COMMUNICATION C2
ITEM NO. 2
COMMITTEE OF THE WHOLE (WORKING SESSION)
March 2, 2022

Assunta Ferrante

From: Clerks@vaughan.ca
Sent: Monday, February 28, 2022 10:33 AM
To: Assunta Ferrante
Subject: FW: [External] "Affordable housing" and the City of Vaughan's response
Attachments: resolution supporting municipal final authority for development planning (Referred from february 15, 2022 council meeting).pdf

---

From: Marilyn Iafrate <Marilyn.Iafrate@vaughan.ca>
Sent: Monday, February 28, 2022 10:21 AM
To: Clerks@vaughan.ca
Subject: Fwd: [External] "Affordable housing" and the City of Vaughan's response

Please include this as part of Wednesday's working session item #2.

Thanks

Sent from my iPhone

Begin forwarded message:

> **From:** Mackenzie Ridge Rate Payers Association <mackenzieridgerpa@gmail.com>
> **Date:** February 28, 2022 at 9:28:14 AM EST
> **To:** Mackenzie Ridge Rate Payers Association <mackenzieridgerpa@gmail.com>, Stephen.LecceCO@pc.ola.org, doug.fordco@pc.ola.org, Clerks@vaughan.ca, Council@vaughan.ca
> **Subject: [External] "Affordable housing" and the City of Vaughan's response**
>
> Dear Neighbours,
>
> The "Affordable Housing" report is a polarizing document. It is not **about NIMBY (Not In My Back Yard), but NIMBI (Now I Must Be Involved).** There is a clear need for affordable housing, but proper local municipal planning is necessary. Unfortunately, this document is clearly about rogue development and not affordable housing. As noted, the definition of affordable housing, and I would also point out, the implementation of this report, is not about affordable housing for our children, struggling Ontarians, or the homeless. This report really only addresses "market value units" that will not result in helping anyone but rogue developers.
>
> If we do not act now, we will be stuck with a myriad of problems. If the recommendation of the report are accepted, this report will result in:
>
> **1) Four units per lot, which could result in four townhouse units per lot in our neighbourhood**
>
> **2) Multi-Tenant housing on one lot. A lot that was intended for a single family dwelling may result in several families living in one multi unit accommodation. So not just legal basement apartments, but having the whole building broken up into separate units.**

3) Eliminating "As of right," which means when a development is going to occur in our neighbourhood, <u>we are not going to be notifie</u>d as community members of the public.

What his all potentially means, is that anyone can tear down houses, putting in several townhouse or multi-tenant housing our neighbour, and building without community input. It also means that any vacant lots in our area (Giorgia Cres and other land) could have townhouses and other multi-tenant dwellings. This could also mean living in a construction zone (like some of our neighbours are experiencing) on a regular basis and changing our community in ways that could make it unrecognizable without adequate transportation, roads, schools, and other proper infrastructure (which we already have).

Please let Mr. Lecce, Mr. Ford know along with Vaughan Council that this report is unacceptable at

Wxitlir2PiggiGSD tg2spe2svk
hsyk2jsvhgsD tg2spe2svk
gsyrgmD zeykler2ge
gpivowD zeykler2ge

Also, please see the attachment and page 10-11, in particular. I have included them below.

Item 2 Page 10 of 14
Staff recognize the importance of monitoring housing supply on a regular basis to track progress towards planning and developing complete communities while conforming to provincial supply requirements. Staff agree that a collective effort from all levels of the government, developers, and community members is needed to address the existing housing crisis.

Staff are concerned about several of the recommendations as they would, if implemented, have significant impacts on local decision-making. In addition, there are several recommendations for which additional details are required, and for which an understanding regarding implementation is lacking.

The following includes a brief commentary from staff with respect to a few of the recommendations for which staff are concerned. The analysis presented below does not however, represent a comprehensive review and commentary on all 55 of the recommendations:

Making Land Available to Build

Staff support the goal of making more land available to build by making better use of land and modernizing zoning rules to support housing development.

Staff are concerned with Recommendations 3, 4, 5, 6, 8 and 9 which would Permit "as of right" residential housing up to four units and up to four storeys on a single residential lot; as-of-right secondary suites, multi-tenant housing, conversion of underutilized or redundant commercial properties to residential or mixed residential and commercial use; "as of right" zoning up to unlimited height and unlimited density in the immediate proximity of individual major transit stations within two years if municipal zoning remains insufficient to meet provincial density targets; "as of right" zoning of six to 11 storeys with no minimum parking requirements on any streets utilized by public transit (including streets on bus and streetcar routes).

Staff are concerned on the basis that conformity is essential to good planning and needs to be assessed. As of right residential up to four units isn't always good planning; and four-storey

buildings may yield additional units (beyond 4-units) which provides built-forms that may not respect the surrounding context (i.e. within established neighbourhoods).

