COMMITTEE OF THE WHOLE FEBRUARY 6, 2006

PLANNING ACT PROPOSED AMENDMENTS BILL 51 (FIRST READING) GENERAL FILE 13.6

Recommendation

The Commissioner of Planning and the Commissioner of Legal and Administrative Services recommend:

1. THAT the Province BE ADVISED that the Council of the City of Vaughan requests the following amendments to Bill 51, *Planning and Conservation Land Statute Amendment Act, 2005:*

    a. That the regulations referred to within Bill 51 be provided in advance of the completion of the legislation in order to provide a thorough review of the impact of the legislation;

    b. That consistent definitions and terminology be utilized within all provincial documents (Provincial Policy Statement, *Planning Act*, and Provincial Plans) and Bill 51;

    c. That the Province not require an open house in addition to a public meeting for all applications as currently provided in Bill 51, but rather establish criteria and distinguish the types of applications (for example; complex versus simple amendments) which may require an open house;

    d. That a minimum of 90 days be provided for the approval authority to review and make a decision based on the additional information admitted as evidence at an OMB hearing;

    e. That the Province provide the "prescribed matters to be included within an Official Plan" at this time to provide certainty to municipalities in the preparation of Official Plans; and

    f. That the requirement for the zoning by-law update 3 years after an official plan update be deleted from Bill 51 to ensure that the zoning by-law is updated at the discretion of municipal council.

2. THAT the minutes of Council be forwarded to the Ministry of Municipal Affairs and Housing, and to the Region of York.

3. THAT the Development Planning Department monitor the progression of the *Planning and Conservation Land Statute Amendment Act*, and report back to Council as necessary.

Economic Impact

Should Bill 51 be enacted as the First Reading version, there will be substantial economic impact to the City in implementing these changes, as detailed in this report. Bill 51 would result in additional administrative costs to the City.

Purpose

The Province has proposed amendments to the *Planning Act* with the introduction of Bill 51 (*Planning and Conservation Land Statute Amendment Act)*, which was introduced into the legislature on December 12, 2005. The first reading version of the legislation has been posted on the Environmental Bill of Rights (EBR), Environmental Registry for comments. Comments on the Bill are due on February 26, 2006. The following report summarizes the proposed changes to the *Planning Act*, and makes recommendations on the amendments.

Background - Analysis and Options

Since the introduction of Bill 26, the *Strong Communities Act*, the Province (Ministry of Municipal Affairs and Housing) has been working on a number of changes to the *Planning Act*, both to implement and complement provincial initiatives such as the amendments to the Provincial Policy Statement (2005), *Places to Grow Act*, and the *Greenbelt Act*. Bill 26 was passed on November 30, 2004, and required that decisions in relation to planning matters "be consistent with" the Provincial Policy Statement (which was subsequently amended March 1, 2005) which changed the previous "have regard to" wording of the *Planning Act.* In addition, Bill 26 increased the time period for decision making before appeals could be made to the Ontario Municipal Board (OMB) from 90 to 180 days for official plan amendments and subdivision approvals; from 90 to 120 days for zoning by-law amendments; and from 60 to 90 days for consents. Bill 26 also removed the rights of appeal on Council's failure to adopt, or refusal of an official plan amendment for an alteration or expansion to the urban boundary.

Bill 51 represents the next phase of "Planning Reform" from the Ministry of Municipal Affairs and Housing. The Bill received first reading on December 12, 2005, and the following report details the proposed changes to the *Planning Act*, and provides comments on the proposed changes within the EBR required time lines.

Portions of the Bill are proposed to come into force when the Act receives Royal Assent, and others will be deemed to come into force on a day to be named by proclamation of the Lieutenant Governor in Council.

A substantive amount of the proposed amendments are to be implemented through regulation which may be filed in the future. To date, no regulations have been drafted for review, which raises questions with regard to the full implications of this legislation in the absence of the regulations. Recommendation 1a requests that the regulations be provided in advance of the completion of the legislation in order have a thorough review of the impact of the proposed changes.

1. New Terms & New Definitions

New terms and new definitions (Subsection (1) (1)) have been added to the *Planning Act*, which relate specifically to some further proposed amendments. New definitions include "area of employment"; "local appeal body"; "provincial plan"; and "residential unit".

The new terms and definitions relate specifically to proposed changes within the legislation which are discussed within the content of this report. Where there is a repetition of definitions within Provincial documents, the definitions and terms should be consistent throughout. For example Bill 51 defines an "area of employment" whereas the Provincial Policy Statement uses this definition to define an "employment area" and Places to Grow uses the term "designated employment area". Inconsistencies in definitions and terminology, however seemingly insignificant can create loopholes in the interpretation and cross-implementation of documents, and therefore recommendation 1b addresses this concern, and requests that all definitions in Provincial documents have consistent definitions and terminology.

