

## **COMMITTEE OF THE WHOLE JANUARY 21, 2008**

### **PLANNING ACT AMENDMENTS**

#### **BILL 51**

#### **GENERAL FILE 13.6**

#### **Recommendation**

The Commissioner of Planning recommends:

1. THAT Council receive this report for information purposes, and that Staff be directed to schedule a future Public Hearing for consideration of proposed Official Plan policies for the following:
  - a) implementation of a protocol as to what constitutes a complete application for Official Plan Amendment, Zoning By-law Amendment, Draft Plan of Subdivision and Consent Applications;
  - b) pre-application consultation requirements prior to the submission of an Official Plan Amendment, Zoning By-law Amendment, Site Plan, and Draft Plan of Subdivision Applications;
  - c) promoting sustainability through requirements for external building design detail, character and appearance, and sustainable design within the Official Plan and the Site Plan Control By-law;
  - d) adding employment land protection policies to ensure that existing policies protect employment lands from being converted to non-employment uses; and
  - e) amendments to the appropriate official plan documents and zoning by-laws, as required, to implement the requirements of Bill 51 as they relate to items a), b), c) and d) above.

#### **Economic Impact**

The changes included in the new *Planning Act* through Bill 51 will result in increased costs to the City including: the requirement to update the Official Plan every 5 years, updating the Zoning By-law within 3 years thereafter, and additional notice requirements for complete applications and refusal decisions. Wherever possible, costs can be reduced by coordinating new processes with existing requirements, such as notices. The full costs associated with implementing Bill 51 are unknown at this time.

#### **Communications Plan**

The appropriate notices will be placed in the local newspapers regarding the upcoming Public Hearing.

#### **Purpose**

The purpose of this report is to provide a summary of the changes to the *Planning Act* through Bill 51, and make recommendations for the implementation of the new requirements, specifically as they pertain to the processing of Planning applications.

## **Background – Analysis and Options**

On February 13, 2006, the Development Planning and Legal Services Departments jointly reported to Council on the First Reading of Bill 51 "*The Planning and Conservation Land Statute Amendment Act*" and recommended a number of changes to the Act to the Ministry of Municipal Affairs and Housing.

On September 5, 2006, the Development Planning and Legal Services Departments provided a report to Council on the proposed regulations associated with Bill 51. This report also recommended a number of changes to the regulations to the Ministry of Municipal Affairs and Housing.

Since the last report to Council, Bill 51 received Royal Assent on October 19, 2006, and was to be proclaimed to come into force on a date named by the Lieutenant Governor. On December 15, 2006, notice was given that *The Planning and Conservation Land Statute Amendment Law Act* (Bill 51) and its associated regulations would come into effect on January 1, 2007.

Bill 51 includes numerous amendments to the Planning Act in order to make the planning process more open and accessible. Bill 51 strengthens the land use planning framework by providing tools and processes to assist in the implementation of related Provincial initiatives all aimed at developing stronger and more sustainable communities. It is anticipated that many of the new provisions provided for in Bill 51 will take some time to be fully implemented.

## **Transition Provisions**

The *Planning Act*, as amended, and regulations came into effect on January 1, 2007. Ontario Regulation 548/06, which addresses the transition provisions, provides that in the case of an application for official plan amendment, zoning by-law amendment, site plan approval, minor variance, consent or subdivision, the date that the applications are considered to have "commenced" is the date that the applications were submitted. If any of the referenced applications were "commenced" on or after January 1, 2007, then they are subject to the new requirements of the *Planning Act*. Any application which has "commenced" prior to January 1, 2007 shall be continued to be disposed of under the *Planning Act* as it read on December 31, 2006.

In the case of a municipal initiated official plan amendment, the date of "commencement" is the date that the implementing by-law adopting, amending or repealing the plan is passed. If a municipal initiated official plan amendment has commenced and an amendment is adopted prior to January 1, 2007, it is disposed of under the *Planning Act* as it read on December 31, 2006. If the municipal initiated official plan amendment is adopted, or passed after January 1, 2007, then it is subject to the new requirements of the *Planning Act*.

