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Response to Bill 109 with Collaborative Application Preparation Process & Development Approvals Process and Fees Review Staff Report to Council

Report Number: 2023-38

Department(s): Planning and Building Services

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Meeting Date: June 19, 2023

Recommendations

1. That the report entitled Response to Bill 109 with Collaborative Application Preparation Process & Development Approvals Process and Fees Review dated June 19, 2023 be received; and,
2. That Staff be directed to bring forward an amended delegation by-law, delegating approval authority for temporary use by-laws and the removal of holding symbols to the Director of Planning & Building Services; and
3. That Council endorse the recommended changes outlined in Appendix 2, subject to further approvals, as required; and,
4. That Council endorse the use of the Region's CAP process; and,
5. That Staff be directed to bring back a Pre-Consultation By-law to implement the Region's CAP process; and
6. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Executive Summary

This report outlines two related but different review projects which have been undertaken concurrently. The first process review to be discussed is the Development Approvals Process and Fees Review. It was initiated by Planning Services and will be Response to Bill 109 with Collaborative Application Preparation Process & Development Approvals Process and Fees Review

completed in two phases. This report presents the first phase which is the review of the internal portion of development review, completed by Sajecki Planning. The second phase is an analysis of the Planning Act application fees and will be completed by Hemson Consulting. Phase two will be presented in the fall. Phase 1 of DAP is focused on the internal part of the process – how staff manage the process and how the various departments interact during the review process.

The second process review to be discussed in this report is the Collaborative Application Preparation (CAP) Process. This review was complete by McCauley & Moyle on behalf of York Region. CAP focuses on the external side of the development application review process. It is the part that applicants see and participate in.

Both of these process review projects were undertaken in response to the new development review timelines prescribed by the Province through Bill 109. Both recommend new ways of doing business to increase the efficiency of development review. Both make recommendations to clarify the process and ensure that all parties understand what it will take to get to the end and that those goal posts don't move. This report highlights the recommendations stemming from both processes.

Purpose

The purpose of this report is to advise Council on process changes proposed for and implemented by Planning Services and our development review partners to address the new Bill 109 timelines.

Background

In 2021, the Province enacted legislation known as Bill 109. This Bill amended the Planning Act in numerous ways. Of relevance to this report is the Bill's changes to planning approval deadlines. It also added additional rules that if the approval timelines were not met, municipalities are required to refund planning application fees. The new deadlines were in place as of July 2022. The fee refunds were supposed to start January 2023, however if Bill 97 receives Royal Assent¹, the refunds will be delayed to applications received after July 1, 2023.

The chart below outlines the timeframes created by Bill 109.

Application Type	No Refund	50% Refund	75% Refund	100% Refund
Official Plan Amendment	Decision made within 120 days	Decision made within 121 and 179 days	Decision made within 180 and 239 days	240 days or later

¹ As of the writing of this report Bill 97 had not yet received Royal Assent.

Application Type	No Refund	50% Refund	75% Refund	100% Refund
Zoning By-law Amendment	Decision made within 90 days	Decision made within 91 and 149 days	Decision made within 150 and 209 days	210 days or later
Site Plan Application	Approval within 60 days	Approval given within 61 and 89 days	Approval given within 90 and 119 days	120 days or later

As of July 2022, staff have been investigating ways to shorten review times, involving external processes that the applicant sees and some internal processes as well. As staff were making some changes, the Region engaged a consultant team to create a new external facing process, this resulted in the Collaborative Application Preparation (CAP) process, explained below. At about the same time, Planning Services engaged a consultant to review our internal processes. This project is called the Development Application Process (DAP) Review and is also discussed in further detail below. In January 2023, Planning Services partially implemented the Region’s CAP process as its final details were being worked out. In April 2023, the Region approved the CAP process and encouraged all nine local municipalities to do the same. Phase 1 of our internal DAP review project has also finished. Therefore, this report brings both projects together and forms a milestone in our efforts to implement the prescribed timelines of Bill 109.

Discussion

Bill 109 has created a new frontier for processing development applications. It is not possible to meet the prescribed timelines without significantly sacrificing the standards that the Town has established. These standards have been created to protect people and property and more often than not have come from lessons learned, whether in Newmarket specifically or by municipalities more broadly. To maintain our standards and meet the legislated timeframes, we are exploring new processes and procedures. There will be some trials and some revisions to these new ways of doing business, as we, and all development reviewers in the province, break new ground.

