



CANADIAN INSTITUTE FOR  
ENVIRONMENTAL LAW AND POLICY

L'INSTITUT CANADIEN DU  
DROIT ET DE LA POLITIQUE  
DE L'ENVIRONNEMENT

# Policy Obstacles to Brownfield Redevelopment in Ontario



June 2011



## Acknowledgements

CIELAP would like to sincerely thank an anonymous donor for their support, which enabled CIELAP to hire Natalie Antonowicz, a student intern, to develop this research paper on Policy Obstacles to Brownfield Redevelopment in Ontario.

Natalie would like to thank the CIELAP staff for their invaluable support and dedication to the project, the anonymous donor who enabled her to undertake this research, and all those she contacted and spoke with to inform this research including Christopher De Sousa, University of Wisconsin at Milwaukee and Cherise Burda, Pembina Institute.

CIELAP would also like to extend appreciation for the significant contributions made to the paper by Jessica Murray.

Copyright © 2011 Canadian Institute for Environmental Law and Policy.

ISBN # 978-1-896588-73-5

## About CIELAP

Founded in 1970, the Canadian Institute for Environmental Law and Policy (CIELAP) is an independent, not-for-profit professional research and educational institute committed to environmental law and policy analysis and reform. CIELAP is incorporated under the laws of the Province of Ontario and registered with Revenue Canada as a charitable organization. Our registration number is 11883 3417 RR0001.

CIELAP informs legislative, policy and regulatory outcomes for Sustainability at the national and provincial/territorial levels of government in Canada.

## About the Author

Natalie is a former research and communications intern at CIELAP. Her research interests are centered on provincial environmental policy, but she is also interested in improving the effectiveness and coordination of environmental policy across local, national, and international levels of government. She has previously researched energy, climate change, and natural resources policy. Natalie is a recent graduate of the University of Toronto, with a degree in political science and environmental policy and practice.

This publication can be downloaded from our website at [www.cielap.org](http://www.cielap.org)



CANADIAN INSTITUTE FOR  
ENVIRONMENTAL LAW AND POLICY

L'INSTITUT CANADIEN DU  
DROIT ET DE LA POLITIQUE  
DE L'ENVIRONNEMENT

# Table of Contents

- Introduction .....1**
- 1. Liability and Financing.....2**
- 2. Municipal Election Structures .....3**
- 3. Perverse Subsidies and Tax Barriers .....7**
- 4. Ownership Constraints .....8**
- 5. Land Use Planning Limitations .....8**
  - Absence of Anti-SLAPP Legislation .....9
- 6. Leapfrogging to Regions Outside the GTA.....10**
- 7. Brownfield Policy in Other Jurisdictions.....11**
  - Québec Revi-Sols Program .....11
  - Montréal Centre of Excellence in Brownfields Rehabilitation .....13
  - United Kingdom .....13
  - United States .....16
- 8. Recommendations for Ontario.....18**

## Introduction

Brownfields are properties – often located in prime areas in cities and towns – that are vacant or underused. They may be contaminated due to past industrial, commercial or institutional uses but have great potential to be redeveloped. Because the potential amount and nature of contamination is generally not known, brownfield projects frequently involve some uncertainty. Cleaning up the site may be costly and time-consuming, especially when compared to the development of pristine sites.

Brownfield sites are often located in desirable downtown locations. Redeveloping them facilitates smart growth through urban intensification (the redevelopment of existing urban areas at higher population densities). Urban intensification results in reduced demand for greenfield sites, which are pristine sites that have never been used for industrial purposes, and may comprise valuable agricultural or green space. It has been estimated that for every hectare of land developed in a brownfield project, up to 4.5 hectares of greenfield land in an outlying area may be saved from development.<sup>1</sup>

Due to a number of barriers, municipalities and developers have been reluctant to develop brownfield sites and have favoured the development of low-density subdivisions and industrial and retail complexes on greenfields. This leads to increased urban sprawl. Over the past seven years, the government of Ontario has attempted to address the uncertainties, risks and costs associated with brownfield redevelopment. A series of legislative and regulatory reforms have been introduced, and are being implemented to encourage redevelopment of brownfield sites.<sup>2</sup>

Despite these changes, a number of policy obstacles to brownfield redevelopment in Ontario remain. This report identifies and discusses six of these common concerns:

- liability and financing;
- municipal election structures;
- perverse subsidies and tax barriers;
- ownership constraints;
- land-use planning limitations; and
- leapfrogging to regions outside the GTA.

The report also compares Ontario's policy framework to those of the United States, United Kingdom and the province of Québec, to explore strategies that have been adopted by other jurisdictions. Finally, the report makes several recommendations for Ontario to consider implementing to ensure that more of its brownfields are redeveloped.

---

<sup>1</sup> Regional Analytics, 2002. *A Preliminary Investigation into the Economic Impact of Brownfield Redevelopment Activities in Canada. Final Report. Prepared for the National Roundtable on the Environment and the Economy.* [online] Burlington, Ontario, pp. 8-9. Available at: <http://www.civil.uwaterloo.ca/maknight/courses/CIVE240-05/week8/brownfield%20report.pdf>.

<sup>2</sup> For more information on these reforms, see *CIELAP's Online Guide to Brownfield Redevelopment*: <http://cielap.org/brownfields/index.html>.

# 1. Liability and Financing

According to Christopher De Sousa, a professor at the University of Wisconsin at Milwaukee and an expert on brownfield redevelopment, civil and regulatory liability are among the most significant obstacles to brownfield redevelopment.<sup>3</sup> Chalifour and Abdel-Aziz also note that liability, "...has been one of the major impediments to brownfields redevelopment in Canada. The parties involved in a brownfields transaction or development project can potentially be exposed to risks of liability that are infinite as to quantum and time."<sup>4</sup> Further, the authors state that due to current liability policies, potential buyers, developers, lessors, financiers and even municipal and provincial approving authorities are unwilling to involve themselves in brownfield site development due to the perceived risk level.<sup>5</sup> According to Chalifour and Abdel-Aziz, this has had in a "chilling effect on the market".<sup>6</sup>

As a result, the private sector perceives brownfield redevelopment as less cost-effective and more risky than greenfield development. The availability and accessibility of greenfield sites in suburban and exurban regions allows developers to avoid brownfields.<sup>7</sup>

In Ontario, developers have concerns about potential civil liability under common law causes of action such as negligence and nuisance, and the migration of contamination onto neighbouring properties.<sup>8</sup> However, due to recent changes to the provincial legal and regulatory regime, significant protection against regulatory liability is now provided within Ontario's brownfield remediation process, and some protection against civil liability is also available for municipalities.<sup>9</sup>

These recent amendments have offered some protection from liability for government clean-up orders by granting immunity from certain environmental orders for contaminated site owners who have filed Records of Site Condition on the provincial government's Brownfields Environmental Site Registry. Records of Site Condition establish the environmental condition of a property at a particular point in time. Other recent amendments afford some liability protection to secured creditors and municipalities who become involved in a brownfield development, or become owners of a brownfield property.<sup>10</sup>

---

<sup>3</sup> Personal Communication with Christopher De Sousa, Associate Professor, University of Wisconsin at Milwaukee, 4 July 2010.

<sup>4</sup> Chalifour, N. and A. Abdel-Aziz, 2004. *Liability Considerations for Brownfield Redevelopment*. p. 3-1 Introduction to Part II in A. Abdel-Aziz and N. Chalifour (eds.) "The Canadian Brownfields Manual." LexisNexis – Butterworths.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> Personal Communication with Christopher De Sousa, Associate Professor, University of Wisconsin at Milwaukee, 4 July 2010.

