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## Citation Information

Bagg, Pamela M.. "Implications of *Soo Mill and Lumber Co. Ltd. v. The Corporation of the City of Sault Ste. Marie* and *Sanbay Developments Ltd. v. The Corporation of the City of London* on Development Control by Municipalities." *Osgoode Hall Law Journal* 14.1 (1976) : 217-226.

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## Case Comment

### The Implications of *Soo Mill and Lumber Co. Ltd. v. The Corporation of the City of Sault Ste. Marie* and *Sanbay Developments Ltd. v. The Corporation of The City of London* on Development Control by Municipalities

By PAMELA M. BAGG\*

The recent Supreme Court of Canada decisions in *Soo Mill and Lumber Co. Ltd. v. The Corporation of the City of Sault Ste. Marie*<sup>1</sup> and *Sanbay Developments Ltd. v. The Corporation of the City of London*<sup>2</sup> appear to have effectively expanded the present acceptable limits of land use and development control under *The Planning Act*.<sup>3</sup> Before turning to the facts of these cases, reference to the background of the relevant sections of the present legislation is in order.

Pursuant to the Ontario government's general review of property law, the Ontario Law Reform Commission requested that J. B. Milner examine and evaluate present zoning mechanisms, in order to determine their sufficiency to meet the needs of municipal planning. In his two reports, *Tentative Proposals for the Reform of the Ontario Law Relating to Community Planning and Land Use Control*<sup>4</sup> and *Development Control, Some Less Tentative Proposals*,<sup>5</sup> Milner concluded that present zoning mechanisms were not sufficient. Specifically, he felt that the role of zoning had been misunderstood, and that zoning was being used in a manner not originally contemplated. The original purpose of zoning was to protect existing property values and to prevent inappropriate uses from spoiling established areas. This is a useful function in relation to those areas of a community that are relatively stable. Therefore, the general zoning by-law is capable of assuring the inhabitants that the stability will not be disturbed by some inappropriate mix

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<sup>1</sup> [1975] 2 S.C.R. 78.

<sup>2</sup> [1975] 1 S.C.R. 485.

<sup>3</sup> R.S.O. 1970, c. 349 as am. 1971, c. 2; 1972, c. 118; and 1973, c. 168.

<sup>4</sup> J. B. Milner, *Tentative Proposals for the Reform of the Ontario Law Relating to Community Planning and Land Use Control* (Ontario Law Reform Commission, 1967).

<sup>5</sup> J. B. Milner, *Development Control: Some Less Tentative Proposals* (Ontario Law Reform Commission, 1969).

of uses. Yet, instead of merely protecting existing property values, zoning by-laws are also used to control development so that future property uses and values can be projected. Thus, by-laws have acquired a dynamic function in addition to their normal static function. When used to regulate future development, the results achieved by zoning by-laws are frequently unsatisfactory. The 'crystal ball' seldom reveals what is the best that a private developer may offer in the course of converting farmland to fully urbanized land or redeveloping urbanized land to a much higher density area. Milner felt that traditional zoning simply prevents the worst, but in doing so, frequently prevents the best.<sup>6</sup>

In practical terms, municipal councils deliberately zone land in an inappropriate manner, in order to exert some control over unstable or undeveloped areas. While allowing some uses such as agriculture, they have created an indirect holding zone until a developer requests an amendment allowing his development. This spot-zoning technique is becoming more frequent in an attempt to solve the problem of the rigidity of the traditional use of zoning by-laws. Yet, it undermines the openness and certainty that the public is entitled to expect from good planning and zoning. For example, of 415 by-laws in 41 municipalities, 316 or 76 per cent related to a single piece or block of land, while 99 or 24 per cent were general zoning changes. This frequency of amendment greatly discredits the argument that general zoning gives absolute certainty.<sup>7</sup>

