

LawyeredEp75

[00:04] HUSEIN: This is Episode 75 of Lawyered. I'm Husein Panju. And on this week's episode, we're speaking with municipal and land use planning lawyer, Isaac Tang, about housing development and other issues related to the area of planning law. The first step will speak about the concept of inclusionary zoning. With real estate prices on the rise, the City of Toronto has become among the first municipalities to specifically require new developments to include some form of affordable housing. We'll find out what the legal mechanisms look like, and the potential policy implications.

[00:40] Next, we'll discuss the controversial use of Minister's Zoning Orders or MZOs. And some situations in which the provincial government can override local planning law. We will also discuss an interesting Toronto case study in which a proposed heritage designation intersected with some other planning considerations. And in our Ask-me-Anything segment, we'll tackle a bunch of other issues, including municipal incentives, and how to achieve meaningful stakeholder consultation. All that and lots more are coming up in just a bit. This is Lawyered.

[Music]

[01:20] Hey there, welcome to another episode of Lawyered. Thanks for tuning in. I really appreciate it. As you noticed in the introduction, this is our 75th episode, and I got to say it's pretty remarkable that the show has been going for this long. I think traditionally, the gift for the 75th anniversary is a diamond, but in this case, you'll just be getting more podcast episodes, which I think is the millennial equivalent of that. So, thanks to everyone who's been supporting the show, since the beginning, 75 episodes ago, or even if you're a newcomer, we appreciate you all the same.

[02:00] A few housekeeping things since we're doing pretty great so far, we have a couple of spots we want to fill for our roster for this year. So, if you have a subject matter of expertise, particularly a new subject matter that we've not covered on the episode so far, drop me a line, if it's a good fit, we would love to have you on to speak about a new era of law that'll be of interest to our listeners, and even prospective listeners as well. You can find our past episodes in the episode archive on our website, and our contact information is on there as well.

[02:35] Our last episode was a really interesting one, we spoke about the area of divorce law with Steve Benmor, who is one of the leading experts on this area, and also publishes a lot of content on this topic on his own social media channels. To be honest, I didn't know very much about this area before the recording. And I learned a lot about how, particularly in this area, it's certainly not a fun thing to go through a divorce in any aspect no matter where you are in the relationship. But he made a pretty insightful comment about how typically, divorce is not the end of a relationship, but it just changes that. And there are incentives for the parties to play nice with each other during the process, and even afterward.

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[03:26] So, we spoke about some topics in that respect in terms of child support, and some new amendments in terms of changing the winners versus losers dynamic. So, it's a really interesting area. Even if you have no connection to divorce in your own life, it's a pretty interesting look at family relationships and how lawyers are often tasked with dealing with some of the emotional baggage that's attached to those and helping to find some solution-oriented outcomes in that. So, if that's something that's remotely interesting to you, you find that in the episode archive, which is episode number 74.

[04:00] Now, the episode that you're about to hear is about the area of planning law. And if you know me personally, this is an area of law that I worked in a fair amount, during the first couple of years of my career. I worked for the Ministry of Municipal Affairs of Housing, which is a provincial ministry that's charged with this type of Planning and Development Law, amongst other things. I obviously got to work for a few municipalities as well. And I learned that it's a very powerful area of law that looks at so many things in terms of environmental issues and transportation and infrastructure.

[04:43] And other social issues as well because, as you'll hear about and it's maybe obvious to you, the way our communities are organized plays a lot of a significant aspect in terms of how we live our lives as individuals, where we go to school, where we go to work, how we interact with each other, green space, those sorts of things. So, it's a really underrated area of policy and law. And I'm really grateful that we have one of the foremost experts in this area who was especially kind to me when I was starting out in my career. I hope you enjoy this episode. And without further ado, here's our interview with our guest, Isaac Tang.

[05:28] HUSEIN: And joining us on today's show, we're very happy to have Isaac Tang. Isaac is a partner at the Toronto office of Borden Ladner Gervais. And he practices exclusively in the areas of administrative law and civil litigation. He represents municipalities, public agencies, and private landowners on a broad range of land-related litigation matters including land-use planning appeals, expropriations, and ground lease arbitrations. He provides strategic planning and municipal law advice on issues including transit-oriented development, and natural heritage and regularly defends his client's interests before the Ontario Land Tribunal and in court.

[06:05] Isaac has always successfully secured or opposed complex planning approvals for a range of public and private sector clients, including hospitals, transit authorities, school boards, pension funds, developers, businesses, and individual homeowners. He's also a former executive member of the Ontario Bar Associations (Municipal Law Section) and a guest lecturer for the Community Planning course at the UT Faculty of Law. And he is also a frequent contributor to municipal planning law matters and is recognized in the 2021 edition of the Best Lawyers in Canada in the categories of municipal law and expropriation law. So, Isaac, thanks for joining us on the show today.