<sup>8</sup> Fox, J., M. Peterson, and P. Jachymek, 2004. *From STELCO to CONDO: The STELCO/SWANSEA Iron Works Remediation Project. Practical Suggestions from the Trenches*. [online] Toronto, Ontario: McMillan Binch LLP, p. 17. Available at: [http://www.mcmillan.ca/Upload/Publication/STELCO\\_to\\_CONDO\\_.pdf](http://www.mcmillan.ca/Upload/Publication/STELCO_to_CONDO_.pdf).

<sup>9</sup> "What are the barriers to developing brownfields?," *CIELAP's Online Guide to Brownfield Redevelopment*. Available at: <http://cielap.org/brownfields/barriers.html>.

<sup>10</sup> "How is brownfield remediation regulated in Ontario?," *CIELAP's Online Guide to Brownfield Redevelopment*. Available at: <http://cielap.org/brownfields/regulation.html>.

The uncertainties associated with redevelopment may pose challenges in obtaining the financial capital needed to redevelop a brownfield site. Lenders and investors, such as banks, trust companies and pension funds, require a certain level of assurance that a brownfield project will succeed financially, and such assurance is often difficult to provide.<sup>11</sup>

Although the province has taken significant action to reduce civil and regulatory liability, it is impossible to fully eradicate it. This is so because, when a negative impact occurs, a party must be responsible to some degree. Therefore, brownfields still present, or are perceived as presenting, more inherent and inevitable risk than greenfields, despite recent policy and regulatory developments. Many brownfield redevelopments are perceived as excessively risky, even if this perception does not reflect reality.<sup>12</sup>

Partly because of concerns about liability, financing has been identified by developers and their lawyers as a significant obstacle to brownfield redevelopment. Little third-party financing exists, and commercial lending institutions are often reluctant to finance redevelopments because of brownfields' reputation as expensive and high-risk, regardless of whether this perception is accurate. Lenders fear that projects on contaminated sites are not as profitable as greenfield projects, and that liability issues may prove to be financially burdensome.

Consequently, the redevelopment of many brownfields is economically feasible only for developers that are able to self-finance a project in its entirety, without any financial assistance. It is of concern that tax incentive financing is only available to projects within community improvement plans, and not to other brownfield sites.<sup>13</sup> Community improvement, administered by municipal governments, may cover a certain area or an entire municipality. For sites not covered by community improvement plans, this lack of access to tax incentive funding may pose a barrier to redevelopment.<sup>14</sup> The fact that such projects tend to be associated with more significant "cost overruns" than greenfield developments further complicates brownfield redevelopment financing.<sup>15</sup>

## 2. Municipal Election Structures

Developers have a strong incentive to seek influence in municipal politics because their business depends on favourable land-use policies. Financing campaigns represents a means by which the

---

<sup>11</sup> "What are the barriers to developing brownfields?," *CIELAP's Online Guide to Brownfield Redevelopment*. Available at: <http://cielap.org/brownfields/barriers.html>.

<sup>12</sup> Personal communication with an official from the Ministry of Municipal Affairs and Housing, 15 July 2010.

<sup>13</sup> Fox, J., M. Peterson, and P. Jachymek, 2004. *From STELCO to CONDO: The STELCO/SWANSEA Iron Works Remediation Project. Practical Suggestions from the Trenches*. [online] Toronto, Ontario: McMillan Binch LLP, p. 20. Available at: [http://www.mcmillan.ca/Upload/Publication/STELCO\\_to\\_CONDO\\_.pdf](http://www.mcmillan.ca/Upload/Publication/STELCO_to_CONDO_.pdf).

<sup>14</sup> Ontario Provincial Planning and Environmental Services Branch, 2003. *Tax Increment-Based Financing*. [online] Available at: <http://www.mah.gov.on.ca/Asset1089.aspx>.

<sup>15</sup> Fox, J., M. Peterson, and P. Jachymek, 2004. *From STELCO to CONDO: The STELCO/SWANSEA Iron Works Remediation Project. Practical Suggestions from the Trenches*. [online] Toronto, Ontario: McMillan Binch LLP, p. 10. Available at: [http://www.mcmillan.ca/Upload/Publication/STELCO\\_to\\_CONDO\\_.pdf](http://www.mcmillan.ca/Upload/Publication/STELCO_to_CONDO_.pdf).

development industry can impact municipal decisions.<sup>16</sup> In cities with high sprawl and expensive transportation, pro-development councils are typically present. Further, many councillors vote in favour of proposals that have been prepared and submitted by their corporate funders.<sup>17</sup> In an assessment of 10 municipalities in the Greater Toronto Area (GTA), developers were found to comprise the single largest interest contributor to municipal elections.<sup>18</sup>

According to MacDermid, "[d]evelopers may try to change land-use designations in the planning process but to be successful they need the support of municipal planning staff and councils."<sup>19</sup> Municipalities, meanwhile, are reliant on development, especially in cities where the governments depend upon property values as a means of increasing the tax base. Property taxation is the largest source of revenue for municipalities, at 50%, and development levies make up 10% of revenue.<sup>20</sup> Accordingly, councillors frequently support development-related activities to increase municipal revenues. Many municipal politicians are firm supporters of suburban development, and developers generally choose to contribute to candidates that support the same goals they do.<sup>21</sup>

In Ontario, candidates for municipal elections are not formally affiliated with political parties. As a result, the public supports a candidate based on his or her campaign, not party affiliation. Mayoral and other municipal elections in Ontario get little media coverage, rendering it difficult for candidates to communicate their platforms via the media. Election campaigns, however, involve significant expenses, and require considerable financing. Acquiring funding allows candidates to use the media to communicate with voters, thus improving their chances of being elected.<sup>22</sup> Consequently, in the absence of funding from political parties, candidates must finance their own campaigns, and corporate donations present a sizable opportunity for acquiring funding.

Rules governing municipal election financing are different from those governing provincial and federal elections. Municipal candidates can raise money for a longer period of time than can candidates for other levels of government. Contributors can donate to any number of candidates, in any number of municipalities, to a limit of \$750 per candidate per donor in municipalities outside of Toronto.<sup>23</sup> However, amendments to Ontario's *Municipal Elections Act* in 2009 did place a contribution limit of \$5,000 per contributor to candidates for office in the same municipal council.<sup>24</sup>

---

<sup>16</sup> MacDermid, R., 2009. *Funding City Politics: Municipal campaign funding and property development in the Greater Toronto Area*. Toronto, Ontario: The CSJ Foundation for Research and Education and Vote Toronto, p. 8. Available at: <http://www.socialjustice.org/uploads/pubs/FundingCityPolitics.pdf>.

<sup>17</sup> *Ibid.* p. 10.

<sup>18</sup> *Ibid.* p. 9.

<sup>19</sup> *Ibid.* p. 36.

<sup>20</sup> *Ibid.* p. 36.

<sup>21</sup> *Ibid.* p. 37.

<sup>22</sup> *Ibid.* p. 8.

<sup>23</sup> *Ibid.* p. 12.

<sup>24</sup> *Municipal Elections Act, 1996*, S.O. 1996, c. 32, s. 71(2.1).



