back.
- d) There are documented instances of the neighbour's employees harassing your employees. An expansion of their operation may be an inappropriate expansion of the harassment of your employees.
- e) All of the above.
- f) None of the above.



**1 (c)** Changes in municipal zoning are not retroactive. Existing legal uses, even if they are not in conformity with the new zoning, are considered to be “legal non-conforming” until a change of use occurs. Your client’s current operations should not be disrupted. However, the new zoning may affect the redevelopment potential or resale value of the site, because it may change the permissible uses as well as the permitted built-form of structures that can be built. There is also a potential impact on the ability to expand or change the existing operations.

**2 (b)** The Ontario *Municipal Act, 2001* provides municipalities with broad powers including the power to regulate businesses. Many municipalities have adopted licensing bylaws regulating certain types of businesses. In the absence of an explicit requirement to obtain one, a municipal business licence is not required to do business. Some municipalities require licences for a particular type of business while others do not. At the same time, even if the primary business (such as a fitness facility) does not require a licence, ancillary uses (such as the snack bar/ restaurant within the fitness club) may still require a municipal business licence.

**3 (c)** The bylaw officer is threatening to use two separate processes in response to the offensive sign at your company’s property: (1) charging your company for having committed a provincial offence which can result in fines upon conviction; and (2) compelling your company to remove the sign in order to comply with the bylaws. Under the first process, if the charge against your company is for having “erected” the sign illegally, your company arguably has a complete defense by virtue of the fact the previous owner had committed the alleged offence of the illegal sign erection. It follows that the charge should be laid against the previous owner who

will be liable for the resulting fine upon conviction. At the same time, using the second process, the municipality can issue orders to compel the current property owner to rectify existing property violations. Presumably if the municipality’s bylaws prohibit more than just the illegal “erection” of the sign but also other aspects of the operation involving the sign, the municipality has the power to order your company, which is the current property owner, to take actions bringing the property into compliance.

**4 (c)** Municipalities are required to base their planning approvals on factors relating to the land use, the built-form, and the physical impact caused by the proposed development. The compatibility of the proposed land use, the scale of the proposed development in relation to the rest of the neighbourhood, shadows caused by the new building envelope, overlook/privacy concerns are factors the planning approval authority should consider. However, concerns about the users of the proposed development (such as the behaviour of employees at the proposed development) or the construction activities (such as noise or property damage concerns) — while otherwise legitimate concerns — are not relevant to determining the desirability of a proposed development at the planning approval stage.

### YOUR RANKING?

- **One or less correct:** *might be time to brush up*
- **Two correct:** *not bad, but some further work needed*
- **Three correct:** *room for improvement*
- **Four correct:** *very well done*

## A DAILY BLOG OF CANADIAN LEGAL NEWS

[WWW.CANADIANLAWYERMAG.COM/LEGALFEEDS](http://WWW.CANADIANLAWYERMAG.COM/LEGALFEEDS)

DAILY UPDATES  
MAJOR COURT RULINGS  
NEWS ROUNDUP  
EVENTS

POWERED BY CANADIAN LAWYER & LAW TIMES

