



DEVELOPMENT & INFRASTRUCTURE SERVICES/PLANNING & BUILDING SERVICES
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May 4, 2015

**JOINT DEVELOPMENT & INFRASTRUCTURE SERVICES/PLANNING & BUILDING SERVICES &
CORPORATE SERVICES/FINANCIAL SERVICES
REPORT 2015-13**

TO: Committee of the Whole

SUBJECT: 2015 Coordinated Provincial Plan Review, Proposed Bill 73 (Planning Act Amendments and Development Charges System Review)

ORIGIN: Development & Infrastructure Services & Corporate Services

RECOMMENDATIONS

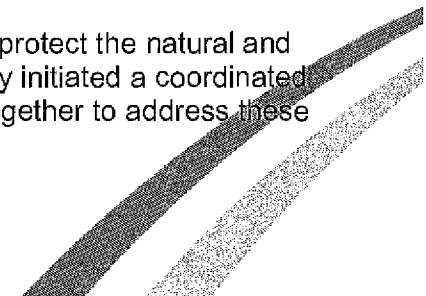
THAT Joint Development & Infrastructure Services/Planning & Building Services & Corporate Services/Financial Services Report 2015-13 dated May 4, 2015 regarding the Coordinated Provincial Plan Review, Proposed Bill 73 (Planning Act Amendments), and Development Charges System Review be received and the following recommendation(s) be adopted:

1. **THAT the comments and issues identified and addressed in this report be forwarded to the Province of Ontario as the Town of Newmarket's comments on the 2015 Coordinated Provincial Plan Review, Proposed Planning Act amendments and Development Charges System review.**
2. **AND THAT the following be notified of this action:**
 - i. **Richard Stromberg, Manager, Ministry of Municipal Affairs and Housing, Ontario Growth Secretariat, 777 Bay Street, Toronto Ontario, M5G 2E5**
 - ii. **Ken Petersen, Manager, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing, 777 Bay Street, 13th Floor, Toronto, Ontario, M5G 2E5**
 - iii. **Ms. Valerie Shuttleworth, Chief Planner, Region of York, 17250 Yonge Street, Newmarket, Ontario, L3Y 6Z1**

COMMENTS

The Province has initiated a coordinated review of the Provincial Growth Plan, Oak Ridges Moraine Conservation Plan, Greenbelt Plan, and Niagara Escarpment Plan.

Over the years, the Province has put in place policies and plans to guide growth, protect the natural and built environment, and protect public health and safety. The Province has recently initiated a coordinated review of four Provincial plans that, although developed at different times, work together to address these



matters and provide a framework for growth in the Greater Golden Horseshoe area. The following plans are under review in 2015:

- Niagara Escarpment Plan (1985) - revised in 1994 and 2005
- Oak Ridges Moraine Conservation Plan (2002)
- Greenbelt Plan (2005)
- Growth Plan for the Greater Golden Horseshoe (2006)

The 2015 Coordinated Review is currently listed on the Province's Environmental Registry (the Environmental Bill of Rights Registry), with comments due by May 28, 2015.

The Town has previously commented on these plans, and it is recommended that these comments be reiterated and forwarded to the Province as part of the 2015 coordinated review.

The Town of Newmarket has previously commented on these matters, either jointly with the Region of York and other area municipalities or directly to the Province, as follows:

Oak Ridges Moraine Conservation Plan (ORMCP)/Greenbelt Plan/Growth Plan (comments provided in 2004 and 2014)

- The Town supports a consolidated/coordinated review of these plans as they need to work together to appropriately direct growth in the Region and Greater Golden Horseshoe, and to promote consistency between definitions and overall land use planning, environmental, and economic development goals.
- A portion of the ORM lands within Newmarket is shown as "Settlement Area" in the ORMCP, but have been designated as Environmental Protection in Newmarket's Planning documents. As part of the ORMCP review, portions of the land within the ORM that are outside of the urban boundary as has been defined through our Planning documents, and that are not needed to support growth, could potentially be re-designated in the ORMCP from "Settlement Area" to be consistent with our Planning documents. A detailed analysis would need to be undertaken to determine which, if any, lands might apply.
- It may be appropriate, with the concurrence of East Gwillimbury and Whitchurch-Stouffville, to review land on the east side of Highway 404 adjacent to Newmarket with the purpose of removing it from the Greenbelt. The Growth Plan indicates that the use of existing infrastructure is to be optimized and encourages the use of existing infrastructure by promoting development where infrastructure expansions would be minimal and that employment lands be strategically located within urban areas near major transportation corridors. This was not intended to reflect a desire by Newmarket for municipal boundary adjustments; rather, it reflects an opportunity to support growth for employment lands in appropriate locations with minimal infrastructure expansion.
- There may be an opportunity to consider portions of the ORM lands within Newmarket as additional Greenbelt land.