As-of-right permissions need to be assessed to ensure conformity, good planning and the best interests of the public. The Province should give municipal Council the decision-making authority on land use planning to help increase housing supply.

Item 2 Page 11 of 14
Policies which encourage the development of complete communities should remain a priority to ensure a balanced mix of uses which include live, work and play. Site specific situations could be considered, but not a broad application as recommended.

Staff are concerned with aspects of Recommendation 12 which is aimed at creating a more permissive land use planning and approvals systems which may limit municipal council decision making authority and public consultation.

Public Consultation is an essential component to good planning; there should not be an automatic exemption for all projects of 10 units or less. Consideration could be given for site specific exemptions, depending on the application and location.

Staff are of the opinion that it may not be good planning to establish the identified province-wide zoning standards, or prohibitions. These included zoning standards for minimum lot sizes, maximum building setbacks, minimum heights, angular planes, shadow rules, front doors, building depth, landscaping, floor space index, and heritage view cones, and planes and eliminating minimum parking requirements. Every application should be assessed on its own merits to determine appropriate building standards. There are varying requirements for each municipality across the province. Staff are of the view that removing floorplate restrictions may not be good planning. Larger floorplates do not guarantee more efficiency on-site and instead compromise good architectural design.

Staff are also concerned with Recommendation 13 which limits municipalities from requesting or hosting additional public meetings beyond those that are required under the Planning Act.

Staff are of the view that this should be at the discretion of the municipality, not a limitation that is mandated.

Staff are concerned with Recommendation 18 which restores the right of developers to appeal Official Plans and Municipal Comprehensive Reviews.

Official Plans and Municipal Comprehensive Reviews are undertaken to conform to provincial land and policies that require provincial or regional approvals. Allowing further appeals for matters which are currently restricted, and subject to ministerial approval, not only is unnecessary, but could significantly contribute to further delays in the process, and prevent more land from being available for development for years as occurred during the last round of Municipal Comprehensive Reviews.

Robert A. Kenedy, PhD
President of the MacKenzie Ridge Ratepayers Association
Associate Professor
Department of Sociology
238 McLaughlin College
York University
4700 Keele Street
Toronto, Ontario M3J 1P3
CANADA
rkenedy@yorku.ca
416 736-2100 ext. 77458
FAX 416 736-5715

On Fri, Feb 25, 2022 at 7:42 PM Mackenzie Ridge Rate Payers Association <mackenzieridgerpa@gmail.com> wrote:

> Dear Neighbours,
>
> Some of you have asked me for material for a letter to our MPP and Mr Ford/Mr Clark regarding the affordable housing, overdevelopment, and the lack of a sensible growth vision for the GTA.
>
> This letter is from a newly formed alliance. I received permission to send it out and offer materials to compose a letter to our provincial representatives.
>
> **The Honourable Doug Ford, M.L.A.**
> Premier of the Province of Ontario
> premier@ontario.ca
>
> ## Re: Formation of new GTA Ratepayer Alliance focused on overdevelopment and the lack of a sensible growth vision for the GTA
>
> Dear Premier,
>
> We are writing to you on behalf of **A Better GTA**, an alliance of non-partisan, non-profit resident and ratepayer groups in the Greater Toronto Area united in opposition to what we see as unregulated overdevelopment and the lack of a sensible growth vision for the GTA.
>
> In recent years, growth in the GTA has run amok. It is destroying neighbourhoods and building uncomfortably dense centres creating traffic gridlock and unliveable communities with few if any public amenities. Canada is also in the grip of a housing affordability crisis that has seen house prices triple in the past 10 years.
>
> The province has responded with ideas such as Transit-Oriented Communities (TOC), which seek to put density along subway lines, and the Housing Affordability Task Force, which attempts to provide a solution for the housing affordability crisis. On the surface, both sound sensible.

The challenge with the province's implementation of transit-oriented communities is that they will achieve the opposite of your government's stated goals. As Matti Seimiatycki, professor of urban planning at U of T, points out "the language is transit-oriented communities, but what they (the province) are really focused on is development and density." The result will be unliveable communities.

The Housing Affordability Task Force was formed to generate ideas to address the housing crisis. Again, while the sentiment was right, the province started with the wrong premise and has generated solutions that will produce the opposite of what is needed. The report was designed by a group of bankers and developers, and predictably makes recommendations that meet the needs of the development industry over public interests.

The province is creating giveaway programs for developers who are interested in maximizing returns on their own specific projects but not interested in paying for the broader societal damage that their projects leave in communities. Residents and ratepayers, who our alliance represents, will be left to pay for the damage.