[06:41] ISAAC: Thanks, Husein, for having me. It's a real pleasure.

[06:43] HUSEIN: Yeah. And for me, as well. As some of our listeners will know, I actually started out my career in the Municipal planning law space. And I recall vividly that you were

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one of the lawyers who I reached out to early on, you were very helpful in terms of mentorship and networking. And it's great to see that you're still practicing in the same area that you were back then.

[07:05] ISAAC: I think it's fantastic. And it's one of those things where going through law school, I never thought about being a municipal planning lawyer at all, and I kind of fell into it and fell in love with the area. So, it's been a real journey and I'm happy and excited to talk about some of the changes that are still ongoing in the space. And happy to talk to your listeners about that as well.

[07:28] HUSEIN: Yeah, absolutely. Now, housing affordability is arguably the biggest challenge facing residents across the country right now. And the city of Toronto recently introduced a new planning instrument to address this exact problem. And this policy is known as Inclusionary Zoning and would mandate the inclusion of affordable rental and ownership housing. Now, we're still in the early days of this policy. And with Toronto being the first Ontario city to test this out, many lawyers are eagerly watching to see how this pans out.

[07:58] So, I know that there are a lot of stories and figures in the news right now about housing affordability across the GTA and across Canada. And I know also that the city of Toronto had induced this zoning framework, Inclusionary Zoning in late 2021 to address this. So, before going to this specific, could you just walk us through what Inclusionary Zoning is and how it works?

[08:20] ISAAC: Sure. So, Inclusionary Zoning is a land use planning tool that allows municipalities to require new residential development to include affordable housing, thereby creating mixed-income housing. If development is subjected to inclusionary zoning, a percentage of residential units within that development needs to be "affordable". And the definition of affordability is dictated by what the municipality considers affordable, that's actually would be located in the official plan policies themselves.

[09:04] Before Inclusionary Zoning could be implemented, I mentioned that an official plan amendment needs to be adopted and approved that would include the parameters for how Inclusionary Zoning is to be utilized. And then the municipality also has to pass a zoning bylaw indicating the more details included in terms of what types of developments would be subject to Inclusionary Zoning. This tool is unique because it's also limited, a municipality can require new development to provide for affordable housing, unless it's within what's called a protected major transit station area, areas that are typically within 500 to 800 meters from a transit station, and so this could be a subway station this could be a boat station, this could be a major bus stop. And there are also no appeals to these Inclusionary Zoning policies and the Zoning Bylaw itself.

[10:08] HUSEIN: Okay. So, as you mentioned, Toronto is the first municipality to have introduced this in its zoning framework. I know it's a very complicated policy and framework. What are some of the important aspects that people should know about?

[10:24] ISAAC: Speaking in generalities, they will apply to complete planning applications filed on or after September 18, 2022. And so there's a bit of a transitional period when developments that are still in the pipeline won't be subject to Inclusionary Zoning. And the purpose of what the city is trying to do is to reach its goal of approving 40,000 affordable rental homes and 4000 new affordable homes by 2030. And so, the inclusionary zoning regime that the city has introduced, is intended to help the city reach this goal.

[11:00] Well, what's interesting first would be how the city comes to its definition of affordability. That's a challenging concept. And as part of introducing this Inclusionary Zoning regime, the city also adopted new definitions for affordability, including affordable rental and affordable housing. And so the concept of affordable housing is something that has been missing for some time. And so there are social housing or subsidized housing that most municipalities have. And there's market housing, which is, can you afford rent, and can you buy a home?

[11:50] The affordable housing concept is something that is certainly new in Toronto. And it's to address that gap where you can't quite meet the market housing requirement, but you don't qualify for social housing. And so you need a little bit of help to allow you to live in a place that would serve your interests in the longer term. And so you are required to move because of housing standards. But you can't afford what the market has today. And so the question is, how do we get more people to the place where you're living in an environment that allows you to commute to work, to do your job, but isn't taking more than half your paycheck, for example?

[12:39] And so, the city has a range in which it considers something affordable. I think the range is between 30% to 60, depending on the income that a household brings. And you can imagine that also depends on whether are you renting a studio unit as opposed to a one or two or three-bedroom unit. So, that percentage shifts depending on the type of unit as well.

[13:05] HUSEIN: As someone who is practicing in this area, how do you think Inclusionary Zoning is going to impact lawyers who are practicing whether they're representing developers, or prospective developers who are contemplating their own project in that city?