Therefore, Milner strongly recommended that when an area could be identified as one that is likely to change, that area should be subject to a different kind of control. To this end, he proposed several recommendations. First, and most desirable, would be the implementation of a development control zone in these areas. That is, the zoning power should be amended to permit the designation of a use as permitted in a zone. Such designation would be subject to approval of the planning director or zoning administrator, with a right of appeal. Second, as a necessary intermediate step, councils should be clearly authorized to prohibit all uses in any zone pending rezoning by amendment, on application, or pending the adoption of a system of development control by permit.<sup>8</sup>

The Ontario Law Reform Commission gave serious consideration to the recommendation of granting a separate development power to municipalities. In its *Report on Development Control*, the Commission stated:

There is evidence of a need to be able to prohibit the use of land by private individuals within a municipality or some areas within such municipalities until a development plan can be worked out, and also to provide for the retention of certain powers in council or some other body over details of development. The commission has concluded however, not to make any major recommendations with respect to overall development control nor with respect to the possible creation

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<sup>6</sup> *Id.* at 19-21.

<sup>7</sup> *Id.* at 13.

<sup>8</sup> *Id.* at 42-43; *supra*, note 4 at 59.

of a third level of regulation until such time as the more basic political, economic and philosophical problems are resolved.<sup>9</sup>

In proposing amendment to *The Planning Act* in 1973, the Ontario legislature adopted the position of the Law Reform Commission concerning development control. But although s. 35a was marginally noted as "development control", it is, in reality, limited site plan control. In effect, s. 35a(2) contemplates a traditional amending zoning by-law, but this by-law would be able to provide that no building permit be issued until the developer has agreed with the municipality, subject to OMB review, in respect of the limited conditions listed therein. Section 35a merely provides a statutory basis for enactment of an amending by-law which expresses a municipality's permission for development of a particular site, and which allows agreements made pursuant to the amending by-law. To interpret this new section as establishing a statutory freeze on development until agreement is reached with the municipality pursuant to s. 35a(4)(b) would seem inconsistent with the legislative background of this amendment. Further, if the legislature had intended to grant such a power to municipalities, it could have done so by clear statutory language, as was done in *The Niagara Escarpment Planning and Development Act*.<sup>10</sup>

The most distinctive feature of *The Niagara Escarpment Planning and Development Act* is its provision for development control instead of conventional zoning. Section 22 specifically provides for areas of development control where all previous zoning is cancelled. Section 23 makes it clear that in those areas, there is to be no development whatever without a permit setting out certain conditions to be met in terms of land use. Therefore, the Ontario legislature has acknowledged this method of development control in a clear manner; it did not do so in relation to individual municipalities.

The Ontario legislature further recognized development control as a system which provided great advantages not provided by zoning. As the Hon. John White stated: "zoning can only anticipate average conditions. Development control is flexible, permitting each proposal to be judged on its own merits and controlled accordingly."<sup>11</sup> While the government recognized these advantages, this is the only area where it chose to sanction such a system. In *The Parkway Belt Planning and Development Act*,<sup>12</sup> development control was not included for the stated reason that the development pressures there were too immediate and intense to allow time for the creation of objective criteria for development control.<sup>13</sup>

Therefore, despite the site plan control power given in s. 35a of *The*

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<sup>9</sup> Ontario Law Reform Commission, *Report on Development Control* (Department of Justice, 1971) at 11-12.

<sup>10</sup> *The Niagara Escarpment Planning and Development Act*, S.O. 1973, c. 52.

<sup>11</sup> The Hon. John White, "Ontario Land Use Legislation", in *The Special Lectures of the Law Society of Upper Canada, The Changing Face of Land Use and Development* (Toronto: Richard De Boo Ltd., 1974) 121 at 127.

<sup>12</sup> *The Parkway Belt Planning and Development Act*, S.O. 1973, c. 53.

<sup>13</sup> *Supra*, note 11.

