

Committee of the Whole (2) Report

DATE: Tuesday, April 12, 2022

WARD(S): ALL

TITLE: BILL 109, MORE HOMES FOR EVERYONE ACT, 2022

FROM:

Wendy Law, Deputy City Manager, Legal and Administrative Services & City Solicitor

ACTION: DECISION

Purpose

This report provides an analysis of Bill 109, the *More Homes for Everyone Act, 2022*. This Bill brings about changes to the *Development Charges Act, 1997* (the “**DCA**”) and the *Planning Act* (the “**PA**”) which will impact the City’s land use planning processes and related finances.

Report Highlights

- Bill 109 is the first major legislative response to the recommendations of the Housing Affordability Task Force Report.
- The Province believes Bill 109 changes will improve transparency and expedite planning approval processes.
- These changes if passed would require major changes to the City’s planning application review and approval processes.
- These changes if passed may cause adverse financial impacts in terms of the City having to accept riskier securities and refund planning application fees.
- Staff are seeking Council authorization to provide comments to the Province as part of the Bill 109 consultation period ending April 29, 2022.

Recommendations

1. That Staff be authorized to make submissions to the Province on the Environmental Registry of Ontario postings and the Ontario Regulatory Registry postings as outlined in this report.

2. That Staff be authorized to provide additional submissions to the Province regarding the proposed changes to the Planning Act and the Development Charges Act as necessary in support of the City's interest.

Background

Bill 109 was made publicly available on March 30, 2022, passed second reading on April 4, 2022 and is now with the Standing Committee for review. It was introduced by the honourable Steve Clark (the "**Minister**") of the Ministry of Municipal Affairs and Housing ("**MMAH**").

Bill 109 is the province's first major legislative response to the Housing Affordability Task Force Report (the "**Report**") published February 8, 2022 aimed at addressing the housing supply crisis. The province has adopted the Report as their "long-term housing roadmap".

MMAH notes that the proposed legislative and related regulatory changes in Bill 109 are inspired by Report recommendations and consultations to date. These proposed changes are all intended to be effective soon – on the day Bill 109 receives Royal Assent (presumably this year), or January 1, 2023 at the latest.

Staff have completed an initial analysis of Bill 109 and identified the following changes to the DCA and PA that are expected to have an impact on City operations:

1. MMAH regulatory power over what collateral developers may use to secure obligations required by municipalities as a condition of development application approval.
2. More MMAH powers over timing and decision-making for Official Plan ("**OP**") and related amendments ("**OPAs**") requiring Ministerial approval.
3. Gradual refunds on Zoning By-law Amendment ("**ZBA**") and Site Plan application fees for non-decision.
4. New type of Community Infrastructure and Housing Accelerator ("**CIHA**") Ministerial Zoning Order.
5. Ability to define required site plan documentation and delegation of approvals.
6. MMAH regulatory power over subdivision conditions and ability to reinstate expired approved draft plans of subdivision ("**DPS**").
7. Mandatory review of upcoming Community Benefits Charge By-laws.
8. Limits on parkland dedication in "Transit-Oriented Communities".
9. MMAH regulations requiring more detailed reporting and a new Ministerial power to require new types of regular reporting.

On March 31, 2022, MMAH sent notice to municipalities seeking comment on the content of Bill 109 along with a request for policy input on ways to increase missing housing types and gentle density in existing neighbourhoods. The comment gathering period ends on April 29, 2022. This may be the City's final opportunity to provide input on the content of Bill 109 and related regulatory changes before it becomes law.

The relevant consultations can be found through the Environmental Registry of Ontario and the Ontario Regulatory Registry through the following link:

<https://ero.ontario.ca/notice/019-5283>

Previous Reports/Authority

March 2, 2022 Committee of the Whole Working Session Report entitled "Resolution Supporting Municipal Final Authority For Development Planning" (Referred From February 15, 2022 Council Meeting):

<https://pub-vaughan.escibemeetings.com/filestream.ashx?DocumentId=99141>

Letter of Credit Policy 12.C.04, as adopted by City of Vaughan Council on November 19, 2019:

<https://pub-vaughan.escibemeetings.com/filestream.ashx?DocumentId=24003>

Analysis and Options

This section provides a summary of Bill 109 changes that will affect the City along with Staff's initial impact assessment. These assessments were prepared in consultation with Planning and Growth Management, Infrastructure Development and Finance staff. Staff are concerned with some of the anticipated negative operational impacts and seek approval to raise these concerns to MMAH.