[13:20] ISAAC: Inclusionary Zoning is here, and I think it's here to stay. It's in the legislation. It's, in fact, used quite often in the United States. And I believe that BC has tried to include Inclusionary Zoning in the past with some success, and some lessons learned. The whole concept of affordability and affordable housing is going to be an issue that developers and municipalities need to address in the long term.

[13:46] And so as a developer, you need to understand what does that mean to your development coming forward? Even though Inclusionary Zoning could be imposed, once you're above a 10-unit threshold under the Planning Act, Toronto said, that might be a little bit too aggressive, we're going to set it at you have to be at 100 units or more, or over 1000 square meters. So, they've regulated, the projects where they think developers can afford to develop affordable housing units, but at the same time, they don't want to stop the development of triplexes, fourplexes, and smaller low-rise buildings that are part of the

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missing middle. And so that's the City of Toronto's control, then developers should pay attention to what each and every municipality that is looking to impose Inclusionary Zoning would require in their respective areas.

[14:50] What I would say to lawyers is unique stay on top of it. Inclusionary Zoning would I expect, even though the City of Toronto is going through it right now, will be different for each and every municipality. So, Mississauga, Brampton, London, Markham, a lot of these larger municipalities aren't going through the processes or have indicated an intention to go through this process. So, it's going to be another layer of considerations that planning lawyers will need to understand.

[15:21] HUSEIN: This whole IZ framework, is to address housing affordability. Knowing what you do about this framework, do you think that this tool will be effective in addressing this important issue?

[15:35] ISAAC: It will have an impact. Is it going to move the needle in affordability? 100%, it will, it will move the needle. But the question is, how much will the needle be moved? IZ is a factor to be considered. But it's not a panacea for solving the issue of affordable housing. IZ in itself won't make more affordable housing without an impact on housing affordability in general. Once you meet the threshold for IZ, developers will need to provide a certain percentage of affordable housing units or a certain percentage of affordable rental units in development.

[16:19] Well, what does that mean for the other units that aren't "affordable"? I expect that these costs will be passed down to the other unit holders and the question will be, can the market bear the brunt of this IZ regime? And I think it's a question that still remains to be answered, and municipalities are looking at this very carefully.

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[16:53] HUSEIN: For numerous decades, the Ontario planning approval process has allowed the Provincial government to implement its own zoning provisions within local municipalities. And while this has historically been used quite sparingly, there's been a dramatic increase in Ministry Zoning Orders or typically called MZOs since the year 2020. And while this usage has often been attributed to emergency responses, many stakeholders in the development community are questioning now whether the future will include more MZOs and/or more predictability. So, Isaac, just kind of level set, can you describe what an MZO is and how this differs from the conventional planning approval process?

[17:35] ISAAC: Certainly. And so typically, it's the local municipality that passes zoning bylaws, that dictate when certain uses can be permitted, and where certain uses are prohibited. It is important for the municipality to dictate where uses are located throughout the municipality to ensure that there's compatibility, to ensure that there are efficiencies in where it puts its transit infrastructure, it put its water and wastewater infrastructure. And what controls essentially a building coming up or not?

[18:07] The Planning Act essentially grants the minister complete authority to regulate land use step into the shoes of a local municipality that typically has jurisdiction in the area, and state these are the uses for the lands that this MZO applies to. So, it's a very unusual and powerful remedy that the minister has to issue Ministry Zoning Orders.

[18:30] HUSEIN: So, when the municipality wants to pass a zoning bylaw, there's a whole bunch of steps you need to check off in terms of having public meetings and those sorts of things. But for MZO's, I gather, there are not as many of these prescribed requirements is that right?

[18:46] ISAAC: That's correct. They need to go through a public process, including notice given to the public, a public meeting, and an opportunity for the public to make submissions. Through an MZO, they don't actually need to do that. They could if they wish to. But there's no requirement under the Planning Act for the Ministry to give advance notice. And another difference would be there's no appeal process for the MZO, the minister's word is full and final, unless it's amended or revoked through another process.

[19:18] HUSEIN: So, many commentators have noticed that there's been a significant increase of MZO's in the last year. Can you tell us a little bit more about what's been going on in that area?

[19:29] ISAAC: Well, prior to 2020, or right about the time of the pandemic, MZO's were issued approximately one or two times a year, sometimes none. And in the news lately, just in terms of numbers, and I've tried to count them, in the last three years from 2020, 2021, and 2022, it's roughly about 30 MZO's a year. So, an increase of 30 fold from the use of MZO's in the past. Commentators have also noted that since the pandemic more MZO's have been issued in the last few years than all the MZO's issued in the past, prior to the pandemic.