*Planning Act*, and in the absence of explicit legislative authority to utilize direct development control, municipalities must still resort to indirect methods of spot-zoning and inappropriate use zoning in order to achieve some semblance of control. The Ontario Economic Council was critical of s. 35a in that it failed to establish clear machinery to be utilized by designated municipalities desiring to exercise the new powers.<sup>14</sup> Rather, it adopted the stand taken by J. B. Milner, that the alternative method of development control is necessary in areas of growth and change, and that any system of individualized development control requires a freezing of the owner's right to make development decisions without official approval.<sup>15</sup>

Against this background, the Supreme Court of Canada rendered its decisions in *Soo Mill and Lumber Co. Ltd. v. The Corporation of The City of Sault Ste. Marie* and *Sanbay Developments Ltd. v. The Corporation of The City of London*. The decisions appear to sanction the very activity of development control via land freezes which had been legislatively rejected as a power available to municipalities. In the absence of statutory limits, the potential implications of this judicially approved power may be far reaching.

The case of *Soo Mill and Lumber Co. Ltd. v. The Corporation of The City of Sault Ste. Marie* involved an attempt by the city to delay premature development in certain areas by placing a holding category on designated uses until the areas appeared ready for such development, and until the standards appropriate to the designated uses could be satisfied. To this end, the Official Plan set out the following policy guideline:

*Zoning By-Law*

The implementing Zoning By-Law will translate the intent and policies of the Official Plan into appropriate legal regulations applicable to land and land uses in the entire planning area. Certain Areas designated for specific land uses on the Official Plan may be zoned otherwise under a "holding category" in order to delay their development for their designated use until they appear to be ready for such development and until the standards appropriate to the designated use can be satisfied. Under the "holding category" the land use may be zoned agricultural use, for parks or recreational use, for open space use, for other temporary uses, for existing uses (preferably with a restriction prohibiting all enlargement) or their designated use with a suffix "H" to indicate a temporary holding status. Prior to zoning lands under a holding category, the municipality shall be satisfied that the use permitted by such zoning will not exert any adverse effect upon any adjacent existing use, will not jeopardize the future development of the land in conformity with the Official Plan designation and that all services deemed necessary are provided. When council receives application for a development project which is deemed suitable by, and which is in accordance with the designation and policies of the Official Plan, the holding category may be removed from the implementing by-law by an amendment to the plan.<sup>16</sup>

Pursuant to the Official Plan, the municipality passed implementing By-law 4500, which designated certain lands R.M. 10, which had been previously

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<sup>14</sup> Report of the Ontario Economic Council, in *The Special Lectures of the Law Society of Upper Canada, The Changing Face of Land Use and Development* (Toronto: Richard De Boo Ltd., 1974) 98 at 107.

<sup>15</sup> *Id.* at 108.

<sup>16</sup> *Supra*, note 1 at 79-80.

zoned 'residential' under the Official Plan. Section 23 of the by-law set out the permitted uses under the R.M. 10 category (which included triplex dwelling, apartment dwelling and multiple attached dwelling), and the necessary requirements of, and standards for, such building development. However, as the designated property was not considered ready for development when By-law 4500 was passed, the suffix 'H' (holding category) was added to the zone designation. Section 40 of the by-law stated that the land, while in that category could only be used for cultivation of land, production of field crops, market gardening, grazing and home occupation. A property owner whose land was placed in this category brought suit to declare the holding designation void on three grounds. In the first place, it amounted to a total prohibition of land use.<sup>17</sup> Secondly, as the designation envisaged an ultimate repeal, it was temporary in nature and thus beyond the scope of the municipality. Finally, it amounted to zoning by permit rather than through a by-law setting out permitted uses. At trial, O'Driscoll, J. held that:

A zoning by-law which places lands in a holding category in order to delay their development for their designated use until they appear to be ready for development and until the standards appropriate to the designated use can be satisfied and which restricts the use to which the lands may be put to certain limited purposes until the holding category is removed is a temporary zoning by-law and is not authorized by s. 35(1) and (2) of *The Planning Act*.<sup>18</sup>