2. *Decisions*

Section 3 (5) has been amended by requiring that, advice, comments and decisions of Council, (and other decision making bodies including the OMB), be consistent with the Provincial Policy Statement, and shall conform with "provincial plans" that are in effect on the date of the decision. This change is significant as it overrules the commonly followed approach which was to apply the policy in effect on the date of the application rather than on the date of decision.

It should be noted that the new approach only applies to the PPS and "provincial plans", not official plans or other types of policy.

The proposed changes are supported as it allows for the application of current policy in decision making on older planning applications.

3. *Local Appeal Body*

A new section (8.1) of the *Planning Act* has been added which would allow a municipality, that meets prescribed criteria, to appoint a local appeal body. A "local appeal body" means an appeal body for certain local land use planning matters, constituted under section 8.1.

The local appeal body would adjudicate appeals on minor variances and consents similar to the OMB. Section 8.1 further establishes the term and qualifications for members, eligibility for appointment, as follows:

> ***"Term and qualifications***
> *(2) A person who is appointed to the local appeal body,*
> *(a) shall serve for the prescribed term, or if no term is prescribed, for the term specified in the by-law; and*
> *(b) shall have the prescribed qualifications, if any.*
>
> ***Eligibility criteria***
> *(3) In appointing persons to the local appeal body, the council shall have regard to any prescribed eligibility criteria.*
>
> ***Restriction***
> *(4) The council shall not appoint to the local appeal body a person who is,*
> *(a) an employee of the municipality;*
> *(b) a member of a municipal council, land division committee, committee of adjustment, planning board or planning advisory committee; or*
> *(c) a member of a prescribed class. "*

Much of the detail in this new section may be prescribed by a future regulation.

A number of clauses have been included which address jurisdictional overlaps with the OMB. Should an appeal be made to the local appeal body which relates to an appeal to the OMB, then the OMB can claim jurisdiction.

The framework for the local appeal body is described within the *Planning Act* amendments, however, there are still details which would be included in a future regulation required to implement this local appeal body such as the municipal requirements for having a local appeal body, the qualifications of its members, and the administrative responsibilities.

Local appeal bodies can be useful for adjudicating matters relating to minor variances and consents as they provide a more local perspective to small scale matters. A local appeal body would assist in alleviating the volume of appeals heard by the OMB which would assist in shorter

time periods for scheduling a hearing. However, there would be a cost to the City for the administration of such a body. Should Vaughan meet the minimum terms and conditions of the prescribed criteria (which may be subject to further regulatory requirements) then Council could decide to establish a local appeal body.

4. Consultation

A proposed amendment to the *Planning Act* provides that for applications to amend the official plan or zoning by-law, or site plan or subdivision approval, Council shall permit applicants to consult with the municipality or planning board before submitting requests and, may, by by-law require applicants to consult with the municipality.

Preconsultation often occurs in the development process in Vaughan, and this clause would assist in implementing some of the other proposed changes to the *Planning Act*, such as complete applications, which would make preconsultation more significant. Should Bill 51 be passed, Council may decide if it wishes to pass a by-law requiring consultation prior to the submission of a planning application.

5. Open House

For applications which require a public meeting; official plan, official plan amendment, zoning by-law or zoning by-law amendment, the *Act* is proposed to be amended to add the additional public consultation requirement of an "open house". The purpose of an open house is to provide an opportunity for the public to review and ask questions about the proposal; and any information and material submitted related to the matter. An open house shall be held no later than 7 days before the required public meeting is held.

The requirement to hold an open house or a public meeting does not apply if the council or planning board refuses to adopt the requested amendment to the official plan or zoning by-law.

Currently, the City hosts public open houses for City-initiated official plan amendments, and secondary plans, however this proposed change would require an open house for all amendments to the official plan or zoning by-law. This proposed amendment does not distinguish between complex and simple amendments, and may delay the processing of simple amendments. Recommendation 1c requests that the Province reconsider applying the open house requirement to all of the above listed applications, and rather, distinguish the types of applications which should have a public open house and a public meeting.

6. Complete Applications

Bill 51 proposes amendments to the *Planning Act* to require that an applicant provide prescribed information or material in support of an application to amend the official plan, zoning by-law, subdivision approvals, or consents, but only if the official plan contains provisions relating to the requirements.