[20:10] HUSEIN: Have you noticed any trends in terms of the specifics about what these MZO's have been for or where they're located or those sorts of things?

[20:18] ISAAC: The MZO's that have been universally accepted and have been seen as a positive thing would be MZO's used to facilitate the creation of long-term care homes during the pandemic, which was important. MZO's have been used to help local businesses. A good example would be an MZO issued in the city of Toronto that allowed restaurants to set up cafes and shops within essentially the city's Boulevard because through the pandemic city was encouraging physical distancing requirements. At the same time, we all recognized how challenging the restaurant industry was facing.

[21:00] And so, instead of having the city go through the public process of zoning each and every site and permitting sidewalks to be used for patios, for each and every site, the city essentially issued a blanket MZO, saying no, it was entitled Cafe TO would be live and it would allow restaurants to operate in an area that it wasn't allowed to operate prior to MZO being issued. So, that was a high point, it allowed the city to respond quickly to a crisis. And the minister issued that in short order after the city requested it.

[21:40] HUSEIN: I know that in light of recent events, there have been some new proposed guidelines related to these MZO tools that have been introduced. Can you tell us a little bit about what's being contemplated in this respect?

[21:54] ISAAC: Well, the hot topic legislation and planning right now, if we can call it that is Bill 109. It's the More Home for Everyone Act 2022. And through this Bill, the province introduced a mechanism for a municipality to essentially ask the province to make an order to regulate zoning similar to an MZO. So, unlike an MZO where it's top-down, the Minister states, this is where the land should be regulated. This new process allows a municipality to ask the Province to say, you should go ahead and take our powers and issue a zoning order based on what we're recommending.

[22:37] It also requires a consultation process, which persons that the municipality considers appropriate, and also requires the municipality to pass a resolution, identifying the lens through which this order should apply to. So, it's called a—it doesn't have a perfect name yet, but it's called the Community Infrastructure and Housing Accelerator Order. That's the way that the guideline has described it as.

[23:08] HUSEIN: There's room for improved branding, in terms of the name.

[23:12] ISAAC: That's a mouthful. And so for the purposes of this podcast, I'll just refer to it as a CHIA order.

[23:23] HUSEIN: I gathered that this allows for a bit more dialogue between the Province and Municipalities. Is that part of the idea?

[23:29] ISAAC: I think reading through the guidelines that were recently introduced by the Province, that's the intent. And in fact, that's built into the legislation itself. I mentioned how for the MZO, public notice and consultation were not something that was really built into those provisions of the Planning Act. Well, these are specifically built into the provisions for this CHIA order. It also allows the municipality to request the province to impose conditions on the landowner similar to an MZO. Providing some more certainty, I would say as to how this order would be utilized.

[24:11] HUSEIN: If these guidelines are formalized or properly introduced, how do you explain the impact of the work of planning lawyers like yourself?

[24:22] ISAAC: I think the first thing would be we received fewer requests for MZOs. Because there's a separate process in which... I'm going to call the CHIA order, an MZO-like process for landowners to request a municipality to say, if the municipality is on-site with this development and the landowner is on-site with its development, there's a real opportunity for these developments to be fast-tracked through a CHIA order. It would take the heavy lifting away from the Minister in trying to interpret local regulations, and local policy, and essentially hand up to the Minister, a zoning order on a silver platter, stating, look, we're signed off on this. If you want this project to go ahead, please approve it.

[25:10] The second thing that is very interesting from my perspective is that it sets out some more guidelines and the four corners of what a CHIA order is envisioned to encompass. And

so it's still in fairly draft form, but it does identify that there's an interest in the Minister for priority developments. So, they've identified lands, buildings, and structures that provide public services for matters such as health, long-term care, education, recreation, social, and cultural activities, security, and safety. Housing is identified as a priority development, including affordable housing, and buildings that would facilitate employment and economic development.

So, it's still fairly broad. But it allows each municipality to say, within our municipality, this is what's important to me, this is what is a priority development. And if you work with us within our vision, landowners can really fast track to development and the municipality would be on board with it.

[26:11] HUSEIN: There'll be some parameters in which when the CHIA orders will be appropriate, right? So, municipalities can just request them from the government and there'll be rubber-stamped without further review.

[26:22] ISAAC: I think it's fair to state that before a CHIA order could be requested, the municipality would have to – as it typically would – provide some planning justification and public interest assessment as to why this process is appropriate, as opposed to the conventional zoning process. Because the conventional zoning process has built-in requirements for public notice, for public consultation, for an appeal process. Whereas through this other order, certain steps are not necessarily removed, but I would say that they are revised to fit what the municipality considers appropriate. And so, I think we're going to see municipalities use these orders carefully, but also in a way that would provide greater transparency and consistency as compared to the MZOs.