Rules governing financial disclosure are often abused, and information about contributors is frequently missing.<sup>25</sup> No body similar to Elections Canada or Elections Ontario governs municipal elections. Complaints about spending violations are rarely investigated because they are subject to municipal approvals or would involve complicated and expensive court proceedings.<sup>26</sup>

Corporate donations to municipal election campaigns are prevalent in the suburban region surrounding Toronto, which includes the cities of Mississauga, Hamilton, and Oshawa. These donations usually come from developers and construction companies,<sup>27</sup> largely because "real estate development is the prime purpose of municipal politics and property taxation its principal source of revenue."<sup>28</sup> Property development generates revenue for developers, and increases the tax base for municipalities.<sup>29</sup>

On average, 32.8% of 2006 GTA municipal campaign donations came from corporations. Candidates in Brampton, Oshawa, Pickering, Richmond Hill, Vaughan and Whitby received over half of their donations from corporate sources, with Pickering topping the list at 76.7%. Mississauga candidates sourced 49.6% of their funds from corporate donors, with remaining municipalities receiving between 22.4% and 35.7%.<sup>30</sup>

The role that development-related interests play in municipal elections is even clearer as we observe that candidates who are elected to councils tend to receive a larger percentage of their funding from corporations, specifically developers, than do those who are defeated. In 2006, an average of 54.3% of the funding received by winning candidates in GTA suburbs was contributed by the development and development-related industries, as opposed to 35% for defeated candidates.<sup>31</sup> It must, however, be noted that these rates may not be entirely accurate, as rules governing disclosure of funding remain poorly enforced and, as such, exact numbers are difficult to obtain.

Not only do corporations make a greater number of contributions than do citizens, they also contribute larger amounts of money. In the GTA, citizens gave a median of \$300, while firms gave \$700. Development companies specifically gave a median of over \$750. In addition to contributing as a corporation, many developers also contributed as private individuals. Additionally, multiple companies within a corporate group contributed funds.<sup>32</sup> Development

---

<sup>25</sup> MacDermid, R., 2009. *Funding City Politics: Municipal campaign funding and property development in the Greater Toronto Area*. Toronto, Ontario: The CSJ Foundation for Research and Education and Vote Toronto, p. 12. Available at: <http://www.socialjustice.org/uploads/pubs/FundingCityPolitics.pdf>.

<sup>26</sup> *Ibid.* p. 13.

<sup>27</sup> Gombu, P., 2010. New election trend: Shunning corporate donors. *The Toronto Star* [online]. 2 May. Available at: <http://www.thestar.com/news/gta/elections/article/803625--new-election-trend-shunning-corporate-donors>.

<sup>28</sup> MacDermid, R., 2009. *Funding City Politics: Municipal campaign funding and property development in the Greater Toronto Area*. Toronto, Ontario: The CSJ Foundation for Research and Education and Vote Toronto, p. 8. Available at: <http://www.socialjustice.org/uploads/pubs/FundingCityPolitics.pdf>.

<sup>29</sup> *Ibid.* p. 9.

<sup>30</sup> *Ibid.* p. 14.

<sup>31</sup> *Ibid.* p. 31.

<sup>32</sup> *Ibid.* p. 27.

related industries – such as planners, engineers and contractors – also support municipal candidates.<sup>33</sup> The high level of funding from a specific type of industry is unique to the municipal level of government, and this does not occur in provincial and federal elections. It is not, however, unique to municipalities in the GTA, and occurs throughout the province.<sup>34</sup>

While some individuals refuse to accept corporate donations, this practice has not yet been adopted on a wide scale, and does not tend to be reinforced by policy. A recent revision of Ontario's *Municipal Elections Act* failed to include a ban on corporate donations province-wide. Toronto, however, serves as an exception to the trend, as only 12% of the funds received by those elected in Toronto wards in 2006 were received from developers and development-related industries.<sup>35</sup> In December 2009, the City of Toronto enacted By-law 1177-2009, which prohibits corporations and trade unions from contributing to candidates running for mayor or city councilor.<sup>36</sup> Corporations and trade unions can receive a maximum penalty of \$50,000 for being convicted of this offence.

Both Québec and Manitoba have banned contributions from corporations and unions in provincial elections, and Québec prohibits such donations in municipal elections as well.<sup>37</sup> Many Canadian and foreign jurisdictions allow political parties to compete in municipal elections, under the logic that doing so facilitates the involvement of citizens, politician accountability, and the representation of groups lacking significant resources. While Ontario's municipal election system stresses political neutrality, the absence of parties allows developers to gain an unfair level of influence, because candidates must rely on private funding, as opposed to party funding.<sup>38</sup>

It must be noted that even if developers were to be banned from funding municipal campaigns, they would still wield considerable influence over municipal politics. This is so because developers support various community groups and functions, provide employment, and make large charitable donations. Governments may have to look towards other sources of municipal revenue, in order to reduce cities' economic need for greenfield development. Granting portions of sales taxes to municipalities and creating shared cost programs with other levels of government may provide alternative, long-term solutions.<sup>39</sup>

Although municipal election structures may significantly impact brownfield redevelopment, this topic, and the precise nature of its effect, has not been explored in detail, and very few authors have written on the subject. Further research on the issue is needed.

---

<sup>33</sup> *Ibid.* p. 29-30.

<sup>34</sup> *Ibid.* p. 30.

<sup>35</sup> *Ibid.* p. 30.

<sup>36</sup> City of Toronto. *Toronto Election Services – Campaign Contributions*. [online] Available at: <http://www.toronto.ca/elections/contribution-info.htm>. [Accessed 21 March 2011]. Full text of by-law at <http://www.toronto.ca/legdocs/bylaws/2009/law1177.pdf>.

<sup>37</sup> MacDermid, R., 2009. *Funding City Politics: Municipal campaign funding and property development in the Greater Toronto Area*. Toronto, Ontario: The CSJ Foundation for Research and Education and Vote Toronto, p. 43. Available at: <http://www.socialjustice.org/uploads/pubs/FundingCityPolitics.pdf>.

<sup>38</sup> *Ibid.* pp. 46-47.

<sup>39</sup> *Ibid.* pp 47-48.

### 3. Perverse Subsidies and Tax Barriers

Under Ontario law, vacant brownfield properties are typically included within the Industrial Vacant tax class, because they were likely formerly industrial operations.<sup>40</sup> Once the Municipal Property Assessment Corporation (MPAC) rezones a property, its tax class is automatically changed. This is problematic for brownfield redevelopment, because the property will be taxed at a higher rate, even if the permitted uses are not yet able to take place because of remediation work that must be undertaken first.<sup>41</sup>

As a result, developers may be required to pay property taxes for residential or commercial use, even before a property can be legally, safely, or suitably used as such.<sup>42</sup> Currently, MPAC does not have

a specific procedure established to determine the impact of contamination on the assessed value of a property. Although contamination may negatively affect the ability of a landowner to occupy, lease or sell the property, there would likely be no reduction in the property assessment.<sup>43</sup>

The issue of property tax class is significant because it impairs profitability: owners must pay high taxes before they are able to use their property in a way that generates profit. This promotes the opinion, among many developers, that greenfield development is not only less expensive but also generates a profit more quickly than brownfield redevelopment.