In support of an application listed above, an approval authority may require that an applicant provide any other information or material that the approval authority considers it may need, but only if the official plan contains provisions relating to these requirements. Until the approval authority has received the necessary information or material or fee, Council may refuse to accept or further consider the application, and the time period for appeals does not begin.

This amendment is a welcome change, as it permits the municipality to establish local requirements for what constitutes a "complete application". This change will assist in addressing frivolous appeals with regard to failure to make a decision on applications which the municipality cannot process as insufficient information submitted in support of an application.

7. Refusal Notice

A municipality must now give notice within fifteen days if it refuses an official plan or zoning by-law amendment application. Additionally, there is a proposed time limit of twenty days from the giving of notice for an appeal to be filed. There formerly was no time limit on such appeals, or notice requirements. This change is supported as it provides a consistent application in the notice and appeal provisions for approvals and refusals.

8. Zoning Changes

a. Area, Density, and Height

A new clause is proposed which would clarify that the municipality has the right to regulate the minimum area of a parcel of land, and to regulate the minimum and maximum density and the minimum and maximum height of development in a municipality or in the area or areas defined in the by-law. Currently the *Planning Act* allows the municipality to regulate height and density, however, this clarification stipulates that the municipality can regulate minimums and maximums for height and density. This change is supported as it will assist the municipality in achieving desired height and density objectives in areas such as the Corporate Centre, Highway 7 Corridor, and in the District Centres.

b. Conditions

Bill 51 proposes amendments that would allow municipalities to impose conditions on zoning by-law amendments, provided that there are official plan policies permitting them to do so, and the conditions may be enforced by agreements registered on title. However, such conditions must be of a kind prescribed by a regulation prepared by the Minister, which is not yet available. Once the regulations detailing permitted conditions are made available, the implications of this proposed change can be reviewed.

9. Ontario Municipal Board (OMB) Appeal Amendments

Several changes are being proposed to the *Planning Act* which serve to amend the procedures of the OMB and protect local decision-making.

a. *Have regard to decisions of Council*

An additional section (2.1) has been added which requires the OMB to have regard to any previous decision on the same planning matter made by a municipal council and any supporting information or material that the municipal council considered in making the decision.

b. *Limits on New Information on Appeal:*

Information and material which was not provided to Council before it made a decision will not be permitted to be admitted as evidence at a hearing, unless the information is provided by a public body, or the OMB decides it was not reasonably possible to provide the information and material to Council before it made its decision. If the OMB determines that the information could have materially affected the decision, it shall not be admitted as evidence until the approval authority is given an opportunity to reconsider its decision in light of the new material, and makes a written recommendation to the OMB. The OMB shall consider Council's recommendation if it is received within the prescribed time period.

These proposed amendments are supported, as they provide the legislative requirement for the Board to have regard to Council's consideration of a matter before the Ontario Municipal Board,

however, there should be a reasonable amount of time given to the approval authority to review and make a decision on any new information which is admitted into a hearing.

To this end, recommendation 1d is provided which requests that the Province stipulate that a minimum of 90 days be provided for the approval authority to review and make a decision based on the additional information admitted as evidence at a hearing.

c. *Limits on Who Can Appeal a Decision or be Party at a Hearing*

A person who has not made oral submission at a public meeting or written submissions to the approval authority is not entitled to appeal the decision, the lapsing provision, or any of the conditions (of a subdivision approval), or may not be added as a party to the hearing. These prohibitions replace the former process whereby a motion before the OMB had to be brought to dismiss such appeals.

d. *Abuse of Process:*

The OMB may now dismiss an appeal of an official plan, zoning by-law, Minister's zoning order, plan of subdivision, variance or consent (including a severance) if the appellant has "persistently and without reasonable grounds" commenced proceedings before it that are an "abuse of process".

e. *Limit on OMB Powers in Official Plan Amendment Appeals:*

The powers of the OMB on an official plan amendment appeal have been reduced to no longer permit the Board to approve or modify any part of the official plan which "is in effect" and "was not dealt with in the decision of council". It is anticipated that this proposed change is intended to prevent the Board from expanding the geographical area subject to a proposed amendment, as long as there was appropriate notice, and from amending parts of the plan not specifically appealed.

This change is supported as it provides Council with certainty that the decision of the Board will be restricted to the area subject to the appeal, and cannot be extended. It complements other proposed changes by ensuring that the appeal before the Board is the same as the matter was considered by Council.

10. No Appeals Permitted

Appeals to the official plan or zoning by-law are exclusively prohibited by the proposed Bill in the following circumstances, except at the time of an official plan review:

a. There is no appeal permitted in respect of official plan policies, or zoning by-law, which are adopted to permit a second dwelling unit within a detached house, semi-detached house, or row house;

b. There are no appeals to a council's refusal to expand the urban boundary, or failure to adopt or approve an amendment to expand or alter all or any of the urban boundary (referred to as the area of settlement); and

c. There is no appeal on a council's refusal to remove any lands from an area of employment, even if other land is proposed to be added.

