

MUNICIPAL, PLANNING & DEVELOPMENT LAW

***A&WMA ONTARIO SECTION AND OPPI TORONTO
DISTRICT***

Workshop on
Land Use Compatibility and Nuisance Sources
May 14, 2015



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Legal Tools for Resolving Land Use Conflicts

Presented by Peter Gross

Presentation Outline

- Introduction of Sensitive Land Uses
- Noise Mitigation Agreements
- Other Assurances
- Defending Nuisance Claims
- Noise By-law Amendments

Introduction of Sensitive Land Uses

- Must know potential impact before approval is granted
- Industry must immediately comply
- Need for technical studies early in planning process
- Industry that cannot comply must modify processes, close or relocate
- Manufacturing requires flexibility in global marketplace

Types of Land Use Conflicts

- Noise
- Odour
- Dust
- Air Quality
- Traffic

Avoiding Conflicts

- Do not permit sensitive use
- Permit sensitive use and require developer to pay for “at source” mitigation
- Permit sensitive use subject to Class 4 designation by approval authority

Class 4 Areas

- Higher sound level limits
- Discretionary classification by land use authority
- Only for areas or sites without existing sensitive uses
- Permits receptor-based “on-building” mitigation
- Noise mitigation agreements

Noise Mitigation Agreements

- Required design elements
- Limitation on height
- Grade of sensitive use
- Requirement for warning clauses
- Review and approval of plans
- Post-construction acoustic audit prior to occupancy
- Security for on-going maintenance

Other Assurances

- Holding provisions in zoning by-law
- Official plan policies requiring compatibility with existing industry
- Restrictive covenants

Nuisance Claims

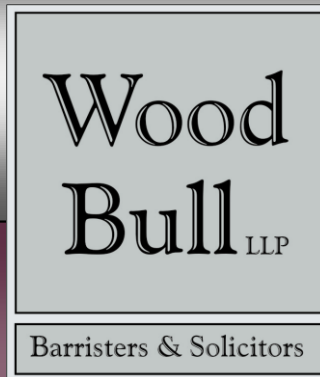
- Industrial and Mining Lands Compensation Agreement
- Industry compensates sensitive use by not opposing planning approval
- Sensitive use in return agrees that the agreement provides a full answer to any future claim for damages or injunction due to noise, dust, air emissions
- Registered on title

Noise By-law

- Prohibition on noise that is unreasonable or likely to disturb
- Noise that is “clearly audible” at a point of reception is deemed to be unreasonable or likely to disturb

Noise By-law Amendment

- Notwithstanding the prohibition above, noise from an activity carried out in compliance with an Environmental Compliance Approval is deemed to comply with this by-law



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