With that in mind, staff have looked at the development approvals process from two vantage points: how it is received externally and how it runs internally. The Region has provided a process for the external portion (CAP – discussed below) and the Town has developed recommendations through the DAP review (also detailed below).

The DAP Report’s recommendations aim to tighten up our documentation to make staff more effective and to expand our resources to allow staff to be more efficient. As Council may be aware, Planning departments throughout Ontario are expanding, to the point that the media is reporting on a shortage of planners. If applications are to be

processed faster, while maintaining the high quality standards we have come to expect, additional staffing resources are required. The alternative is to decrease the quality of review or allow for some refunds of application fees; neither of which are acceptable outcomes. Most departments that are involved in development review will need some form of additional resources.

Both CAP and DAP call for attempting changes, experimenting, and learning along the way. Specifically, the DAP report states: “the Town of Newmarket, along with other municipalities, must demonstrate adaptability and embrace innovative thinking to effectively provide policy and regulatory guidance as it continues to grow.”

We are learning not only from our own changes but those of other municipalities as well. It is important to note that these changes will evolve and become more effective over time. It is possible that staff may come back to Council in the future seeking recommendations to approve further changes and/or revise the ones contained in this report.

In July 2022 the revised timelines came into effect. Although the DAP review process was about to begin, Planning Services staff felt that changes were needed immediately to avoid refunding application fees which were to start January 1, 2023. In December 2022, municipalities were assured (via a letter from the Minister) that the start of the fee refunds would be delayed until July 1 2023. However, staff still proceeded with implementing additional changes, partly to get staff across all affected departments used to the new timelines. To date, the changes include:

- Fully funded by a grant from the Province, two contract Planners were hired, the contract ends in November, 2023;
- Scheduling tentative Committee of the Whole meetings in July and August in case a statutory public meeting or Council decision is required during the summer break to meet Bill 109 timelines;
- Compressing staff review times in order to get reports onto Council agenda’s quickly, while still preserving the amount of public notice and Council’s review times;
- Scheduling statutory public meetings at Council or Committee of Whole, whereas they were typically only scheduled for Council meetings;
- No longer allowing concurrent Rezoning and Site Plan applications;
- Minimizing the submission requirements for applications (Minimum Viable Product discussed below);
- Delaying the collection of application fees and deeming an application complete until the quality of submission materials has been confirmed and that all Town standards have been met;
- Shortened internal commenting times; and
- Starting to use the standardized Terms of Reference provided by the Region.

Development Approval Process Review

In 2022, the Town received funding to undertake a project to examine its in-house processes with a goal to shorten processing times. The Town has used the Streamline Development Approval Fund from the provincial government to pay for two contract Planner positions as well as fund the Development Approval Process (DAP) Review. The purpose of the DAP Review is to identify opportunities to improve efficiency and effectiveness in development review, respond to Bill 109 changes, and ensure the Town is charging appropriate application fees. It is being completed in two phases. Phase 1 is a review and analysis of existing development review processes, Phase 2 is the review of our application fees. The Fee Review by Hemson Consulting will be subject to a separate report that is currently targeted for the fall. The fee review hinges on decisions made and changes implemented as a result of the recommendations on our process as outlined in this report.

Part of the basis for undertaking the DAP Review is the increasing complexity and number of planning applications processed by the Town. For instance, in 2014 Planning Services generated less than \$150,000 in application fees whereas in 2020 Planning generated over \$1 million in fees. Looking forward, Planning Services is projecting a 5% increase in the number of applications received each year in the next 2-5 years and this will likely double after 5 years.

In addition to a greater volume, an increasing amount of development applications are for mid/highrise intensification developments. These are inherently more complicated and require more staff time (across various departments) to process than the types of applications received in previous years and decades.

The DAP Review Report, prepared by Sajecki Planning is attached as Appendix 1. A total of 21 recommendations have been identified across five key areas covering: Departmental Structure & Governance; Resourcing; Workflow; Software & File Management; and Documentation.

Most recommendations are organizational in nature and can be implemented by the Town's Administration. There is only one that requires Council approval, that is to utilize the newly expanded ability of Council to delegate minor zoning by-law amendments to staff. Council would have to approve any new staff positions created as a result of the recommendations.

As part of the amendments to the Planning Act (from Bill 23), Council now can delegate the approval of "minor zoning by-law amendments" to staff. Although termed "minor zoning by-law amendments", there are only two specific types of "amendments" that staff currently feel are appropriate to delegate to staff: Temporary Use By-laws and Removal of Holding Provision By-laws. If Council is supportive of exploring this recommendation, an amendment to the delegation by-law can be brought back in the fall implementing this recommendation.