These restrictions on appeals are intended to assist municipalities in achieving some of the requirements of the Provincial Policy Statement, the Greenbelt Plan, and Places to Grow. These amendments are supported as it provides Council with certainty on their decisions on these types of applications.

11. Official Plans

a. Contents of an official plan

Bill 51 proposes changes which will allow the Province to prescribe specific information that an official plan shall contain. Currently, the *Planning Act* allows that an official plan shall contain "goals, objectives, and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality....". A new clause is proposed which would enable the Province to "prescribe other matters which shall be in an official plan."

Certainty regarding what will be prescribed is requested at this time, as the preparation of an official plan is a costly undertaking. Without clarity as to what may be required within an official plan, a municipality is vulnerable to an ever-changing regulatory context. Recommendation 1e requests that the Province provide this information at the time of the passing of Bill 51.

b. Official Plan Updates Required

Bill 51 proposes amendments to require that official plans be updated every 5 years. Currently the *Planning Act* requires that Council hold a special meeting every 5 years to determine the need for a revision to the official plan, and in doing so, must have regard to the Provincial Policy Statements. The proposed changes would require that an official plan must be revised every 5 years to ensure that it conforms with provincial plans, or does not conflict with them, has regard to matters of provincial interest (which are listed in Section 2 of the Act), is consistent with the Provincial Policy Statement, and, if it contains policies dealing with areas of employment, to ensure that those policies are confirmed or amended.

Further, the amendments would require that before revising the official plan, Council shall consult with the approval authority and with the prescribed public bodies with respect to the revisions that may be required, and hold a special meeting of council, open to the public to discuss revisions that may be required. Each time Council revises the official plan for this requirement, Council, shall by resolution declare to the approval authority, that the official plan meets the requirements.

Currently, the City has a number of Official Plans and Community Plans which would, upon the passing of this legislation, require review. To update all of these documents simultaneously would be extremely tiime consuming and costly to the City.

In addition to the official plan update requirement, Bill 51 proposes requiring that no later than 3 years after a revision to the official plan comes into effect, Council shall amend all zoning by-laws that are in effect to ensure that they conform with the official plan.

The proposed requirement for the zoning by-law update is not supported by the Development Planning Department. Requiring that the zoning by-law be updated after an official plan update has many implications for the municipality. Currently, when the Official Plan is updated, the zoning is typically updated on a site by site basis at the time of applications made by the landowner to implement the official plan policies. This requirement takes the timing and discretion of updating the zoning by-law out of the hands of Council, or in advance of a landowner driven application, which infers pre-zoning lands. This could impact the phasing and timing of development within the municipality, in addition to the substantial costs of such an update. Recommendation 1f is provided which requests that this requirement be deleted from Bill 51.

12. Community Improvement

The definition of "Community Improvement" within the *Planning Act* is proposed to be expanded to include "construction" and the "improvement of energy efficiency". Certain upper-tier

municipalities, which will be subsequently prescribed by regulation, may now designate a community improvement project area.

The maximum amount of grants or loans which a municipality may make has been changed from "not exceeding the cost of rehabilitating the lands and buildings" to permitting any cost related to environmental site assessment, environmental remediation, development, redevelopment, construction and reconstruction of lands and buildings for rehabilitation purposes, or for the provision of energy efficient uses, buildings, structures, works, improvements or facilities."

An upper-tier municipality may make loans or grants to a lower-tier municipality (and vice-versa) for the purposes of carrying out a community improvement plan that has come into effect, if the official plan of the municipality making the loan or grant so permits.

The proposed changes to the Community Improvement provisions of the Planning Act are supported as it provides for greater flexibility in the implementation of Community Improvement.

13. Site Plan (Section 41) Amendments

The Site Plan Control Area (Section 41) of the *Planning Act* is proposed to be amended to permit Council to require drawings which address matters relating to exterior design, including, without limitation, the character, scale, appearance, and design features of buildings, and their sustainable design, but only to the extent that it is a matter of exterior design, if an official plan and the site plan control by-law both contain provisions relating to such matters are in effect in a municipality.

Site plan control cannot relate to interior design, the layout of interior areas (excluding walkways, stairs, elevators, and escalators), and the manner of construction or construction standards.

The City's Site Plan Control By-law (By-law 228-2005) and the Official Plan will have to be amended to refer to the amendments to the Planning Act, when they are final. These changes are supported as it gives the City more control over the visual appearance of buildings being constructed in the municipality and their sustainable design.

