



Corporate Report

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DATE: May 5, 2015

TO: Chair and Members of Planning and Development Committee
Meeting Date: May 25, 2015

FROM: Edward R. Sajecki
Commissioner of Planning and Building

SUBJECT: **Provincial Bill 73 – *Smart Growth for Our Communities Act, 2015***

RECOMMENDATION: That the report titled “Provincial Bill 73 – *Smart Growth for Our Communities Act, 2015*”, dated May 5, 2015, from the Commissioner of Planning and Building, be approved and forwarded, by the City Clerk, to the Ministry of Municipal Affairs and Housing (EBR Registry Number: 012-3651), the Association of Municipalities of Ontario (AMO) and the Region of Peel.

**REPORT
HIGHLIGHTS:**

- The Minister of Municipal Affairs and Housing introduced Bill 73 – *Smart Growth for Our Communities Act, 2015* following province-wide consultations on the Land Use Planning and Appeal and Development Charges systems that was conducted in the fall of 2013.
- This report deals with the proposed amendments to the *Planning Act*. A companion report from the Commissioner of Corporate Services and Chief Financial Officer dealing with the proposed changes to the *Development Charges Act* will be considered by General Committee on May 20, 2015.

- Changes to the *Planning Act* would extend the review of Provincial policy statements and new official plans from five to ten years, limit certain appeal rights, not permit amendments to new planning documents for a two-year period after their adoption, strengthen the development permit system, strengthen public input in decision making and expand the use of dispute resolution options, among other matters.
- The 90 day public consultation period on Bill 73 began March 5, 2015 and all comments received prior to June 3, 2015 will become part of the public record and considered as part of the decision making process by the Ministry.

BACKGROUND:

From October 2013 to January 2014, the Province consulted with municipalities, stakeholders and the public on changes needed for the land use planning and appeal system and the development charges system. The outcome of this consultation is Bill 73 – the proposed *Smart Growth for Our Communities Act, 2015*, which received its first reading in the Ontario Legislature on March 5, 2015.

Bill 73 will amend both the *Development Charges Act, 1997*, and the *Planning Act*, creating significant changes to the existing planning framework. To date, the Bill has gone through second reading and is currently being debated. The last day to submit comments on the Bill to the Province is June 3, 2015.

As part of this process, Council approved two reports for submission (Resolutions 0224-2013 and 0225-2013¹). These included reference to Council Resolution 0048-2013 (see Appendix 1) which sought an amendment to the *Planning Act* to prohibit appeals of applications that request additional density outside of areas identified in the official plan and of planning policies adopted to conform to the growth management policies of the Growth Plan and related Provincial regulations and policies.

¹http://www5.mississauga.ca/research_catalogue/reports/PDC_Reports/Land_Use_Planning_Report.pdf

and

http://www7.mississauga.ca/documents/agendas/committees/council/2013/12_11_2013_Council_Agenda.pdf
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A staff team comprising representatives from Policy Planning, Development and Design, Park Planning, Transportation Planning, Legal Services and Finance was struck to review Bill 73. This report addresses the proposed changes to the *Planning Act*. A companion report from the Commissioner of Corporate Services and Chief Financial Officer will be considered by General Committee on May 20, 2015 which addresses the proposed changes to the *Development Charges Act*.

COMMENTS:

Bill 73 – the proposed *Smart Growth for Our Communities Act, 2015* will have direct implications to the City of Mississauga if passed. Generally, the City might anticipate the following outcomes:

1. *Greater predictability for future land development by providing increased protection from changes to the City's land use plans.*
2. *More incentive for the City to encourage innovative land use development tools through official plan policy.*
3. *More authority and time to proactively resolve potential land use planning disputes beyond the traditional Municipal Ontario Board process.*
4. *A greater expectation and role for the City to facilitate meaningful public participation in the planning process.*

How Will the *Planning Act* Change if Bill 73 Is Approved?

A comprehensive overview of proposed changes to the *Planning Act* as a result of Bill 73 is provided as Appendix 2. The following provides some key highlights:

Bill 73 would result in the following amendments to the *Planning Act* ensuring greater predictability for land use planning and development:

Extension of the Mandatory Review Period for Official Plans

- The proposed legislation would extend the requirement for a city to undertake a review of Provincial policy statements and new official plans from five to ten years.

New Limitations on the Rights to Appeal Planning Documents

- An appeal to an official plan in its entirety (a “global appeal”) would be prohibited.
- Appeals in connection to specific matters (e.g. population and employment forecasts that conform to the Growth Plan and settlement area boundaries) would be prohibited.
- Allow for the option of an extension by 90 days to the 180 day requirement for an approval authority (the Region in case of the City of Mississauga) to make a decision on an official plan once approved by Council.

