

In The Arg Devco Case The OMB Wades Into Brownfields Legislative Jurisdiction

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Proponent working since 2014 to fulfill OMB condition of subdivision approval that requires it to file a Record of Site Condition (RSC). This, itself, isn't newsworthy. Filing an RSC can be a long process. What is newsworthy is that based on the facts of the case, an RSC is not required to comply with Ontario's brownfields legislation.

The property had been occupied by the North Bay General Hospital.¹ Hospitals are deemed a residential use under Ontario's primary brownfields legislation, Ontario Regulation 153/04, made under the *Environmental Protection Act*.² The hospital was demolished and the property was vacant at the time of the proposed redevelopment.³ Under the Regulation, if a property is vacant, it is deemed to have its last use.⁴ At the time of the proposed redevelopment, the property was deemed to have a residential use under Regulation 153/04.

Where a proponent seeks a building permit to change land to a more sensitive use, it must file an RSC.⁵

The proponent, ARG Devco, sought subdivision approval for detached lots, semi-detached lots, townhouse condominiums and vacant land condominiums.⁶ The proposed development would have continued the residential use of the property, and no RSC would have been required for a building permit under the EPA.⁷

Notwithstanding there was no EPA requirement, the OMB inserted a condition of approval that an RSC be filed for the Property.⁸ The OMB stated:

As residential development is proposed (i.e. a sensitive land use) the Board finds that a Record of Site Condition is an appropriate condition of approval for a brownfield prior to the development.⁹

¹ 2014 CarswellOnt 7683 at para 3 (Ontario Municipal Board) [ARG Devco].

² O Reg 153/04, s 1(3); O Reg 170/03, s 1(1).

³ ARG Devco, *supra* note 1 at para 3.

⁴ O Reg 153/04, s 2.

⁵ *Environmental Protection Act*, RSO 1990, c E.19, s 168.3.1; O Reg 153/04, s 14.

⁶ ARG Devco, *supra* note 1 at para 11.

⁷ O Reg 153/04, s 1(3).

⁸ ARG Devco, *supra* note 1 at para 17.

⁹ *Ibid.*

The OMB cited the Provincial Policy Statement as its authority to include this condition.¹⁰ The Policy Statement does not mention RSCs or discuss where filing an RSC would be appropriate, though it does define “sensitive use” to include residential homes.

The ARG Devco case raises the following question – when should the OMB make environmental conditions that go beyond Ontario’s brownfields legislative requirements?

As ARG Devco continues to work towards filing an RSC for the property, it surely must be asking itself the same thing.

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¹⁰ *Ibid.*