

Noise and other nuisances are significant factors when the demand for housing means situating new residential developments closer to industries and retailers that rely on around-the-clock operations and delivery schedules. *Photo: Adobe Stock*



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# Noise and other nuisance

## Considerations for housing developments near existing industry

by Justin McLarty and Jesse White

As American journalist and essayist H. L. Mencken noted, more than 100 years ago, “There is always a well-known solution to every human problem – neat, plausible, and wrong.”

There is no simple and correct solution to the housing crisis. There are too many factors contributing to the growing pressures on the already strained housing supply for anything “simple”: construction costs and development fees; inflation and interest rates; skilled labour availability; aging and lagging infrastructure; etc.

Commendably, numerous actors from all orders of government and the

private sector have been grappling with these issues. Progress is being made.

The solutions proposed so far may not be “wrong,” but perhaps “incomplete.” Continued focus on housing is crucial to long-term sustainability, and all stakeholders need to work together to arrive at an appropriate solution.

There is a recurring land use compatibility issue facing new development in historically non-residential areas. That is the issue of noise and other nuisances, which becomes a significant factor when the demand for housing and need for density means

situating new sensitive residential developments ever closer to industries and retailers that rely on around-the-clock operations and delivery schedules.

Introducing housing developments near such existing industry adds yet another complication to overcome when addressing the housing crisis. Overcoming this issue requires input and co-operation from the developer, the surrounding land owners and businesses, and the local municipality.

New sensitive uses and existing industrial and/or commercial uses may not be compatible. Unfortunately, the real world

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consequences of such incompatibility can easily be overlooked until the issue is blaring at residents, late at night, from across the street. To mix metaphors, it is recurrently a final hurdle placed just after the finish line. An unexpected stumbling block that should have been addressed much earlier in the development process.

## The Noise Issue in a Nutshell

A neat and plausible step toward a solution to our crisis is to introduce new residential areas within a municipality. Eventually, residential developments will need to be built closer and closer to existing industries and 24/7 retailers.

The existing industry is noisy, especially noticeable late at night when the other background noises of the municipality subside. Prior to the introduction of neighbouring residential areas, the noise from the existing industry is not a problem. The proposals introduce a risk of land use compatibility issues – a conflict between the goals of protecting existing business and creating much-needed housing.

Compatibility is not a novel issue. Land use compatibility is a fundamental question within municipal planning. Developers, municipalities, and approval authorities are keenly aware of this issue from the perspective of Ontario's *Planning Act* and municipal zoning bylaws.

The added complication arises with municipal noise bylaws. Existing businesses may suddenly be offside the local noise bylaw upon the introduction of residential areas near their unchanged operations. That is the unexpected stumbling block, arrived at after all the land use approvals have been obtained. Critically, it is not an issue that can be cured by the Ontario Land Tribunal.

## Provincial Noise Guidelines

Typically, when a development is proposed near existing industry, a municipality will require the developer to undertake a noise study, conducted by a professional acoustical consultant, as well as other environmental studies. This is a requirement in many official plans. The results of those studies are intended to determine if a development is feasible.

Ideally, those studies will explicitly involve the existing industry, but that is not always the case. Where the nearby noisemaker is not an industrial but instead a commercial retailer, the policies

requiring these noise studies are often more lax.

Provincial guidelines set a basis for acceptable noise levels at “sensitive receptors.” The frequently cited guideline is generally referred to as NPC-300, the “Environmental Noise Guideline: Stationary and Transportation Sources – Approval and Planning.”

NPC-300 provides daytime and nighttime noise limits. When it comes to introducing new sensitive residential uses near to existing industry, the sound levels must not be predicted to exceed Class 1 limits.

If the sound from the existing industry is expected to exceed the Class 1 limits at the proposed residential receptors, there is an opportunity to designate the lands as Class 4. The Class 4 designation provides greater daytime and nighttime noise limits, requires warning clauses in purchase agreements, and permits the developer more flexibility to use “at receptor” noise mitigation measures, such as enclosed balconies, to reduce the noise experienced at the residential receptors.

The increased noise limits also provide greater flexibility to the existing industry, which may have an as-of-right ability to expand its operations prior to the introduction of the sensitive residential area.

There is sometimes a temptation to use the Class 4 designation as a full solution to the compatibility issues between existing industry and proposed housing. This should be cautioned against. While it offers helpful tools to mitigate the impact of the noise, the designation should not be turned to as a first resort and should be the exception, not the rule.

We can expect further Class 4 designations in Ontario as developments continue to be proposed in historically non-residential areas. Developers, industry, and municipalities should bear in mind that a Class 4 designation is not a blanket solution to address compatibility, and it does not necessarily mean that residents will experience an acceptable level of noise.

Living next to or near the pre-existing operations will still likely lead to noise complaints. That is where a municipality's noise bylaw comes in. Although the noise bylaw should be considered from

the outset of the proposed development, because it is not the subject of the proposal (in the way that a zoning bylaw is), it can easily be overlooked.

### Municipal Noise Bylaws

Those who find themselves living near industrial operations or near commercial retailers who are accepting deliveries 24/7 may be likely to lodge complaints with the municipality. In practice, a Class 4 designation and a warning when moving in does little to dissuade a sleepless resident from filing a complaint.

Because of legislation passed in 2020 in response to the pandemic and the severe supply chain issues that resulted, municipalities are not able to prohibit the late-night delivery of goods to retailers, restaurants, hotels, motels, or goods distribution facilities. The *Main Street Recovery Act, 2020* added a new section (section 130) to the *Municipal Act, 2001*, explicitly taking that power away from municipalities.

For now, municipalities cannot restrict those operations but, as a pandemic measure, it cannot be certain that this restriction on municipal authority will

remain in place or will not be further regulated by the province. Although the business may be operating within its rights, compliance with the noise bylaw is a complaints-driven process. Complaints will lead to tension between the business and residents, and despite the efforts during the land use planning phase, the parties may find themselves with incompatible uses.

### Takeaways

A plausible partial solution to the housing crisis is to introduce residential areas in locations that historically were not considered residential-friendly, such as in proximity to existing industrial operations or where retailers operate during otherwise quiet hours.

Where housing developments are proposed near existing industry, there should be consideration of the local municipal noise bylaws and other matters that are not necessarily top-of-mind when seeking official plan and zoning bylaw amendments. To avoid stumbling into those issues after the development is complete, or at the end of a municipality's approval process, they should be considered early

on in the development process through consultation with the nearby businesses.

While we need housing developments to progress, such development should not proceed at the expense of existing businesses. Those businesses are essential to long-term sustainability – a fact reflected in Ontario's pandemic legislation, passed to ensure that they remained operational. All stakeholders, landowners, developers, businesses, and municipalities will need to co-operate in order to co-exist and move forward together.



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