Holding provisions are generally placed on a property through a rezoning process. This allows the approval of the zoning by-law change subject to certain conditions being fulfilled. Subsequently removing the holding provision, once all the conditions have been fulfilled, is administrative in nature. It is a check that all the Town's requirements have been met before the applicant can proceed with the redevelopment. Currently the by-laws which remove the holding provision are put on the Council agenda without a report. If this step is delegated to staff, it can save an applicant about a month during the wrap up of the project.

Temporary Use By-laws grant temporary relief from the use provisions of the zoning by-law² and are infrequently used in Newmarket. The only time a temporary use by-law has been used in Newmarket in recent memory was in 2017 to facilitate the temporary relocation of Community Living from their location on Oak Street while the building underwent a major renovation.

Delegating the approval of these minor and administrative by-laws to staff allows developments to proceed quickly by not having to wait for a Council meeting. Section 5, Recommendation A.3 (page 38) of the DAP Report provides additional information on other municipalities that have taken advantage of this new delegation power.

The remaining recommendations from the DAP report are listed in Appendix 2. Staff is seeking Council's formal endorsement of these recommendations with the intention of returning to Council for specific requests when budget approval is required. There are recommendations to create position(s) to increase review and processing capacity. There are also recommendations to bring some of the external review (done by consultants) in-house. The broader picture of using consultants versus internal staff will be considered in Phase 2. Specific requests for additional staff will be brought forward for Council approval.

Collaborative Application Preparation (CAP) Process

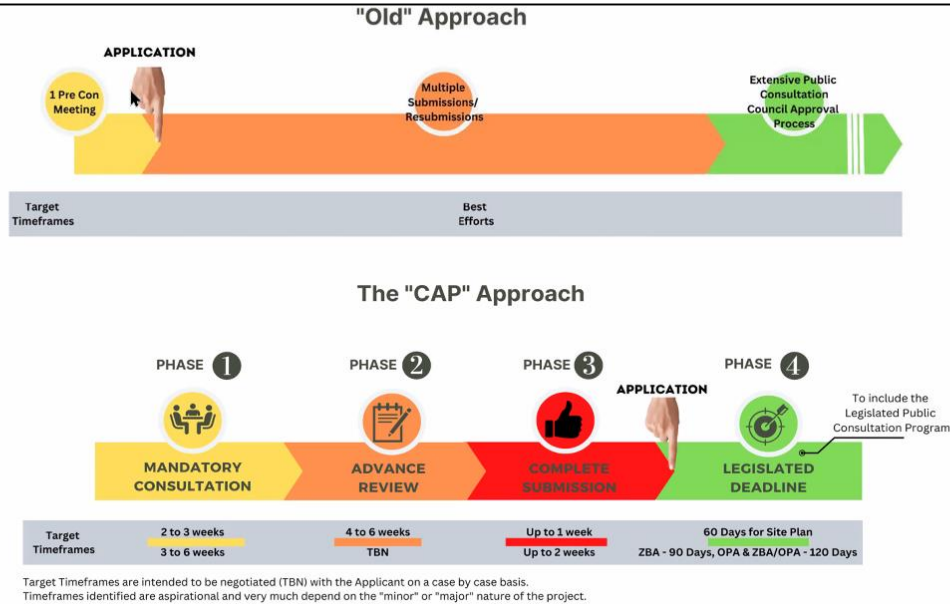
In 2022, the Region commenced a project to standardize data collection and terms of references for submission materials. Even prior to Bill 109 the Region was contemplating ways to simplify the application process. When Bill 109 received Royal Assent, the project pivoted and focused on a standardized process for development applications. The result is the Collaborative Application Preparation (CAP) process. The full report (Data Standardization with York Region) is attached as Appendix 3.

The focus of the CAP process is to have all parties involved in development applications collaborating as early as possible and to set clear expectations of how to get to the end of the process. As shown in Figure 1 below, it is set out into four phases, with the bulk of the work being done in Phase 1 & 2. During these phases staff review and comment on the quality of the submission prior to deeming the application complete. Also during the first two phases, the applicant and review team establish a clear set of expectations on

² Temporary Use By-laws only allow the use to exist for a maximum of three years and may be renewed.

how to get to the end goal, it is expected that all parties agree to the steps to get to the end and that end goal does not move. Once the submission materials meet all Town standards, the application is deemed complete and moves through the decision making process more quickly. CAP incorporates public consultation into Phase 2 and emphasizes setting clear expectations for the applicant on how to get to the approval.

