BILL 73: SMART GROWTH FOR *OUR COMMUNITIES ACT*, 2015

Posted on July 18, 2015

Categories: Insights, Publications

In March of 2015 Bill 73, *Smart Growth for Our Communities Act*, *2015* received first reading before the provincial legislature. The proposed legislation makes significant changes to the *Planning Act* (the "Act") and the *Development Charges Act* (the "DC Act"). While introducing Bill 73 to the provincial legislature, the Minister of Municipal Affairs and Housing, the Honourable Ted McMeekin stated that the proposed amendments were in response to a lengthy and co-ordinated public consultation on Ontario's Land Use Planning and Appeals System that took place between October of 2013 and January of 2014. Minister McMeekin asserted that the proposed amendments would give residents a greater, more meaningful say in how their communities grow; would make the planning and appeals process more predictable, would give municipalities more independence and would make it easier to resolve disputes at the community level.[1]

While acknowledging that the Ontario Municipal Board ("OMB") is an important piece of the puzzle, Minister McMeekin confirmed that the OMB's operations, practices and procedures were not part of this first-stage review. He did confirm that "to really complete our puzzle, however, I will work with my colleague the Attorney General in a review of the OMB's scope and effectiveness. In the end, Speaker, we all want to see planning disputes resolved, wherever possible, locally".[2]

Although significant improvements have been made regarding municipal accountability, the province's desire to ensure greater local municipal independence and a more predictable planning and appeal process may well result in increased costs and a longer and more uncertain approval process that does not have the flexibility to react to market needs.

On a positive note Bill 73 introduces provisions to ensure greater municipal accountability and transparency with respect to municipal reporting requirements for Developments Charges, Section 37 density bonusing funds and Parkland Dedication funds. Municipalities will now be required to prepare annual detailed reports of the cash-in-lieu of parkland dedication funds and density bonusing funds. As well, all municipalities must reflect capital projects funded through development charges in a detailed annual report.

Bill 73 will result in amendments to the DC Act to allow municipalities to collect more funding for transit infrastructure and waste recycling and handling facilities. Under the current Development Charges system municipalities could only project their charges upon historic levels of service provisions, whereas the proposed

changes will allow municipalities to derive fees on the basis of desired future levels of service or enhanced levels of services. Many developers are concerned that increased taxes on transit oriented development will only result in a further "piling on of taxes on the backs of future new home purchasers".[3] As stated by MPP Peter Milczyn, while sitting as a City of Toronto Councillor in June of 2013, "what many people assume is the developers pay. Well, the reality is the purchasers pay".[4]

Although the Minister has not commenced the review of the OMB's role there are several proposed changes to the Act that would significantly curtail when and what can be appealed to the OMB, as follows:

1. No Global Official Plan Appeals:

Section 17(24.2) – This section introduces an outright prohibition against appeals of an entire official plan or what is known as a global appeal of an official plan. There is also no appeal of an official plan that is passed by a municipality to implement provincial policy (see **subsections 17(24.5, 24.5 and 36.4**).

2. 2 Year Prohibition on "New" Official Plan Appeals:

Section 22(2.1) – This section specifically prohibits any person or public body from requesting an amendment to a new official plan before the second anniversary of the first day any part of the plan comes into effect. The term "new" Official Plan is not defined. As the proposed amendment results in a freeze on amendments to a "new" official plan it is imperative that the province provide clarity regarding what constitutes a "new " official plan. It is important to note that no freeze exists with respect to revisions to official plans, the prohibition is only with respect to "new" official plans.

3. 2 Year Prohibition on "Comprehensive" Zoning By-law Appeals:

Section 34(10.0.0.1) – If a municipal council globally amends its zoning by-law in compliance with subsection 26(9) of the Act, by repealing and replacing all its zoning by-laws, no person or public body is allowed to submit an application for an amendment to any of the by-laws before the second anniversary of the day on which the council repeals or replaces the zoning by-laws. Similar to the prohibition against "new" official plan appeals the two year hiatus is only allowed where it is a repeal and replacement of the entire municipality's zoning by-laws. As mentioned above it will be very important to ensure that clarity is provided by the province to ensure that in fact the municipality's by-law is truly a new global by-law and not simply minor modifications in the guise of being a new by-law.

4. 2 Year Prohibition on Minor Variances after a Zoning Amendment Application:

Section 4 (1.3) –This section specifically prohibits any person from applying for a minor variance before the second anniversary of the day on which the by-law was amended, unless council has declared by resolution,

that the application for the minor variance is permitted. This amendment prevents land owners and developers from seeking modifications, no matter how minor, to the plans without first obtaining a blessing from municipal council. As many will attest minor tweaking of final plans is often required to meet changing market needs or even correcting minor deficiencies during the construction process. This proposed amendment will make what should be a minor process into something far more complicated and time consuming.

5. No appeals of Community Planning Permit Zoning By-laws for 5 years:

Section 70.2(2.1) – This section stipulates that when there is a by-law adopting or establishing a development permit system, no person or public body can apply to amend either the official plan or the by-law adopting or establishing a development permit system before the fifth anniversary of the day the by-law is passed.

6. Requirement to Review Employment Land Policies deleted from the Act thereby ensuring no appeals to the OMB and No Review for 10 years:

Section 26(1) and)1.1(a) – Under the existing Act a municipality is required to revise its Official Plan to ensure conformity with provincial plans, consistency with provincial policy statements and that its plan has regard to matters of provincial interest. In addition all municipalities with Official Plans that contain policies dealing with areas of employment have to confirm or amend their employment land policies every 5 years. Under Bill 73 the requirement to review a municipality's employment land policies every 5 years has been deleted from the Act. This deletion, coupled with the introduction of subsection 26(1.1) whereby municipalities are only required to review their Official Plans every 10 years, means that any land owner that wants to convert employment lands will have to wait 10 years for the municipality to embark upon its Official Plan review. A ten year gap will significantly reduce growth opportunities particularly in built up municipalities. Regrettably many of the protected employment areas are poor candidates for modern industrial users and yet offer some of the best city-building opportunities due to their locational attributes.

Many of the other changes proposed through the Bill 73 amendments relate to community consultation and early and more meaningful involvement for the public in the development approval process.

The burning question after reviewing Bill 73 is whether the proposed amendments will ensure that Ontario communities will continue to grow and thrive, as envisioned by the province or will the amendments result in a much slower, more inflexible planning approval process that will undermine growth and prosperity. The Bill is currently under debate. We will continue to follow this important piece of legislation and keep you informed through up to date Bulletins on our website.

by Mary Flynn-Guglietti, Co-Chair, Municipal Law Group

1 Ontario Ministry of Municipal Affairs and Housing, Bill 73 – *Proposed Smart Growth for our Communities Act*.[ps2id id='1' target='/]

2 "Bill 73, Smart Growth for Our Communities Act", 2nd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl, 1st Sess, No 71 (21 April 2015) at 3654 (Hon Ted McMeekin).[ps2id id='2' target='/]

3 Ontario Home Builders' Association, *OHBA Submission – Smart Growth For Our Communities Act.*[ps2id id='3' target='/]

4 *Ibid*.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.