Greenfield developments face lower up-front costs than do brownfield developments. This is so because in Ontario, greenfield sites retain their low property value and low farmland tax rate until construction commences, while brownfields are assigned higher values and property taxes, because of their formerly industrial uses, throughout the redevelopment process. The difference in taxes paid between brownfields and greenfields may amount to hundreds of thousands of dollars. Therefore, the comparatively lower tax rates associated with greenfields make them more attractive to industry.<sup>44</sup>

Overall, the current property transfer and property taxation regimes function in a way that renders brownfields more cost prohibitive to develop than greenfields. Additionally, the structures in place do not recognize clean-up and decontamination as an expense, and fail to factor issues of contamination into property assessment. Ultimately, the factors discussed above discourage brownfield redevelopment by making it the more expensive option. As such, the combination of many policy factors creates a clear incentive for greenfield development.

---

<sup>40</sup> Canadian Brownfields Network. May 26, 2009. *Submission re: Amendments to Ontario Brownfield Regulations*. [online]. Available at: [http://www.canadianbrownfieldsnetwork.ca/PDF/CBN\\_Follow-up\\_Letter\\_with\\_attachments\\_to\\_Minister\\_Gerretsen\\_April27\\_2009.pdf](http://www.canadianbrownfieldsnetwork.ca/PDF/CBN_Follow-up_Letter_with_attachments_to_Minister_Gerretsen_April27_2009.pdf).

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.* p. 6.

<sup>43</sup> *Ibid.* p. 5.

<sup>44</sup> *Ibid.*

## 4. Ownership Constraints

It is often difficult for purchasers and redevelopers to ascertain ownership of a brownfield site. Many sites may be under multiple ownership, and true ownership may be difficult to determine. Land ownership rights exist in bundles, meaning that the ownership of a piece of land may be divided among several entities. Consequently, redevelopment may be stalled until the ownership is united and conferred to a single entity.<sup>45</sup>

Also, brownfield site owners are often hesitant to sell their land because they expect values to increase in the future. As a result, derelict sites remain unoccupied. The existence or perception of risk or liability amplifies owners' reluctance to sell brownfield sites. In such cases, the owners' reasoning is that despite the fact that redevelopment may yield greater profits, the potential risk of selling is not worth the revenue.<sup>46</sup> Owners also understand that they cannot escape liability simply by selling their land. If they will continue to be liable, they prefer to retain control over contaminated lands.<sup>47</sup>

## 5. Land Use Planning Limitations

According to the Environmental Commissioner of Ontario (ECO), Ontario's land use planning system does not strongly consider environmental planning and protection. The province has recently passed a number of land use planning laws that protect the environment, such as the *Oak Ridges Moraine Conservation Act, 2001*, the *Greenbelt Act, 2005*, and the *Lake Simcoe Protection Act, 2008*, in an *ad hoc* manner. Consequently, sensitive lands in the province are not protected by broad-based policy, but on a case-by-case basis. This approach has been deemed by the ECO to be "both reactionary and problematic."<sup>48</sup>

The ECO has argued that the current land use planning system does not give enough weight to environmental concerns, and does not give planning authorities adequate powers to restrict specific forms of development where they are ecologically inappropriate. Thus, it is likely that many greenfield areas slip through the cracks of the provincial landscape protection regime and become attractive development prospects.<sup>49</sup>

---

<sup>45</sup> Adams D, Disberry A, Hutchison N, and Munjoma T, 2001. Ownership constraints to brownfield redevelopment. *Environment and Planning, A* 33(3) 453 – 477.

<sup>46</sup> *Ibid.*

<sup>47</sup> Fox, J., M. Peterson, and P. Jachymek, 2004. *From STELCO to CONDO: The STELCO/SWANSEA Iron Works Remediation Project. Practical Suggestions from the Trenches.* [online] Toronto, Ontario: McMillan Binch LLP, p. 10. Available at: [http://www.mcmillan.ca/Upload/Publication/STELCO\\_to\\_CONDO\\_.pdf](http://www.mcmillan.ca/Upload/Publication/STELCO_to_CONDO_.pdf).

<sup>48</sup> Environmental Commissioner of Ontario, 2009. Reforming Land Use Planning. *Building Resilience, ECO Annual Report, 2008-09.* Toronto: The Queen's Printer for Ontario, pp. 17-23. [http://www.ecoissues.ca/index.php/Ontario\\_Planning\\_Act\\_2010\\_Review](http://www.ecoissues.ca/index.php/Ontario_Planning_Act_2010_Review).

<sup>49</sup> Environmental Commissioner of Ontario, 2009. Reforming Land Use Planning. *Building Resilience, ECO Annual Report, 2008-09.* Toronto: The Queen's Printer for Ontario, pp. 17-23. [http://www.ecoissues.ca/index.php/Ontario\\_Planning\\_Act\\_2010\\_Review](http://www.ecoissues.ca/index.php/Ontario_Planning_Act_2010_Review).

## ***Absence of Anti-SLAPP Legislation***

SLAPPs – Strategic Lawsuits Against Public Participation – are lawsuits intended to discourage citizens from bringing their concerns to public decision-makers and tribunals. SLAPPs typically involve claims of defamation or “interference with economic interests.”<sup>50</sup> Initiated by corporate interests, these lawsuits target individuals and grassroots organizations that are unable to afford to fight the suits.<sup>51</sup> Such lawsuits prevent public participation in environmental policy matters and tend to force their targets to abandon their causes due to a lack of resources to combat the suits. SLAPPs have been described as a form of “legal bullying”. The victims of SLAPPs generally do not engage in illegal activities, but are targeted by corporate interests because they engage in activism, and often report environmental violations to authorities and the media.

In his 2008-2009 annual report, the ECO noted that

[w]hen the stakes are in the many millions – sometimes billions – of dollars, the resources that developers are prepared to invest to overcome residents’ objections far surpass the capacity of most citizens groups, environmental organizations, and even conservation authorities and municipalities.<sup>52</sup>

The ECO also observed that the land use planning system is weighted in favour of the development industry, which has “the resources, knowledge and experience (and access to a stable of planning, environmental and other professionals with specialized expertise) to skillfully argue their case before the Ontario Municipal Board.”<sup>53</sup>

Anti-SLAPP legislation can serve as a deterrent against lawsuits of which the sole purpose is to dissuade public participation. Such legislation can also protect citizens’ right to participation and assembly. In Ontario, many municipalities have passed resolutions calling for anti-SLAPP legislation, and the Association of Municipalities of Ontario has resolved to meet with the province to help develop solutions to SLAPPs, and to avoid the undue costs placed on citizens from Ontario Municipal Board hearings.<sup>54</sup> Anti-SLAPP legislation has been debated in Ontario, most recently as Bill 138, a private members bill proposed by NDP leader Andrea Horwath. This bill, however, only received a first reading, and was abandoned when the legislature adjourned in

---

<sup>50</sup> McClenaghan, T., and Lintner, A. 2008. *Re: Urgent Need for Anti-SLAPP Legislation in Ontario*. [online] Toronto, Ontario: CELA and Ecojustice, p. 1. Available at: <http://www.cela.ca/sites/cela.ca/files/703L-AG%20Bentley%20re%20SLAPP%20Final%20Nov%2020%2C%202008.pdf>.

<sup>51</sup> *Ibid.*

<sup>52</sup> Environmental Commissioner of Ontario, 2009. Reforming Land Use Planning. *Building Resilience, ECO Annual Report, 2008-09*. Toronto: The Queen’s Printer for Ontario, pp. 23-25. Available at: [http://www.ecoissues.ca/index.php/Cost\\_awards\\_and\\_SLAPP:\\_Techniques\\_used\\_to\\_chill\\_public\\_participation\\_in\\_planning\\_decisions](http://www.ecoissues.ca/index.php/Cost_awards_and_SLAPP:_Techniques_used_to_chill_public_participation_in_planning_decisions).