1. Regulatory Power on Acceptable Collateral to Secure Development Obligations

A new addition to the PA will allow the Minister to pass regulations on what surety bonds and "other [security] instruments" developers can use to secure obligations imposed by municipalities as a development application approval term. This regulation may authorize applicants to choose the approved security to offer. The province wants to promote the use of sureties and other securities that can free up money for homebuilders to pursue additional construction projects. There is no current indication in Bill 109 or provincial consultation summaries of exactly what acceptable securities will be recognized or their terms.

Initial Staff Assessment:

The City currently only uses letters of credit from banks and alternatively cash securities to be held in City accounts to secure development-related commitments. This requirement is established in the Council-approved *Letter of Credit Policy 12.C.04*. Current letters of credit are required to be in “unconditional” form which limits the ability of banks to demand proof of default by the developer and otherwise withhold a City order for payment. Staff calculate the security required for each development. The Policy along with current standard security agreements would have to be amended in sync with any future regulation. Sureties and other securities eventually prescribed may create greater recovery risk for the City if the regulation gives more power to the developer or surety insurer to dictate recovery terms or the amount to be guaranteed.

Staff propose informing MMAH that it should avoid creating material recovery risks to municipalities with any eventual prescribed security requirements. Any alternative security should be “unconditional” as letter of credits are. If the Province plans to prescribe the form of securities, there should be further consultation with municipalities or AMO to ensure municipal interests are addressed, similar to the consultation process that was undertaken when the prescribed forms of mandatory bonds under the *Construction Act* were introduced.

2. More Provincial Power Over Time and Decision-Making for Official Plan (OP) and Amendments (OPAs) Minister Must Approve

Currently the PA permits appeals by municipalities and other affected parties to the Ontario Land Tribunal (“**Tribunal**”) if the Minister needs to approve the municipality’s OP or OPA but fails to decide within 120 days of receiving it. Bill 109 adds a new discretionary power for the Minister to suspend this appeal period indefinitely by giving notice, effectively prolonging the Minister’s consideration period.

In addition, the Minister will also gain the power to refer all or part of an OP/OPA they are considering to the Tribunal for a **non-binding recommendation or an actual decision** on the OP/OPA. Upon referral, Bill 109 currently provides the Tribunal may hold a hearing or other proceeding upon which notice is provided to the municipality along with anyone who made submissions on it to Council before adoption. If the Minister exercises their discretion to refer an OPA to the Tribunal for a recommendation, the Minister’s eventual decision is not subject to further Tribunal appeal. The province believes both these changes will encourage dispute resolution and avoid further delays caused by non-decision appeals.

Initial Staff Assessment:

As a lower-tier municipality, York Region is the approver of Vaughan's OP and OPAs, rather than the Minister. While Vaughan is not directly affected by these powers, since Vaughan's OP must conform to York Region's, any suspension in York Region's OP and OPAs getting approved may negatively impact scheduling on Vaughan's end.

3. Gradual Refund on Zoning By-law Amendment (ZBA) and Site Plan Application Fees for Non-Decision

New additions to the PA will result in municipalities having to refund up to all fees paid for complete ZBA applications it has not decided on and Site Plan applications it has not approved within the following periods:

Fee Refund Amount:	If No Decision on ZBA Within:	If No Decision on ZBA-OPA Within:	If Site Plan Not Approved Within:
50%	90 days	120 days	60 days
75%	150 days	180 days	90 days
100%	210 days	240 days	120 days

The PA stipulates such fees can only be levied on a cost-recovery basis. The time windows triggering the initial 50% refund are tied to the standard review period after which applicants gain a PA right to appeal to the Tribunal for non-decision. As part of these Bill 109 additions, the current standard review period for site plans is being extended to 60 days from 30 days.

The province believes these changes will expedite planning decisions in line with the Report's calls for accountability from municipalities that routinely fail to meet standard review periods. The Report had recommended automatic approval of applications that a municipality fails to decide on within legislated timelines. This fee penalty regime seems to be proposed as an alternative.

Implementation of this gradual refund regime will apply to applications received on or after January 1, 2023.