## **Land Use Planning Process Changes**

Many of the changes to the *Planning Act* focus on modifying the Planning process to make it more transparent and accessible to the public.

### **i) Decisions Based on Current Policy**

The revised Act requires that municipal decisions on Planning applications are to be based on Provincial plans and policies in place at the time of their decision.

Councils, local boards and the Ontario Municipal Board (OMB) must now make their decisions **consistent with** Provincial policy statements and Provincial plans *in effect at the time of the decision, not at the time of application*. Under the new regulations, Council must state that the decision on any application is consistent with the Provincial Policy Statement; that it conforms or

does not conflict with any applicable Provincial plan; and that it conforms to the City's Official Plan.

**ii) Required Pre-Application Consultation**

Under the requirements of Bill 51, Council may, by By-law, now require applicants to consult with the municipality and its staff prior to submitting an application for an Official Plan, Zoning By-law Amendment, Site Plan, or Plan of Subdivision.

**iii) Public Open House**

Public Open House provisions are a new addition to the *Planning Act* within Bill 51. Municipalities are now required to hold public open houses in addition to and prior to the statutory public hearing on all official plan updates required every 5 years (Section 26 of *Planning Act*), and the local municipality's comprehensive zoning by-law updates (Subsection 26(9) of *Planning Act*), development permit system official plan amendments, and development permit system by-laws.

The Act requires that notice be given by the Municipality in a similar fashion as the notice for Public Hearings. The open house must be held a minimum of 7 days prior to the public hearing, in order to give the public an opportunity to review and ask questions about the proposal.

This new provision will have to be met when the City embarks on the Official Plan update and subsequent required zoning by-law update as required by Bill 51.

**iv) Complete Applications**

Changes to the *Planning Act* provide an opportunity for municipalities, through the incorporation of Official Plan policies, to require that applications for official plan amendments, zoning by-law amendments, subdivisions and consents contain specific information and material in support of the application. These requirements have been detailed in four regulations corresponding to each application type.

The Act now provides Council an opportunity to require additional information or material in support of the application at the beginning of the process. In order to implement this provision, Council must adopt an Official Plan or an Amendment to the Official Plan that prescribes the submission requirements. The regulations for what constitutes a complete application have been expanded to include some of the following:

- a) consistency with Provincial Policy Statement (PPS);
- b) conformity or lack of conflict with Provincial plans;
- c) considerations related to servicing;
- d) identification of related Planning applications;
- e) archaeological potential; and,
- f) ensure zoning by-laws conform to the municipal Official Plan.

In order to ensure a complete application has been submitted, municipalities can pass a by-law requiring applicants to consult with them before submitting an application. The Development Planning Department will propose an amendment to the Official Plan outlining specific provisions as to what constitutes a complete application. The City will need to review in detail what would constitute a complete application as it relates to the specific application submitted. The submission requirements will be different depending on the type of application submitted and would need to be clarified during the consultation held with staff. The type of information that could be required, but not limited to, may include the following:

- a) Planning Justification Study;
- b) Environmental Impact Study;

- c) Flood Plain and Erosion Hazard Study;
- d) Agricultural Lands Impact Study;
- e) Air Emissions Study;
- f) Traffic Impact and/or Parking Study;
- g) Retail Market Study or other Economic Impact Studies; and
- h) Plans including site grading, servicing, landscaping and elevations.

The Official Plan should be amended to determine what constitutes a complete application for each application type. Through the prescribed requirements outlined in the Official Plan, it can also be a requirement that Council may refuse to accept an application until it is considered to be complete under these requirements.

**v) Notice Requirements**

The statutory time period for Council to make a decision on an application does not start until a complete application is received. Once an application is submitted, the City is required, within 30 days of the fee being paid, to advise the applicant if the application is complete or not. Within 15 days of advising the applicant, the City must advise the public of the receipt of a complete application, in the same manner as notice would be given for a public hearing. All complete information as listed above, must also be made available to the public within the 15 days. If the City determines that an application is incomplete, the application is not required to be considered, and the applicant must be notified of any outstanding documentation.