Our alliance is not a bunch of NIMBYs. We are not against development. We just want sensible, balanced, affordable, liveable developments and a broader regional city that can prosper for all. Growth must be accompanied by infrastructure, jobs, transit, parks, cultural institutions and other features which will allow communities to thrive. We want to see a return to respecting the Ontario Planning Act and a reversal of the province's policies which would transfer power over land use decisions from municipalities and citizens to developers. We want to see a holistic vision created for the GTA, and a return to an evidence and policy-based approach to planning - not one based on access, connections and ministerial whim. It is not too late to get community buy-in in trying to solve the housing affordability crisis – but a comprehensive, win-win and durable solution must involve ALL stakeholders, not just the development industry. We urge you to hold a Summit to bring all affected stakeholders to the table and work out reasonable compromises. Do not rush to introduce legislation prior to the Election that will only benefit the development industry. Residents are voters too.

In this letter, we draw your attention to two specific problems:

1) The findings in the Ontario Housing Affordability Task Force Report.
2) The two TOCs at Yonge and Hwy 407.

1) <u>The findings of the Ontario Housing Affordability Task Force.</u>

The Province of Ontario, indeed much of Canada, has a housing affordability crisis. Over the past 10 years, house prices have tripled. Some people have become fabulously rich off the housing market while many others are barely scraping by.

But a housing affordability crisis is not the same as a housing shortage. The report begins: ***"For many years, the province has not built enough housing to meet the needs of our growing population. While the affordability crisis began in our large cities, it has now spread to smaller towns and rural communities".***

The trouble is that the data shows this statement is simply not true. Our analysis is spelled out on our website.

Here are the facts:

- Compared historically, Canada does not have a housing shortage. We are building houses today at the same rate or faster than population growth, especially in the GTA housing supply is growing much faster than population growth; at issue is that we are not building the right kind of housing – particularly rental and low-income housing.

- According to Toronto and York Region records, there is already enough proposed housing (approved and under review) to meet population projections for the next 20 years; at issue is that developers are sitting on their approved projects but are not building and this can be fixed by legislation.
- Housing vacancies in the GTA are at a 20 year high; many are either being left empty or are being used for short-term rentals such as Airbnb.
- The cost of financing a mortgage has kept even with incomes and has not risen.

The primary reasons we are having a housing crisis are as follows:

- Interest rates are at a historic low; money is cheap, inflating housing sale prices.
- We are experiencing a period of supercharged demand by investors (25% of buyers in Toronto now are multi-property owners); if you can finance at 1.5% and get a return of 20%, everyone will want to be in on it.
- We have failed to build houses for renters and low-income households.

The current housing task force report is built on a false premise and its recommendations would not solve the problem, but would mainly result in weakening the power of municipalities and citizens to help determine the nature of the communities that they live in. **The Yonge/407 TOCs are a good example to show the consequences of following the path planned by your government – chasing unlimited height and unlimited density rather than planning for livable communities.**

2) <u>The Two TOCs at Yonge St and Hwy 407</u>

The stated aim of the TOC Act is to *"build vibrant connected communities, bringing jobs and housing closer to transit."* We like the sound of this. Unfortunately, what is being proposed is the opposite. The pair of TOCs at Highway 407 and Yonge St. provides an example. The TOCs will create the following:

- **The 2nd densest place on earth**, just behind the Dharavi slums of Mumbai – made famous by the film Slumdog Millionaire. The centres will be 3 x as dense as St. James Town, 4 x as dense as Yonge-Eglinton, 5 x as dense as North York Centre, and 6 x as dense as the Toronto Central Waterfront and the island of Manhattan. In this small area (half the size of Exhibition Place), the province's plan is to install 67 condo towers,

40 @ 60 storeys or more, 11 @ 80 storeys. (For reference, First Canadian Place is 72 storeys).

- **A centre that will be unliveable.** The province's plan attempts to squeeze the equivalent of the population of Newmarket (88,000) into 45 hectares. It will have only 1 school, no community or cultural centres, and less than 10 hectares of parkland; by contrast, Newmarket has 29 schools and 320 hectares of parkland. How is this a vibrant community?

- **A centre that will do nothing for jobs and will exacerbate traffic for the whole GTA.** The plan doubles housing from the original secondary plans proposed by Richmond Hill and Markham, but halves employment. The result will be that residents will have to commute longer and farther to work. This will further clog our already overcrowded road network and Yonge Subway; people in midtown Toronto should expect to never get a subway seat again.

We agree with the TOC concept. However, in its current implementation, the Yonge-407 TOC is a shameless giveaway to developers. The Yonge-407 TOC centre has the potential to be a cornerstone for the Ontario economy and a centre for all of York Region. It can address jobs, help Canada meet its climate targets, and be a model for smart city building. The current plan will not achieve this. Therefore, we urge the province to scrap the current TOC proposals and do a Blue Sky for the lands on both sides of 407 from Yonge St to Bayview and beyond along the 407 and hydro corridor. A better vision for the GTA is possible.

