



June 8, 2020

Delivered by Email

City of Burlington
426 Brant Street
P.O. Box 5013
Burlington ON L7R 3Z6

**West End Home Builder's Association | Community Planning, Regulation and Mobility Committee Agenda
Item 5.4, Report PL-06-20 – Bill 108 Timelines**

Attn: Kevin Arjoon, City Clerk

The following submission on behalf of the West End Home Builders' Association is intended to provide comment and feedback on Staff Report PL-06-20, regarding the timelines for the processing of and the decision-making process related to development applications as established by Bill 108, "More Homes, More Choice Act, 2019". PL-06-20 speaks to revised review timelines for Official Plan amendments, Zoning By-law amendments, and subdivision applications that have been in effect since June 6, 2019.

Prior to Bill 108, Bill 139, which came into effect in 2017, was the operative version of the *Planning Act*. The legislated review timelines provided in Bill 139 were the longest ever instituted in Ontario's history. Bill 108 adjusted the review timelines. The review timelines in Bill 108 have, for the most part, generally gone back to those that have been in existence in the Province for the years preceding Bill 139. Although timelines may have varied slightly over the years, proponents have always had a right to appeal their applications if the municipality has been unable to make a decision within the timeframes that were in effect at that time. This is part of the historical planning process in Ontario and is a fundamental element of natural law.

WE HBA appreciates that the matter of planning decisions being made in an appropriate amount of time is of concern to City Council and staff. Every municipal Council works to ensure that the aspects of the planning process within their control are efficient and result in good planning decisions. City staff is investigating ways to improve the planning process with greater efficiencies and improved relationships with applicants, which are all intended to assist staff in undertaking reviews and making recommendations to enable Council to make decisions based on the best planning advice available. We recognize that the legislated timelines in Bill 108 and, in many instances, the unrealistic expectations of Council, places additional pressure on City staff, City departments and external commenting agencies. This said, legislated timelines should not impact the City's ability to arrive at good planning decisions.

Staff report PL-06-20 effectively identifies many of the major issues that may impact the pace at which applications are reviewed. As the report states, the review of an application relies on cooperation, time management and workload adjustment from other departments and external commenting agencies. While City Planning staff may try to push applications through the process as quickly as they can within a fixed timeline, unfortunately, City Planning does not appear to receive the same commitment from other internal departments and external commenting agencies. This is the most significant issue impacting the review timelines. The opinion that Planning staff may not be moving fast enough may be exaggerated.

The impacts of planning reviews extending beyond the legislated timelines is misunderstood by Council. The staff report notes on page 3 that "historically, it is very rare for an applicant to appeal for non-decision". As City staff identify, prior to Bill 139, during the period between 2011 and 2018, the City considered 104 development applications. Of these 104 applications, only 9 applications were considered within the legislated statutory timelines. Of the remaining 95 files, only 2 of these applications were then appealed due to a non-decision by Council.

Since Bill 108 has come into effect, City staff state on page 5 that only 4 applications have been appealed due to decisions not being made by Council within the legislated timelines. These 4 appeals were in response to the interim control by-law imposed by City Council in March 2019, not due to a legislated timeline. Every applicant has a right to appeal. At the time that the 4 appeals noted above were made, this represented the only appeal route the applicants had available to them due to the interim control by-law. These appeals appear to be unrelated to Bill 108.

In addition, the City polled 16 municipalities to see what, if any, measures they are considering in response to the timelines established by Bill 108. Staff found that 9 of the 16 polled are not considering any changes at this time. Mississauga and Oakville have responded positively. Mississauga is moving up the timing for the statutory public meeting required by the *Planning Act* to a much earlier point in the planning process so that public consultation occurs earlier and within the legislated planning process. This is intended to assist staff in completing reviews and assist Council in making its decision within the established timelines. Oakville is now requiring all new applications to be made digitally to save time and make the process more efficient while ensuring that its review remains within the same legislated planning process. The remaining municipalities are uncertain if they are intending to make any changes.

On page 3, staff note "... the City's position in an appeal is not strengthened by having a decision in place. As such, the risk in providing a decision outside of the required timelines is also reduced". This is profound, as City staff, including City Legal, is advising Council that appeals for non-decision have no impact on nor do they compromise the City's position at LPAT hearings. In fact, staff notes that in many instances, notwithstanding an appeal for non-decision, applicants continue to try to work with City staff to resolve outstanding matters. Clearly, the building industry wants to avoid lengthy and expensive LPAT hearings too. Therefore, it is also false to assume that the building industry has an advantage at LPAT in the event of a non-decision. Also, before any LPAT proceeding can commence, City Planning staff must go to Council and seek direction. The City's position at LPAT is always confirmed by Council, regardless of the nature of the appeal.