The appeal time frames within the *Planning Act* do not begin until a complete application has been received. The applicant cannot file an appeal to the Ontario Municipal Board until a complete application has been received. It is therefore important to include the new policies for complete applications in the Official Plan. However, an applicant may file a motion with the OMB requesting that the OMB decide whether the application is complete.

Upon adoption of an official plan amendment and/or zoning by-law to implement the provisions of Bill 51 as they relate to a complete application, pre-application consultation and sustainability the Development Planning Department will update its Planning application forms and administrative procedures to ensure that all of the requisite information and material is addressed within the application forms as part of this review. The Clerk's Department advises they are doing the same to ensure that the Consent application forms are appropriately updated. It is also recommended that public notice of a complete application be coordinated with the notice of public hearing (as permitted by the Act) as often as possible in order to reduce the costs to the municipality for the additional notice requirement. The Development Planning Department will work toward a process to ensure that the notice requirements can be accommodated within all of the requisite time periods.

**vi) Application Materials**

The Planning Act includes a new provision which requires that all materials filed as part of an application shall be made available to the public. This would include any supplementary information to the prescribed information included in the complete submission requirements. Applicants should be made aware at the time of submission of this provision.

**vii) Notification of Refusal Provision**

A new provision has been added to the Planning Act which requires that upon the decision of Council to refuse to adopt an OPA or refuse to pass a zoning by-law amendment, the municipality has 15 days to issue the refusal notice. The notice must be sent to the applicant, each person asking to be notified, and the appropriate approval authority.

The regulations related to each application type also provide that the notice include:

- a) an explanation of the purpose and effect of the application;
- b) a statement confirming Council's refusal including the date of the refusal;
- c) a written explanation for the refusal;
- d) identification of the 20 day period for filing an appeal (similar to existing decision notice provisions); and
- e) statements advising of appeal rights (similar to existing decision notice provisions).

These new notice requirements are applicable to all applications received after January 1, 2007, upon adoption of Official Plan Amendments required by Bill 51, and will be processed through the Clerk's Department, which currently provide notification of approval and adoption.

### **Updating Municipal Planning Documents**

- a) The *Planning Act* now requires municipalities to revise their official plans at least every five years

Bill 51 identifies the matters that will determine whether an official plan must be revised and actions that must be carried out in the review. In assessing the need to update its official plan not less frequently than every five years, a municipality must ensure that the plan: conforms with Provincial plans or does not conflict with them; has regard to matters of Provincial interest; and is consistent with Provincial policy statements.

These Official Plan updates will require the conducting of a Public Open House, as discussed earlier, in addition to the Public Hearing.

- b) Official Plan Policies for the Protection of Employment Lands

The Act Provides Council with an opportunity to protect Employment lands from conversion by adopting official plan policies that prohibit the conversion of employment lands and the removal of such lands from the employment land base. By adopting such policies, it will preclude applicants from appealing employment land conversions to the OMB, except at the time of the five year municipal official plan review.

- c) Municipal Zoning By-law Updates

The Act also requires that Municipal zoning by-laws be updated no later than three years after the official plan revisions; made as part of the five year review, come into effect. When municipalities undertake the review of their official plan and zoning by-laws, the Act requires that a public open house be held.

### **Planning Tools to Support Sustainable Development**

New or expanded financing and planning tools in the Planning Act support sustainable development from an environmental, economic and community perspective. The tools can also help to conserve land, energy, natural resources, green spaces, and improve air quality, for the future.

