

Land Use, Zoning, Tax Issues Related to Urban Food Production

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Introduction

Over the past six months I have been working on feasibility studies for two urban farms in Toronto – one proposed for a TDSB secondary school property, and one on the property of a private developer that will be managed by a non-profit organization. These are both envisioned as diverse market garden style farms, under six acres, both with multiple partners and training components.

Researching the feasibility of these projects I came across a number of interrelated zoning, land use, taxation and policy issues that will need to be addressed to move these and other such initiatives forward. The issues outlined below are particularly complex as they are inter-jurisdictional (Municipal and Provincial government policy implicated) and interdepartmental.

Zoning

Zoning of both tracts of land will have to be changed in order to sell food produced from the urban farms. The private property is zoned multiuse residential and the TDSB property has not been identified, so I'm not sure what the zoning designation is. It is highly unlikely that it will be zoned agricultural, although possible. Zoning will need to be changed to agricultural to allow for sale of food, and to take advantage of tax savings available to farmers.

Options for changing zoning designations

Temporary use bylaws zone land or buildings for specific uses for a maximum period of three years at a time, with extensions possible (OMMAH, 2008). Temporary use bylaws are permitted under the Toronto Official Plan. A temporary use bylaw, is comprehensive, city-driven process, and includes public consultation. They can take up to one year to complete and are regarded as suitable for tailoring zoning to the specific land use needs of the property in question. A *minor variance application* is brought forward to a municipal Committee of Adjustment, can take up to three months to complete, is regarded as general and non-land use specific. Duration can be specified/requested within the application. These are two options available for changing zoning designations.

Once a site is identified there should be a process through which urban growers can change zoning designations. City policy should expedite this process for urban grower in order to facilitate urban food production by assigning a planner to work with urban growers on planning related issues.

Land use and taxation

Reduced taxation is an incentive for agricultural production in rural areas. Landowners are taxed at a rate relative to the lands' zoning. In order to get a reduced property tax rate, the property must be taxed at agricultural rates - Farm Property Class Tax Rate (FPCTR) offered through OMAFRA. In order to be eligible for the Farm Property Class Tax Rate (FPCTR):

- 1) Property must be assessed as farmland, through the Municipal Property Assessment Corporation (MPAC).

- 2) Grower must have a valid Farm Business Registration number.

What makes this issue complicated for urban food production purposes are the multiple authorities and jurisdictions implicated. While the City is responsible for collecting property taxes, property assessments are not the City's responsibility. MPAC is responsible for determining the property classification. In other words, zoning is more or less strictly a City issue as it pertains to land use. Farm designation as it pertains to property taxes is a MPAC and OMAFRA issue even though it is the City that collects and uses the property taxes.

This relationship is highlighted by an example offered by MPAC. It is possible for a property to be designated as a "farm" BUT still pay residential property tax rates because the farm isn't listed by OMAFRA under its FPCTR. MPAC and OMAFRA do not concern themselves with zoning at all. Of course, the City must be consulted so as to assure urban farming is permissible given the City's zoning of the particular site. In conclusion, taxation and zoning must be address separately.

However, to make food production viable, it will be important for the farm sites to get the appropriate designations. Residential property tax rates are reduced by 25%, encouraging interim land use partnerships between landowners and growers.

Some questions need to be addressed by the City in their urban food production policy: Will/can MPAC re-assess land as farmland? Does the tract's zoning need to be changed to 'agricultural' in order to pay the agricultural property taxes? How does this translate in the urban context? What are the property tax implications of urban agricultural activity? Can farmers and property owners take advantage of agricultural taxation rates within the City? How can we facilitate this process to encourage urban food production? What are the issues related to public and private property?

This question of taxation and zoning relates to creating incentives to grow food in urban areas.

Definition of farm

At existing farmers markets Public Health determines who is/is not a farmer. In order to be a "farmers' market" and exempt from Public Health special event regulations, 51% of a markets' vendors must be farmers. How does Public Health define "farmer"? Our research indicates that "farmer" requires a rural address, and/or OMAFRA status. Again, will OMAFRA issue farm status to urban growers? This issue needs clarification and requires the City and province to work together to resolve these issues.

Composting

Most provincial governments regard composting sites to be waste management facilities (under the Environmental Protection Act) that require formal approvals or licenses (there are some exemptions such as leaf and yard facilities). EPA approval is required unless you are composting waste that is generated on-site. The regulations stipulat that composting areas should be separated from other land use zones by buffer zones (100 meters from nearest property lines and water well or water body). The rigorous approval

process is not suited to the mid-scale nature of composting as an urban agricultural activity.

Municipal governments in Ontario operate under a need to know by-law. They are concerned with distance to neighbours, local soil conditions and potential impacts on local water and groundwater.

The City should work with the Province to develop guidelines that are suitable for urban agricultural purposes. High quality compost is essential to all scales of urban food production – from balcony and backyard gardening to larger growing tracts. Once these guidelines are established, the City should administer a simple approval process. Because high quality compost is so essential to urban food production, the City should undertake a pilot to divert suitable food waste materials, produce high quality compost and make it available to urban growers at community garden sites.

Private gain from public land

What are the regulations prohibiting private gain from public lands. How can these be waived for the purposes of urban food production?

Final recommendations

1. One City planner should be designated to assist urban farmers with the process of changing zoning designations, and working cross-jurisdictionally on taxation and land use issues.
2. The City should develop mid-scale composting guidelines and administer an approval process to facilitate composting at urban farming sites. This should be done in consultation with the Province, with the goal of enabling urban growers to bypass the EPA approval process.