



**SUBJECT: Bill 73 amendments to Planning Act**

**TO: Development and Infrastructure Committee**

**FROM: Legal Department**

Report Number: L-25-16

Wards Affected: All

File Numbers: 145-01

Date to Committee: September 13, 2016

Date to Council: October 3, 2016

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**Recommendation:**

Receive and file legal department report L-25-16, bill 73 amendments to Planning Act.

**Purpose:**

This report provides an overview of amendments to the *Planning Act* and *Development Charges Act, 1997*, that were introduced by Bill 73, "Smart Growth for Our Communities Act, 2015", and came into force and effect on July 1, 2016. The intent of this report is to provide Committee and Council with a general overview of the amendments. The report does not address every amendment in detail; rather it highlights key amendments that would be of interest to Committee and Council.

The report is not intended to provide legal advice with respect to how the amendments impact or relate to any particular development application or process. Such advice is subject to solicitor-client privilege and would be provided confidentially to Committee and Council in the context of the consideration of a particular development application.

City Legal staff, along with Planning, Finance and Parks and Recreation staff, have reviewed the amendments and have made, or are in the process of making, changes to the City's development review and administration processes in order to comply with the new legislation.

A City that Grows

- Promoting Economic Growth
- Intensification

- Focused Population Growth
- An Engaging City
- Good Governance
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## **Background and Discussion:**

On December 3, 2015, the Ontario Legislature passed Bill 73, “Smart Growth for Our Communities Act, 2015”. Bill 73 introduced significant reforms to the *Planning Act* (and several to the *Development Charges Act, 1997*). A few of the amendments came into effect when Bill 73 was passed in December 2015, while the vast majority of the amendments came into force and effect on July 1, 2016. New and revised *Planning Act* regulations were also filed by the Province in order to implement the Bill 73 amendments, including notice and transition provisions.

The following represent key changes to the *Planning Act* introduced by the amendments:

### **1. Changes to Rights of Appeal**

#### a) Prohibitions

- i. Prohibition on whole-plan appeals of a new Official Plan adopted by Council and/or approved by the approval authority;
- ii. Prohibition on appeals of boundaries of the Greenbelt Area or Protected Countryside as defined under the *Greenbelt Act, 2005*, or a specialty crop area designated by the Greenbelt Plan;
- iii. Prohibition on appeals of population and employment forecasts set out in an approved Growth Plan in the Greater Golden Horseshoe area, or in a lower tier Official Plan if the forecasts are allocated by an upper-tier Official Plan approved by the Minister;

#### b) Two year moratorium on certain amendments

- i. No amendments to a new Official Plan (i.e. complete replacement of an existing Official Plan, not merely a review) before the second anniversary of the first day of the first day that any part of the new plan comes into force;

- ii. No amendments to a new comprehensive Zoning By-law until the second anniversary of the new by-law. This only applies to a complete repeal and replacement of all a municipality's zoning by-laws;
  - iii. No amendment to a Zoning By-law through minor variance where the Zoning By-law has already been amended or varied within the previous two years. A municipal council may pass a resolution exempting certain classes of requests including, for example, where there is an error in the planning instrument or where amendment is needed to address implementation concerns that arise at the site plan stage of review. Council could also delegate this authority to exempt to a municipal officer such as the Director of Planning and Building.
- c) Explanation of Reasons of Appeal Required
- i. Appellants that argue that an appealed decision is not in conformity with a provincial plan or applicable Official Plan must now provide an explanation of how it is not in conformity in its notice of appeal. The Ontario Municipal Board may dismiss an appeal if an explanation is not provided.
- d) Appeals of Non-Decisions
- i. Municipalities may extend the 180 day period in which a decision is to be made by up to an additional 90 days by written notice. The extension can be made only once. No notice is required to be given to any other party for an extension, however, there is no restriction on providing such notice. The appeal period on the non-decision on Zoning By-law amendment applications remains 120 days;
  - ii. Once a non-decision has been appealed, a municipality may issue to all persons that would have been given notice if a decision had been made, advising that any other appeals must be filed within 20 days.

## **2. Changes to Consideration of Written and Oral Submissions**

- a) OMB duty to have regard for written and oral submissions from the public
  - i. Oral and written submissions from the public have been added to the list of information and material that the OMB must "have regard to" in reaching a decision.
- b) OMB now has a duty to have regard for information and material received by Council where Council failed to make a decision in the statutorily required timeframe and the matter was appealed.

- c) Councils and Committees of Adjustment Must Explain Effect of Submissions on Decisions
  - i. Council and the Committee of Adjustment are now required to “briefly” explain the effect of written and oral submissions it has received in its notice of decision. This requirement applies to Official Plans and Zoning By-laws, as well as amendments to those documents, and plans of subdivision and consents. In the case of Committees of Adjustment, it applies to a decision to approve or refuse a minor variance;
  - ii. The submissions to be considered include written submissions made to Council and oral submissions made at a public meeting;
  - iii. The explanation may be brief, suggesting that there is flexibility on behalf of the Province on how this requirement is best implemented in each municipality.

