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COMMERCIAL REAL ESTATE GROUP

Amendments to subsection 111(2) of the Act now permit municipalities, with the Minister of Municipal Affairs and Housing's approval, to provide financial assistance to implement a community improvement plan adopted under section 28 of Ontario's *Planning Act*. Section 28 authorizes municipalities to designate community improvement project areas and adopt community improvement plans. Accomplished through a legal process of public meetings and appeal rights, a community improvement plan approved by the Minister of Municipal Affairs and Housing can confer broad powers on municipalities to acquire, hold, clear, lease, and sell land in areas designated for community improvement.

Within the framework of a local Official Plan containing approved community improvement policies and designated community improvement project areas, municipalities may use their subsection 28(7) *Planning Act* powers to issue grants or loans to registered or assessed land and building owners within designated areas. Financial incentives to implement community improvement plans may be exempt from the Act's general bonus prohibitions, with the Minister's approval. While many of the improvement plans are not new, municipalities have started using this new power to establish financial incentives for remediation of contaminated sites.

Along with the *Municipal Act* amendments, amendments to other legislation may also facilitate Brownfield redevelopment. Developed by the Ministry of Municipal Affairs and Housing, together with the Ministries of the Environment and Energy and Finance, the *Brownfield Statute Law Amendment Act, 2001* encourages Brownfield remediation and redevelopment by clarifying environmental liability and giving municipalities more flexibility in planning and financing. The amendments change the Brownfield Act's community improvement provisions designed to maintain, remediate, rehabilitate, and develop the existing physical environment for social,

MUNICIPAL TAX INCENTIVES FOR DEVELOPMENT OF BROWNFIELD SITES

In almost any community throughout Ontario, derelict and abandoned industrial and commercial sites can be found. Once used for industrial or commercial manufacturing activities, many of these sites, called Brownfields, are now contaminated. Even so, their desirable locations in the heart of downtown, adjacent to waterways, and in harbours make them attractive for redevelopment. Unfortunately, too often the cost to clean these contaminated lands seriously impedes their redevelopment potential.

As municipalities strive to contain urban sprawl, the desire to redevelop under-used and abandoned property grows. Increasingly, municipalities are actively promoting clean-up and redevelopment of contaminated sites to use their existing infrastructure more effectively and revitalize neighbourhoods. The big question for municipalities has been how to attract private sector investment in the redevelopment of brownfields.

Until recently, the *Municipal Act* (the "Act") prevented municipalities from directly or indirectly assisting any manufacturing, industrial, or commercial enterprise through bonuses. The Act specifically prohibited municipalities from giving or lending money or municipal property, leasing or selling municipal property at or below fair market value, guaranteeing borrowing, and granting total or partial exemption from any levy, charge, or fee. Recent amendments, however, have introduced three incentives to attract Brownfield redevelopment.

economic, and environmental activities. By waiving planning and development application fees and building permit fees, the amended act encourages Brownfield owners to clean and redevelop their property. Additional amendments attract reinvestment by allowing municipalities to freeze or cancel the municipal portion of property tax on contaminated sites; the Ministry of Finance may match the municipal tax treatment for the education portion of the property tax.

Arguably the most promising financial assistance tool is the new tax increment equivalent financing authorizing municipalities to provide grants based on the increase in revenues to the municipality.

For example, if the municipal tax on an undeveloped property was \$10,000 and the municipal tax after redevelopment is \$110,000, the municipality may provide a grant for, say, 10 years based on the annual tax increment of \$100,000. In the program's first year, the property owner's grant would equal 100% of the tax increment, with the grant decreasing by 10% each year until the 10-year period ends. So, the grant would be \$100,000 the first year and \$10,000 the tenth and final year. The total cumulative incremental tax increase would be \$1,000,000 (\$100,000 per year x 10 years), with the owner receiving a total grant of \$550,000 over the 10 years.

The city of Toronto opted into the tax increment equivalent financing program October 2003, identifying 10 Brownfield sites for the program under "Toronto's First Tax Incentive Program for Industrial Reinvestment." Specific to the 10 identified Brownfield sites, the program provides a tax grant of up to 62.5% of the total new taxes resulting from new development, to be paid annually over a maximum 12-year term, for property and building improvements. Properties must be used for eligible employment uses, the owner must invest at least \$500,000, and the grant may not exceed the cost of site improvements. Many other Ontario municipalities are also using the tax incentive program, along with other eligible municipal loans and grants and the waiver of municipal fees for development applications and building permits.

In combination, these recent legislative amendments equip municipalities with essentially three major financial assistance tools for investors interested in redeveloping Brownfields:

- municipal loans or grants through community improvement plans under section 28 of the *Planning Act*,
- waiver of municipal fees, such as planning and development application fees and building permit fees, and
- tax increment equivalent financing to leverage the difference between current and potential tax yields on redevelopment properties.

It is anticipated that these financial incentives will entice private landowners to seriously consider reinvesting in these sometimes derelict, abandoned, and under-used sites.

Written by Mary L. Flynn-Guglietti

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

THE MCMILLAN BINCH LLP BROWNFIELD TEAM

McMillan Binch LLP has invested more in honing expertise in Brownfield development than any other Canadian law firm: we are a principal of Brownfield developer REON Development Corporation. Acting on transactions from their inception grounds our legal advice in the realities of Brownfield development. We understand the risks – not only as lawyers, but also as owners. Through REON, we have built close connections with real estate brokers, toxicologists, environmental engineers, planners, and the other consultants needed to successfully complete a Brownfield transaction. We are also experienced in dealing with the Ministry of the Environment. Whether you are buying, selling, or financing a Brownfield development, our lawyers can help. If we can assist you, please call any of the lead lawyers on our multi-disciplinary Brownfield team:



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Mary Flynn-Guglietti has over 20 years experience in the practice of administrative law with an emphasis on municipal law, land use planning law, environmental law and expropriation law. She has extensive experience in obtaining approvals of city-wide and site specific official plan amendments, rezonings, subdivision approvals, severances and minor variances. She represents developers, ratepayers and municipalities.



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John advises and represents clients in a range of land related transactions including the purchase and sale of commercial properties, the development of both residential and commercial sites, negotiations with and appearances before government agencies, as well as mortgage and other land-backed financings. John also negotiates leases on behalf of the firm's clients. John has a particular interest in the development of contaminated properties, and has experience with the purchase, remediation and sale of Brownfield sites.



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Michael's practice focuses on environmental regulation and commercial law where he advises clients in manufacturing and resource industries on environmental issues such as decommissioning, waste management, export/import of hazardous waste, recycling, emission approvals, environmental audits, compliance, and corporate governance relating to environmental matters.