Young-407 TOC is not an isolated case. Overdevelopment has become one of the main concerns for GTA residents. Another example of massive overdevelopment is the proposed 105 high-rise towers on either side of Steeles Ave from Dufferin to Bayview. If all are approved, 63,000 NEW residents or the entire population of Aurora (62,000 in 2021) would be squeezed into this already crowded area.

The solutions to the GTA's issues with housing, transportation, climate management, and more are not out of our reach. We can build a great city that provides for all of this and addresses our affordability problems. However, first, we ask that your government defer any further action on implementing any legislation which would enact the current TOC policies or the Task Force report. This concern is clearly echoed by many municipal councils and Mayoral associations throughout the GTA. There is no rush. Give residents the opportunity to make our case.

Best,

Robert A. Kenedy, PhD
President of the MacKenzie Ridge Ratepayers Association
Associate Professor
Department of Sociology
238 McLaughlin College
York University
4700 Keele Street
Toronto, Ontario M3J 1P3
CANADA
rkenedy@yorku.ca

Committee of the Whole (Working Session) Report

DATE: Wednesday, March 2, 2022 **WARD:** ALL

TITLE: RESOLUTION SUPPORTING MUNICIPAL FINAL AUTHORITY FOR DEVELOPMENT PLANNING (REFERRED FROM FEBRUARY 15, 2022 COUNCIL MEETING)

FROM:
Wendy Law, Deputy City Manager, Legal and Administrative Services & City Solicitor
Haiqing Xu, Deputy City Manager, Planning and Growth Management

ACTION: FOR INFORMATION

Purpose

To provide information to Council regarding the function of the Ontario Land Tribunal and a summary of the Housing Affordability Task Force report released on February 8, 2022.

Report Highlights

- A Member's Resolution supporting municipal final authority for development planning was tabled at the Committee of the Whole (2) meeting of February 8, 2022.
- Council resolved on February 15, 2022 to defer the resolution to a Committee of the Whole (Working Session) to allow for further consideration and discussion regarding the contents of the resolution.
- The Housing Affordability Task Force Report was released to the public by the Province on February 8, 2022 (the "**Task Force Report**").
- The Task Force Report contains 55 recommendations to address the housing crisis with an aim to increasing the housing supply.
- If implemented, the recommendations included in the Task Force Report will impact local decision-making authority in respect of development planning applications.

Recommendations

1. That Council receive this report for information.

Background

There have been numerous changes to planning legislation and the policy regime within this term of Council (2018-2022) which have had an impact on the decisions of this Council. Further changes are likely to be proposed by the Province prior to the end of this term as a result of the Task Force Report.

This report summarizes at a high-level the statutory framework which governs planning and development in Ontario, and highlights some of the key legislative changes introduced through this Council's term regarding the Planning appeals process. In addition, this report also provides a high-level summary of the Task Force Report and includes some Staff comments on the recommendations which would have the most impact on Council's local decision-making authority.

Previous Reports/Authority

CW (2) Report - Resolution Supporting Municipal Final Authority for Development Planning – February 8, 2022.

Analysis and Options

1. History and Functions of the Ontario Land Tribunal

When we started this term of Council in 2018, Planning Act applications were subject to what is commonly referred to as the Bill 139 regime.

Bill 139 - *Building Better Communities and Conserving Watersheds Act, 2017*, received royal assent on December 12, 2017, and represented a significant change in the planning regime. The intent of the legislation was to change the way *Planning Act* appeals were heard in Ontario.

Bill 139 saw the replacement of the Ontario Municipal Board ("**OMB**") with the Local Planning Appeal Tribunal ("**LPAT**") as well as the process by which *Planning Act* appeals were heard by the new LPAT.

Under the Bill 139 regime, appeals regarding decisions of Council were limited in several ways. As an example, decisions on certain planning applications, could only be appealed if the decision of Council was not consistent with the Provincial Policy Statement and/or was not in conformity with, or did not conflict with, applicable Provincial Plans and Official Plans (the "**Consistency/Conformity Test**").

In addition, the Bill 139 regime established a two-stage appeals process for certain appeals of Official Plan Amendment and Zoning By-law Amendment applications which eliminated the authority of the Tribunal to conduct *de novo* hearings for a first stage appeal.

On a first stage appeal an appellant was limited to challenging the decision of Council on the basis that Council's decision did not meet the Consistency/Conformity Test. The submissions considered by the LPAT on a first stage appeal were also limited to the Enhanced Municipal Record, which contained all the information considered by Council in deciding, as well as the Case Synopsis and Appeal Records prepared by the parties to the appeal. On a first stage appeal, if the LPAT were to find that the decision of Council did not meet the Consistency/Conformity Test, the matter would be referred back to Council for reconsideration.

Only if a matter were to come before the LPAT a second time following a second decision of Council (or inaction of Council following the first stage appeal), could the LPAT make a decision as if it was the municipality, and that is only where the LPAT found that the Council decision did not meet the Consistency/Conformity Test.