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[27:29] HUSEIN: Most Canadian municipalities have the ability to protect certain properties as heritage designations, should they be places of cultural significance. And while this tool has clear benefits on a public scale, the use of these destinations may create tensions, especially with increased development and stakeholder pressures. And the recent Ontario case describes the practical effect of what can happen when the two interests intersect. So, as we are going to be talking about a case in a moment, before we get to that, just give us a high-level description of how these order protections work in the Municipal context.

[28:06] ISAAC: The first piece is the Ontario Heritage Act. It's the paramount legislation for regulating how municipalities can identify certain properties or even certain areas that are subject to protection, before there's an alteration, demolition, or change to these properties. And a good example to say would be Victorian homes, buildings that are built in a certain era or were constructed by a famous architect in the municipality and you can imagine that changes from place to place. These would be typically reviewed and potentially designated by a municipality as being worthy of protection.

[29:00] And before municipality could actually go through this process and designate a property as being protected, it also has to meet certain standards in a regulation set up with

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the province out of the Planning Act to determine whether a property meets the criteria or warrant protection through whether it meets a cultural heritage value or interest.

[29:24] HUSEIN: That dovetails right into the case, we're going to be speaking about. The case is the Ontario Superior Court of Justice case. The case name is called Toronto and 445 Adelaide Street West. This citation is 2022 ONSCJ 1471. So, what were the facts that led up to this case getting up to court?

[29:46] ISAAC: It's a case of Infill Development in the city of Toronto. The developer had gone through a fairly lengthy process and discussions with the City of Toronto to demolish a number of homes along Adelaide Street between Bathurst and Spadina for those familiar with the Toronto area and then entered the entertainment district, the fashion district of the city of Toronto. And this Infill Development is quite common within the area. The developer wanted to build a 14-story hotel. The city was not pleased with the development proposal. And the developer had appealed the city's lack of decision on the planning approvals to the Ontario Land Tribunal.

[30:37] But what is interesting about this case is that before the Ontario Land Tribunal, dealt with the merits of this hotel development, the city had, in fact, designated the property as being worthy of protection under the Ontario Heritage Act, specifically, and also the city was undergoing through a process upon which the district in which these properties fell into, was also part of a heritage conservation district, and that was subject to appeal before the Ontario Land Tribunal as well.

[31:09] HUSEIN: Right. So, you have two things going on, or at least two things going on. One is the heritage issue and the planning issues, becoming part of one dispute. Is that right?

[31:18] ISAAC: It started that way. And it's interesting because it didn't end that way. But the LPAT at that time decided to proceed with the hearing on the merits of a development application, without needing to go through the Ontario Heritage Act process. And the hearing proceeded purely on whether the Planning Act tests were met to permit the development of the 14-story building.

[31:51] HUSEIN: So, how did the LPAT find that?

[31:53] ISAAC: So, after a fairly lengthy hearing, I think it was a 12-day hearing, the tribunal decided that there were merits, the planning merits for the 14-story hotel proposal, and approved the planning instruments, including the zoning that was needed for the hotel to be constructed. And what happened after that was the city appealed the LPAT's decision to Divisional Court. And this is in fact a decision that is very interesting and quite recent, that I think provides planning lawyers further guidance as to some of the challenges that come to play when you're dealing with a Heritage property, and redevelopment of that property.

[32:38] HUSEIN: So, what are some of the high points that you think lawyers should be cluing onto?

[32:41] ISAAC: The city's case, as I read, the decision was never purely on the merits of should this development application proceed, but rather that there was a real concern the city had, that the LPAT, by ruling on the development application, would undermine the Ontario Heritage Act process of a city designating these properties as worthy of protection. So, I think that's what really led to this combination of the battle between the Planning Act and the Ontario Heritage Act before the Divisional Court.

[33:18] And because the developer did not avail himself of either appealing the decision of the designation to the LPAT and not allowing that process to complete or even not allowing that process to get before the Tribunal, the jurisdiction of the tribunal in dealing with those matters was limited. And that's essentially what the Divisional Court found, which is they didn't wade into the merits of the decision. But it was very careful in indicating that look, the tribunal's jurisdiction on this appeal was substantially circumscribed because the only matter that it is entitled to determine were matters under the Planning Act. And by deciding the matters of the Planning Act in the way it did not consider the impact of that decision on matters that still needed to be carried out through appeals and potential appeals of matters that were to be before the tribunal through the Ontario Heritage Act.