<sup>53</sup> *Ibid.*

<sup>54</sup> Association of Municipalities of Ontario (AMO), 2009. *AMO Report to Members on September 2009 Board Meeting*. [online] October 15, 2009. Available at: [http://www.amo.on.ca/AM/Template.cfm?Section=Aerts\\_and\\_FYIs&Template=/CM/ContentDisplay.cfm&ContentID=155599](http://www.amo.on.ca/AM/Template.cfm?Section=Aerts_and_FYIs&Template=/CM/ContentDisplay.cfm&ContentID=155599).

June 2009.<sup>55</sup>

In May 2010, Ontario established an expert panel to advise the province about drafting and implementing anti-SLAPP legislation.<sup>56</sup> In October 2010, the Anti-SLAPP Advisory Panel released a report that detailed the need for anti-SLAPP legislation, and set out recommendations for how such legislation ought to function.<sup>57</sup> This is encouraging, as it demonstrates that the government is interested in addressing the impacts of SLAPPs on public participation and environmental protection. Currently, Québec is the only Canadian jurisdiction to have enacted anti-SLAPP legislation.

SLAPPs contribute to continued greenfield development because of their ability to silence the concerns of developers' opponents. It must, however, be noted that on its own, anti-SLAPP legislation would not be able to prevent all greenfield development; it would affect the outcome only in cases where opponents of a project voice their concerns publicly. Anti-SLAPP legislation would allow people and organizations to challenge the development of individual greenfields, but it is difficult to say whether this type of legislation would promote brownfield redevelopment significantly more than, for example, financial incentives for developers, decreasing liability risks through policy changes, or implementing stricter anti-greenfield development policies.

## 6. Leapfrogging to Regions Outside the GTA

Leapfrogging is a major threat to the effectiveness of greenbelt protection. It occurs when development 'leaps' over a greenbelt, and targets outlying regions beyond the suburbs. Leapfrogging hinders efforts to curb sprawl, and isolates greenbelts' natural features from their surrounding ecosystem.<sup>58</sup>

The enactment of the *Greenbelt Act, 2005*, which created a protected area of land around the GTA, and the *Places to Grow Act, 2005*, which sets out Ontario's development goals, did not deter developers. They "continued to acquire land and make suburban subdivision applications for land that, while within reasonable commuting distance of Toronto, was not constrained by [the legislation]."<sup>59</sup> The ability and willingness of developers to build outside the Greenbelt presents a challenge to the promotion of brownfield redevelopment.<sup>60</sup>

---

<sup>55</sup> Bill 138, Protection of Public Participation Act, 2008. Available at: [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=2133&detailPage=bills\\_detail\\_the\\_bill&Intranet=](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2133&detailPage=bills_detail_the_bill&Intranet=).

<sup>56</sup> Gray, J., 2010. *Ontario looks to smack down SLAPPs*. Globe and Mail [online] Available at: <http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/ontario-looks-to-smack-down-slapps/article1630818/>.

<sup>57</sup> Anti-SLAPP Advisory Panel, 2010. *Anti-SLAPP Advisory Panel Report to the Attorney General*. [online] Available at: [http://www.attorneygeneral.jus.gov.on.ca/english/anti\\_slapp/anti\\_slapp\\_final\\_report\\_en.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/anti_slapp/anti_slapp_final_report_en.pdf). For more information see the submission of the Ontario Bar Association to the Advisory Panel: <http://www.oba.org/en/pdf/OBA-Submission-Anti-SLAPP-Advisory-Panel.pdf>.

<sup>58</sup> Ontario Greenbelt Alliance. *Growing the Greenbelt*. [online] Available at: <http://greenbeltalliance.ca/?q=node/16>. [Accessed March 28, 2011].

<sup>59</sup> Sewell, J., 2009. *The Shape of the Suburbs: Understanding Toronto's Sprawl*. Toronto, Ontario: University of Toronto Press, Scholarly Publishing Division.

<sup>60</sup> *Ibid.*

Simcoe County, which is located just outside the GTA, presents an attractive opportunity for developers, and reduces their willingness to engage in brownfield redevelopment. Developers view the south section of the county as a site for exurban development because it is close to the GTA, and to jobs and population centres in the region.<sup>61</sup> Most of Simcoe County is excluded from the Ontario Greenbelt. This denies the region protection, and encourages leapfrogging.<sup>62</sup>

Examples of leapfrogging include Bradford/Bond Head and New Tecumseth, where communities of 100,000 and 50,000 respectively were proposed. The former would serve to complement an automobile plant, and the latter would be constructed on greenfield sites.<sup>63</sup>

In Ontario, leapfrogging has tended to occur in areas that are connected to Toronto by the 400-series highways.<sup>64</sup> Additional highway development, therefore, may “open more land to development pressures because of easy access to the superhighway system.”<sup>65</sup> A policy of extending highways may act as a disincentive for brownfield redevelopment because it makes greenfields outside Toronto, but still proximate to the GTA, readily accessible to developers.

## 7. Brownfield Policy in Other Jurisdictions

Jurisdictions such as Québec, the United Kingdom, and the United States have enacted policies that aim to address various obstacles to brownfield redevelopment, from which Ontario may learn new ideas and best practices for the advancement of its own brownfield policy.

### **Québec Revi-Sols Program**

Québec is the only Canadian province to have implemented a provincial-level funding incentive program for brownfield redevelopment.<sup>66</sup> The Revi-Sols program offers grants to communities, to fund assessment studies that lead to rehabilitation work, and to provide for the cost of rehabilitation. Revi-Sols requires that project plans include development after a site has been rehabilitated. Seventy percent of each grant has a predetermined use: 50% of the funding goes towards assessment studies and physical clean-up; and 20% of each grant is to be used to perform remediation activities, such as soil and groundwater treatment. Projects by municipal

---

<sup>61</sup> Birnbaum, L., Nicolet, L., and Taylor, Z., 2004. *Simcoe County: The New Growth Frontier*. Toronto, Ontario: Neptis Foundation. p. 1.

<sup>62</sup> Environmental Defence, *Money and Politics in Simcoe County: Shining a Light on Municipal Election Financing*, March 2010. Available at: <http://environmentaldefence.ca/reports/money-and-politics-simcoe-county-shining-light-municipal-election-financing>.

<sup>63</sup> Sewell, J., 2009. *The Shape of the Suburbs: Understanding Toronto's Sprawl*. Toronto, Ontario: University of Toronto Press, Scholarly Publishing Division.

<sup>64</sup> Ontario Greenbelt Alliance. *Greenbelt 2.0 Backgrounder*. [online] Available at: [http://greenbeltalliance.ca/files/pdf/Greenbelt\\_2\\_backgrounder.pdf](http://greenbeltalliance.ca/files/pdf/Greenbelt_2_backgrounder.pdf).

<sup>65</sup> Sewell, J., 2009. *The Shape of the Suburbs: Understanding Toronto's Sprawl*. Toronto, Ontario: University of Toronto Press, Scholarly Publishing Division.

