



Town of Newmarket
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Bill 108 – Planning Review Process Changes Staff Report to Council

Report Number: 2019-116

Department(s): Planning and Building Services

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Meeting Date: November 25, 2019

Recommendations

1. That the report entitled Bill 108 – Planning Review Process Changes dated November 25, 2019 be received;
2. That Council endorse the recommended process changes; and,
3. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Executive Summary

Changes to Provincial legislation and Council reporting practices have led to increased pressure on the ability to achieve legislated decision timelines. This increases the risk of Council being unable to take a position on a planning application and applications being subject to appeal to the Local Planning Appeal Tribunal (“LPAT”). This report addresses these changes and recommends changes to increase the ability of the Town to meet statutory decision deadlines.

Purpose

The purpose of this report is to build on past reports on the effects of Bill 108, (the “More Homes, More Choices Act”) and to recommend changes to established Town practices in response to the Bill.

Background

On May 2, 2019, the Province introduced Bill 108 which proposes changes to the Development Charges Act, 1997 (DCA). The Bill has been introduced as part of the Province's "More Homes, More Choice: Ontario's Housing Supply Action Plan." This Bill contains changes to various policy documents and legislation, as was presented to Committee of the Whole in Reports [2019-62](#) and [2019-76](#).

Among the changes from Bill 108 are amendments to the Planning Act. These changes are intended to increase the supply of housing by reducing barriers to the approval of development applications. Staff have reported previously through the reports cited above that there is limited evidence that Bill 108 will achieve its objectives and instead will create additional administrative costs, increase price uncertainty for developers, and may reduce municipalities' ability to continue to provide the same level of service in the face of growth without finding additional sources of funding.

Bill 108 includes amendments to the Planning Act that are designed to reduce the time it takes municipalities to make decisions on Planning Act applications. This is ostensibly achieved by reducing the amount of time that must pass before an applicant has the right to appeal a lack of decision on the part of a municipal council to the Local Planning Appeal Tribunal. These timelines were previously extended under the former Provincial Government under Bill 139 as part of a sweeping set of changes to give greater local control to municipalities. Many of these changes are now reversed.

The timelines for municipal processing of development applications (before a right to appeal for a non-decision of a council arises), which had been extended in Bill 139, are now proposed to be shorter than Bill 139 timelines.

	Pre-Bill 139	Bill 139	Bill 108
Official Plan Amendment	180 days	210 days	120 days
Zoning By-law Amendment	120 days	150 days	90 days
Draft Plan of Subdivision	180 days	180 days	120 days

These required timelines reduce the ability for Planning staff to undertake detailed reviews of applications to address the complex issues that arise through land development. These timelines will impact the ability to consult effectively with the public, address the concerns of residents and review partners, and meet internal reporting cycles. This increased inability to meet decision timelines risks more applications being subject to appeal and Council not having the ability to render a decision on important developments in Newmarket.

Discussion

The process for reviewing, providing public notice, and rendering a decision on a Planning Act application is set out in the Planning Act and its associated regulations. The specific steps vary by type of application, but are broadly similar for the largest and most common type of application that requires public notice – applications for zoning by-law amendment, official plan amendment, and draft plan of subdivision. There have not been significant changes to the processes for other types of applications (consent, minor variance, site plan approval, draft plan of condominium, part lot control, etc).

Beyond the general requirements of the Act, Newmarket's internal processes require additional steps that are customary but not statutorily required.

Planning Act required steps

Below are the statutorily-required steps of the Planning Act that must occur as part of one of these types of applications in order for Council to make a decision on an application.

Planning Act Requirements
1. Declare Application Complete The Act requires that within 30 days of an application being submitted that the Town notify the applicant whether they have submitted all materials required by the Town's Official Plan.
2. Public Notice The Town must within 15 days provide public notice of the complete application (signs on the property, letters to surrounding residents, and/or notice in the newspaper). Staff must circulate the notice and submitted materials to departments and review partners for comment (e.g. York Region, LSRCA, provincial ministries, utility companies, advisory committees).
3. Statutory Public Meeting The Town must provide notice to the public at least 20 days in advance of holding a statutory public meeting, and such a meeting must be held. Council must make a decision on the application.
4. Notice of Decision The Town must provide notice of the decision on the application. Certain persons have appeal rights of Council's decision.

Depending on the type of application, these steps must occur within a given number of days as laid out in the table earlier in this report or the applicant has the right to appeal the lack of decision to the LPAT.

Town of Newmarket internal processes

Planning staff ensure that the steps laid out above occur for each application. In addition to them, there are other steps that occur as a matter of historical practice rather than statutory obligation. In order to complete each of these steps, there are also internal processing requirements (report approval timelines) that must occur.

The circumstances of applications also play a key role in when each step can occur based on the complexity of the application, the time that review partners require to review, the volume of applications, and the timing of the application among the Council reporting cycle.