New Conditions For Seeking Amendments to Planning Documents

- Applications to amend a new official plan or comprehensive zoning by-law are prohibited for two years following the documents coming into effect.
- Following the approval of a rezoning application initiated by or on behalf of a property owner, minor variances would not be permitted for a two-year period without Council’s authorization.
- In addition to the four tests in the *Planning Act*, Committees of Adjustment will be required to apply prescribed criteria when making decisions on minor variances.

Bill 73 would also facilitate changes to the Planning Act to encourage municipalities to readily utilize land use development tools, other than traditional zoning by-laws:

Strengthening the Development Permit System

- Municipalities will be able to prohibit any applications to amend a development permit system by-law (which sets out development standards, similar to a zoning by-law) for a period of five years after the date of its passing.
- The Region may require the City of Mississauga to adopt a development permit system.

Bill 73 would provide the City greater opportunity to resolve land uses planning disputes outside of the traditional avenues (i.e. Ontario Municipal Board):

Dispute Resolution Opportunities

- Mediation, conciliation and other dispute resolution techniques before an Ontario Municipal Board (OMB) hearing are permitted. If these techniques are utilized, the Bill would extend the time that an appeal must formally be submitted to the OMB by 60 days after the appeal period expires.

Lastly, Bill 73 would require changes to the *Planning Act* placing greater emphasis on meaningful public participation:

New Requirement to Detail Public Participation Process

- Municipalities will be required to set out in its official plans how and when the public will be consulted on land use planning matters.

Identifying How Public Input Considered in Decision Making

- Council will be required to explain how public input affected its planning decisions.

How should Bill 73 be revised?

While Bill 73 would strengthen the planning process, as it is written, the City's recommendations within the original submission have not been fully addressed. For instance, the Bill incorporates part of the recommendations of Resolution 0048-2013, but it has not addressed prohibiting appeals for increased density outside of those areas identified for intensification in a municipality's official plan. (See Appendix 1.)

The following highlights specific areas of Bill 73 which might be considered in order to further enhance its overall impact:

- Expanding the official plan policies that are not appealable is supported. However, further protection of official plans that conform to Provincial policy and have been reviewed in accordance with required timeframes should be given.
- The intent of protecting new official plan and zoning by-laws for two years following their coming into effect by not allowing amendment applications is supported. However, there may be situations where an amendment application would result in good

planning and could be supported. A preferred approach would be to allow amendment applications but remove the right of appeal should Council not support the application. Extending the time period that applications are not appealable, particularly for new official plans and comprehensive zoning by-laws (e.g., to five years), would also be recommended.

- The “Clergy principle” requires that development applications submitted prior to new official plan policies coming into effect be considered under the policy framework that existed when the application was submitted. This encourages appeals and delays the implementation of new policies. The Province should amend the *Planning Act* to define rights under the “Clergy principle.”

Next Steps

The Bill has proceeded to second reading and is being debated. If passed, it will be forwarded to a Standing Committee for public hearing and to consider amendments. At this point staff will request that the City be added to the list of deputants to ensure that the City’s position is considered. In line with this process, Provincial Working Groups will be established to provide input into the Bill and its implementation. The final steps will be for the Committee to report back to the House with any amendments. The Bill will proceed to third reading for final approval and Royal Assent (signing of the Bill).

Staff will be engaging other organizations, such as Association of Municipalities of Ontario (AMO) and the Region of Peel, to ensure that proposed changes are uniform where possible.

Provincial Working Group

The working group for the development permit system will provide advice on implementing this system. This group would also be charged with providing recommendations on what makes up a minor variance and when local appeal bodies could be used for land use planning issues. Staff will monitor the outcomes of this working group and provide comments to the Province.

FINANCIAL IMPACT: Not applicable at this time.

CONCLUSION: Overall, Bill 73 provides a number of benefits to municipalities related to land use planning. This report should be sent to the Province for consideration as the Bill is debated. Further, this report should be forwarded to AMO and the Region of Peel.

ATTACHMENTS: Appendix 1: Resolution 0048-2013
Appendix 2: Bill 73 – Proposed Changes to the *Planning Act* and Recommended Revisions

Edward R. Sajecki
Commissioner of Planning and Building

Prepared By: Shahada Khan, Planner, Policy Planning



RESOLUTION 0048-2013
adopted by the Council of
The Corporation of the City of Mississauga
at its meeting on March 27, 2013.