Council's opinion that applications are being appealed excessively because of the City's inability to make decisions is unsubstantiated. WE HBA believes that should staff and applicants have the opportunities to work cooperatively to address any issues in advance of Council making a decision on an application, that would lead to a good planning decision being made, this should be prioritized as opposed to rushing an application through the system.

The WE HBA and our members consistently seek the fair and expedient review of applications within the legal parameters established by the *Planning Act*. This statement can be further reinforced by our recent



submission to the City regarding pre-submission consultations that was sent to Council by WE HBA. In part, this letter states:

“The City of Burlington has recently been requiring potential applicants to conduct pre-submission community information meetings. Pre-submission consultation meetings are not required by provincial statutes or regulations or Region of Halton or City policies or by-laws. Simply put, the City’s “requirement” to conduct these meetings has no legal authority, yet potential applicants are being advised by City Planning staff that planning applications will not be accepted unless these meetings have been held. As there is no legislative or policy basis, these meetings can only be considered as voluntary.

The mandatory protocol proposed in the Mayor’s planning report (MO-21-19) is not based on established policies and is therefore illegal. In addition, it is challenging to engage in meaningful dialogue with City staff if public input is sought at the earliest possible opportunity and before an applicant has been provided an opportunity to refine an application that responds to circulation comments that have been received through the planning review process. Inevitably under these circumstances, pre-submission community information meetings will significantly impact and prejudice dialogue with City staff and the refinement process.

The mandatory requirements proposed in MO-21-19 will only compound and confuse the public. Just as the City wants to receive and comment on complete and comprehensive applications, the public deserves the same courtesy and should not be marginalized. The planning process established in the *Planning Act* must be respected and cannot be over-ridden by the City. The City has no authority to control voluntary meetings. If approved, the recommendations contained in MO-21-19 can only be treated as informative guidelines that proponents may wish to consider in the event that any such meetings are held.”

We continue to be opposed to pre-submission community meetings.

WE HBA is supportive of Option 1 put forth by City Staff through Staff report PL-06-20, subject to the following:

- a) The City accept digital applications to speed up the circulation process (as Oakville has done);
- b) The statutory public meeting be held very early in the planning review process, to accommodate public engagement and provide the time necessary for an appropriate consideration of comments received; and,
- c) City Planning staff not be required to seek Council permission to exceed the review timelines. The City Planners should not be compromised and should be allowed to complete their jobs, that is to give their professional opinion without political interference, and without violating their professional Code of Conduct.

Option 2 is not a valuable option and should not be supported. This option will lead to more refusals and take away from the Planner’s abilities to recommend good planning decisions. As per the staff report, the




list of Cons for Option 2 is indication enough that this would not be the best option. WE HBA also does not support Option 3. The City of St. Catharines previously had a model that resembles Option 3 in place for approximately 2 years. Although there may be a few politically attractive elements within this option, St. Catharines opted to abandon this method of making decisions on applications after a short trial period as it not only lengthened the decision-making process, leading to a greater risk of appeals for non-decisions, but it also increased the City staff work loads significantly.

The WE HBA respectfully submits that subject to the modifications noted above, Option 1 of Staff report PL-06-20 could be supported by WE HBA. To reiterate our earlier sentiments, WE HBA and our members consistently seek the fair and expedient review of applications within the legal parameters established by the *Planning Act*. If staff believe that Option 1 is a means by which the planning process can be better accomplished, lead to good planning decisions, and lead to improved working relationships between City staff and applicants, we are supportive of Option 1, with the modifications we have proposed.

We would be happy to speak further to this topic should Council or Staff wish.

Sincerely,



Kirstin Jensen, MPI, MA
Manager of Planning & Government Relations
West End Home Builders' Association

c.c. Mayor Marianne Meed Ward
Members of Council
Robert Molinaro, President, West End Home Builders' Association
Heather MacDonald, Director & Chief Planner, Department of City Building
Brynn Nheiley, Manager of Development Planning
Jamie Tellier, Manager of Urban Design