<sup>66</sup> Canada Mortgage and Housing Corporation, 2002. *Residential Intensification Case Studies: Urban Contaminated Sites Rehabilitation Program Revi-Sols*. p. E-4. [online] Available at: <http://www.cmhc-schl.gc.ca/en/inpr/su/sucopl/upload/Urban-Contaminated-Sites-Rehabilitation-Program-Revi-sols-Montr%C3-al-Qu%C3-ec.pdf>.

governments, the private sector, and joint projects between the two entities are eligible for funding. The program has been very successful, and has resulted in significant benefits in terms of land area rehabilitated, increased property tax revenues, and the generation of significant interest among developers. During the program's first five years, 153 redevelopment projects were undertaken.<sup>67</sup>

The program comprised two phases. Phase I, which took place between 1998 and 2003, provided \$40 million for assessment and rehabilitation of brownfields in Montréal and Québec City. Due to the success of Phase 1, the provincial government developed Phase II (2000-2005): an additional \$50 million for all other urban municipalities, and matching the province's Phase 1 and Phase 2 contribution by municipalities and the private sector. A total of \$180 million was directed towards the rehabilitation of Québec's brownfields between 1998 and 2005.<sup>68</sup>

Revi-Sols has demonstrated that partnerships between municipal governments and private development interests, through public subsidies, can stimulate private sector investment in brownfield redevelopment. The framework of the Revi-Sols program, which has proven to be highly successful, involves the province acting as the funding source and regulator of clean-up and environmental standards. The city assumes an administrative role, and provides infrastructure and zoning support. The private sector contributes investment toward site clean-up and development projects.<sup>69</sup> Integrating the efforts and interests of the public and private sectors, as well as the community, was found to be an important step towards ensuring that projects are cohesive within the existing urban landscape.<sup>70</sup>

Examples of Revi-Sols redevelopment projects include:

- a shopping mall in Shawinigan where chlor-alkali and solvent manufacturing plants previously existed from 1936 to 1985;<sup>71</sup>
- parks, green spaces, 800 residential units and light commercial and industrial developments in Montreal, on a site previously occupied by a Canadian Pacific Railway

---

<sup>67</sup> National Round Table on the Environment and the Economy (NRTEE), 2003. *Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada*. NRTEE, p. 13. [online] Available at: <http://www.nrtee-trnee.com/eng/publications/brownfield-redevelopment-strategy/NRTEE-Brownfield-Redevelopment-Strategy.pdf>.

<sup>68</sup> *Ibid.*

<sup>69</sup> Canada Mortgage and Housing Corporation, 2002. *Residential Intensification Case Studies: Urban Contaminated Sites Rehabilitation Program Revi-Sols*. p. E-4. [online] Available at: <http://www.cmhc-schl.gc.ca/en/inpr/su/sucopl/upload/Urban-Contaminated-Sites-Rehabilitation-Program-Revi-sols-Montr%C3-al-Qu%C3-ec.pdf>.

<sup>70</sup> Canada Mortgage and Housing Corporation, 2005. *Brownfield Redevelopment for Housing Case Studies: Quai Des Éclusiers, 4300, rue St-Ambroise*. p. 4. [online] Available at: <http://www.cmhc-schl.gc.ca/en/inpr/su/sucopl/upload/Brownfield-Redevelopment-for-Housing-in-Canada-Case-Studies-Quai-des-%C3%83-clusiers-Montreal-Quebec.pdf>.

<sup>71</sup> National Round Table on the Environment and the Economy (NRTEE), 2003. *Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada*. NRTEE, p. A-7. [online] Available at: <http://www.nrtee-trnee.com/eng/publications/brownfield-redevelopment-strategy/NRTEE-Brownfield-Redevelopment-Strategy.pdf>.



yard used for maintenance of rolling stock as well as construction of railway, armament, and military equipment;<sup>72</sup> and

- a new kindergarten in Ville La Salle on a site formerly filled with rubble of unknown origin, including foundry waste and coal.<sup>73</sup>

### **Montréal Centre of Excellence in Brownfields Rehabilitation**

The Montréal Centre of Excellence in Brownfields Rehabilitation, established in 1997, is a partnership between the City of Montréal, the Province of Québec, and the federal government. It is a non-profit organization that invests in redevelopment technology demonstration projects and risk assessment. The centre partners with technology developers and industrial firms. It has managed \$6 million in demonstration projects, and \$2.4 million in a technology platform and showcase.<sup>74</sup> It would be valuable for the province of Ontario to consider undertaking such an initiative.<sup>75</sup>

### **United Kingdom**

The goal of the UK's brownfields policy is "to promote a sustainable pattern of physical development of land and property use in cities, towns and the countryside."<sup>76</sup> Generally, government land use planning systems in the UK do not force or require redevelopment, but instead address how sites are redeveloped. The government's role is mainly regulatory, and tax and planning systems are used to facilitate redevelopment.<sup>77</sup>

The Homes and Communities Agency (HCA), a public body, is the national housing and regeneration delivery agency in England. In 1998, the HCA created a National Land-Use Database to provide a comprehensive record of all previously developed sites that may already be, or may become, available for development. This includes sites that are vacant, derelict, or still in productive use.<sup>78</sup> One obstacle the Database faces is that many properties become brownfields for a very short period of time before being turned over for a new use, and are therefore not captured by database or survey exercises.<sup>79</sup>

---

<sup>72</sup> *Ibid.*, p. A-8, A-9.

<sup>73</sup> *Ibid.*, p. A-9.

<sup>74</sup> *Ibid.*, p. 15.

<sup>75</sup> See Montreal Centre of Excellence in Brownfields Rehabilitation website at: <http://cemrs.qc.ca/Accueil/tabid/36/language/en-US/Default.aspx>.

<sup>76</sup> National Round Table on the Environment and the Economy (NRTEE), 2003. *Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada*. NRTEE, p. A-22. Available at: <http://www.nrtee-trnee.com/eng/publications/brownfield-redevelopment-strategy/NRTEE-Brownfield-Redevelopment-Strategy.pdf>.

<sup>77</sup> *Ibid.*

<sup>78</sup> Homes and Communities Agency, 2011. *National Land Use Database*. [online] Available at: <http://www.homesandcommunities.co.uk/NLUD>. [Accessed April 8, 2011].

<sup>79</sup> National Round Table on the Environment and the Economy (NRTEE), 2003. *Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada*. NRTEE, p. A-22. Available at: <http://www.nrtee-trnee.com/eng/publications/brownfield-redevelopment-strategy/NRTEE-Brownfield-Redevelopment-Strategy.pdf>.

Government policies and programs exist to promote and support redevelopment of brownfields. Spatial planning efforts prevent greenfield development, and make brownfields available for redevelopment. For example, tests are required to ensure that there are no suitable and available brownfield sites for new developments before a local planning authority may allocate greenfield sites. Public entities undertake research and development of new remediation techniques and technologies, promote best practices that encourage brownfield redevelopment, and work to eliminate factors that compromise redevelopment. The government provides financial support, including grants, loan support, and other mechanisms that allow for the sharing of risks and profit.<sup>80</sup> An example of such support is the *Finance Act 2001*, which created a tax incentive that allows companies to offset 150% of land remediation costs against the profits on which they pay corporation tax.<sup>81</sup> Direct funding is typically executed by arm's-length public sector regeneration agencies.<sup>82</sup>

Brownfield redevelopment in the UK is largely private sector-led, with little direct government involvement. The government has consistently preferred private sector redevelopment for brownfields, in part because the majority of brownfield land is privately owned (over 70% in 2006),<sup>83</sup> and urban land is in high demand.<sup>84</sup>

English Partnerships, a branch of the HCA and a specialist in brownfield redevelopment, released *The Brownfield Guide* in 2006.<sup>85</sup> This report describes how brownfield sites may be considered for reuse, and shares English Partnerships' best practice approach to redevelopment. Two initiatives discussed in the study are Brownfield Land Action Plans (BLAPs) and Local Brownfield Partnerships (LBPs), both of which integrate multiple local stakeholders in a thorough planning and redevelopment process.<sup>86</sup>

BLAPs are a regional approach to redevelopment, which aim to guide and accelerate redevelopment action, by analyzing the supply of brownfield land and its relationship to regional development priorities. Two pilot projects were carried out under the study to better understand:

- potential shortfalls in the supply of developable brownfield residential land;

---

<sup>80</sup> *Ibid.*, p. A-24.