In 2019 there was a shift back to the pre-Bill 139 regime and de novo hearings with the introduction and implementation of the changes brought about through Bill 108.

Bill 108 – The *More Homes, More Choice Act, 2019* received royal assent on September 3, 2019 and amended 14 statutes, including the *Conservation Authorities Act*, *Development Charges Act, 1997*, *Local Planning Appeal Tribunal Act, 2017*, *Ontario Heritage Act*, and the *Planning Act*.

Bill 108, though its amendments to the *Planning Act* and *Local Planning Appeal Tribunal Act*, effectively repealed the Bill 139 regime as it relates to the adjudication of land use planning matters in Ontario. As such, Bill 108 reintroduced the land use planning approvals and appeals process that existed prior to the OMB becoming the LPAT in which the Tribunal has the authority to conduct a hearing *de novo* and make a decision and final order following a hearing on the merits.

In addition, the Bill 108 regime reinstated shorter timeframes for which Council could decide on a *Planning Act* application before an applicant could appeal for non-decision.

The following is a comparison chart which compares historical timelines.

	Pre-Bill 139	Bill 139	Bill 108 (Current State)
Official Plan/Official Plan Amendment	180 days	210 days	120 days
Zoning By-law Amendment	120 days	150 days	90 days
Draft Plan of Subdivision	180 days	180 days	120 days

The LPAT was replaced by the Ontario Land Tribunal in June of 2021 via the passage of Bill 245.

On June 1, 2021, the Province passed the *Accelerating Access to Justice Act, 2021* (Bill 245) and the Local Planning Appeal Tribunal, Environmental Review Tribunal, Board of Negotiation under the Expropriations Act, Conservation Review Board and the Mining and Lands Tribunal (collectively the "**Predecessor Tribunals**") were merged into a new single tribunal called the Ontario Land Tribunal ("**OLT**").

The OLT is an independent adjudicative tribunal with a wide statutory mandate and considers appeals filed pursuant to 27 different statutes, including the Planning Act, the Development Charges Act, 1997 and the Expropriations Act.

The OLT is an independent adjudicative tribunal created under the statutory authority of the *Ontario Land Tribunal Act, 2021*. The OLT is responsible for hearing and deciding appeals that can be filed under sections of the following Ontario statutes:

1. The Aggregate Resources Act
2. The Assessment Act
3. The Clean Water Act, 2006
4. The Conservation Authorities Act
5. The Development Charges Act, 1997
6. The Environmental Assessment Act
7. The Environmental Bill of Rights, 1993
8. The Environmental Protection Act
9. The Expropriations Act
10. The Greenbelt Act, 2005
11. Greenbelt Plan
12. The Lakes and Rivers Improvement Act
13. The Mining Act
14. The Municipal Act, 2001
15. The Niagara Escarpment Planning and Development Act
16. The Nutrient Management Act, 2002

17. The Oak Ridges Moraine Conservation Act, 2001
18. The Oak Ridges Moraine Conservation Plan, 2002
19. The Oil, Gas and Salt Resources Act
20. The Ontario Heritage Act
21. The Ontario Water Resources Act
22. The Pesticides Act
23. The Planning Act
24. The Resource Recovery and Circular Economy Act, 2016
25. The Safe Drinking Water Act, 2002
26. The Toxics Reduction Act, 2009
27. The Waste Diversion Transition Act, 2016

The *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, was enacted to ensure that tribunals are accountable, efficient and transparent in their operations as well as remain independent in the decision-making process. This Act applied to the OMB, the LPAT and continues to apply to the OLT.

The exclusive jurisdiction of the OLT includes the authority to determine all questions of law and fact, make orders, give directions, and impose conditions.

Through the authority of the *Ontario Land Tribunal Act, 2021*, the OLT has exclusive jurisdiction over all matters falling under the authority of the Predecessor Tribunals. This includes the authority to determine all questions of law and fact, make orders, give directions and impose conditions. The OLT hears and decides matters related to land use planning, land valuation, land compensation, municipal finance, environmental and natural features and heritage protection, and other related matters.

As part of the OLT's statutory authority it can adopt any available practices and procedures that, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of a matter on its merits. This includes the ability of the OLT to create rules governing its practices and procedures which can be found in the OLT's Rules of Practice and Procedure on the OLT's website.

OLT Members are appointed by the Lieutenant Governor in Council and are required to have experience in interpreting and applying legislation with specific knowledge of the laws, regulations, policies, procedures and rules that are relevant to the subject matters and practice of the OLT.

Because of the passage of the *Accelerating Access to Justice Act, 2021* (Bill 245) current Members of each of the Predecessor Tribunals continue as Members of the OLT until the expiration of their term.