Figure 1 – ZBA & OPA processes from McCauley & Moyle Data Standardization with York Region Report.



There are some assumptions baked into the CAP process. They are that CAP:

- Assumes success – modelled after positive application process experience.
- Assumes that trust can be established between all parties.
- Assumes quality submissions.
- Assumes the emphasis on investing time and effort up front will create a smoother process.
- Assumes the Minimum Viable Product (MVP) concept is built in.

Highlights of the CAP process/philosophy:

- York municipalities are united in working together on common development application processing features.
- It's about Quality. Investing more time up front will improve information Quality.
- Improved Quality will permit faster processing timeframes.
- Because CAP incorporates negotiated deadlines, this provides certainty and transparency for development processing.
- CAP is modelled after "correct start" concepts utilized in Building Permit processes when mandatory deadlines were legislated.

- Bringing municipal staff in early to a project will ultimately save time and wasted effort, reduce the risk of multiple submissions and contribute to Quality.
- CAP is a collaborative process created for like-minded participants, focused on mutual targets. The CAP Process is different from other process re-engineering efforts in that negotiated deadlines for each phase are encouraged.
- CAP is based on clarity and improved guidance for applicants as to what to expect.
- CAP "gets" the intent of the new legislation and will be of benefit to the Development Industry. The CAP Process is fundamentally different from current processes.

The full scope of CAP is quite large, wide ranging, complex, and un-tested. It is acknowledged that it cannot be fully implemented by all municipalities. The intention is that the nine local municipalities take the guiding principles and overall philosophy of CAP and to create consistency in the Region. However, implementation will have to vary slightly by municipality, especially during these early days. As different municipalities test out different aspects there is a commitment to continuous improvement. The group that came together to inform the CAP process is committed to continuing to work together and learn from each other as we implement what we can based on our resources.

Next Steps

Both Sajecki Planning and McCauley and Moyle recommend that a Change Management Plan be created for implementing CAP and DAP respectively. The changes resulting from the combined processes will be significant, and they must be coordinated and implemented across many internal departments. A change management plan will shepherd and support these changes and set up how they can be achieved successfully.

Immediate next steps are to bring forward an amendment to the delegation by-law delegating approval authority for temporary use by-laws and the removal of holding symbols to the Director of Planning & Building Services.

If CAP is endorsed by Council, staff will also return with a new Pre-Consultation By-law which will formalize CAP implementation. Staff will review how other York Region municipalities have amended or created new pre-consultation by-laws and copy their approach.

Conclusion

The results of the CAP and DAP processes are to establish set clear expectations of how the process will, increasing the resources and capacity of staff to review development applications in an effective manner and establish collaborative working relationships between all the parties (internal and external), ultimately getting to the

finish line together, quicker. This will take flexibility from all sides. It is staff's hope that the combination of the CAP and DAP processes will result in faster approvals while maintaining the quality of development, neighbourhoods, and ultimately community, that Newmarket is proud of.

Business Plan and Strategic Plan Linkages

These changes fit into Council's Strategic Priority of Customer First Way of Life.

This project supports the Town's strategic goals of being:

- Living Well
- Well Equipped & Managed
- Well Planned & Connected
- Well Respected

Consultation

Creation of the CAP process was an initiative hosted by York Region, and it was a collaboration of the nine local municipalities. Planners, Engineers and LSRCA staff attended some or all of the 19 consultation sessions run by the consultants. The CAP process also involved consultation with BILD (both meetings and surveys).

The DAP process included detailed interviews with all staff who are involved in reviewing development applications. Details of those interviews are found in Section 4.1 of their report, attached as Appendix 1. Sajecki Planning also reached out to developers working in Newmarket and requested feedback via an online survey. A detailed description of their consultation process is found in Sections 3.1 & 3.2 of their report.

Human Resource Considerations

There are currently no direct human resource considerations.

Specific requests for additional staff resources will be brought forward through the yearly budget process.

Budget Impact

There are no direct budget approvals as a result of this report. However, it is the intention that implementing these recommendations will avoid the mandated refunds of Planning Act application fees if timelines are not met. This will have a positive effect on the Town's budget.

Attachments

Appendix 1 – Development Approval Process & Fees Review, by Sajecki Planning, June 2023

Appendix 2 - List of Recommendations requiring Council's endorsement

Appendix 3 – Data Standardization within York Region, by McCauley & Moyle, January 2023

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