



Township of Wilmot **REPORT**

REPORT NO. DS 2019-14

TO: Council

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DATE: May 27, 2019

SUBJECT: Response to Bill 108 – More Homes, More Choice Act, 2019

Recommendation:

That Report DS 2019-14 be received for information; and,

That Report DS 2019-14 be forwarded to the Ministry of Municipal Affairs & Housing as the Township of Wilmot’s comment on Bill 108, prior to the June 1, 2019 deadline for comments.

Background:

On May 2, 2019 the Provincial government gave first reading to Bill 108 – The More Homes, More Choice Act, 2019. Bill 108 has been posted to the Environmental Registry of Ontario for comments until June 1, 2019.

The window for providing comments is very tight and limits the depth of review which can reasonably be completed by Township staff. Further, the unknown nature of some components of the proposed changes related to the Community Benefits Charge and Development Charges further complicates the ability to knowledgeably respond to Bill 108.

Bill 108 is an omnibus bill in that it makes changes to several pieces of legislation in respect of several different subjects. The various acts amended by Bill 108 are the Cannabis Control Act, the Conservation Authorities Act, the Development Charges Act, the Education Act, the Endangered Species Act, the Environmental Assessment Act, the Environmental Protection Act, the Labour Relations Act, the Local Planning Appeal Tribunal Act, the Occupational Health and Safety Act, the Ontario Heritage Act, the Planning Act and the Workplace Safety and Insurance Act.

A summary of the Schedules to Bill 108, produced by the Province, is attached as Appendix A for reference.

This report is specifically focused on the proposed changes to the Development Charges Act, D.C.A. (Schedule 3), and the Planning Act (Schedule 12).

The changes to the Development Charges Act are described as “helping to reduce costs and increase housing”.

The changes to the Planning Act are described by the government as “helping to increase the supply of housing and streamline development approvals.”

In addition to the changes proposed by Bill 108, on May 2 by the Province made changes to the Ontario Building Code, some of which took effect immediately and other which will take effect on July 1, 2019.

The Province also released A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019) which the Township had previously provided input into by way of comments on the draft legislation. Based on a cursory review of the plan it would appear that no significant changes were made between the draft document and the newly released document.

Discussion:

Development Charges Act Amendments – Schedule 3

The proposed bill will have significant and challenging impacts to the utilization of development charges as a funding mechanism for growth related capital across the municipal landscape. In addition, some of the revisions to the DCA, in our opinion and that of other municipalities and DC professionals will not meet the intended goal of “helping to reduce costs and increase housing”.

The Bill proposes the removal of so-called “soft services” from the D.C.A. These services will be considered as part of a new Community Benefit Charge. While information on the Community Benefit Charge is limited at this time, it is proposed that a municipality may, by by-law, impose community benefit charges against land to pay for the capital cost of facilities, services and matters required because of development or redevelopment in the area to which the by-law applies.

The currently published Development Charges Background Study includes \$11.6M in growth related capital costs for parks and recreation, which is considered one of these soft services. These projects have the potential for \$7.5M to be recovered through development charges. The removal of these “soft services” from the D.C.A. could drastically impact Wilmot’s ability to fund growth related capital costs for this community infrastructure.

The Bill further proposes that rental housing, non-profit housing and industrial / commercial / institutional (ICI) developments pay their DC's in six (6) equal annual payments commencing the date of issuance of an occupancy permit.

The delay in receiving the DC revenue will impact DC cash flows, as "hard services" are typically provided in advance of the development occurring. The lack of fiscal capacity to carry these large capital investments will require increased debt borrowing, generating upward pressure on the DC rates. On top of this, the requirement to manage multi-year collections for development charges from building permits associated with these types of developments will create significant administrative burdens, and the increased staffing resources would most likely be reflected in increased planning fees and building permit fees. Overall, the installment methodology is likely to have to be counterintuitive to the perceived goals of this legislation.