The process by which OLT members are appointed remains unchanged from the times of the LPAT and the OMB. OLT Members are appointed by the Lieutenant Governor in

Council. From the pool of appointed OLT Members, the Lieutenant Governor in Council designates a Chair and Vice-Chairs. The appointment of OLT Members is overseen by the Public Appointments Secretariat.

The OLT provides on its website a full description of the roles, responsibilities and qualifications of an OLT Member.

This OLT Member Position Description notes that OLT Members are required to have certain abilities, skills, knowledge and experience in order to carry out their responsibilities effectively. The requirements noted in the Member Position Description have been reproduced, in part, below and include the following:

- Experience in interpreting and applying legislation with specific knowledge of the laws, regulations, policies, procedures and rules that are relevant to the subject matters and practice of the OLT.
- Understanding of the professional, institutional, community and cultural contexts within which they operate and render their decisions.
- Understanding the concepts of fairness, natural justice and proportionality.
- Demonstrated analytical, conceptual, problem-solving, decision-making and writing skills.
- Ability to listen actively and to communicate clearly and effectively with OLT users, including those who are not professional representatives, are not represented by counsel or other professionals, who otherwise rarely participate in administrative justice proceedings.
- Commitment to respect, diversity and inclusion, to maintain fair, transparent processes that meet high professional standards and to provide access to justice.

When making decisions on Planning Act matters, the OLT is tasked with applying the same planning tests as Council in making a determination.

The *Planning Act,* at section 3(5), requires that when Council exercises it authority and decides on a planning application, that its decision be consistent with the Provincial Policy Statement (the "**PPS**") and conform with/not conflict with applicable provincial plans, among other matters.

The OLT when deciding on an appealed application is similarly required under section 3(5) of the *Planning Act* to ensure that its decision is consistent with the PPS and conforms with/does not conflict with applicable provincial plans.

In addition to the foregoing, any approval authority is also required to have regard to matters of provincial interest in rendering a decision as per section 2 of the *Planning Act*.

In making decisions, the OLT is required to have regard to decisions of Council as well as any information and materials that municipal council considered when making its decision.

In addition, when arriving at a decision related to an appealed planning matter, the OLT, pursuant to section 2.1 of the *Planning Act*, is required to have regard to the decisions made by municipal council as well as any information and material that municipal council considered when making its decision.

In instances where the OLT is making a decision that relates to a planning matter that is appealed because of the failure of a municipal council or approval authority to make a decision, the Tribunal is required to have regard to any information and material that the municipal council or approval authority received in relation to the matter.

The requirement under the *Planning Act* for the OLT to "have regard to" municipal decision making and information before Council has been commented on by the Courts. The Courts have determined that the meaning of "have regard to" obligates the OLT to at least scrutinize and carefully consider the Council decision, as well as the information and material that was before Council. It does not, however, require that the OLT be deferential to Council's decision. Rather the OLT is to consider the decisions of Council and weigh those decisions against the evidence heard by the OLT at a hearing on the merits before making a decision.

As set out above, Bill 108 introduced shorter times fames for Council to make decisions with respect to development applications made under the Planning Act.

The *Planning Act* permits a person or public body to make applications to Council to amend its Official Plan (section 22(1) of the *Planning Act*) and Zoning By-law (section 34 of the *Planning Act*) ("Applicant").

Generally, an Applicant may file an appeal to the OLT with respect to Council's decision to either refuse or approve the application, or Council's failure to make a decision on a complete Zoning By-law Amendment application within 90 days or a complete Official Plan Amendment within 120 days. If a Zoning By-law Amendment application is made in conjunction with an Official Plan Amendment the timeline for a decision on both applications is 120 days. These timelines for the making of a decision are a departure to the timelines provided for within the Bill 139 regime.

In addition, the *Planning Act* permits that an owner of land may make an application for a Draft Plan of Subdivision ("**Draft Plan**") pursuant to section 51(16) of the *Planning Act*.

When an owner requests a Draft Plan an appeal to the OLT can be made with respect to Council's decision to refuse the application, approve the application, impose Draft Plan conditions and change Draft Plan conditions. In addition, an appeal can be filed with respect to Council's failure to make a decision on a complete application within 120 days of receipt.

The Divisional Court is deferential to Tribunal decisions rendered by the OLT due to the specialized expertise of the Tribunal members to hear and consider such matters.

Pursuant to the *Ontario Land Tribunal Act, 2021* a decision of the OLT can be subject to review by the Divisional Court in certain circumstances. A person may request permission from Divisional Court to review a decision made by the OLT only on the basis that the OLT made an error of law when hearing the matter such that a different decision would have been made had the error not occurred. The role of Divisional Court in this process is supervisory in nature and is intended to ensure that administrative tribunals/boards do not exceed the authority given to them by law. In practice, the courts when conducting a review tend to be deferential to OLT decisions, as the OLT has the knowledge and technical expertise to hear the specialized matters that come before it, including land use planning appeals.