- i) Community Improvement Planning

As discussed in previous reports on Bill 51, the Community Improvement provisions within the Planning Act have been expanded to:

- a) Allow municipalities to include new building construction related to energy efficient use of lands, buildings, structures and facilities within the costs of a Community Improvement Plan.
- b) Allow municipalities to register grant or loan agreements on the title of land so that municipalities can increase their ability to enforce agreements and developers can increase their ability to secure upfront financing for their projects.
- c) Allow upper-tier municipalities to participate in lower-tier community improvement grant or loan programs that would increase lower-tier capacity to stimulate private sector development activities through their financing programs.
- d) Require municipalities to provide public notice when they adopt a community improvement plan to increase transparency and accountability in the municipal decision-making process

The *Planning Act* now allows upper-tier municipalities to adopt Community Improvement Plans for matters, which have been prescribed in Ontario Regulation 550/06 to include infrastructure (which includes communication systems, electric power systems, transportation corridors and facilities, waste management and water, wastewater and stormwater works and associated facilities), land, and buildings within and adjacent to existing or planned transit corridors that have the potential to provide a focus for higher density mixed use development and redevelopment and affordable housing.

The changes to the Community Improvement sections were previously supported by Vaughan Council as it expands the tools available to the municipality in implementing community improvement plans. The utilization of Community Improvement Plans will be examined through the review of the City's Official Plan.

## **ii) Minimum and Maximum-Densities & Height**

The Planning Act clarifies that the City has the authority to require minimum and maximum height and densities in a zoning by-law.

## **iii) Cash-in-Lieu of Parkland**

The Planning Act provides, if a cash-in-lieu payment is required, no building shall be constructed unless the payment or satisfactory arrangements to pay have been made. The amount of money paid to the City for cash-in-lieu of parkland may be reduced to encourage certain types of development such as sustainable development, infill development or affordable housing projects, provided that criteria and policies related to the reductions are set out in the Official Plan. The benefits of incorporating cash-in-lieu reduction criteria and policies into the Official Plan must be evaluated fully prior to implementation.

## **iv) Site Plan Control and Subdivision**

Changes to the Site Plan Control Official Plan and By-law will be required to reflect the new requirements to the *Planning Act*.

Several key changes to Site Plan Control (s. 41) and Plan of Subdivision (s. 51) have been made, which include the following:

a) Site Plan Control

The Site Plan Control provisions in Section 41 have been amended to allow municipalities to require drawings which are sufficient to display:

- i) 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 a by-law passed under Subsection (2) that both contain provisions relating to such matters are in effect in the municipality;
- ii) the sustainable design elements on any adjoining highway under a municipality's jurisdiction, including without limitation trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities, if an official plan and a by-law passed under Subsection (2) are in effect in the municipality; and
- iii) facilities designed to have regard for accessibility for persons with disabilities.

b) Plans of Subdivision

The Subdivision provisions in Section (51) have been amended by adding the following to the list of matters to be considered in a plan of subdivision (S. 51(24)):

- i) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under Subsection 41 (2) of this Act;
- ii) the extent to which the plans design optimizes the available supply, means of supplying, efficient use and conservation of energy.

Additionally, the list of applicable subdivision approval conditions (S.51 (25)) has been expanded to include:

- i) highways, including pedestrian pathways, bicycle pathways and public transit rights-of-way, be dedicated as the approval authority considers necessary; and
- ii) that the approval authority shall impose as a condition to the approval of a plan of subdivision that land that is planned as a school site for any school board that has jurisdiction in the area in which the land is situated be offered to the school board at a price that does not exceed the value of the land determined as of the day before the day of the approval of the draft plan of subdivision.

v) Definition of Development

The definition of "development" has been clarified as follows: The definition of "development" in Subsection (1) does not include the placement of a portable classroom on a school site of a district school board if the school site was in existence on January 1, 2007, thereby exempting school boards from the site plan control requirements for portables for existing schools.

Ontario Municipal Board Reform

The changes to the *Planning Act* through Bill 51 includes a series of reforms to Ontario Municipal Board (OMB) procedures and the OMB appeal process which have been outlined in previous reports on Bill 51. The key changes include requiring the OMB to *have regard* for the decisions of a municipal council; and appeals to the OMB would be limited to organizations or individuals who

took part in the approval process at the local level, unless the Board determines that the party could not have reasonably participated in the local approval process.

i) **Timeframe for consideration of new information by the OMB**

The changes to the *Planning Act* limit information and material which may be heard at an OMB hearing to generally that information and material that was provided to a municipality *before* Council made a decision on a development application.