Staff continues to support these positions and it is recommended that these comments be reiterated and forwarded to the Province as part of the 2015 coordinated review.

The Town has also previously commented on proposed changes to the land use planning and appeal system.

From October 2013 to January 2014 the Province undertook consultation on the land use planning and appeal system. The Town of Newmarket submitted the following comments as part of that process:

Review of Land Use Planning and Appeal System (comments provided in 2014)

- that the Province coordinate and consolidate its review and changes to Provincial plans and policies in order to reduce the number of times official plans need to be amended to conform to these plans and policies;
- appeals of an entire official plan or zoning by-law should be prohibited;
- privately initiated complex official plan amendments that are contrary to the objectives and direction of an up to date official plan should be required to be deferred to the next official plan comprehensive review or update;
- increase the prescribed time frames for municipalities to consider whether an application is complete;
- remove the provisions for appeal of failure to declare an application complete;
- the *Planning Act* should be clarified to ensure consistent wording with respect to the prescribed time frame within which municipalities are required to make a decision and clearly indicate that the time frame commences from the date the application is considered complete and not the receipt of the application;
- the time frame for Council to make a decision before an appeal may be launched should be doubled, e.g., expanded to 360 days for official plan amendments and plans of subdivision, 240 days for zoning applications and 60 days for site plans;
- pilot implementation of the Development Permitting System (DPS) should be actively encouraged and detailed training should be provided by the Province;
- lower-tier municipalities should be required to undertake provincial conformity exercises one year after approval of the upper-tier conformity exercise in order to incorporate upper-tier interpretations, or additional amendments, where applicable;
- notices/circulation provisions under the *Planning Act* and the OMB procedures should be updated to allow for notice via e-mail;
- the *Planning Act* should be amended to provide clear authority (in addition to the holding, bonusing, development permitting and plans of subdivision provisions) for development proponent(s) to be required to dedicate and build new streets, implement intersection improvements and other infrastructure requirements considered necessary to support the development.
- conformity amendments to reflect provincial plans and policy should not be subject to appeal unless the municipal official plan policy provides for more protection or is more restrictive than the provincial plan or policy;
- where official plan policy reflects the minimum standard established in the *Planning Act*, there should be no right of appeal, e.g., alternative parkland standard (Section 51.1 (2)) of the *Planning Act*.
- the *Planning Act* should be amended to address and prevent the future application of the “clergy principle” in order to prevent outdated planning documents from prevailing.

The Province has introduced Bill 73, being proposed amendments to the *Planning Act* and *Development Charges Act*.

Bill 73 (first reading – March 2015) is the Province’s proposed response to the public consultation. Bill 73 is currently listed on the Province’s Environmental Registry, with comments on the proposed amendments due by June 3, 2015. York Region is also providing comments, however due to timing of reports/agenda deadlines, there was insufficient time to participate in this coordinated review.

The key proposed amendments and additions to the Planning Act that could impact Newmarket include:

OMB to “Have Regard To” any information and material received by a municipal council whether or not a decision is made prior to an appeal

The *Act* currently requires the OMB, when it makes decisions relating to planning matters, to “have regard to” decisions of municipal councils and approval authorities relating to the same planning matter, and to any supporting information and material they considered in making those decisions. The section of the *Act* is proposed to be rewritten to impose a similar requirement when the OMB deals with appeals resulting from the failure of a municipal council or approval authority to make a decision – that is, the OMB would be required to “have regard to” the information and material that the municipal council or approval authority received in relation to the matter, even though a decision was not made within the required timeframe. This information and material includes any written and oral submissions from the public related to the planning matter.

2 Year Moratorium on appeals of Official Plan Amendments, Zoning By-law Amendments, and Minor Variance Applications

During the first two years following the adoption of a new Official Plan or a comprehensive zoning by-law, no applications for amendments would be permitted. Similarly, during the two-year period following a site-specific rezoning, applications for minor variance on that property would only be permitted with Council approval.

Limiting Appeals

Bill 73 would remove the ability to appeal certain Official Plan matters to the OMB including:

- a) “Global” appeals of new official plans. Appeals must be specific and scoped;
- b) Appeals of any part of an OP that implements certain matters relating to vulnerable areas under the *Clean Water Act*, the lake Simcoe watershed; a Greenbelt, Protected Countryside or specialty crop area under the *Greenbelt Act*; the Oak Ridges Moraine Conservations Plan Area; Growth forecasts; or settlement area boundaries in lower-tier official plans. In Newmarket’s case, this would apply to certain lands within the ORM which are currently outside of the urban area.
- c) Appellants who argue that a decision is inconsistent with a provincial policy statement, provincial plan or upper-tier municipal plan would be required to identify these issues in their notices of appeal, failing which the OMB can dismiss all or part of the appeal without a hearing;

Additional Emphasis on Public Consultation and Consideration of Submissions from the Public

Currently the *Planning Act* does not make it mandatory to include in an Official Plan the measures and procedures the municipality will undertake for informing and obtaining the views of the public for official plan amendments, zoning by-law amendments, plans of subdivision, etc. Bill 73 would make this mandatory. In addition, municipalities would be entitled to include the use of alternative forms of public consultations for plans of subdivision and consents. Further, as part of any decision on development approval applications, municipal councils will be required to explain the effect of written and oral submissions received with respect to their decision on an application.