This decision is consistent with the case of *Re Kerr and the Township of Brock*, and the position expressed in *Re Bridgman and the City of Toronto*:

[E]veryone has a right to use his own property in any way that he may see fit so long as he does nothing that will be a legal nuisance to his neighbours. That is a common law right. One must place a strict construction on any statute or by-law which is restrictive in the nature of the liberty of the subject or the liberty with which he may exercise those rights that the common law gives to him over his property.<sup>19</sup>

Both the Court of Appeal and the Supreme Court of Canada departed from this position. Jessup, J.A. adopted the reasoning expressed in *Re Bruce and the City of Toronto*:

Ontario Courts now accept that the obligation imposed on the municipal councils to plan for the growth and development of the community demands recognition of the necessity for means to compel the observance of the right of the community to determine and enforce the direction in which the community should be shaped,

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<sup>17</sup> The courts have made it clear that the authority vested by s. 35(1) of *The Planning Act* will not support the absolute prohibition of the use of land for any purpose. This principle was explained in *Re Kerr and the Township of Brock*, [1968] 2 O.R. 509 at 511 in that:

[T]here is no right of absolute prohibition contained in s. 30(1) (now s. 35(1)) mentioned, but merely a right to regulate even though the regulating may be done positively, by forbidding certain uses or negatively, by forbidding all uses not mentioned in the by-law.

The only limited statutory exception to this is contained in s. 35(3) of *The Planning Act* whereby a municipality may prohibit the erection of buildings on flood plain or hazard land where services could not be properly provided.

<sup>18</sup> *Soo Mill and Lumber Co. Ltd. v. The Corporation of the City of Sault Ste. Marie*, [1972] 3 O.R. 621 at 621 (H.C.).

<sup>19</sup> [1951] O.R. 489 at 496.

and that in this regard the rights of the community are paramount to the rights of the owner.<sup>20</sup>

Laskin, C.J.C. adopted the position that planning policies should be liberally rather than strictly construed. Therefore, in deciding whether the holding category amounted to a practical freeze or prohibition of the use to which this individual could put his land, the court stated that one must look beyond the individual use to see whether everyone affected was in fact frozen or sterilized in his land use. In this case, although the individual in question might not be able to use his land in the manner designated, the fact that agricultural and related uses were permitted did not amount to a general prohibition.<sup>21</sup> Further as the holding designation was an implementation of an overall Official Plan and a general zoning by-law, the individual had no basis for claiming discrimination.

In connection with the allegation that a municipality may not enact such a holding category for a temporary period, Laskin, C.J.C. clearly stated that the power to enact is equally the power to repeal. The fact that a by-law contains, within its terms, provisions that envisage changes therein by the enacting authority, does not mean that one municipal council has withdrawn discretion from a successor, either as to the continuation of the by-law or as to its amendment at a particular time.<sup>22</sup>

Therefore, it is clear from this decision that municipalities now have the power to place lands in a temporary holding category, which, while allowing some use of the land, can be inappropriate for particular individuals. However, the decision raises two serious questions. First, for what purposes has the court authorized 'holding zones' to be used? Second, by what means and by application of what criteria is the 'holding zone' to be lifted?

There are two purposes for which a 'holding category' may be used. The first is as an interim or stop-gap measure, designed to provide time to enable a municipality to introduce permanent comprehensive zoning regulations.<sup>23</sup> In such a case, the municipality is uncertain about the type of development it wishes to see in a given area and, therefore, finds it desirable to stop all further development while reviewing and, more likely, changing the use in the area. The second purpose is as a timing device to prevent premature development.<sup>24</sup> That is to say, the Municipal Council has decided upon the proper designated development for an area, but feels that development should not proceed until the area is provided with proper services. In this case, the permitted use before and after the implementation of the holding category will be the same. In the *Soo Mill* case, Laskin, C.J.C. clearly authorized the latter function for a holding by-law. Since the Official Plan and the implementing by-law set out the appropriate designation and re-

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<sup>20</sup> [1971] 3 O.R. 62 at 67.