0048-2013 Moved by: Jim Tovey

Seconded by: Pat Mullin

WHEREAS Municipalities are required to produce Official Plans;

AND WHEREAS Municipalities use these plans to invest large amounts of up front capital in infrastructure to service future growth according to those plans;

AND WHEREAS densities located in areas not identified in the Official Plan may require changes to long term infrastructure planning, at additional costs;

AND WHEREAS Municipalities are provided finite growth numbers and job numbers as a basis for their Official Plan;

AND WHEREAS densities approved by the Ontario Municipal Board to be located in areas not identified in the Official Plan subtract from, and limit, a Municipalities ability to implement the intensification policies of that plan;

NOW THEREFORE BE IT RESOLVED that the City of Mississauga request of the Province of Ontario to make amendments to the *Planning Act* as follows;

1. where a Municipality has an Official Plan, and
2. where that Official Plan has been approved by the Province of Ontario, and
3. where the Municipality is achieving all of their targets for densities as outlined in the Provincial Growth Plan

AND FURTHER where a Development application is submitted to the Municipality requesting densities to be located in any other area than those identified in the Municipality's Official Plan, that development application shall have no right of appeal at the Ontario Municipal Board. The decision of Council will be final;

AND FURTHER Despite subsection 22(7), there is no appeal in respect of the official plan policies of a municipality or a planning board, adopted to conform to the growth management population, intensification and employment targets and policies as set out in the *Provincial Growth Plan for the Greater Golden Horseshoe area* and related regulations and Provincial policies;

AND FURTHER that the resolution be forwarded to AMO.

	YES	NO	ABSENT	ABSTAIN
Mayor H. McCallion	X			
Councillor J. Tovey	X			
Councillor P. Mullin	X			
Councillor C. Fonseca	X			
Councillor F. Dale	X			
Councillor B. Crombie	X			
Councillor R. Starr	X			
Councillor N. Iannicca	X			
Councillor K. Mahoney	X			
Councillor P. Saito	X			
Councillor S. McFadden	X			
Councillor G. Carlson	X			

Carried (12, 0) Unanimously

Bill 73 - Proposed Changes to the *Planning Act* and Recommended Revisions

Proposed Changes	Recommended Revisions
Extension of the Mandatory Review Period for Official Plans	
<ul style="list-style-type: none"> • Policy statements issued by the Province are to be reviewed at 10 year rather than five-year intervals. • The mandatory five year official plan review has been revised to 10 years for new official plans and every five years thereafter. 	<ul style="list-style-type: none"> • The Province should clarify if the 10 year review applies to official plans currently in effect and if so, which ones. It should also clarify the difference between a 10 year and 5 year review.
New Limitations on the Rights to Appeal Planning Documents	
<ul style="list-style-type: none"> • An appeal to a new official plan in its entirety (a “global appeal”) is not permitted. • Appeals in connection to specific matters are not permitted (e.g. Growth Plan forecasts and settlement area boundaries). • Appellants, if appealing policies that conform to policy statements of the upper tier official plans, must identify the issues in their notices of appeal. If the appellant fails to do so, the OMB may dismiss all or part of the appeal without a hearing. 	<ul style="list-style-type: none"> • The legislation can be strengthened and force more thoughtful appeals by making clear that it is not acceptable to appeal extensive sections of an official plan, as appellants may still appeal substantial sections without proper rationale. • Council had previously recommended that there should be no right of appeal to a Council’s refusal of an application to amend the official plan, provided that the municipality has an in-effect official plan that has been reviewed and updated in accordance with provincially established policies and timeframes. The Province should revise Bill 73 to include this recommendation.
<ul style="list-style-type: none"> • Approval authorities have the option to extend the 180-day notice of decision period, for the approval of official plans, by up to 90 days, with written notice being given before the 180 day expires. • After receiving an appeal due to an approval authority not making a decision on an official plan, the approval authority may give notice for other appeals to be submitted within 20 days after the date of the notice. 	<ul style="list-style-type: none"> • The Bill needs to address what happens if an upper tier municipality does not make a decision within the extended timeframe.
New Conditions For Seeking Amendments to Planning Documents	
<ul style="list-style-type: none"> • During the two-year period following the coming into effect of a new official plan or the global replacement of a municipality’s zoning by-laws, no application for 	<ul style="list-style-type: none"> • Mechanisms should be considered to thwart appeals that may be made with the intent of delaying implementation of new official plan policies. Perhaps policies are deemed to be in

