

commercial real estate bulletin

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builders beware! critical dates looming for Toronto's green initiatives

As you go off to your favourite summer getaway spot – be it the comforts of the family cottage in Muskoka, Haliburton or the Thousand Islands; or simply to traverse Ontario's great parks or winery districts – we wanted to provide you with some holiday reading that updates you on a few “green initiatives” taking place in the City of Toronto.

green roofs

A roof-top park. An urban oasis. A refuge from a concrete jungle. These are some of the thoughts that spring to mind when one thinks of green roofs. Not surprisingly, many developers also think about construction costs and the willingness of their buyers to pay for sprawling gardens, often twenty or more storeys above the city streets. However, at least in Toronto, a green roof will soon be mandatory.

On May 27, 2009 the City of Toronto Council enacted the first municipal By-Law in North America that both requires, and governs the development process for, green roofs on new building projects in the City. With this, Toronto has joined the ranks of major world cities in both Europe and Asia.

Dubbed the “Green Roof By-Law” (the “GRB”), By-Law 583-2009 creates a new Chapter of the *City of Toronto Municipal Code*, Chapter 492 and was enacted pursuant to powers granted to the City of Toronto under section 108 of the *City of Toronto Act, 2006*.

The GRB will have dramatic effects on all development applications that file a completed site plan application or a completed building permit application after January 30, 2010.

After that date, all new buildings or building additions, with a gross floor area greater than 2,000 square metres, will require twenty to sixty percent of the available roof space of the building project to be a green roof. The larger the building project, the greater the green roof coverage must be – the maximum sixty percent coverage is reached for buildings above 20,000 square metres of gross floor area.

Available roof space is defined to include all roof area excluding private terraces, areas utilizing renewable energy devices or residential outdoor amenity space (up to two square metres per unit).

New industrial buildings or additions will not be required to comply until January 30, 2011 and will be subject to a less stringent requirement of either 10 percent or 2,000 square metres of green roof coverage, whichever is less.

An important exception to the GRB is for residential buildings, or additions to residential buildings, which are less than six storeys or 20 metres in height.

If a building project is required to have a green roof, its owner is also required to construct and maintain the green roof according to the standards of the GRB. The GRB sets out the "Toronto Green Roof Construction Standard" (the "TGRCS") which calls for, among other things, certain specific requirements with respect to: gravity loads; slope stability; wind uplift; fire safety; water proofing; drainage; plant selection; vegetation performance; and irrigation.

Additionally, the TGRCS mandates that an applicant develop a maintenance plan for its green roof going-forward – in accordance with the rules set out in the GRB. Both the TGRCS and the accompanying maintenance plans are to be policed using a permit system under the supervision of the Chief Building Official.

There is provision in the GRB for a reduction in the required amount of green roof or a complete exemption and the payment of cash-in-lieu. For reductions, an application may be made to the Chief Planner and, for exceptions, the request is to City Council. The criteria used to determine if a reduction or exemption is appropriate have not yet been promulgated; however, the cash-in-lieu amount is currently set at \$200 per square metre of lost green roof. Decisions of the Chief Planner or of City Council may not be appealed to the Ontario Municipal Board.

Included in the GRB are provisions that make it an offence to contravene the GRB and fines can be assessed at up to \$100,000 for breaches of the GRB requirements. It is unclear if this is a one time or a continuing fine.

Though there is no longer a choice as to whether to build or not to build a green roof, there are some positive aspects of the GRB. Green roofs lower building heating and cooling costs, add value to building amenity users and display corporate social and environmental responsibility. It does not take much imagination to view the creativity or ingenuity of a green roof being a major draw to one building over another, as the urban population becomes accustomed to recreating on top of the world.

Toronto green standard

For several years, many Toronto developers have taken progressive steps in building their projects with a mind towards environmental sustainability. To date, these actions have largely been voluntary; however, at least in some part, this is going to change.

In 2006, the City of Toronto adopted the Toronto Green Development Standard. Just over three years later, in September of 2009, this will be replaced with the “Toronto Green Standard” (the “TGS”) which calls for environmentally friendly technologies and innovations to be included as standard protocol in all new buildings and landscape designs in the City.

Applying to all building types, the TGS is a two-tier performance measure system. Tier One is mandatory and will be secured through the City powers found in the *Planning Act*. Tier One measures include: exterior sustainable design; landscaping; site level infrastructure features (such as automobile, cycling and pedestrian infrastructure); and, energy efficiency of 25% better than the Model National Energy Code for Building (MNECB) or Energuide 80 for low-rise development. These measures will be secured mainly through site plan and plan of subdivision agreements.

Tier Two is optional and consists of enhanced performance measures that will be obtained through incentive programs such as a development charge refund program. Tier Two measures include enhanced sustainable performance measures that raise the bar and encompass whole building performance – such as 40% energy efficiency above MNECB or Energuide 85 for low-rise development.

In addition to the TGS, Toronto City Council will also be asking the Province for the power to *require* energy efficient measures that exceed the levels set out in the *Ontario Building Code*. If this occurs, Toronto could adopt a stricter environmental building policy than anywhere else in the Province and certain Tier Two requirements could become mandatory.

For those developers that have already been taking these environmentally sustainable measures, the TGS is great news – now all Toronto builders will be on a level playing field when it comes to the inclusion of such technologies.

Enjoy your vacation!

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a cautionary note

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