[34:29] I think the first lesson for planning lawyers would be going quick and fast, which may not be the most appropriate approach when developing a property. And I say this with caution only because, as a third party looking at this case, it seemed like the developers had a fairly comprehensive and compelling case for why these properties should be redeveloped. But instead of going through all of the process allowing the LPAT to consider whether these buildings should be demolished, as it was required to do when properties are designated. under Part Four as being worthy of protection, the developer decided to say, no, LPAT, you've got the jurisdiction to make a decision, notwithstanding that there was something to be decided later.

[35:25] And I think that was a risk that was taken, likely because the developer thought they had a good case. And I think they were right, to the extent that they had a decent case on the merits. But the challenge here is that they had forgotten or had not considered, at least in the Divisional Court's opinion, the paramountcy of the Ontario Heritage Act once a property has been designated for protection.

[35:52] HUSEIN: Because you're taking a risk, then if you don't challenge all the heritage aspects and only focus on the planning issues, right?

[35:57] ISAAC: Yes, that's correct. And the Divisional Court was very cautious in suggesting that the LPAT had the jurisdiction to consider those matters. In fact, it stated that the LPAT had incorrectly made that determination and by making the decision did it, it failed to consider the implications of the Ontario Heritage Act protections on its ruling.

[36:29] HUSEIN: And then just one last question. So, in light of this case, just in general, are there any other considerations that planning lawyers have to consider when they're dealing with an issue that has heritage elements either directly or indirectly?

[36:42] ISAAC: I think another lesson learned would be landowners need to be involved in each and every step of the process. And in this case, it seemed like the landowner did not appeal the heritage designation. And that was something that may have led to come to the decision it did, which is, that we didn't appeal the heritage designation. We've applied to demolish the buildings, we're going to deal with it anyways.

So, why don't we just go ahead and seek the planning approval now, because we've got a good case there? But we don't have a good explanation for why we didn't appeal the heritage designation. So, that might have been -- hindsight 2020 is always something where, if an opportunity was there to appeal, potentially appeal it. It would have taken more time, but at least that would have removed that jurisdictional concern that the Divisional Court had was the tribunal's decision-making.

[Music]

[37:47] HUSEIN: And before we wrap up our episode, we enter the Ask-me-Anything segment with, Isaac Tang. As listeners of our show will know, we do a call out for questions that members of our Patron community want to hear answered on the show. We got a number of questions for this episode. And if you want to find out more about how you can submit your own questions for new episodes, you can check out our crowdfunding website, which is www.lawyeredpodcast.com/patron. Okay, so Isaac, we got a lot of interesting questions for today's episode. I think planning issues have been in the news, especially in the last year or so partly for reasons that we've already discussed.

[38:28] The first question is this. In a lot of potential development sites, there's a tension between getting a project underway sooner, because if it happens sooner, there's a shorter period where you're burning cash, and sitting on the land and developing later because the planning context is likely skews higher density generally, new residents are likely to help and prices likely to continue to rise. So, the question is, what could cities and/or the province do to help incentivize earlier movers, especially in neighborhoods with a lot of opportunities for development?

[39:04] ISAAC: Once a developer obtains the permissions to construct, they've gotten their official plan amendment zoning, they've gotten their site plan approvals. The next question is usually when can I build? They want to pull that building permit as soon as possible. Because most developers are operating on a leveraged model. They're borrowing money to build this development. And it costs them money to not develop. So, once they have the planning approvals, developers typically would strike the ground right away.

[39:41] But the second part is—and maybe this is the part that your listener was referring to, which is, what can municipalities and public authorities do to encourage development in neighborhoods where development is appropriate? And so a good example would be near major transit station areas, municipalities are still undergoing processes to update the As of Right zoning, to update As of Right planning permissions for sites, because they're required

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to plan that. But also, because it serves as incentivizing developers to come in, assemble lands, and make greater use of developing an area that is suitable.

[40:30] Beyond just simply updating the As of Right planning permissions, municipalities could think creatively. For example, if you're the first development that is intended to revitalize an area, the municipality has the discretion to request less parkland than is typical. They could decide to waive certain fees. As long as this is providing a bonus under the municipality to the landowner. There are numerous ways that municipalities can incentivize early development, and there's still a great opportunity for this to occur in the future.

[41:13] HUSEIN: Excellent. Okay. The next question that's been submitted is, what strategies if any, can development lawyers employ to create buy-in with local residents and stakeholders? And sometimes a lot of conversations about some people in the communities want this development, some people want no development.

