

# COVID-19: WHAT IS THE IMPACT ON DEVELOPMENT APPLICATIONS AND HEARINGS?

Posted on March 23, 2020

**Categories:** [Insights](#), [Publications](#)

In these unprecedented times, access to current information is crucial for protecting your interests and making informed business decisions. McMillan's team of municipal lawyers continues to be fully available to answer your land use planning and municipal questions, and we are making every effort to ensure our clients' files continue to move forward during this time. If you have any questions or concerns you would like to discuss, please do not hesitate to contact Mary Flynn-Guglietti ([mary.flynn@mcmillan.ca](mailto:mary.flynn@mcmillan.ca)); Annik Forristal ([annik.forristal@mcmillan.ca](mailto:annik.forristal@mcmillan.ca)); or Kailey Sutton ([kailey.sutton@mcmillan.ca](mailto:kailey.sutton@mcmillan.ca)).

## **General State of Matters:**

On March 11, 2020, the World Health Organization declared the coronavirus that causes COVID-19 to be a pandemic. In response, governments, corporations and other authorities have implemented drastic measures to prevent the spread of this illness and protect the health of the global population. These measures include the temporary shutdown of offices, the cancellation of meetings and public gatherings, and, in some instances, the enforcement of mandatory self-isolation. On March 17, 2020, the Province of Ontario declared the pandemic to be an emergency under s 7.0.1 (1) of the *Emergency Management and Civil Protection Act*.

The impacts of such extraordinary circumstances of both unknown duration and unprecedented scale have cascading effects on many sectors, including those of local government and development. While we understand that community leaders are attempting to provide coordinated responses, the very nature of municipalities and their local factors has led to differences in how each will operate during the requirement for "social distancing."

It is therefore clear that, at these times and in these quickly-evolving circumstances, it is crucial to have current information in order to protect your rights and make informed business decisions. We have been diligently monitoring the changing circumstances with a focus on the GTA. The following is a high-level summary of the state of matters in this field. We intend to continue to provide updates as circumstances evolve.

## **Can I still file a development approval application\* or appeal?**

\*Applications include official plan amendments, rezoning applications, plans of subdivision, consent applications, site plan approval, minor variance applications and building permits.

**Applications:** The ability to file applications will be determined on a municipality-by-municipality basis. For example, the City of Toronto Committee of Adjustment is not receiving new applications at this time, while other municipalities are accepting applications by registered mail (e.g., City of Hamilton), and others allow electronic filing of applications (e.g., City of Markham). A status summary for a number of municipalities is found at the end of this bulletin.

**Appeals:** Pursuant to the [Planning Act](#), Notices of Appeal are to be filed with the clerk of the municipality or with the approval authority and, as such, the ability and means by which an appeal may be filed will also be determined on a municipality-by-municipality basis. Specifically, for official plan amendments, rezonings, and appeals of draft plans of subdivision, these appeal periods are a mere 20 days from the date of Notice of adoption, passing, or refusal, and as such, are very likely to be impacted by measures implemented by municipalities. For these reasons, it is important for individuals to remain keenly aware of, and act within, statutory deadlines in order to preserve their appeals.

In the event that an appeal is to be filed directly with the Tribunal (per Rule 5.1 of its [Rules of Practice and Procedure](#)), the Tribunal is still accepting courier deliveries. As such, filings should be couriered with a subsequent email ([LPATRegistrar@ontario.ca](mailto:LPATRegistrar@ontario.ca)), which email will be accepted as the date stamp/confirmation of the courier delivery in the event that the couriered package is not received on the intended date. We note that this information is current to March 16 and should be confirmed prior to proceeding in this fashion.

Existing case law would support the conclusion that an appeal delivered by email or courier prior to the appeal deadline has been successfully filed, despite the required fee not having been received by the municipality. In an earlier decision of *Mono (Town) Official Plan Amendment No. 23, Re*, the Ontario Municipal Board (as it was then) concluded that “[t]he fee is established by the Board for administrative reasons only. It does not form a substantive part of an appeal, and no valid appeal should be frustrated by its absence” (2000 CarswellOnt 6087, para. 14). This decision was affirmed in a case we recently argued, *Springbrook Estates Inc. v. Brampton (City)*, wherein the Tribunal stated that:

“The Tribunal’s and previously the Board’s Rules permit appeals and other documents to be filed electronically. If there is no mechanism for fees to be filed electronically then it negates the ability to file appeals in this manner...As the Board has previously ruled, the receipt of the filing fee is only administrative and an otherwise valid appeal should not be frustrated by the date of the receipt of the hard copy of the Notice of Appeal and the receipt of the filing fee” (2019 CarswellOnt 1330, paras. 27 & 29)

As such, and in an attempt to preserve appeal rights, we recommend taking all steps possible in order to file an

appeal within the statutory timelines and, if possible, make payments as prescribed. If a municipal office is closed, we suggest filing by email to protect the appeal and subsequently filing by mail a certified cheque. Note that, even if successfully filed within the statutory period, we understand that no new hearing events are being scheduled by the Tribunal at this time.