Administrative Law - Matters for Consideration should the OLT be removed as the authority to hear appeals of Development Planning application decisions.

Administrative law is an area of public law that generally applies to decisions by public authorities, such as municipalities, regarding their appropriate exercise of powers given to them by legislation.

A municipality, when making a decision on a development planning application, is exercising its authority under the *Planning Act* to do so. Administrative law principles provides that when Council exercises its authority to make a decision that the decision is subject to review to ensure that the decision-making process was procedurally fair, adequate reasons are provided and that the exercise of authority does not exceed what is given by law.

Currently, Council's decision-making function regarding *Planning Act* decisions is reviewed through an appeal to the OLT. As noted, the statutory authority of the OLT to hear appealed development planning matters, under the *Planning Act*, is found within the *Ontario Land Tribunal Act*, 2021 ("*OLT Act*"). The *Planning Act* provides the right of a person to appeal Council's exercise of its decision-making power regarding planning

applications. Pursuant to the *OLT Act*, the OLT has the exclusive jurisdiction to hear appeals of decisions made by Council with respect to *Planning Act* matters. Collectively, the *Planning Act* and *OLT Act* stipulate the manner in which appeals are to be conducted and the statutory tests that are to be applied by the OLT when making a decision in the appeals process.

If the OLT were to no longer have jurisdiction to hear *Planning Act* appeals, through either an amendment to or replacement of the applicable legislation, a decision of Council on a planning application would still be subject to review to ensure procedural fairness and appropriate exercise of authority by Council. In instances where a statute does not specify a process of review, such as through an appeal process, a person typically can seek a review of a decision by the courts through an application for judicial review.

Judicial review is a process by which courts make sure that the decisions of administrative bodies are fair, reasonable, and consistent with the law. The Divisional Court, and in some instances the Superior Court, hears applications for judicial review of decisions of administrative bodies in Ontario by virtue of s. 6 of the *Judicial Review Procedure Act.*

A court in considering an application for judicial review has the authority to refuse the relief requested by the applicant, make a declaration that a decision is invalid, set aside a decision that it has declared invalid, grant an injunction and other powers.

2. The Housing Affordability Task Force Report

On February 8, 2022, the Province published a report from the Housing Affordability Task Force which includes 55 recommendations for additional measures to increase the supply of market housing to address the housing crisis. The Task Force Report is attached to this report as Attachment 1. Staff understand that the Province intends to act on some of the recommendations contained within the Task Force Report quickly and may bring forward new legislation this Spring. The Task Force Report also contains some recommendations with respect to OLT reform and appeal rights.

Staff have reviewed the Task Force Report and are in support of the direction of some of the key recommendations. Critical to this support is the need to balance residential intensification with employment growth, soft and hard infrastructure, and environmental and climate impacts from developments.

Staff recognize the importance of monitoring housing supply on a regular basis to track progress towards planning and developing complete communities while conforming to provincial supply requirements. Staff agree that a collective effort from all levels of the government, developers, and community members is needed to address the existing housing crisis.

Staff are concerned about several of the recommendations as they would, if implemented, have significant impacts on local decision-making. In addition, there are several recommendations for which additional details are required, and for which an understanding regarding implementation is lacking.

The following includes a brief commentary from staff with respect to a few of the recommendations for which staff are concerned. The analysis presented below does not however, represent a comprehensive review and commentary on all 55 of the recommendations:

Making Land Available to Build

Staff support the goal of making more land available to build by making better use of land and modernizing zoning rules to support housing development.

Staff are concerned with Recommendations 3, 4, 5, 6, 8 and 9 which would Permit "as of right" residential housing up to four units and up to four storeys on a single residential lot; as-of-right secondary suites, multi-tenant housing, conversion of underutilized or redundant commercial properties to residential or mixed residential and commercial use; "as of right" zoning up to unlimited height and unlimited density in the immediate proximity of individual major transit stations within two years if municipal zoning remains insufficient to meet provincial density targets; "as of right" zoning of six to 11 storeys with no minimum parking requirements on any streets utilized by public transit (including streets on bus and streetcar routes).

Staff are concerned on the basis that conformity is essential to good planning and needs to be assessed. As of right residential up to four units isn't always good planning; and four-storey buildings may yield additional units (beyond 4-units) which provides built-forms that may not respect the surrounding context (i.e. within established neighbourhoods).

As-of-right permissions need to be assessed to ensure conformity, good planning and the best interests of the public. The Province should give municipal Council the decision-making authority on land use planning to help increase housing supply.

Policies which encourage the development of complete communities should remain a priority to ensure a balanced mix of uses which include live, work and play. Site specific situations could be considered, but not a broad application as recommended.

Staff are concerned with aspects of Recommendation 12 which is aimed at creating a more permissive land use planning and approvals systems which may limit municipal council decision making authority and public consultation.