The steps that occur in Newmarket are laid out generally below as they occur chronologically with and between the required Planning Act steps.

Planning Act Requirements	Town Processes
1. Declare Application Complete	<i>Statutory steps presented in table earlier in this report.</i>
	Agenda requests for Preliminary Report Advance notice is required for reporting to Committee of the Whole. Depending on the date of the application within the Council cycle, this can lead to reports being presented weeks after they are prepared.
2. Public Notice	<i>Statutory steps presented in table earlier in this report.</i>
	Preliminary Report Planning staff collect the comments from residents and review partners and provide them to Council to introduce the application and request that Council refer the matter to a public meeting.
	Scheduling Public Meeting Based on the Committee of the Whole cycle timing, Planning Act notice requirements, and the practice of requiring Council direction to hold a statutory public meeting, it is rarely possible to schedule a meeting for the immediately following cycle. This requires the public meeting to occur two Council cycles after the preliminary report.
3. Statutory Public Meeting	<i>Statutory steps presented in table earlier in this report.</i>
	Agenda request for Final Report Depending on the date of the statutory public meeting within the Council cycle and the need to analyze feedback from the meeting, additional time to reach another Council cycle is often required.

	Final Report Following the statutory public meeting, Planning staff again collect the comments from residents and review partners and provide them to Council along with a recommendation on the application.
4. Notice of Decision	<i>Statutory steps presented in table earlier in this report.</i>

It is increasingly challenging to meet or even come close to legislated timelines under the Planning Act. The Town's practices and internal reporting processes, combined with the notice provisions of the Act, render the likelihood of meeting the legislated timelines improbable.

In preparing research for this report, Planning staff have laid out the Council reporting timelines and evaluated a range of scenarios based on potential applications and processing approaches. In order to reduce processing timelines and increase the ability to meet the legislated timelines, staff recommend the following changes.

Recommended process change

This change proposes to increase the efficiency of processing Planning Act applications by discontinuing the practice of providing a "Preliminary Planning Report" on an application, and allowing staff to schedule a statutory public meeting when the review of the application is sufficiently advanced. This change would allow the notice of the meeting to be provided without being tied to a Council meeting schedule, which can allow a meeting to be scheduled inside of the approved Council calendar with the required 20 day notice.

The preliminary planning report is a customary practice that lays out the details of an application and initial comments, but does not present the position of Planning staff nor provide a recommendation. The value of the preliminary report is limited, and represents an expense of staff time that can achieve better value spent on other tasks.

By discontinuing the practice of first having a preliminary planning report and instead allowing staff to provide the required notice, processing times can be significantly reduced and residents will be provided with clearer notice for their opportunity to address Council. The current practice of presenting the preliminary planning report leads to some confusion for residents engaged in the process who see the report as an opportunity to share feedback or oppose an application. In truth, the preliminary report is a formality to initiate the required public meeting which is the appropriate venue for such input.

This potential change was first introduced to Council at a recent workshop on the Procedure By-law by staff from Legislative Services, as efforts to improve efficiency have been a collaborative process between Legislative Services and Planning Services. It is worth noting that the process of a preliminary planning report does not exist in the Procedure By-law and no amendments to the By-law are required for this proposed

change; rather, the matter was included within the presentation in order to give Council a broader picture of all potential process changes underway.

It should also be noted that there is no statutory requirement for Council to refer an application to a public meeting, or for Council to delegate the authority to do so – the only statutory requirement is that a meeting be held. The practice of requesting that Council refer the matter has grown as a custom, but exists nowhere in law.

Current practice	Proposed change
Preliminary report before public meeting	No report before public meeting
Notice of public meeting following preliminary report	Staff will provide notice of the public meeting upon receipt of the complete application
Final recommendation report following public meeting	No change

Council will continue to be notified of all applications, and staff will make a point to circulate notices of applications to all members of Council and senior staff. These notices provide a brief summary of the nature of the application, details on where more information can be found, and an invitation to contact the responsible Planning staff member with any questions.

Conclusion

The recommended changes will continue to meet the Town's statutory obligations under the Planning Act, reduce the time it requires to process certain Planning Act applications, and increase the ability of the Town to meet legislated timelines. By being better able to meet legislated timelines, the Town can reduce its risk of having Planning Act applications appealed to the Local Planning Appeal Tribunal, and better ensure that Council is able to render a decision on applications that are important to Newmarket.

Business Plan and Strategic Plan Linkages

This proposed change supports continuous improvement to planning processes, ensuring public consultation and efficient processing of development applications.

Consultation

This report was reviewed by the approval authorities listed below.

Human Resource Considerations

None.

Budget Impact

None.

Attachments

None.

Approval

Ted Horton, Senior Planner, Community Planning

Adrian Cammaert, Acting Manager, Planning Services

Jason Unger, Acting Director, Planning and Building Services

Peter Noehammer, Commissioner, Development & Infrastructure Services

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