[41:32] ISAAC: As a lawyer, our role in this development process usually comes late in the game. And so one of the things that I would advise my clients is, that early engagement is always appropriate. No one likes a surprise. And no one likes a surprise when it's there in their backyard, or is in their neighborhood. And so engaging these neighborhoods early, typically, is the better response. I know that in certain circumstances, clients may say, "Well, what if we just fly this development through, and does it occur?" It doesn't under the Planning Act, because you're required to provide notice.

[42:10] I think the right thing to do, and the thing that has worked successfully is engaging these neighborhoods early on, so that they understand what's being proposed. So, if there are concerns, these can be identified early on. If it turns out that you can address them great, if it turns out you can't address them at least that is identified. And you understand what the case you have to make to the Tribunal is, and you could have your experts lined up and your client understands the risks they're taking, by not revising a development for something that the neighborhood wants.

[42:41] HUSEIN: There is something to be said for just enhancing dialogue with your neighbors, so that down the line, there are fewer issues. And perhaps the residents or other neighbors have suggestions that can help improve the project. But if there's no dialogue, it's hard to improve what you don't know.

[43:01] ISAAC: Exactly, dialogue is extremely important. And frankly, sometimes the dialogue shouldn't be with the lawyer. Lawyers have to recognize, that maybe we're the wrong mouthpiece. Maybe it's more important for the planner to engage them. Typically, it would be a planner. And maybe it's city staff who have bought into certain elements of the proposal, but not other elements. And having them talk to the right person. We have to give some credibility, also to people who have lived in a neighborhood, they probably know the area a lot better than we do.

And they might have identified something that would be compelling for a tribunal member to hear about, and that really engaged with what you've mentioned earlier, Husein is

helpful. I think that a lot of neighbors and residents are respectful, and they appreciate the opportunity to have their voices heard.

[43:54] HUSEIN: And so, the next question that we have is the reason why... and this relates to something we said earlier. So, the reason why MZOs are prompting new questions about intergovernmental relationships. What do you think the role of the province should be independent of what the documents say that the role is?

[44:10] ISAAC: Understood. So, the province should regulate land use planning, in the role that it is typically intended to regulate, which is to identify matters of provincial interest and facilitate the development of such interests using the tools before it. They also need to trust the municipalities to regulate their lands in the means that they see fit. I think that in the last couple of years, you've seen the rise of MZOs, and the province is stepping in and saying this is what I think is important.

[44:50] I think that the municipalities recognize that there needs to be a little bit more dialogue, between the municipality and the Province and understand these are certain standards that the municipality wants to meet here, and there are good reasons for that and then the province should take that into consideration before regulating the way it does with its orders. And so that dialogue is there, it's increasing. But at the same time, the municipalities need to recognize that, where there is a provincial interest, the province will involve itself in the planning process, as we've seen in the last couple of years.

[45:33] HUSEIN: Yeah, do you foresee it changing any differently in the future? I know the pandemic is not over. But it's not as intense as it was in 2020, which is when these MZOs were very active. So, do you see this changing due to pandemics or other reasons?

[45:53] ISAAC: And it's funny because this recording is right after the provincial election had concluded. So, I would say that I would expect that provincial orders, whether they're MZOs, or CHIA orders, will continue to be something that municipalities and landowners will see and have to address going forward. But I also think that the dialogue will improve. I think the last couple of years and the attention from the media has uncovered something that needs to be addressed at both legislative and regulatory levels. And the changes proposed by Bill 109, at least some of them, I'm not going to say all of them, at least some of them, I think are intended to improve that dialogue.

[46:48] HUSEIN: Yeah. And as you mentioned, a lot of this is politically driven, which came with elections, and different Ministers come in as well. So, yeah, it is exciting times, to be sure. The next question that we have is, you have been practicing law for just over a decade or so, the question is, have you found that the municipal or planning law areas have changed since you began practicing? And if so how?

[47:15] ISAAC: Yeah, it's a great question, especially for those who are looking to join the field or have an interest in the area. I would say that there are even more and more layers of planning policy than when I first started. And even when I'm talking to the people that I've worked with for many years, and they've been practicing for many decades, they would say that, when taking a look at planning law today, it is far more complex and nuanced than

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it was a decade ago. And so if we just take a look at the types of provincial plans, and the types of updates the provincial plans that have occurred in the last couple of years, they have been substantial.

[47:59] And even the planning horizons – I’m using planning language here – have changed dramatically from looking at a 20-year planning horizon to a 30-year planning horizon. And even within Municipalities, there are different layers of policies. And so we’re seeing more common, numerous secondary plans, and tertiary plans, which are even a more detailed interpretation of the policy. We’ve seen an increase in both provincial and municipal guidelines. So, there’s law, there’s policy, and now there’s this different concept of guidelines that need to be met. So, I would say that, certainly Planning Law has become more and more complex. I think it’s something that has been referred to as – I’m looking at my stack of books here – a blob, as referred to by Joe Barrett. This blob has been getting larger and larger. And it’s becoming more of a challenge.