The following are some stats on the 2021 fees collected by the City in connection to ZBA and Site Plan applications:

2021 Fee Stats:	ZBAs:	Site Plans:
Number of Applications	83	88
Total Fees Collected	\$4,282,039.26	\$7,549,337.38
Average Fees	\$51,590.83	\$85,787.92

These fees were charged in accordance with former *Tariff of Fees for Planning Applications By-law 191-2019*, as amended and *Fees and Charges By-law 171-2013*, as amended. **Attachment 1** provides a summary of the present fee calculation structure for ZBA and Site Plan applications.

Before an application can be deemed “complete” the City must be in receipt of the required fees.

Initial Staff Assessment:

These proposed changes to the PA will have many implications for the City. In terms of budget, any shortfall in fee recovery will impact the property tax base which may result in tax increases.

Planning reporting timelines will also be affected. Current internal reporting timelines can take 60-90 days just to get to the required Statutory Public Meeting stage. Matters will have to be brought forward upon receipt in order to ensure statutory timeframes are met. This may mean that more Statutory Public Meetings are held in a year, and that Council sits during the summer hiatus.

In addition, pre-application consultation requirements may have to change with requirements for complete applications becoming much stricter. A challenge experienced by Staff in the approval process has been the quality of submitted documents.

Staff may need to pass ZBAs with a Holding Provision “(H)” in order to meet the timelines so as to address matters that are not resolvable before the deadline to pass a ZBA or refuse it so as to not be in a position to refund fees. This will not improve efficiency but create further delays along with greater confusion for applicants, residents and Council.

A gradual refund is a punitive approach that may lead to more application refusals based on “prematurity” or not having enough information. In practice more time to collaborate with the applicant may create a better outcome and avoid further delays via a Tribunal appeal.

Currently if an application is subject to any combination of external review by the Toronto and Region Conservation Authority, York Region, Peel Region and/or the Ministry of Transportation, it takes several months to get comments back. Bill 109 does not mandate response times for these external agencies which would not share in any fee penalty. In turn, process changes will have to be considered if the changes are implemented, which may include requiring developers to get independent approval from these external agencies before a Building Permit will be issued.

Furthermore, Staff believe that the timelines should be paused when all comments are in the applicant's hands for consideration and resubmission preparation. It can take quite some time for applicants to provide a resubmission and sometimes applicants have other priorities causing certain applications to become idle between submissions. There is also concern with applicants losing incentive to make a resubmission or work with Staff if they are reimbursed fees after set times.

Ultimately the proposed change causes unintended consequences that do not clearly translate into increased housing and housing options.

4. New Community Infrastructure and Housing Accelerator (CIHA) Ministerial Zoning Order

Bill 109 adds to the PA a new type of Ministerial Order that can be issued upon request by municipal Council. The goal is to expedite approval processes on key projects. The request can be for the Minister to exercise any municipal PA section 34 (zoning) power. The municipality must have provided some public notice and consultation it "considers appropriate" before requesting a CIHA Order. The request must identify the subject lands and how the zoning powers should be exercised. In turn, the Minister can grant a CIHA Order as requested or one with modifications and conditions the Minister deems "appropriate" and "reasonable".

Like current Ministerial Zoning Orders ("**MZOs**") whose powers remain unchanged, CIHA Orders do not need to be compliant with any provincial policy statements or municipal OPs and are not subject to Tribunal appeal. CIHA Orders make it clear that this exemption can extend to subsequent approvals required to realize a use recognized by the Order (e.g. exempting following subdivision and site plans from provincial policy statements and OP compliance). Furthermore, unlike MZOs, CIHA Orders can only be requested by municipal Councils with the Minister having to follow "guidelines" on the issuing process. The first three-page CIHA guideline (**Attachment 2**) does not provide much additional clarity aside from:

- Municipalities can only request these for lands within their boundaries.
- Orders will not address environmental assessment issues related to infrastructure.
- Exemptions of subsequent approvals in a CIHA Order zone from compliance with provincial policy statements and OPs will require the municipality to have adequately "mitigated" the potential adverse impacts.
- Lifting of a CIHA Order condition is at the Minister's sole discretion.

Staff Initial Assessment:

The City would have to establish a process in which to use this newly proposed tool. More information is required from the Province on how this power will be exercised.