### **Ontario Regulation No. 73/20**

It would appear, however, that concerns related to filing appeals within the statutory appeal time have been addressed by the enactment of [Ontario Regulation No. 73/20](#) (O. Reg. 73/20), filed by the Province through the Lieutenant Governor in Council with the Registrar of Regulations on March 20, 2020.

O. Reg. 73/20 is an order under s.7.1 of the *Emergency Management and Civil Protection Act* suspending limitation periods and procedural time periods retroactive to March 16, 2020 under “any provision of any statute, regulation, rule, by-law or order of the Government”, including the Planning Act and the Local Planning Appeal Tribunal Act. Further, the regulation suspends any period of time within which any step must be taken in any proceeding in Ontario (subject to the discretion of the court/tribunal/other decision-maker), and, as such, will also impact the Tribunal’s Rules of Practice and Procedure. These suspensions commenced on March 16, 2020 and are for the duration of the emergency.

Such suspension does not appear to require any further step by a court, tribunal, or other administrative body, so it appears that the suspensions are currently in place effective as of March 16. However, as the regulation appears to provide the Tribunal, for example, with discretion to override the suspension respecting steps in a procedure, any procedural directions issued by the Tribunal should be adhered to.

While O. Reg. 73/20 effectively suspends all statutory limitation periods retroactive to March 16, 2020, we nevertheless strongly recommend that individuals adhere to all deadlines set out in the respective rules and legislation to the extent possible.

### **What has happened to my previously scheduled appeal? When will my appeal hearing be scheduled?**

**Local Planning Appeal Tribunal:** All front-line counter services are closed. All appearance hearings, telephone conference calls and mediation events scheduled until April 3 have been adjourned, to be rescheduled at a later date. It is our understanding that, in some circumstances, the Tribunal may be permitting matters to proceed in writing pursuant to the Tribunal’s Rules of Practice and Procedure. However, it is unclear at this time which events the Tribunal is allowing to go ahead as such. Additionally, the Tribunal is not scheduling any new hearing events until further notice.

**Toronto Local Appeal Body:** Offices are closed at 40 Orchard View Blvd. All in-person hearings scheduled to April 3 are postponed, but scheduled teleconference hearings are unaffected at this time and will proceed as

scheduled. It is presumed that, as with the Tribunal, the TLAB is similarly not scheduling any new hearing events at this time.

Note that, based on current reports and projections of health officials, we suspect that these postponements may, in fact, go on beyond April 3, 2020.

### **Bill 187: An Act to amend the Municipal Act, 2001 and the City of Toronto Act, 2006**

[\*Bill 187, or the Municipal Emergency Act, 2020\*](#), received Royal Assent on March 19, 2020. This Act has amended the *Municipal Act, 2001*, and the *City of Toronto Act, 2006* to allow members of councils, local boards and committees participating electronically to be counted for purposes of quorum during emergencies. Further, the Act amends the *Municipal Act* to allow the Lieutenant Governor in Council to make regulations imposing limits and conditions on the powers of a municipality under section 129. How these new powers are implemented will also differ municipality-by-municipality and will require monitoring.

### **The Status of GTA Municipalities**

The below represents a list of those municipalities in which we experience the most volume of development applications and appeals. Please also note that the status of the matters contained herein are evolving rapidly and may not be the most current. If you have a question relating to a specific municipality not included in the list below, please do not hesitate to contact us.

- [City of Toronto](#)
  - Cancelled all non-essential services and closed many facilities including City Hall; tentatively resuming April 5.
  - Most City Planning services suspended (some exceptions for large-scale, time-sensitive, or public infrastructure projects). Suspended services include:
    - Building, Sign Permit and Zoning intake, review and issuance;
    - All building inspection services other than emergency inspections; and
    - All information requests, complaints and reports.
  - City Council meetings cancelled until April 3; Mayor can call a special meeting if required.
  - Committee of Adjustment meetings cancelled until April 3; will be rescheduled. New applications will not be received. Expect delays in the review of applications received prior to the current disruption.
  - Design Review Panel meetings have been cancelled; will be rescheduled.
  - Heritage Planning application reviews will be limited.
  - Provincial Offences courtrooms, public counters, email and call centre services are closed. Applications and payments can be submitted by regular mail. All online services remain available

to the public.