The inclusion of this requirement increases the transparency in the Planning process as municipalities will need to specifically note what impact the public consultation process had on its decision. Newmarket staff reports have implemented this procedure for some time to explain how public input was considered during the review of a development application, however the formal Notice of Passing will also need to incorporate this requirement.

Extended time to review Official Plan Amendment applications

Appeal timeframes of a non-decision of Council for official plan amendment applications may be extended up to 90 days provided written notice is given from the approval authority or the applicant. The timeframe before an appeal of a non-decision in respect of an official plan would then be 270 days (currently 180 days). Appeal timeframes for other types of applications such as zoning by-law amendment applications and subdivisions do not appear to be extended.

Newmarket had previously recommended to the Province that the time frame for Council to make a decision before an appeal may be launched should be doubled, e.g., expanded to 360 days for official plan amendments and plans of subdivision, 240 days for zoning applications and 60 days for site plans.

While Bill 73 partially addresses the Town's comments by providing for a longer review period for official plan amendment applications, in staff's opinion the proposed extended timeframe still does not provide sufficient time to adequately review and consult on such applications before an appeal may be launched. In addition, because Bill 73 does not appear to extend the review timeframe for other types of applications, it is recommended that the Town of Newmarket reiterate its previous recommendation to extend the timeframe to 360 days for official plan amendments and plans of subdivision, 240 days for zoning applications and 60 days for site plans.

It is also recommended that these extended timeframes be included in the *Act* as-of-right, as opposed to requiring the approval authority or applicant to provide written notice of its intention to extend the timeframe.

Dispute Resolution

Bill 73 would allow the use of mediation and other dispute resolution techniques where appeals are made on official plan amendment applications, zoning by-law amendment applications, plan of subdivision applications, and consents. Where a municipality gives notice of an intention to use an alternative dispute resolution process, an additional 60 days beyond the current 15 days is provided before the decision maker must submit the appeal record to the OMB. Staff supports this proposed change.

Participation in the dispute resolution process by the persons and public bodies who receive invitations is voluntary.

Section 37 (Bonusing) Requirements

In an effort to increase transparency in the manner in which Section 37 funds are spent, Bill 73 will require municipalities to establish a special account for money collected through Section 37 and any money paid out must be for services or matters specified in the by-law. Changes to the *Act* will also require an annual Treasurer's statement to Council relating to the special account.

Parkland Dedication

Bill 73 proposes to amend the maximum parkland dedication amounts when using the alternative parkland dedication process from the current standard of 1 ha per 300 units to a lesser standard of 1 per 500 units. Further, before a municipality could adopt official plan policies allowing for the alternative parkland dedication approach, the municipality will have to prepare and make available to the public a parks plan that examines the need for parkland in the municipality.

Newmarket already has appropriate policies in its Official Plan allowing for the use of the alternative parkland dedication approach, and staff is currently preparing a Parkland Dedication By-law that will establish a new standard for parkland dedication for new developments. The Town also has a Council-adopted Parks Policy Manual that establishes open space and parkland targets within the municipality, and this document will inform, to a certain extent, the parkland standard that will be brought forward for Council's consideration through the Parkland Dedication By-law.

Similar to the Section 37 requirements outlined above, Bill 73 will require an annual Treasurer's statement to Council showing the opening and closing balances of the special account and including statements identifying and land or machinery acquired during the year with funds from the special account, any building erected, improved or repaired during the year with funds from the special account, details of the amounts spent, and for each of these, the manner in which any capital cost not funded from the special account was or will be funded.

Proposed Amendments to the *Development Charges Act*

Development Charges System Review

The *Development Charges Act, 1989* was the first of its kind in Ontario. The Act replaced the former lot levy regime, which evolved through OMB hearings. The Act standardized the practice of collecting growth related revenue. The Act also provided a standard for measuring service level standards and rules for public consultation. The *Development Charges Act, 1997* placed limitations on what services could be included where and additional rules and regulations surrounding approach and implementation. Bill 73 proposes amendments to the *Development Charges Act, 1997*.

The key proposed amendments and additions to the *Development Charges Act* that could impact Newmarket include:

1. Administrative changes

Annual Reporting of the Treasurer

These changes will add to the current reporting requirements. The treasurer will be responsible for identifying all assets whose capital costs were funded by development charges. For each asset the

treasurer must identify costs which were funded by other sources, includes a statement as to the municipalities compliance with the new limits on additional levies and require that report be made to the public.