5. Ability to Define Required Site Plan Documentation and Delegation of Approvals

MMAH will be given regulatory authority to prescribe required documents that must be submitted for site plan approval on applications received after Bill 109 receives Royal Assent. In addition, municipalities can require “any other information” if the OP considers it necessary. There is a Tribunal appeal mechanism for when municipalities fail to determine whether an application is complete within 30 days and to settle disagreements over completeness. In practice, this updated regime will mirror what is currently in place for OPA and ZBA applications.

Additionally, the PA would require Council to appoint an “officer, employee or agent” to approve site plans. This change expressly removes the power of Council to approve site plans and transfers it all to the delegate. This mandatory delegation will only apply to site plans submitted on or after July 1, 2022. The Province believes these measures will streamline the development approval process.

Initial Staff Assessment:

Some changes in the City’s current site plan approval process may be required to put this into effect. Staff support this new authority to assign a delegate that Council deems appropriate, which is currently the regime at some other municipalities. The City’s Site Plan Control By-laws would also need to be updated.

6. Regulatory Power on Subdivision Conditions and Ability to Reinstate Expired Draft Plans of Subdivision (DPS)

The current PA limits municipal authority to impose subdivision approval conditions to those that are “reasonable, having regard to the nature of the development proposed for the subdivision”. Bill 109 adds Ministerial authority to pass regulations on “prescribed matters” that cannot be imposed as subdivision conditions. There is no indication in Bill 109 or provincial consultation documents what conditions will be prohibited. This new power may be in response to the Report finding that flags the lack of standardized conditions across municipalities as being a source of increased development costs and delays.

In addition, a new PA ability will be given to municipalities to grant a one-time reinstatement of a DPS for which the approval has expired within the past five years. Such reinstatement would require the subject lands not to have already been pre-sold according to the expired DPS. Presently PA extensions to the approval time for meeting DPS conditions can only be given before that approval time lapses. The Province believes these changes will help expedite new subdivision approvals.

Initial Staff Assessment:

What conditions are prohibited may have an impact on subdivision approval timelines. Prohibiting financial conditions can also lead to an inability to collect costs relating to the development. Some of these financial conditions are to collect on behalf of previous developers who made oversized infrastructure dedications. If these are no longer permissible developers may be reluctant to offer oversized dedications in anticipation of future development hampering growth.

Staff are also concerned about how restrictive the regulation will be as the City continues to experience unique intensification related servicing and transportation scenarios which may not be present in municipalities that are less populated, or that are experiencing less growth or approving only small-scale projects. In turn, any regulation that applies provincially must appreciate the fact that different municipalities may need different conditions to ensure their financial sustainability and growing infrastructure needs. As such, it is in staff's view that any future prohibitions on subdivision conditions account for practical differences between municipalities. The fact that some types of municipalities may not require a condition is not in itself sound justification to prohibit it provincially. Municipalities should be consulted extensively before prohibitions are proposed.

7. Mandatory Reviews of Community Benefits By-laws

Municipalities have until September 18, 2022 to pass a new Community Benefits Charges ("**CBC**") By-law before the PA's former section 37 authority to charge traditional section 37 benefits becomes ineffective. The City's CBC By-law is currently in development.

Bill 109 adds a requirement that any CBC By-law passed be reviewed and affirmed by a Council resolution confirming it at least every five years. Municipalities will be required to consult with such persons and public bodies as they "consider appropriate" in the review. Councils must then assess the results and pass a confirming resolution on whether the By-law needs to be revised or can stay as-is to complete the review process. Failure to pass this resolution in time triggers automatic expiry of the CBC By-law at the end of the statutory review window.

There is only a statutory right to appeal CBC By-laws to the Tribunal when they are initially passed or amended. Bill 109 will not change this. There will be no appeal right of Council's decision on whether the CBC By-law needs to be amended or not after a review. The Province believes these changes would increase transparency and public engagement.

Initial Staff Assessment:

The impact is minimal. Staff had always expected that the CBC Strategy would require periodic review. This five-year review period syncs with when Development Charge By-laws must be refreshed per the DCA.