<sup>21</sup> *Supra*, note 1 at 84.

<sup>22</sup> *Id.* at 85.

<sup>23</sup> Ian Rogers, *Canadian Law of Planning and Zoning* (Toronto: Carswell Co. Ltd. 1973) at 21.

<sup>24</sup> *Id.* at 21.

quirements for the property, a holding category passed pursuant to, and within the confines of, such a structure only has the effect of delaying already approved development. Laskin stated that the removal of the suffix "H", as contemplated by the Official Plan would leave the property zoned R.M. 10 (as before the 'Hold') and the appellant would then be able to proceed with a development under that category without the requirement of any further permit respecting land use.<sup>25</sup> Although it is true that once the hold is lifted, no further permission is required, nevertheless, the court neglected to specify any criteria to be used in determining whether, and when, the holding category will be lifted.

The only reference to specific criteria which Laskin, C.J.C. makes is that, in general, he does not regard it as legally objectionable that the removal of the suffix may have to be prompted by an application for a development project conforming to the Official Plan.<sup>26</sup> However, he then fails to explain why he sees no such legal objection. Construed narrowly, the judgment holds that when a developer has met all the criteria set out in s. 23 of the implementing by-law, the municipality has no residual discretion to refuse permission. It must lift the holding category. This was clearly the belief of Jessup, J.A. in the Court of Appeal. He stated that the holding category would remain until such a time as the property was considered ready or mature for development, in accordance with s. 23 of the by-law.<sup>27</sup> This position is also consistent with s. 35(3) of *The Planning Act* which states that:

A by-law may prohibit the use of land or the erection or use of buildings or structures unless such municipal services as may be set out in the by-law are available to service the land, buildings, or structures as the case may be.

If this is the case, then the decision does not go beyond that of *Verdun v. Sun Oil Co. Ltd.*<sup>28</sup> This method of time-controlled sequential zoning, in accordance with an Official Plan and the requirements of the implementing by-law, via the use of temporary holding zones, is consistent with planning principles. Indeed, it is desirable in undeveloped areas to prevent premature inadequate development.<sup>29</sup>

<sup>25</sup> *Supra*, note 1 at 83.

<sup>26</sup> *Supra*, note 1 at 84.

<sup>27</sup> *Soo Mill and Lumber Co. Ltd. v. The Corporation of the City of Sault Ste. Marie*, [1973] 2 O.R. 110 at 115 (C.A.).

<sup>28</sup> [1952] 1 S.C.R. 222.

<sup>29</sup> It has been expressed that the freezing of development for all practical purposes by placing land in a 'holding category' amounts to expropriation without compensation. However, it is interesting to note, that in the United States, where the rights of property are constitutionally protected, this type of 'time-controlled sequential zoning' has been approved by the courts. In *Golden v. Planning Board of Ramapo*, (N.Y.) 285 N.E. 2d. 291 (N.Y.), a moratorium was placed on development and the sequence of development was paced in relation to the city's capacity to furnish adequate public facilities and services. The plan covered an 18 year period. In the interim, any developer who wished to proceed had to accumulate development points which were clearly set out in the statute. No special permit would issue until 15 development points had been accumulated. The courts upheld the statute. This represents the first time that any court in the U.S. has upheld the concept of restrictive development through comprehensive planning or the exercise of the zoning power without compensation. For a further analysis see: Benson Blank, *Time Control, Sequential Zoning*, Baylor L.R., 25:318; 35.