Having said that, the Bill proposes exempt all secondary suites from the payment of development charges which will reduce the cost of creating such units and/or streamline the construction of units. In recent years infilling redevelopments typically consist of a single or semi-detached dwelling which is designed with an income suite. Do to current provisions of the Act limiting DC exemption only to units created within an existing dwelling a multi-step process is required to gain occupancy of the dwelling and then to subsequently apply for the creation of a secondary suite and complete the requisite inspections and occupancy again. By allowing the creation of the unit without duplication of process at the very least the process is streamlined. Lowering the cost of construction does not however necessarily translate to affordability. Rather it translates to increased profitability which may or may not flow through to the rental rate for the unit.

Finally, the bill proposes that the DC amount for all developments proceeded by site plan shall be set, and remain static to the DC rate the day the application is filed. The proposed methodology of locking in rates, well in advance of issuing building permits will without a doubt produce shortfalls in DC revenues. There would be no financial incentive for the development to move quickly to the building permit stage, which could induce speculation activities.

Overall, the proposed bill in its current format would generate significant fiscal consequences to municipalities that have historically operated efficiently within the current DC regulatory framework. The movement to a new Community Benefit Charge model will result in additional consulting requirements to re-write DC by-laws across the province, and additional administrative complexities. The information provided, specifically with regard to this section is limited, and support of such a drastic change within a short review period would not be prudent, nor would it be consistent with our municipalities approach.

Planning Act Amendments – Schedule 12

Bill 108 proposes significant changes to the process of land use planning in Ontario. The changes are described as streamlining the process which would suggest that a faster process is the most desirable outcome of a planning exercise.

In focusing on the speed of decision making the legislation fails to account for the importance of achieving the best decisions or best outcome as having a significant value to the community.

Application Review Time Frames

Bill 108 significantly reduces the minimum processing times for a number of development applications before an applicant can appeal the lack of decision by the approval authority. Bill 139 had increased the time frames for reviews of development applications in 2017 and Bill 108 now has the opposite effect.

Time frames for Official Plan Amendments had been 180 days prior to Bill 139, increased to 210 days by Bill 139 and under Bill 108 is now reduced to 120 days.

Subdivision applications had been 180 days both prior to and after Bill 139 but would now be reduced to 120 days.

And zoning amendments which had been 120 days prior to Bill 139 and increased to 150 days under that Bill would now be reduced to a mere 90 days.

These time frames are very tight and on more controversial applications may be difficult to achieve. As always Township staff attempt to process applications as quickly as possible but these time frames could result in more applications being appealed to LPAT which in turn could have financial implications to the Township. There is a cost to efficiency and it is important to recognize that the application processing speed is often directly related to staffing resources.

The intention of the planning process is to thoroughly review development applications to ensure that land use planning decisions result in positive outcomes for the municipality, the applicant and the neighbouring land owners wherever possible and the reduction in decision making windows could become problematic. Certainly it could impact the ability to introduce additional consultation steps beyond the minimum requirements of the Planning Act. Staff are aware that other municipalities with informal consultation processes will be revisiting their ability to continue such practices in light of the limited decision making time frames.

Limits on Rights of Subdivision Appeal

Bill 108 introduces limits on the rights of appeal on the approval of plans of subdivisions, effectively removing the right of third parties (neighbouring land owners included) from appealing decisions.

In general it would be rare that a neighbouring land owner would appeal a plan of subdivision and much more likely that an appeal would come from a competing developer.

As such the stated goal of streamlining the approval process should be achieved in terms of limiting frivolous appeals but the optics of denying neighbouring land owners the right of appeal is inherently problematic and seems counterproductive to inviting them to provide input into the approvals process.

The limitation is reminiscent of the concerns raised with the limits placed on input into and appeal of the previously proposed 'Open for Business' bylaws under Bill 66 which were subsequently withdrawn after public and municipal outcry.

Having said that the Association of Municipalities of Ontario (AMO) has come out in support of the limitations placed on third party appeals in respect of Bill 108.

Reversion to former OMB Hearing and Appeals Process

Bill 108 maintains the Local Planning Appeals Tribunal (LPAT) which was formerly the Ontario Municipal Board (OMB). Having said that the rules for under which the LPAT operates are being reverted back to the rules used by the OMB.

These rules allow for the introduction of new evidence at hearings, allow for the calling of expert witnesses and allow for the cross examination of witnesses. Ultimately the rules allow the LPAT to make decisions without regard for the decision of the approval authority in what is deemed to be 'the best planning outcome'.

