

Committee of the Whole (1) Report

DATE: Monday, October 07, 2019

WARD: ALL

TITLE: BILL 108 TRANSITIONAL REGULATION AMENDMENTS

FROM:

Wendy Law, Deputy City Manager, Administrative Services and City Solicitor
Jason Schmidt-Shoukri, Deputy City Manager, Planning and Growth Management

ACTION: DECISION

Purpose

To seek approval from Council to request amendments to LPAT transition regulation O. Reg. 303/19 by making submissions to the Attorney General of Ontario.

Report Highlights

- O. Reg. 303/19-Transition for Planning Act Appeals is now in force in Ontario as part of Bill 108: *More Homes: More Choices Act, 2019*
- Section 1(5) of O. Reg. 303/19 provides that “major planning appeals” commenced under the Planning Act to the Local Planning Appeal Tribunal (LPAT) appeals that are commenced on or after April 3, 2018 but had no hearing scheduled prior to Sep 3, 2019 (effective date) are no longer subject to the Bill 139 regime
- O. Reg. 303/19 as currently enacted has the potential to substantially delay and increase costs with the final approval of development applications by allowing third parties who appealed a Council approval in the Bill 139 regime, to restart the appeal process under the Bill 108 regime
- Bill 108 is inherently unfair to the municipal authority involved and undermines Council authority with respect to its decisions regarding local planning.

Recommendations

1. That staff be directed and authorized to make submissions to Ontario's Attorney General requesting that changes be made to O. Reg 303/19, - *Transition for Planning Act Appeals*, being the Transitional Rules in accordance with the contents of this Report from the Deputy City Manager, Planning and Growth Management, and the Deputy City Manager, Administrative Services and City Solicitor; and
2. That this Report from the Deputy City Manager, Planning and Growth Management, and the Deputy City Manager, Administrative Services and City Solicitor be forwarded to the Ministry of Attorney General.

Background

On May 2, 2019 the Province released Bill 108: *More Homes, More Choices Act, 2019* as a way to address the shortage of affordable housing across the Province by finding faster ways of attaining a greater mix of housing supply "on the ground". Bill 108 proposed amendments to thirteen different statutes, including the Planning Act and the Local Planning Appeal Act, 2017. Certain amendments to the Planning Act and the Local Planning Tribunal Act, 2017 came into effect on September 3, 2019.

Changes to the *Local Planning Appeal Tribunal Act, 2017* from Bill 108 largely bring back the procedures that were in place under the previous Ontario Municipal Board. The *Local Planning Appeal Tribunal Act, 2017* maintains the Local Planning Appeal Tribunal (the "LPAT and/or "Tribunal") as the appeal body for Council's decisions regarding planning applications.

Changes to the *Planning Act* as a result of Bill 108 have re-introduced the "*de novo*" hearing where the Tribunal can consider a development proposal as if no decision were made by a council.

In addition, the Province has revoked Ontario Regulation 102/18 "Planning Act Appeals" related to the procedures of the Tribunal under the Local Planning Appeal Tribunal Act, 2017. Specifically, the Province has revoked the timelines, time limits, practices and procedures related to appeals under the *Planning Act* brought into force under the previous Bill 139, Building Better Communities and Conserving Watersheds Act, 2017 (Bill 139). Previously, the Regulations directed certain actions to be taken by the parties in an appeal, and for an appeal to be disposed of within a certain timeframe. Practically, it has been difficult for municipalities, private parties and the Tribunal to meet those timeframes.

LPAT has an ongoing caseload of appeals, many of which were commenced under the Bill 139 regime. The Bill 139 regime came into force on April 3, 2018.

Ontario Regulation 303/19, which is the recently adopted transitional regulation under Bill 108, as currently enacted, has the effect of resetting the appeal process for appeals that were commenced on or after April 3, 2018 in which no hearing date had been set prior to September 3, 2019. Those appeals are to be transitioned over and decided under the new Bill 108 regime, even though the original application was considered under the Bill 139 regime.

Previous Reports/Authority

None

Analysis and Options

It is staff's view that to protect Council's planning decisions, appeals commenced under one set of Rules should be completed under the same set of Rules. An amendment to section 1(5) of the above noted regulation is key, as it will allow municipal approvals of planning applications made under the Bill 139 regime which were appealed by third parties to be disposed of under the Bill 108 framework.

Councils make their decisions based on the planning framework in place at the time they are considering the applications before them. The current transitional regulation will result in decisions which were made by Council under the auspices of 'compliance and conformity' with provincial policy (Bill 139), which are then appealed and heard at a '*de novo hearing*' (Bill 108) revolving around more general principles of 'good planning'. This creates a substantive disconnect in terms of the different planning regimes applicable to the two decisions (Council, then LPAT) made on the same matter. This in turn instills a lack of procedural fairness in the sequence of decision making, and thereby undermines public confidence in local decision making and authority.

The current system will undoubtedly yield a disorderly and unpredictable resolution of said appeals. Appeals ought to be decided applying the same legal standards to which Council was subjected when it made its' decisions. To proceed otherwise has the undesired effect of usurping the 1st instance decision-making function of Municipal council. O. Reg. 303/19 as currently enacted has the unintended consequence of delaying the disposition of Bill 139 cases.

On. Reg 303/19 ought to be amended to allow the completion of Bill 139 appeals under the Bill 139 regime when the following criteria are met:

- a) Where Council approved an applicant's development through enactment of the appealed planning instrument prior to September 3rd, 2019.
- b) The appellant is not a public body or the applicant; and the appeal was launched before September 3, 2019.
- c) Council passes a resolution prior to December 31, 2019 electing that such appeals be disposed of under the Bill 139 regime.

Financial Impact

The Bill 108 standard will result in increased internal and external legal costs to the taxpayers defending Council's decision due to a reversion to the '*de novo standard*' and the uncertainty/inconsistency surrounding the appeals being litigated under the lens of a different/broader legal standard than what was envisioned by Council.

Broader Regional Impacts/Considerations

The Association of Municipalities of Ontario (AMO) has taken the position that where an appeal starts under one set of rules, it should continue through the appeal with that same set of rules. They feel that Councils make decisions based on the planning framework of the day. They are of the view that having a decision made on the basis of compliance and conformity but appealed on the basis of a *de novo* hearing is not reasonable. AMO feels that a change in the framework and rules mid-process will not lead to an orderly transition.

Conclusion

Planning and Legal Staff recommend that the City of Vaughan write to the acting Attorney General of Ontario seeking an amendment to Ontario Regulation 303/19 which will allow for determination of appeals started after April 3, 2018 which had no scheduled LPAT hearing date prior to September 3, 2019, under the Bill 139 regime.

For more information, please contact:

Chris Guerette, Legal Counsel, Legal Services Department x8086

Attachments

None

Prepared by

Chris Guerette, Legal Counsel, x8086