New information may only be permitted if the OMB was of the opinion that it was not reasonably possible to provide the information and material to the municipality prior to Council's decision, or the information and material was introduced into evidence by a public body.

If the OMB determines that the new information and material could have materially affected the decision of a municipal council, then the OMB is required to provide Council with an opportunity to reconsider its decision in light of the information and material and make a written recommendation to the Board.

Ontario Regulation 549/06 gives a municipal council 60 days to reconsider its decision on a plan of subdivision, official plan or zoning by-law application, based on new information and material, and provide a recommendation to the OMB.

ii) **Enhanced Public Record Requirements**

In addition to previous requirements for public record submissions for an OMB appeal, the regulations also provide that the affidavit from a municipal employee declare that: the requirements for the giving of notice and the holding of at least one open house (if applicable) have been complied with and the requirements for giving notice of a complete application have been complied with. For many years, an affidavit from the Clerks Department has been filed at OMB Hearings regarding satisfaction of notice requirements.

The records must also now include a statement as to whether or not the decision of Council is consistent with the PPS and conforms or does not conflict with applicable Provincial plan(s) that are in effect. In the case of zoning by-laws, subdivisions and consents, an additional confirmation with respect to official plan conformity is required.

iii) **No Appeals Permitted**

The *Planning Act* has been amended to prevent appeals to the OMB, in order to enable municipalities to protect employment areas from conversion to other uses and to allow second dwelling units.

Bill 51 enables municipalities to protect employment lands by removing an applicant's right of appeal to the OMB when a Council refuses or fails to adopt an official plan amendment or pass a zoning by-law amendment that proposes to remove any land from an area of employment, even if other land is proposed to be added. This provision operates to prevent appeals only if the municipality has official plan policies in place dealing with employment land conversions. The legislation allows full appeal rights to the OMB at the time of the 5-year review of a municipal official plan, or at any time when a municipality decides to alter employment land designations and policies.

The legislation does not prevent the conversion of employment lands to other uses if the conversion is consistent with the Provincial Policy Statement (PPS) (and conforms to the Growth Plan for the Greater Golden Horseshoe, where applicable) and is supported by the municipal council. The PPS provides that municipalities may permit conversion of employment lands to other uses only when a comprehensive review is undertaken to determine if the conversion is



necessary, and where it has been demonstrated that the land is not required for employment purposes over the long term.

The Act also allows municipal councils to designate and zone areas where second residential units (i.e. basement apartments) could be permitted without appeal to the OMB, except at the time of the 5 year review of the official plan wherein full appeal rights would be allowed.

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 were previously supported by Council as it provides Council with certainty on their decisions on these types of applications.

### **Provincial Interest: Sustainability**

Changes to the Planning Act through Bill 51 has added "sustainability" to the list of items of Provincial Interest. Section 2 of the Act states that when a municipal council carries out their responsibilities under the Planning Act, they shall have regard to matters of Provincial interest which has been expanded to include *"the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians"*.

To support this expression of Provincial interest, the Site Plan Control and subdivision provisions have been expanded to enable the municipality to require plans for site plan which demonstrate the sustainable design of a building, and in the subdivision process, the plan must have regard to matters of Provincial interest, and *"the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy"*.

There may be an issue between the Planning Act and the Building Code Act in this regard (Site Plan) as the Planning Act may enable the municipality to require the sustainable design of a building, however, the Building Code Act does not enable the municipality to require that a building be designed to contain features above and beyond what the Code requires. Staff are reviewing possible site plan approval conditions regarding this matter.

The Act contains provisions which may allow municipalities to provide incentives for sustainability initiatives including implementing a community improvement plan (s. 28 (1)) and enabling a reduction of the payment of cash-in-lieu for parkland where sustainability criteria of the official plan have been met (s.42 (6.2)).