Asset Management Plan

The Town will have to greatly expand its Asset Management Plan to include services that are eligible for development charge revenue. If services are not included in the Plan, the Town will not be able to collect development charges for the services.

This means that the Town's Plan will have to be expanded to include Stormwater, Fire, Outdoor Recreation, Indoor Recreation, Library and Parking Lot Services.

Area Specific Development Charges

The Town of Newmarket may be prescribed to have area specific development charges. This could mean, for example, having different development charges for inside and outside the Town's urban centres. The Town would not need to implement area specific development charges until the prescribed areas are determined and until the next background study is completed.

How the area specific development charges will be calculated is yet to be determined and may add complexity to the development charge calculation. Conceivably, there can be a cost that is incurred in one area can benefit the whole Town. Similarly, the pressure development puts on municipal services is in part determined by geography and urban form. For example, low density developments are more likely to use more water than rise development as they are more likely to use water for irrigation. How to determine the share of costs can add complexity to the development charge background study.

Comments

In general, the amendments will initially create additional administrative costs for the Town, however the future benefit of the reports are likely to outweigh the initial cost. They appear reasonable and there is no reason to object to them.

The province is proposing to give itself a new power to prescribe area-specific charges. The Town does not support this proposed amendment.

2. Potential Funding Enhancements

Planned Service Level

Rather than looking backward to the 10 year average service level, this amendment would allow the Town to look forward 10 years for the desired service level. How the desired service level will be calculated is yet to be determined.

Based on the discussions of what services are likely to be able to use the planned service level calculation, there are indications that transit and solid waste are the only ones being considered at this time. The Town would not benefit from this.

Change in 10% Reduction

In addition to changing the way municipalities can calculate planned service levels, Bill 73 is also considering removing the mandatory 10% discount for Transit and Solid Waste. Again, neither removal affects the Town.

Ineligible Services

This change ensures that ineligible services are identified in the regulations, rather than partly in the Development Charge Act, 1997 and in the regulations. This change gives the Minister of Municipal Affairs and Housing much more discretion in removing ineligible services without having to go to provincial parliament to receive approval. Recycling is being considered for removal from the list of ineligible services.

Comments

These items – historic service levels, mandatory 10% reduction and ineligible services – limit a municipality's ability to have growth pay for growth. As a consequence, an unfair burden is placed on current taxpayers. At this time, it appears that only Transit and Solid Waste will benefit.

The Town recommends that these restrictions should be lifted.

3. Voluntary Contributions

This change will have no impact on development charges; however it will impact alternative means of collecting financial resources to pay for development related projects, including voluntary payments. Voluntary contributions are collected to fund the expansion of the Town's municipal services in order to accommodate new growth. Those who provide voluntary contributions are given priority to proceed with their development. The removal of the option for voluntary payments will likely increase the impact on tax payers.

The actual wording is:

A municipality shall not impose, directly or indirectly, a charge related to a development or a requirement to construct a service related to development, except as permitted by this Act or another Act.

The only exception would be for payments allowed by other provincial legislation. This would not be applied retroactively and would not affect agreements already in place.

Comments

Currently the Town accepts contributions for trails, public art and entrance signs – the last two items are not eligible for DC funding, but this does not appear to be an exclusion.

Until such time that growth fully pays for growth, the Town is opposed to the restrictions being placed on voluntary contributions. It places an unfair burden on the current property taxpayers

OMB Reform

Bill 73 does not contain any proposed amendments to the *Ontario Municipal Board Act* or any substantive issues regarding the OMB such as whether the Board should continue to exist, the composition and/or qualifications or requirements of the Chairs and Vice Chairs or the current powers of the Board.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

Providing input on Provincial plans and legislation supports the *Well-respected* branch of the Community Strategic Plan by being an influential contributor to regional and provincial affairs.

CONSULTATION

The Legal and Finance departments provided information which is included in this report.

Staff has also reviewed the Region of York's report entitled "Proposed Amendments to the Planning Act and Development Charges Act under Bill 73" dated May 14, 2015 and is supportive of the Region's position taken in that report.

HUMAN RESOURCE CONSIDERATIONS

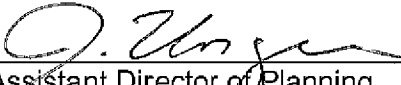
Not applicable to this report.


BUDGET IMPACT

There are no Capital or Operating budget implications associated with this report.

CONTACT

For more information on this report, contact R. Nethery, Director, Planning & Building Services, ext. 2451, (rnethery@newmarket.ca), or M. Mayes, Director of Finance/Treasurer, ext. 2102, (mmayes@newmarket.ca).


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