- Toronto Building not accepting or issuing building permits. No preliminary project applications, zoning reviews, or property information letters can be applied for, processed or issued.
- Inspections: No progress inspections will be undertaken, but construction may proceed without a City inspection subject to certain requirements. Toronto Building will require and review documentation provided by the applicant after this service disruption.
- City of Brampton
  - All City facilities closed until April 5, including City Hall.
  - Public meetings and Council meetings cancelled until April 5, including the Committee of Adjustment meeting scheduled for March 24.
  - Existing planning applications are continuing to be processed. The City is accepting applications digitally through its FTP Site. All appeals will be accepted digitally.
  - Fees are not required at the time of submission and applications will not be deemed to be Complete until payment is processed once the City offices are reopened. Advise of intended payment method with submission. If paying by cheque, issue the cheque and send a picture of it with your application documents being uploaded to the [FTP site](#). The cheque should then be mailed Planning and Development Services. Alternately, payment can be made over the phone by credit card when City Hall reopens.
  - Reports are still being completed, external agencies are still providing comments, and meetings are being held via Skype as necessary
  - Buildings Division closed until April 5. No applications for permits or registrations will be accepted. Buildings Division will only be accepting inspection requests via email and/or fax for the period of March 17 to April 3, 2020. Inspections to be conducted of unoccupied buildings only.
- City of Mississauga
  - All facilities and public counters closed through to April 5, including City Hall and the Provincial Offences Courthouse; Planning Committee is suspended at this time.
  - Planning reports are still being written; Commissioners now have delegated authority to sign agreements.
  - The City will continue to deliver essential services including Regulatory Services, Building Permits/Inspections, Site Plan Applications, OPAs & Rezoning Planning Applications, as well as Administrative/Technical functions related to preserving safety and public trust.
  - Appeals (including fees) to be filed by registered mail or courier to the attention of Clerks Office, 2nd Floor, 300 City Centre Drive, Mississauga, Ontario L5B 3C1.
  - Application resubmissions are requested to be done electronically; otherwise, the documents must

be delivered to the loading doors at the west side of City Hall.

- The City is still processing Official Plan amendments, rezonings, condominiums, and site plans. Meetings are being conducted remotely through WebEx, emails or by phone.
- Payments may be sent via mail or through the drop-box at City Hall.
- City of Markham
  - Planning & Development front counter is closed until further notice. The Markham Civic Centre, 8100 Warden Avenue and 555 Miller Avenue are closed until April 5, 2020
  - Public meetings have been cancelled for March, including: Council, General Committee, Development Services Committee, Committee of Adjustment, Heritage Committee, Accessibility Committee, and all advisory committees. City to determine status of April meetings and events.
  - Applications can be submitted online here for: Pre-Consultation Request, Building Permits, Heritage Permits, Site Plan Applications, Site Alteration Permits, Draft Plan of Condominium, Townhouse Siting Applications, Minor Variance Applications, and Consent Applications.
  - Additional information respecting planning submissions may be found on the City's recent adopted platform, "[ePLAN](#)".
- City of Vaughan
  - Public closures until April 6, including: Vaughan City Hall, Joint Operations Centre
  - Council, committee and task force meetings cancelled until April 9.
- City of Hamilton
  - Municipal facilities closed until April 6, including municipal service centres, public counters and City Hall.
  - All Committee meetings cancelled until April 5.
  - Provincial Offences courtrooms closed up to and including April 3, 2020.
  - Planning applications and appeals may be filed by regular mail (e.g., USB with digitals) with certified cheque. Recommend sending email to advise that application is being submitted by mail. Expect processing delays.
  - Building Permit applications may be made online.
- City of Ottawa
  - Provincial Offences Courthouse closed until April 3.
  - Other facilities and services closed or cancelled until further notice, including Building Code Services Counters
  - City Hall main foyer remains open to the public, and access to work areas will only be accessible by City employees
- Region of Peel

- Development Services staff are available to participate in one-on-one phone calls, conference calls, or virtual meetings.
- Submissions via courier or mail will not be accepted as counters are currently closed to the public. Contact the Peel employee assigned to your application directly to arrange for electronic submissions.
- Payments cannot be processed by cheque, visa or debit at this time. Development Services is currently investigating electronic fund transfer methods, while working with the local municipalities on alternative payment options.
- [Region of York](#)
  - York Region facilities are currently closed to the public.  
We continue to monitor, evaluate and respond to this situation as it evolves, and remain available to answer your questions and move your files forward as permitted.

*A special “thank you” to Donia Hashem, Student-at-Law, for her dedicated efforts in tracking down the above-noted updates from each of the municipalities listed above where possible, and to those municipalities who provided prompt and detailed responses.*

by Mary Flynn-Guglietti, Annik Forristal, Kailey Sutton

#### **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.

© McMillan LLP 2020