However, failure by the Supreme Court to specify the criteria to be used by municipalities in determining when the holding category must be lifted leaves the decision open to a much broader interpretation. The language of the Official Plan appears to vest a residual discretion in the council beyond those criteria listed in the implementing by-law. The critical passage states:

[W]hen council receives application for a development project which is *deemed suitable* by council *and* which is in accordance with the designation and policies of the Official Plan, the holding category *may be removed* from the implementing by-law by an amending by-law without any need for any amendment to the Plan. (emphasis added)<sup>30</sup>

Therefore, it is open to question, in the absence of judicially imposed limitations, whether the development must not only meet the criteria in the Official Plan, but must also be "deemed suitable" by the council. Furthermore, notwithstanding that either or both conditions are met, council is still not required to lift the holding category as the by-law provides that council "may", not "must", remove it. The direction is not mandatory. If this broad interpretation is correct, it would appear to vest councils with the right to exercise their discretion in determining whether individual developments are "deemed suitable", regardless of whether the criteria in the Official Plan and the implementing by-law have been met. This method of municipal development control by a permit system was expressly rejected by the Provincial legislature as being inappropriate.

The foregoing analysis is further supported by the decision of the Supreme Court of Canada in *Sanbay Developments Ltd. v. The Corporation of the City of London*. In that case, a general zoning by-law had zoned certain lands suitable for multi-family dwellings. Among the permitted uses of land in that zone was apartment buildings containing six or more dwelling units, provided such apartment buildings met the regulations contained in the accompanying section of the by-law. The city later passed an amendment to this by-law called 'Holding Regulation' which repealed the prior governing regulations. The amendment further stated that there should be no multi-family dwellings (three or more units) in the area until the by-law should be amended to provide details concerning permitted building areas, parking areas, open space, external design and regulations governing the size, floor area, and character and use of such buildings. In the interim, a developer who wished to place a multi-family dwelling on his property, which was subject to the by-law, was advised that he could not get a permit unless he obtained an amendment to the existing zoning by-law allowing the development he sought. What criteria were to be used to judge his development? Clearly, there were none set out in the by-law. However, the Supreme Court of Canada stated that the 'Holding Regulation' could not be read as reserving to the municipality an overriding authority to require any owner of land who desired to put it to a permitted use, in accordance with applicable standards and controls, to satisfy other *ad hoc* requirements which the municipality might impose in the particular case.<sup>31</sup> The Court must have believed that the city

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<sup>30</sup> *Supra*, note 1 at 80.

<sup>31</sup> *Supra*, note 2 at 492.

contemplated an interim delay until a general amending by-law dealing with those matters listed in s. 35(1)(4)(b) of *The Planning Act* was passed. With due respect to the Court, the City of London likely had not the slightest intention of doing what was contemplated. Since there was no explicit requirement in the decision that a general by-law with the proper regulations be passed within a given time period, the city could sit idle with its holding by-law as long as it wanted. In the meantime, developers would have to seek specific rezoning in the form of individual by-laws to permit the erection of each individual development.<sup>32</sup> There would be no objective criteria to guide the developer in drafting his plans and no guarantee that the municipality would not change its policies between applications. This method of development control via permit can be seen as being broader than that in other enabling legislation on development control, because it lacks any objective standards by which to judge individual developments.

The arbitrariness and discrimination to which this broadly interpreted judicial power is open is evident, as illustrated in the Supreme Court of Ontario's decision in *Re Fairmeadow Developments and The Town of Markham*.<sup>33</sup> In that case, the Township of Markham, pursuant to its Official Plan, placed certain designated lands in a 'rural residential zone', excepting the Village of Unionville, which had not been included in the Official Plan study. However, in 1971, the township planners felt it was necessary to place some control on the Village until studies to determine the ultimate use of lands situate there could be completed. Therefore, they placed Unionville under the same 'rural residential' zone. However, as this area was never included in the Official Plan, it was necessary to amend the Official Plan after the fact, but only to the extent of specifying the basic policy of holding these lands. Neither the by-law nor the subsequent amendment to the Official Plan had been approved by the Ontario Municipal Board. The Ontario High Court upheld the by-law on the basis that the *Soo Mill* and the *Sanbay Developments* decisions sanctioned the use of a temporary zoning by-law which did not absolutely prohibit all land use affected by it, provided such by-law implemented planning objectives.<sup>34</sup> Yet, there is a great difference between a holding by-law passed pursuant to a system of approvals and checks connected with the adoption of the Official Plan, the planning policies reflected in such a plan and in by-laws implementing it (as was contemplated by the Supreme Court of Canada in the *Soo Mill* case) and one which is passed pursuant to no general Official Plan or implementing by-law, and which, unlike the *Soo Mill* case and the *Sanbay Developments* case, will likely result in a complete change of land use when the holding zone is lifted. Again, in light of the absence of a time limitation and objective standards by which to judge developments to be built in the interim, municipalities are vested with an unbridled discretion not contemplated by the present *Planning Act*.