8. Limits on Parkland Dedication in Transit-Oriented Communities

Bill 109 will modify the PA to deem all Parkland Dedication By-laws that use the alternative per dwelling unit rate of calculating parkland dedication for residential developments (being up to 1 hectare per 300 units) as subject to a maximum dedication cap in special areas. This cap would also apply to the freestanding municipal authority outside of By-laws in the current PA to require parkland dedication as a condition of subdivision or consent approval. The special areas are those the province designates as a Transit-Oriented Community (“**TOC**”) through an Order-in-Council per the *Transit-Oriented Communities Act, 2020*.

The amended PA would provide the following parkland dedication caps in TOCs for all developments and redevelopments:

Subject lands up to 5 hectares:	Subject lands more than 5 hectares:
No more than 10% of land area or value of the land.	No more than 15% of the land or value of the land.

In addition, the Minister of Infrastructure would gain the power to identify any land in a TOC that is strata-based, encumbered by below grade infrastructure or otherwise, subject to easements/restrictions as being suitable for parkland dedication in their opinion. Once ordered as such for a development or redevelopment, the land must be accepted by the municipality for park purposes in satisfaction of any parkland dedication requirement. The Province believes these changes will provide increased certainty for parkland requirements in TOCs.

Initial Staff Assessment:

The City plans to continue to use the alternative residential rate to calculate parkland dedication. Currently there are no confirmed TOC in Vaughan. Should there be a TOC, dedication caps in the area may create a shortfall in land area and/or payment-in-lieu to meet parkland needs in these high-density communities and City-wide overall. Staff are currently developing criteria for accepting suitable encumbered land such as strata parks in the City’s upcoming new Parkland Dedication By-law. The proposed Minister of Infrastructure power to identify encumbered land of any type or area in TOCs as fulfilling the parkland dedication requirement for a development or redevelopment can be a greater concern in practice. That is, this power may cause the City to receive parkland

inconsistent with those recognized in the OP and Parkland Dedication By-law throughout a TOC. In Staff's view, the Bill should be amended so as to require the Minister of Infrastructure to have regard for local parkland dedication requirements and otherwise consult with the municipality before exercising his power. This is important as MMAH insists on a cap for parkland dedication in TOCs.

9. More Public Reporting May be Required

At present, the PA only prescribes annual public financial reporting on the use of the parkland dedication reserve fund and upcoming community benefits charges. Annual public financial reporting is also required for development charges under the DCA. Bill 109 will allow regulations to be passed to prescribe how these existing annual financial reports must be made publicly available. This means they should be posted on municipal websites at a minimum. The regulation will also require extra details on how parkland levies are being used for planned parkland needs and extra details regarding whether the municipality anticipates incurring projected capital costs for a service that development charges are being levied for.

More importantly, a new addition to the PA will require municipalities to report to the Minister any planning information on-demand and report on any "prescribed planning matters in accordance with the regulations". This regulatory power is sweeping, allowing the Minister to define the report content/format, frequency and mandatory recipients. The province wants to use this authority to improve public transparency over development applications and approvals. However, there is no current indication in Bill 109 what these new reports that the Minister plans to impose may be.

Initial Staff Assessment:

Staff believe the new requirements for existing reports will have negligible impact. However, Staff are concerned over the uncertainty of the broader power to require new types of PA development reports in any frequency. This will in all cases take up additional resources but may not provide proportional benefit to the public or development industry.

Financial Impact

If the changes as proposed to the PA are passed, the City's ability to keep the fees charged for ZBA and Site Plan applications is at risk. As set out above, the City took in fees in the amount of \$11,831,376 in 2021. Any shortfall in fee recovery will impact the property tax base which may result in tax increases.

Broader Regional Impacts/Considerations

Some of the changes proposed within Bill 109 have implications for the Region. If the

changes are made, City Staff will work closely with the Region to implement any required amendments to our practices.

Conclusion

Staff seek Council approval to provide feedback to MMAH on the changes proposed to the PA and the DCA through Bill 109. While the specific details of much of the proposed changes are currently unknown, and are subject to future regulations, this is an opportunity for staff to provide comments of issues of concern to the City.

For more information, please contact: Caterina Facciolo, Deputy City Solicitor, Planning and Real Estate Law, ext. 8662.

Attachments

1. Summary of Fees and Charges for Zoning By-law Amendment Applications and Site Plan Applications as per By-law 158-2021 as amended.
2. MMAH Community Infrastructure and Housing Accelerator – Initial Proposed Guideline dated March 30, 2022.

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