Appeals are also no longer limited to issues of conformity or conflict with the Provincial Policy Statement, a provincial plan or the Regional or Township Official Plans as the LPAT has been.

The value of this reversal depends largely on whether it is viewed from the position of the appellant or the respondent.

Secondary Suites

Bill 108 expands on secondary suite requirements previously requiring municipality's to permit an additional unit in a main dwelling or in an ancillary building by requiring provisions for secondary suites to be permitted in both – effectively allowing up to three units on an single, semi-detached or rowhouse dwelling lot.

While the original intent of the wording of our Official Plan update was to limit the secondary suite to either the dwelling or the ancillary structure in accordance with Places to Grow (2017) staff are of the opinion the wording can be interpreted to reflect the new reality of Bill 108 without further amendment to the Plan at this time.

Consideration of parking provisions and lot area to address the potential for 3 units will form an important part of the Zoning Bylaw update currently underway.

Community Benefits Charge

The Community Benefits Charge is a replacement to the former 'bonusing' provisions allowed under Section 37 of the Act. While not used in Wilmot, Section 37 allowed municipalities to provide developers with bonuses (increases) in height and density in exchange for the provision of facilities and services set out in the zoning by-law.

As highlighted in the section on Development Charges Act changes, Bill 108 requires the municipality to now complete a Community Benefits Charge Strategy and bylaw which incorporates 'soft services' previously collected as Development Charges.

Once in place the Community Benefits Charge appears to limit the municipality's ability to require the conveyance of parkland or cash-in-lieu of parkland as a requirement of site plan development and redevelopment.

At this time though several of the key components of this new process are not known which makes it difficult for staff to provide a fulsome review of the impact of the change.

Parkland Dedication / Cash - In – Lieu / Site Plan Approval Conditions

Section 42 of the Planning Act permits the Township to require the conveyance of parkland or the payment of cash-in-lieu of conveyance as a condition of redevelopment via site plan. An example would be the collection of cash-in-lieu for the Timberlane development in Baden.

The intent obviously is to recognize that with the intensification of existing neighbourhoods an additional burden or strain may be placed on recreational resources that needs to be addressed.

Bill 108 would appear to limit the ability to require conveyance of parkland or cash-in-lieu as part of site plan approval if a Community Benefits Charge By-law is in effect.

As indicated previously several key components of this change are unknown at this time and as such the impact is difficult to quantify at this time.

Strategic Plan Conformity

Planning Act amendments proposed by Bill 108 have the effect of reducing time frames for municipal consideration of development applications and limiting the rights of appeal of third parties (including residents).

Efforts to reduce public engagement are not supportive of the goals of the Wilmot Strategic Plan.

Amendments to increase the ease of constructing secondary suites throughout the municipality support an increase in the variety and affordability of housing options and as such have the potential to enhance our quality of life. By providing alternatives to greenfield development these policies also promote the protection of our natural environment by intensifying development and limiting our residential footprint.

Financial Considerations:

The amendments to the Planning Act have the potential to increase the number of appeals filed for failing to make decisions within the limited time frames proposed by Bill 108. An increase in appeals could have significant financial impacts which would need to be addressed through increased legal fees or alternatively through increasing staff resources to respond to and ensure development applications can be brought to Council for decisions within the standards set by the Province.

In addition, as noted previously the existing capital forecast included growth related capital investments that would be significantly impacted by the proposed changes to the Development Charges Act. The deferral of payment for specific classes over a 6-year period, the locking of rates at the time of site plan application and the removal of “soft-services” from the DCA will result in increased administrative burden, debt requirements and a movement away from the traditionally successful model of growth paying for growth. From a financial perspective the proposed bill needs a longer review / input period and significant amount of additional research to meet the objectives desired.

Conclusion:

This report provides a brief overview of some of the many changes proposed under Bill 108.

Many of the impacts of the legislation will not be fully understood until the legislation is finalized and the implementing regulations are released.

Staff will continue to monitor and update Council on an ongoing basis moving forward but recommend that this report be forwarded to the Province as our comment on Bill 108 prior to the June 1, 2019 deadline for comments.

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