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<sup>32</sup> This opinion has also been expressed by Peter Betts, Q.C., "Recent Trends in Land Use Control with Particular Reference to 1973 Ontario Legislation", in *The Special Lectures of the Law Society of Upper Canada, The Changing Face of Land Use and Development* (Toronto: Richard De Boo Ltd., 1974) 83 at 88.

<sup>33</sup> [1973] 3 O.R. 144.

<sup>34</sup> *Id.* at 152.

The Ontario Municipal Board addressed itself to this very issue in *Re Toronto Official Plan Amendment*,<sup>35</sup> commonly known as the '45 ft. height by-law'. Here, the City of Toronto, wishing to study further downtown development, passed a by-law and a subsequent amendment to the Official Plan to limit buildings to 45 feet in height and a gross floor area of 40,000 square feet. It was also clearly expressed that during the hold period, amendments arising out of individual applications, based on standards acceptable to the city and the local community, could be made. The by-law stated in part that:

[I]t would be intended within each area designated for development control to require that each permit application for a principal building be subject to planning review before the issuance of a building permit. These controls would be in the absolute discretion of council and would be subject to the OMB consideration only in the event of appeal.<sup>36</sup>

Both the OMB and the Ontario Cabinet held the by-law and amendment to the Official Plan *ultra vires*. In doing so, they stressed that this holding by-law was not passed pursuant to, and within the confines of, the Official Plan. Hence, if this amendment were adopted, it would give the council the right to pass land use restriction, notwithstanding any other provisions of the Official Plan.<sup>37</sup> More importantly, they felt that the council had failed to discern the difference between review of zoning by-laws from time to time and review of individual applications by council with unbridled discretion. The total failure of the city to establish objective criteria for exemption, and the attempt to substitute the subjective opinion of council in place of objective criteria would be open to abuse. As the Hon. D'Arcy McKeough, Treasurer of Ontario, stated:

The criteria must be public information so that a property owner may have the basis on which decisions affecting his property are being made so that he may be reasonably confident of fair and equitable treatment and so that he may exercise his lawful rights in the event of a dispute.<sup>38</sup>

The situation in this case raises the same problems as the decisions in *Fairmeadows*, *Soo Mill* and *Sanbay Developments*. The OMB has properly recognized that the power of municipalities to implement development control via a permit system, especially in the absence of any objective guidelines, is beyond the scope and intention of *The Planning Act*. However, it is evident from the language used in all cases, that the ability to put a temporary hold on an area, to permit the completion of planning studies leading to the development of new planning standards or devices, is a legitimate objective.<sup>39</sup> It is the manner of attaining these objectives which is of concern. The courts have allowed a method which has been explicitly withheld from municipalities by the legislature. In doing so, they have left the door open to wide discretion. Therefore, if the need for development control is recognized, as it clearly has been, then it is imperative that the legislature implement statutory perimeters to limit this judicially sanctioned power, in order to create a more open, equitable and dynamic planning system.

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<sup>35</sup> *Re Toronto Official Plan Amendment* [1975], 4 O.M.B.R. 222.

<sup>36</sup> *Id.* at 226.

<sup>37</sup> *Id.* at 233.

<sup>38</sup> *Id.* at 223.

<sup>39</sup> *Supra*, note 1 at 82; *supra*, note 35 at 223.