The Act requires that to implement the site plan control provisions through the official plan and site plan control by-law, these documents would require amendment to reflect the new criteria in the Planning Act.

Sustainability is undefined in the amended *Planning Act*, which enables Vaughan to undertake a consultative process to define sustainability and to develop a comprehensive plan to implement sustainability in Vaughan. This process will be taking place as the City will be embarking on an Environmental Master Plan and an official plan update. Both processes will be utilizing sustainability as the founding principle.

It is recommended that implementing sustainability components of the *Planning Act* be coordinated with the Environmental Master Plan and the official plan update, wherein a full consultative process will be undertaken to define and establish goals and objectives and measurable targets for sustainability for the City of Vaughan.

### **Local Appeal Bodies**

Section 8.1 has been added to the *Planning Act* to allow municipal councils to create a Local Appeal Body (LAB) to adjudicate appeals related to applications for minor variances and/or

consents to sever. Section 8.1 also establishes parameters for the Local Appeal Body's composition and powers. Ontario Regulation 551/06 has been passed which outlines the procedure for creating a Local Appeal Body. Where a municipality chooses not to establish a Local Appeal Body, consent and minor variance appeals would continue to be heard by the Ontario Municipal Board.

At the Committee of the Whole (Working Session) of February 27, 2007, Council considered a report on Bill 130 amendments to the Municipal Act. On March 19, 2007, Council directed that staff report back on opportunities available to establish a local appeal body.

The legislation does not authorize a municipality to establish a joint LAB with one or more other municipalities, nor does it authorize a municipality to hear appeals submitted by another municipality. This applies to both upper tier and lower tier municipalities.

In order for a municipality to establish a Local Appeal Body, the municipality's official plans and zoning by-laws are required to be up-to-date and conform to any applicable Provincial plans, and be consistent with Provincial policy statements, and the municipality must pass a by-law to constitute and appoint the LAB and describe the procedural and administrative requirements.

Establishing a Local Appeal Body in Vaughan is at the discretion of Vaughan Council. The administrative costs of the LAB are borne by the City, and would require a number of resources including staffing, and office space. In 2006, there were approximately 12 appeals made on Minor Variance and Consent applications, and therefore the anticipated administrative costs of establishing a LAB is not recommended at this time given the anticipated costs versus the perceived benefits of establishing a LAB. Should Vaughan Council choose to implement a Development Permit System (discussed below), then further consideration could be given to establishing a LAB at that time.

#### **Development Permit System**

Changes to the *Planning Act*, through the passing of Ontario Regulation 608/06, expands the Development Permit System, which was previously a pilot project restricted to 5 municipalities in Ontario, to all the municipalities in Ontario. In order to establish a development permit system, a municipality must meet certain criteria as established in the regulation.

The Development Permit system is intended to streamline the development process by merging the minor variance, zoning and site development processes into one.

Given that the City is about to embark on a new official plan, the official plan process would be the best opportunity to fully examine the feasibility and appropriateness of implementing a Development Permit System for Vaughan.

#### **Relationship to Vaughan Vision 2020**

This report is consistent with the priorities set forth in Vaughan Vision 2020, particularly "Plan & Manage Growth and "Economic Vitality", and "Lead & Promote Environmental Sustainability".

#### **Regional Implications**

N/A

#### **Conclusion**

The *Planning Act* has been amended by Bill 51 to complement Provincial initiatives such as Places to Grow, and to implement reforms to the Ontario Municipal Board. This report provides an overview of the substantive changes to the Act which will require modifications to the

administrative procedures of the City in relation to the processing of planning applications. As part of the City's future review and comprehensive zoning by-law update, a number of the provisions of the Planning Act changes will be incorporated into the respective documents. However, it is recommended that the Development Planning Department proceed with the amendments as identified in the recommendation section as soon as possible. Accordingly, a public hearing will be necessary to consider amendments to the City's Official Plan and Site Plan Control By-law, to facilitate the new provisions contained in Bill 51.

**Attachments**

N/A

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