<sup>81</sup> *Ibid.*, p. A-25.

<sup>82</sup> *Ibid.*, p. A-24.

<sup>83</sup> English Partnerships, 2006. *The Brownfield Guide: A practitioner's guide to land reuse in England*. Conclusions p. 106. [online] Available at: <http://collections.europarchive.org/tna/20100911035042/http://englishpartnerships.co.uk/landsupplypublications.htm>. [Accessed April 8, 2011].

<sup>84</sup> National Round Table on the Environment and the Economy (NRTEE), 2003. *Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada*. NRTEE, p. A-23. Available at: <http://www.nrtee-trnee.com/eng/publications/brownfield-redevelopment-strategy/NRTEE-Brownfield-Redevelopment-Strategy.pdf>.

<sup>85</sup> English Partnerships, 2006. *The Brownfield Guide: A practitioner's guide to land reuse in England*. [online] Available at: <http://collections.europarchive.org/tna/20100911035042/http://englishpartnerships.co.uk/landsupplypublications.htm>. [Accessed April 8, 2011].

<sup>86</sup> *Ibid.*, section 5 Conclusions, p. 106.

- how much of the stock of brownfield land might be absorbed by the development process in the foreseeable future, both with and without public sector intervention; and
- how much brownfield land will likely remain undeveloped and thus require public sector intervention to reduce any negative impacts upon the region.

The pilot projects demonstrated that BLAPs are both feasible and valuable for development planning. These Plans help build an understanding of the scale and characteristics of brownfield land, and its relationship with existing land use policies. They also provide an understanding of future demand for various uses of brownfield land. Government resources may then target brownfields that the market is less likely to redevelop on its own.<sup>87</sup>

LBP connects stakeholders to participate in finding the most appropriate reuse for brownfield sites. Stakeholders may include the site owner, local planning authorities, local residents and community interest groups, businesses, and the development industry. First, citizens or businesses identify local brownfield sites that they are most concerned about redeveloping. Next, the local planning authority assesses these sites. The assessment identifies site-specific issues that may be impeding redevelopment, considers possible low-cost or low-effort methods of redevelopment, and identifies sites where low-input redevelopment is likely not possible. A panel of private developers then brings forward proposals for how they would redevelop the sites, and one or more are selected as “preferred developers,” with whom the community and the public sector partner. The partnership then proceeds to determine what the final redevelopment project will be.<sup>88</sup>

In 1998, the government increased its target from 50% to 60% of new homes to be built on brownfield land.<sup>89,90</sup> Between 1999 and 2008, this target was met successfully.<sup>91</sup> However, problems began to arise at the community level for two principle reasons. First, the planning regime was inflexible to economic demands, and the needs of individual communities.<sup>92</sup> It was described as being highly centralized and bureaucratic, alienating communities, and creating local opposition to development.<sup>93</sup> Second, the development of privately owned gardens became a

---

<sup>87</sup> *Ibid.*, Annex B, p. B9-B10.

<sup>88</sup> *Ibid.*, Annex B, p. B19-B21.

<sup>89</sup> Harrison, A.R., 2004. *Monitoring and Re-use of Brownfield Land in England and Wales*. LandInform Ltd., p. 1. [online] Available at: <http://www.ecologic-events.de/bodenschutz-bayern/de/documents/HarrisonAndrewRLandInformLtd.pdf>.

<sup>90</sup> Department for Communities and Local Government: London, 2006. *Planning Policy Statement 3 (PPS3): Housing*. [online] Available at: <http://webarchive.nationalarchives.gov.uk/20100520022021/http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement3.pdf>.

<sup>91</sup> Department for Communities and Local Government, 2010. *Clark – new powers to prevent unwanted ‘garden-grabbing’*. Available at: <http://www.communities.gov.uk/news/corporate/16083341>. [Accessed April 8, 2011].

<sup>92</sup> Department for Communities and Local Government, 2011. *Planning and the budget*. p.2-3. [online] Available at: <http://www.communities.gov.uk/newstories/planningandbuilding/1872022>. [Accessed April 8, 2011].

<sup>93</sup> Department for Communities and Local Government, 2010. *Planning power from Town Hall and Whitehall to local people*. [online] Available at: <http://www.communities.gov.uk/news/newsroom/1788714>. [Accessed April 8, 2011].

major issue. ‘Garden-grabbing’<sup>94</sup> is the practice of developing homes on land attached to existing urban or suburban homes to increase population density. According to campaigners, this damages neighbourhoods’ character by turning green spaces into a “concrete jungle.”<sup>95</sup> Between 1997 and 2008, development on previously residential land, that includes gardens, rose from 11% to 23%.<sup>96</sup> A lack of local control over development decisions, and the inclusion of gardens into the category of brownfields resulted in “inbalances [*sic*] in provision such as between blocks of flats and family homes with gardens”.<sup>97</sup>

In 2010, the government addressed the garden-grabbing issue by changing the definition of brownfields to exclude gardens.<sup>98,99</sup> Further, in 2011, the government announced that it will remove the centrally imposed goal of 60% of new homes to be built on brownfields, and facilitate the localization of authority on brownfield redevelopment.<sup>100</sup> The intention is to put greater control into the hands of localities, allowing for more innovation, creativity, and the determination of communities’ own futures. Communities will have the right to create neighbourhood plans, which will define specific developments or development types that will have automatic planning permission, without the requirement to submit planning applications to the local authority. These are the current efforts the UK is undertaking to streamline decision-making, and to remove barriers to brownfield development.<sup>101</sup>

### **United States**

The United States has a coordinated national effort to encourage brownfield redevelopment and address barriers to the redevelopment process. This approach stresses harmonization of policy, regulations and incentives. Federal brownfield incentives are targeted, for the most part, to state and local governments, as opposed to the to the private sector. This structure is criticized because funding is distributed indirectly, and all three levels of government must be involved in the funding and incentives process. The system, however, promotes transparency and accountability, and is flexible in meeting the particular needs of specific communities.<sup>102</sup> The Environmental

---

<sup>94</sup> Department for Communities and Local Government, 2011. *Planning and the budget*. p.2-3. [online] Available at: <http://www.communities.gov.uk/newsstories/planningandbuilding/1872022>. [Accessed April 8, 2011].

<sup>95</sup> BBC News, 2010. *Councils to get help to stop ‘garden-grabbing’*. [online] Available at: [http://news.bbc.co.uk/2/hi/uk\\_news/politics/8728633.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/8728633.stm). [Accessed April 8, 2011].

<sup>96</sup> Department for Communities and Local Government, 2010. *Clark – new powers to prevent unwanted ‘garden-grabbing’*. Available at: <http://www.communities.gov.uk/news/corporate/16083341>. [Accessed April 8, 2011].