[48:56] HUSEIN: I don’t know if you know, but based on what you’ve seen, what do you attribute this blob of vacation to? Has it been a change in government? Has it been a change in policy? It’s just natural. What do you think?

[49:14] ISAAC: Changing policy and changing government certainly is something that has led to this. So, we’ve seen a change in the Provincial government from Conservative to Liberal to Conservative again. And that has led to it. But more importantly, there are just more people living in urban centers, more and more people are living in cities. Municipalities are understanding that infrastructure has been running at a deficit for a large number of years, if not decades. And we’re struggling with that. Both municipalities, developers, and landowners are struggling with how do we place more people in areas while providing all the necessary services that are required to create complete communities.

[50:00] At the end of the day, that’s the nut that needs to be cracked. And some municipalities are suggesting, will provide more and more guidelines. And I think that’s helpful in certain cases. But in other cases, it leads to a slowdown in construction, because sometimes these guidelines don’t apply across the municipality and they’re drafted as such. So, we just see more land use conflicts in the last couple of years. And the change in policy, and the additional layers in policy, are partially in response to that.

[50:37] HUSEIN: So, I think people are becoming a bit more creative in terms of how they use the land that they’re on. And how can address things like housing, like we’re talking about earlier as well?

[50:49] ISAAC: Exactly, the hot button topic right now is always transit-oriented development and development near transit. It’s a new term used here. But I mean, if you take a look at our companion nations and other developed nations and nations that have gone through this process, it’s not unusual, a transit-oriented development is something that has been planned and needs to be planned. And I think we’re just in the growing pains of that process, while other areas may have gone through this 10, 20, or 30 years ago, we’re experiencing it now. And what you see in these changes in policy and law is just in response

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to that need to ensure that people are able to move from work, to play to home efficiently. And driving isn't always going to be the solution unless we find some way to have flying vehicles just like *Back to the Future* or something.

[51:51] HUSEIN: Yeah. That'll be our next episode.

[51:53] ISAAC: Exactly.

[51:55] HUSEIN: So, Isaac, thanks so much for taking the time to chat with us about these important planning issues, as we were talking about this area of law that is constantly changing. And yeah, with affordable housing and MZOs being very hot in the news, right now, it's helpful to get a legal perspective on what these actually mean, and how things will be changing in the future as well. And so, despite the "blobfication", as you were talking about, you provided some help and clarify what's changing here. So, thanks very much for your time, we look forward to staying in touch in the future as well.

[52:28] ISAAC: Thanks for having me. Take care.

[Music]

[52:37] HUSEIN: And that's all we got for our 75th episode of Lawyered. Thanks for listening. Our guest for today's episode was Isaac Tang, you can learn more about him and there's busy practice at his firm's website, which is www.blg.com. And more about our show and links to all the cases and issues that we spoke about today, you can find those on our website, which is www.lawyeredpodcast.com.

[53:02] On our next episode, we're going to be releasing one of our bonus interviews, where our guests will be Paul Karvalis. In addition to being a lawyer himself, Paul has been conducting some in-depth research to uncover the secrets of happiness in the legal profession. It's quite fascinating. And he'll be speaking to us about his findings and some practical applications of those as well. So, it's really been an insightful discussion, and looking forward to sharing that with you once it's out.

[53:27] And we want to help to improve our show and get some neat and affordable legal awards in exchange would really appreciate it if you can check out our crowdfunding campaign, which is located at www.lawyeredpodcast.com/patron. There's a lot more information there about what that means and what the funds go towards. I want to give a shout-out to a few of our patrons including Flynn Paquin, Hasan Panju, Jeff Lang-Weir, and Keren Gottfried. Thanks so much for supporting the show. We really appreciate it. And to make sure that you never miss another episode of our show, do us a favor and subscribe to the podcast for free on iTunes or wherever you get your podcasts. You can also follow us on LinkedIn, Facebook, Twitter, and our Twitter handle is @lawyeredpodcasts.

[54:14] As always, our sound editing work is managed by Solomon Krause-Imlach, theme is by Ben Swirsky, and website maintenance by Steve Demelo. And, of course, please be advised that this show is meant to be helpful and informative but it is not intended to be legal advice. However, if you do want legal advice, please reach out to a lawyer directly to

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help you with your particular situation. And with that, we will see you in two weeks, and until then, keep it legal.