Proposed Changes	Recommended Revisions
<p>amendments are permitted.</p>	<p>effect (after appeal is resolved) retroactively to the Council approval date, so that the policies apply to applications submitted after this date.</p> <ul style="list-style-type: none"> • The Province needs to amend the <i>Planning Act</i> to define rights under the Clergy principle. • The Province should remove the two year freeze on amendments to new official plans and zoning by-laws and replace it with provisions that remove the right of appeal to a Council decision for an extended period of time (e.g. five years).
<ul style="list-style-type: none"> • Following the approval of a rezoning application initiated by a property owner or his agent, minor variances are not permitted for a two-year period without Council’s authorization. • In addition to the existing ‘four tests’* prescribed in S. 45(1), a minor variance application must conform to “prescribed criteria”. <p>*The Four Tests are:</p> <ol style="list-style-type: none"> 1. Is the application minor? 2. Is the application desirable for the appropriate development of the lands in question? 3. Does the application conform to the general intent of the Zoning By-law? 4. Does the application conform to the general intent of the Official Plan? 	<ul style="list-style-type: none"> • The Province should consider the types of minor variances that should not be permitted for a two year period. Perhaps this requirement should apply to larger, mixed use type projects rather than applications that have gone through a rezoning and where minor variances are so minimal to not have any consequence to the site or major implications to the public or surrounding community. • That the City be invited to comment on the outcomes from the Provincial Working Group related to the criteria for minor variance applications.
Strengthening the Development Permit System	
<ul style="list-style-type: none"> • Allow municipalities to create a development permit system (newly referred to as a community planning permit). Once established amendment applications could be prohibited for five years. • An upper-tier municipality may require a lower-tier municipality to adopt a development permit planning system for prescribed purposes. 	<ul style="list-style-type: none"> • The Province should clarify for what purposes an upper-tier municipality may prescribe a development permit system.

Proposed Changes	Recommended Revisions
Dispute Resolution Opportunities	
<ul style="list-style-type: none"> Decision makers are permitted to use mediation, conciliation and other dispute resolution techniques. When these techniques are used, the timeframe for submitting appeals to the Board is extended from 15 to 75 days. 	
Greater Emphasis on Meaningful Public Participation	
<ul style="list-style-type: none"> Official Plans are required to include descriptions of the measures and procedures for informing and obtaining the views of the public for official plan amendments, zoning and subdivisions and consents. Ontario Municipal Board (OMB) is to “have regard to” the information and material that the municipal council or approval authority received in relation to the matter. This Bill clarifies that this includes written and oral submissions from the public. Decision makers and Committees of Adjustment are required to explain the effect of written and oral submissions on their decisions. 	
New Cash-in-lieu (CIL) Parkland Dedication	
<ul style="list-style-type: none"> A parks plan is required that examines the need for parkland in the municipality if the alternative parkland provisions of the <i>Planning Act</i> are utilized. The cash-in-lieu collected under the alternate requirement is changed from one hectare per 300 dwelling units to one hectare per 500 dwelling units. The treasurer is to make an annual financial statement regarding expenditures from the special account for parkland. 	
Conformity to Upper-Tier Official Plans	
<ul style="list-style-type: none"> An approval authority shall not approve a lower-tier municipal official plan if the plan does not conform with the upper tier municipality’s existing official plan or to a new upper tier municipality’s official plan that is in its 180 day appeal period. 	<ul style="list-style-type: none"> Upper-tier official plans should be required to be completed and approved in sufficient time so that lower-tier municipal official plans can be completed and approved in a timely manner. [Also related to proposed mandatory 10 year official plan review policy.]

Proposed Changes	Recommended Revisions
	<ul style="list-style-type: none"> Mechanisms should be considered so that approval authorities are able to approve and retroactively modify lower tier plans, if they are moving forward through approvals at a faster rate than the approval authority.
Section 37 Reporting	
<ul style="list-style-type: none"> Section 37 monies are to be kept in a special account and the treasurer is to make an annual financial statement. 	
Alternative Planning Bodies	
<ul style="list-style-type: none"> Planning Advisory Committees are mandatory for upper-tier and single-tier municipalities. These Committees would require at least one member who is neither a councillor nor a municipal employee. 	<ul style="list-style-type: none"> The Bill should clarify if the membership requirements of planning advisory committees are the same where these committees are mandatory and where they are optional.

K:\PLAN\POLICY\GROUP\2015 Provincial Legislation\Bill 73\PDC report and appendices\Prov Bill 73 Appendix 2 Planning Act_Changes_Implications_Rec AW.docx