14. Plan of Subdivision Approvals (Section 51)

In addition to the amendments proposed to Section 51 of the *Planning Act* discussed throughout this report, the following changes are also proposed exclusively to Section 51.

Subsection 51(24) contains a list of criteria which are considered when reviewing a subdivision plan. An additional item has been added to the list; the extent to which the plan's design optimizes the available supply, means of supplying, and efficient use and conservation of energy. Additionally, a further condition of approval has been added which permits the municipality to require the dedication of highways, pedestrian pathways, bicycle pathways and public transit rights-of-way. These are positive changes for the City, as it provides the legislative authority to implement important initiatives such as the Pedestrian and Bicycle Master plan.

15. Undertakings relating to Energy

The Lieutenant Governor in Council will, by regulation, be able to exempt from the *Planning Act* approval process, undertakings that relate to energy and have been approved or exempted under the Environmental Assessment Act.

16. New Rules for Cash-in-Lieu of Parkland

Proposed changes to the Planning Act will allow the municipality to reduce the amount of cash-in-lieu of parkland required for a redevelopment if:

(a) the official plan contains policies relating to the reduction of payments required;
(b) the council is satisfied that no land is available to be conveyed for park or other public recreational purposes under this section; and
(c) the part by whose value the payment is reduced meets sustainability criteria set out in the official plan.

17. Development Permit System

The *Planning Act* currently contains the provision for the establishment of a development permit system, with the passing of regulation by the Lieutenant Governor in Council. A development permit system would collapse three approvals processes - minor variance, zoning and site plan control - into one. Currently, the development permit system is in place as a pilot project in 5 communities throughout Ontario including portions of the City of Hamilton (downtown Gore area), portions of the Town of Oakville (employment redevelopment area), City of Toronto (Central Waterfront Planning Area), Lake of Bays (waterfront community), and Waterloo Region (wellhead protection areas).

Although there are no regulations in place now permitting an expanded development permit system, and no proposed amendments to the *Planning Act*, it is suggested through the media releases issued with the release of Bill 51, that the Ministry of Municipal Affairs and Housing is advocating the implementation of the development permit system across Ontario. In order to implement, further regulations would have to be made. Should a development permit system be permitted throughout Ontario, Council will have the ability to determine if it would like to implement a development permit system.

18. Facilitation of Conservation Easements

The Bill also provides for amendments to the *Conservation Land* Act, the *Conveyancing and Property Act, the Land Titles Act,* and *the Municipal Act* to facilitate conservation easements and covenants. The proposed legislation would improve the effectiveness of conservation easements as a tool to support the long-term stewardship and protection of agricultural lands, natural heritage areas and important watershed features on private lands.

The purpose of conservation easements and covenants has been broadened to include protection of water quality and quantity, watershed protection and management and further purposes which may be prescribed by the Minister of Natural Resources. The purpose of this amendment is to assist in the implementation of forthcoming source water protection requirements.

Technical amendments are made to facilitate the creation and preservation of conservation easements and covenants. Construction and demolition on land that is subject to a conservation easement or covenant requires the consent of the conservation body that is a party to the easement or covenant. Provision is also made for registries of conservation easements and covenants, to be established by regulation.

The *Planning Act* is amended to ensure that the subdivision control and part-lot control provisions of Section 50 do not interfere with the creation of conservation easements and covenants. The *Conveyancing and Law of Property Act* is amended to provide that conservation easements and covenants, unlike easements and covenants in general, are not subject to being modified or discharged by a court. The *Land Titles Act* is amended to exempt conservation easements and covenants from various technical restrictions that apply to easements and covenants in general.

The *Municipal Act, 2001* is amended to clarify that land sold for tax arrears remains subject to conservation easements and covenants.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities set forth in Vaughan Vision 2007, particularly 'A-5', "Plan and Manage Growth".

Conclusion

The Province is proposing amendments to the *Planning Act*, and various other Acts with respect to conservation easements, with the introduction of Bill 51 into the legislature on December 12, 2005. The proposed changes to the *Planning Act* are intended to complement Provincial initiatives such as Places to Grow, and to implement reforms to the Ontario Municipal Board. This report has been prepared to provide the Province with commentary on the Bill, and requests that a number of changes be considered before the Bill receives Royal Assent. The comments are being provided in accordance with the Environmental Bill of Rights comment posting which closes February 26, 2006.

Attachments

1. Bill 51 *Planning and Conservation Land Statute Amendment Act, 2005* (Councillors Only)

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Respectfully submitted,

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