Public Consultation is an essential component to good planning; there should not be an automatic exemption for all projects of 10 units or less. Consideration could be given for site specific exemptions, depending on the application and location.

Staff are of the opinion that it may not be good planning to establish the identified province-wide zoning standards, or prohibitions. These included zoning standards for minimum lot sizes, maximum building setbacks, minimum heights, angular planes, shadow rules, front doors, building depth, landscaping, floor space index, and heritage view cones, and planes and eliminating minimum parking requirements. Every application should be assessed on its own merits to determine appropriate building standards. There are varying requirements for each municipality across the province.

Staff are of the view that removing floorplate restrictions may not be good planning. Larger floorplates do not guarantee more efficiency on-site and instead compromise good architectural design.

Staff are also concerned with Recommendation 13 which limits municipalities from requesting or hosting additional public meetings beyond those that are required under the Planning Act.

Staff are of the view that this should be at the discretion of the municipality, not a limitation that is mandated.

Staff are concerned with Recommendation 18 which restores the right of developers to appeal Official Plans and Municipal Comprehensive Reviews.

Official Plans and Municipal Comprehensive Reviews are undertaken to conform to provincial land and policies that require provincial or regional approvals. Allowing further appeals for matters which are currently restricted, and subject to ministerial approval, not only is unnecessary, but could significantly contribute to further delays in the process, and prevent more land from being available for development for years as occurred during the last round of Municipal Comprehensive Reviews.

In the past, through appeals to Official Plans, landowners have sought changes to their permissions through the Tribunal appeal process and have by-passed the normal public process and avoided municipal application fees. This should be avoided. Restrictions against appeal rights in respect of Official Plans and Municipal Comprehensive Reviews should remain to ensure certainty to the those planning processes which are expensive and time intensive. Certainty in land use policies will provide housing quicker. If a landowner desires a change, the Official Plan Amendment process is sometimes available.

Cut the Red Tape so we can Build faster and Reduce Costs

Staff recognize the challenges associated with the complexity of the planning legislation and 'red tape' that may create delays in building homes quicker.

Staff are concerned with Recommendation 19 which would legislate timelines at each stage of the provincial and municipal review process, including site plan, minor variance, and provincial reviews, and deem an application approved if the legislated response time is exceeded.

Staff are concerned with this recommendation and note that a contributing factor to missed deadlines include the province's own reply to circulations and the quality of the initial applications.

Staff are concerned with Recommendations 26, 27, and 29 which would have effects on appeals rights and costs implications at the OLT related to deemed approvals, for which staff are also concerned; more information with respect to the recommendations are required.

Staff recognize that the cost of filing an appeal to the OLT may act as an incentive to file; staff are concerned however with limiting increases in appeal fees to third party appeals. The cost of filing an appeal should be equitable amongst all parties.

Reduce the Costs to Build, Buy and Rent

Staff agree that there could be ways to reduce costs by exploring the municipal funding model and creating opportunities to build more rental.

Staff are concerned with recommendation 32 which suggests waiving development charges and parkland cash-in-lieu and charging only modest

connection fees for all infill residential projects up to 10 units or for any development where no new material infrastructure will be required.

This is not the solution for municipalities when relying on the development charges for developing the infrastructure required to meet the needs of the growth. These fees should be at the discretion of the municipality. Consideration can be given to reductions where infill development has suitable infrastructure. In most instances, residential housing would require additional infrastructure to support growth, particularly with regards to soft services such and parks, libraries, fire, and community centers. This provision would result in impacts to the City of Vaughan's service level provisions

Financial Impact

Not applicable.

Broader Regional Impacts/Considerations

Not applicable.

Conclusion

This report has been prepared for information purposes to assist Council in the consideration of the deferred Member's Resolution of February 15, 2022. A high-level summary has been provided with respect to the statutory framework which governs planning and development in Ontario, and some of the key legislative changes introduced through this Council's term regarding the Planning appeals process and have been highlighted.

In addition, this report provides a high-level summary of the Task Force Report and includes Staff comments on certain recommendations which would have the most impact on Council's local decision-making authority for Council's information. While legislative amendments are expected to be announced in the Spring, the specific details of which recommendations will be acted on by the Province is not known at this time.

Attachments

1. Report of the Ontario Housing Affordability Task Force released February 8, 2022.

Prepared by

Gurnick Perhar, Legal Counsel ext. 8385
Caterina Facciolo, Deputy City Solicitor, Planning and Real Estate ext. 8662
Christina Bruce, Director, Policy Planning and Special Programs ext. 8231

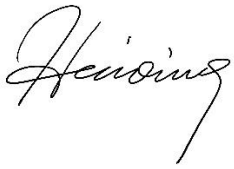
Approved by

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

Reviewed by

Nick Spensieri, City Manager

Approved by



Haiqing Xu, Deputy City Manager
Planning and Growth Management