<sup>97</sup> Department for Communities and Local Government, 2011. *Planning and the budget*. p.2-3. [online] Available at: <http://www.communities.gov.uk/newsstories/planningandbuilding/1872022>. [Accessed April 8, 2011].

<sup>98</sup> Department for Communities and Local Government, 2010. *Clark – new powers to prevent unwanted ‘garden-grabbing’*. Available at: <http://www.communities.gov.uk/news/corporate/16083341>. [Accessed April 8, 2011].

<sup>99</sup> Department for Communities and Local Government, 2010. *Planning Policy Statement 3 (PPS3): Housing*. Annex B, p. 26. Available at: <http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement3.pdf>.

<sup>100</sup> Department for Communities and Local Government, 2011. *Planning and the budget*. p.2-3. [online] Available at: <http://www.communities.gov.uk/newsstories/planningandbuilding/1872022>. [Accessed April 11, 2011].

<sup>101</sup> Department for Communities and Local Government, 2010. *Planning power from Town Hall and Whitehall to local people*. [online] Available at: <http://www.communities.gov.uk/news/newsroom/1788714>. [Accessed April 11, 2011].

<sup>102</sup> *Ibid.*, p. A-19.

Protection Agency (EPA) administers the National Brownfields Program, which provides direct funding for brownfields assessment, cleanup, revolving loans, and environmental job training. The EPA also provides technical information on brownfields financing matters.<sup>103</sup>

The Brownfields National Partnership Action Agenda was created in 1997 to provide a framework for cooperation among governments, businesses, and non-governmental organizations. Government incentives focus on pilot projects, revolving loans, small grants, and technical assistance.<sup>104</sup> Between 1997 and 2010, the EPA provided 273 revolving loan grants, worth a total of US\$261,541,790.<sup>105</sup> This system has been criticized as having burdensome environmental, legal, and administrative requirements, which hinder its utility and efficacy. The shortcomings of the Revolving Loan Fund demonstrate the need for “harmony between federal legislation and the legal, environmental, and administrative requirements of any financial incentive program.”<sup>106</sup> Also in 1997, the federal government passed the *Taxpayer Relief Act*, creating a tax incentive for redevelopment by allowing costs of remediation to be deducted from income during the year they are incurred. Despite its goal to support the remediation of 14,000 brownfield sites, the program was not widely used for several possible reasons, including that many developers did not understand the program, and the perception that administrative efforts and costs required to obtain the tax credit exceeded its value.<sup>107</sup>

State brownfield redevelopment efforts are centered on liability relief, voluntary site clean-up, technical assistance, and the provision of low-cost loans and tax relief. State brownfield redevelopment policies and programs that result in the most remediated sites, compared with other states, typically have at least five of the following six policy features: measures to address civil and regulatory liability, responsible person protection, tax incentives, risk-based remediation, memorandum of agreement, and loans, grants and guarantees.<sup>108</sup> Local governments in the United States generally provide financial incentives for brownfield redevelopment, such as tax-increment financing incentives, tax relief, and low-cost loans.<sup>109</sup>

The major challenges in achieving effective and increased brownfield redevelopment in the United States are streamlining the administrative process, and improving the coordination of programs at all levels of government.<sup>110</sup>

---

<sup>103</sup> U.S. Environmental Protection Agency, 2011. *Brownfields and Land Revitalization – Grants & Funding*. [online] Available at: [http://www.epa.gov/brownfields/grant\\_info/index.htm](http://www.epa.gov/brownfields/grant_info/index.htm).

<sup>104</sup> National Round Table on the Environment and the Economy (NRTEE), 2003. *Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada*. NRTEE, p. A-20. [online] Available at: <http://www.nrtee-trnee.com/eng/publications/brownfield-redevelopment-strategy/NRTEE-Brownfield-Redevelopment-Strategy.pdf>.

<sup>105</sup> U.S. Environmental Protection Agency, 2011. *Brownfields and Land Revitalization – Brownfields Grant Fact Sheet Search*. [online] Available at: [http://cfpub.epa.gov/bf\\_factsheets/index.cfm](http://cfpub.epa.gov/bf_factsheets/index.cfm).

<sup>106</sup> National Round Table on the Environment and the Economy (NRTEE), 2003. *Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada*. NRTEE, p. A-20. Available at: <http://www.nrtee-trnee.com/eng/publications/brownfield-redevelopment-strategy/NRTEE-Brownfield-Redevelopment-Strategy.pdf>.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*, p. A-21.

<sup>110</sup> *Ibid.*

## 8. Recommendations for Ontario

A recent book by Pamela Blais, an urban planning consultant,<sup>111</sup> observes that:

perverse prices, flawed policies, and market distortions undermine efforts to curb urban sprawl. A market that operates in this manner is the opposite of what planning calls for. Planning in its many guises – smart growth, new urbanism, sustainable development – has set about to achieve compact, mixed-use cities with efficient development and to curb urban sprawl. However, it has had very little success in doing so. And is this any wonder, when the very kinds of land use that it is trying to curb are subsidized and offered at discount prices, while the kinds it is trying to encourage are overpriced?<sup>112</sup>

Blais' submission is supported by the findings of this paper. Based on the paper's analysis and the examples demonstrated in other jurisdictions, we make the following recommendations to the Ontario government:

1. Make some degree of tax incentive financing available to all brownfield sites, not only those in areas with community improvement plans.
2. Undertake research on the impacts of the current municipal election structures on brownfield redevelopment, and take action to ensure that negative impacts are addressed.
3. Review and revise current property transfer and property taxation regimes so that they do not result in brownfields being more cost prohibitive to develop than greenfields, and create tax incentives to encourage brownfield development.
4. Reform the land use planning system so that it provides stronger environmental protections to greenfield areas at risk of development.
5. Implement anti-SLAPP legislation consistent with the recommendations of Ontario's Anti-SLAPP Advisory Panel's 2010 report.
6. Expand Ontario's Greenbelt to address concerns about leapfrogging to areas beyond the Greenbelt that are still proximate to the Greater Toronto Area.
7. Reconsider the appropriateness of government policies that promote highway extensions.
8. Provide grants to communities to fund assessment studies that lead to rehabilitation work, and contribute to the cost of rehabilitation.
9. Promote partnerships between municipal governments and private development interests, through public subsidies, to stimulate private sector investment in brownfield redevelopment.

---

<sup>111</sup> Principal of Metropole Consultants Ltd.: [http://metropoleconsultants.com/metropole\\_3/People.html](http://metropoleconsultants.com/metropole_3/People.html)

<sup>112</sup> Blais, P., *Perverse Cities: Hidden Subsidies, Wonky Policy and Urban Sprawl*. Vancouver, B.C.: UBC Press, p. 11.

10. Establish a centre for investment in redevelopment technology demonstration projects and risk assessment, such as the Montreal Centre of Excellence in Brownfields Rehabilitation.
11. Create a provincial land use database to provide a comprehensive record of all previously developed sites that may be, or may become, available for development, including sites that are vacant, derelict, or still in productive use.
12. Establish policies requiring it to be shown that there is an absence of suitable and available brownfield sites for new developments before a municipality may allocate greenfield sites for development.
13. Develop a regional approach to redevelopment, such as the UK's Brownfield Land Action Plans, which guide and promote redevelopment by analyzing the existing supply of brownfield land and its relationship to regional development priorities.