### **3. Change to Criteria for Consideration of Minor Variance Applications**

- a) Municipalities may establish minor variance criteria by by-law
  - i. In addition to the four part test to determine whether a minor variance should be granted, applications must also now conform to any criteria established by a municipality by by-law. Such a by-law can be appealed to the OMB.
- b) Province may establish minor variance criteria by regulation
  - i. The Province may by regulation establish additional criteria to assess applications for minor variances. The Province has not proposed regulated criteria at this time, and may choose not to do so.

### **4. Service of Public Notice**

- a) Notices of Official Plans, Official Plan Amendments, Zoning By-laws, Zoning By-law Amendments, Plans of Subdivision, Consents and Minor Variances may now be served by e-mail.

### **5. Changes to Official Plan Reviews and New Official Plans**

- a) Where a municipality adopts a new Official Plan, the next review of the Official Plan is extended from 5 years to 10 years.

- b) Official Plans must now also include a description of measures and procedures for informing and obtaining views of the public regarding development applications and reviews of plans.
- c) The requirement that employment area policies and designations must be considered as part of an Official Plan review has been deleted. However, municipalities must still comply with employment area conversion policies under the PPS and Growth Plan.
- d) Municipalities must submit a proposed Official Plan to the Minister at least 90 days before giving notice of a public meeting on the new plan.
- e) An upper-tier approval authority is prohibited from approving a lower-tier Official Plan if any part of the lower-tier Official Plan does not conform with the in-force upper-tier Official Plan or a new or five year review upper-tier Official Plan that is adopted within 180 days of the lower-tier Official Plan being adopted.

## **6. Urban Design a Matter of Provincial Interest**

- a) Section 2 of the *Planning Act* provides a list of matters of provincial matters that all approval authorities shall have regard in making a decision. Urban design is now listed, through the promotion of built form that is well designed, encourages a sense of place and provides for public spaces that of high quality, safe, accessible, attractive and vibrant.

## **7. Alternative Dispute Resolution**

- a) Municipality may introduce Alternative Dispute Resolution
  - i. A municipality may adopt alternative dispute resolution policies and procedures in relation to appeals for Official Plans and Zoning By-laws, amendments to those documents, as well as Plans of Subdivision and Consent that may be exercised before an appeal is forwarded to the OMB;
  - ii. If a municipality has adopted this approach, the timeframe for forwarding the appeal record to the OMB is extended from 15 days to 75 days;
  - iii. Participation in the ADR process is voluntary.

## **8. Introduction of Section 37 Transparency Requirements**

- a) All money received through Section 37 agreements must be paid into a special account and spent only for the facilities, services, or matters as are set out in the by-law that is the subject of the Section 37 agreement

- b) The City Treasurer must now provide Council with a public financial statement relating to the Section 37 account on a yearly basis. The statement is required to include, at minimum the following:
  - i. Opening and closing balances;
  - ii. The list of facilities, services and other matters specified in the by-law for which the funds have been spent;
  - iii. Details of the amounts spent; and
  - iv. How capital costs for the facilities, services and other matters will be funded if the costs are not fully covered by the special fund.

## 9. Parkland Dedication

- a) The *Planning Act* provides that as a condition of development or redevelopment, a municipality may require that land in an amount not exceeding 5% for residential land (or 2% for commercial/industrial development) be conveyed to the municipality for park or other recreational purposes. Alternatively, a municipality could choose an alternative requirement for residential development of parkland dedication at a rate of 1 hectare for 300 dwelling units, or at a lesser rate as specified in a Parkland Dedication By-law. The alternative rate approach can only be used if it is identified in a municipality's Official Plan.
- b) The amendments to the *Planning Act* now require that before a municipality can adopt Official Plan policies that support parkland dedication at an alternative rate, it must prepare and provide to the public a parks master plan that examines the need for parkland.
- c) The amendments also change the calculation of cash-in-lieu paid in respect of parkland where the alternative rate is used. For cash-in-lieu, the alternative rate is reduced from a maximum of 1 hectare for 300 dwelling units, to 1 hectare for 500 dwelling units.
- d) The City Treasurer must now provide Council with a public financial statement relating to the cash-in-lieu of parkland account on a yearly basis. The statement is required to include, at minimum the following:
  - a. Opening and closing balances;
  - b. Any land or machinery acquired by the funds;
  - c. Any buildings erected, improved or repaired with the funds;
  - d. Details of the amounts spent; and
  - e. How capital costs for the facilities, services and other matters will be funded if the costs are not fully covered by the special fund.

### **Strategy/process**

As noted above, City Legal staff, along with Planning, Finance and Parks and Recreation staff, have reviewed the amendments and have made, or are in the process of making, changes to the City's development review and administration processes in order to comply with the new legislation.

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### **Financial Matters:**

As noted within, the amendments to the Planning Act introduce new financial reporting requirements with respect to funds obtained through Section 37 agreements and through cash-in-lieu of parkland dedication.

### **Other Resource Impacts**

None identified at this time.

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### **Public Engagement Matters:**

As noted within the report, several of the new amendments to the Planning Act enhance public engagement through the requirement of approval authorities to have regard to the oral and written submissions of members of the public made regarding development applications.

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### **Conclusion:**

This report is provided for Committee and Council's information, and is recommended to be received and filed.

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Respectfully submitted,

Blake Hurley

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### **Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.