



COMMUNITY PLANNING

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Our File: L11 Bill 108

August 21, 2019

John Ballantine, Manager
Municipal Finance Policy Branch
777 Bay Street
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Toronto, ON M5G 2E5

To Mr. Ballantine,

Re: Proposed *Planning Act* and *Development Charges Act* Regulations with respect to the implementation of Bill 108, the *More Homes, More Choice Act* EBR Postings 019-0184 & 019-0183

This letter comprises the County of Oxford's formal comments with respect to the Ministry of Municipal Affairs current phase of consultation on the proposed regulatory changes under the Planning Act (new regulation) and Development Charges Act (O. Reg. 82/98), with respect to the implementation of the community benefits authority and other matters presented through Bill 108. These comments are primarily based on the limited information presented in the related postings on the Environmental Registry of Ontario (ERO), ERO nos. 019-0183 and 019-0184. However, many of the County's comments with respect to the proposed regulatory changes also relate back to the proposed changes to the provision of the Planning Act (PA) and Development Charges Act (DCA). It is noted that the County did not previously comment on the proposed changes to these Act provisions due to the short commenting window (e.g. 30 days) and lack of implementation detail necessary to evaluate and comment on potential impacts.

Given the summer Council schedule and limited consultation period provided for the current postings, the attached comments were prepared by staff on behalf of the County (i.e. have not yet been reviewed with County Council). That said, if any revisions or additions should result from subsequent review of these comments with County Council, they will be forwarded under separate cover at a later date. Until such time, these comments should be considered the County's formal submission.

Following are the comments and concerns that the County feels should be specifically considered and addressed by the Province as part of the current consultation process.

General

The County is generally in agreement with the questions and concerns identified in the following documents (see attached):

- Watson & Associates Economists Ltd., July 25th Memo to Development Charge Clients; and
- Submission on Regulatory Changes Implementing the More Homes, More Choice Act, 2019, Municipal Finance Officers' Association of Ontario, Aug. 19th, 2019.

That said, through our own review of the proposed changes, the County has also identified a number of additional comments and concerns, which are outlined as follows.

- To ensure legitimate consultation and informed decision making, a full draft of the proposed regulation wording should be released for consultation by the Province;
- Municipalities are generally in the best position to identify local impacts and considerations and ultimately determine the most effective approach for achieving various Provincial objectives in their jurisdictions (e.g. how to improve the supply of affordable housing). As such, any new legislation and/or regulations should ensure municipalities maintain the authority and flexibility (e.g. enabling vs. directing) to enable effective local implementation and ensure any potential negative impacts (e.g. financial, land use etc.) can be avoided, or acceptably mitigated.

That said, it appears that a number of the proposed changes (e.g. replacing Development Charges regime with the Community Benefit Charge Regime for 'soft services', additional dwelling units requirements etc.) could be more restricting than enabling for municipalities, if not properly considered and implemented. This could result in increased administrative burden and limit the ability of County and Area Municipalities to ensure effective and fiscally sustainable delivery of important local services; and, avoid or mitigate potential negative land use impacts, without resulting in any substantial improvement in the supply and/or affordability of housing. Therefore, it will be important that municipal concerns in this regard be closely considered and addressed.

- Growth should pay for growth. Further, complete, vibrant communities supported by a full range of services (including 'soft' services) are good for everyone, are more economically, socially and environmentally sustainable and improve community wellbeing. Therefore, it is crucial that municipalities have the flexibility necessary to determine what services are required to support the development of such communities and the ability to fully recover the costs of those services related to growth.
- Improving the supply of affordable housing benefits the Province as a whole. Further, access to and demand for affordable housing is not restricted to just the existing residents of the municipality where such housing is being provided. For example, if one municipality chooses to provide local funding for incentives and programs that substantially improve housing affordability/supply in their communities, it could simply incent more in-migration/demand from nearby municipalities where the same level of local funding and programs are not provided (i.e. further increase the burden on the local tax base/development fees of the municipalities that do provide such local funding and programs). As such, any financing or subsidies directed at reducing the cost and/or increasing the supply of affordable housing should come from Provincial funding sources, as they are not specific to a particular geography and are more directly related to

wealth/capacity to pay (e.g. sales tax and income tax) rather than local property taxes and fees.

- Land Planning Appeal Tribunal – The County supports the elimination of the two stage appeal process and commitment of additional resources to the LPAT, however, we believe the return to full cross examination and ‘de novo’ hearings (e.g. allowing for the submission of new evidence) will lead to more confrontational, expensive and time consuming hearings and eliminate the incentive to ensure municipalities have been presented with full and complete information at the time of making their decision on a planning matter. We believe this could negatively impact the ability of municipalities to ensure they are making fully informed decisions on such matters.
- Additional dwelling units - As previously expressed through our comments on ERO no. 019-0181, the County is generally supportive of additional dwelling units as a means of increasing the supply of affordable housing, in appropriate locations and subject to appropriate development standards. That said, it is crucial that municipalities retain the ability to establish appropriate development criteria or standards to ensure that any potential negative land use/community impacts from the establishment of such units can be avoided or acceptably mitigated (e.g. minimum parking space requirements, unit size, entrance locations, date of construction of building etc.). This is particularly important for additional units in ancillary structures, new buildings and outside of fully serviced settlement areas. Ensuring municipalities have the authority and flexibility to establish appropriate development criteria and standards will help to improve municipal and broader community acceptance of such units, thereby increasing the likelihood of more timely and wide spread implementation of local provisions and programs to allow for and encourage such units.

ERO no. 019-0183 – Community Benefits Authority under the *Planning Act*

Without additional implementation detail (e.g. draft regulations), it is very difficult to determine the potential risks and benefits of implementing the CBC authority. However, based on the information currently available, the County has significant concerns with the requirement for municipalities to develop and implement the new Community Benefit Charge (CBC) approach if they wish to continue to recover the growth related costs of ‘soft’ services from development.

The current Development Charge (DC) regime provides a robust, predictable, flexible and well understood and tested process for recovering the growth related costs of most ‘soft’ services. In contrast, based on review of the limited information available to date, there appear to be a number of potential risks associated with shifting to the CBC regime to finance such services. These include, but are not necessarily limited to, financial uncertainty (e.g. not being able to fully finance growth related service costs and provide necessary services), additional administrative burden (e.g. another process to administer in addition to DCs), time delays (e.g. associated with appraisals and appeals) and the substantial time and resources that will be required to properly develop and implement the new system. That said, it is also difficult to discern the potential benefits of moving to the proposed CBC regime for the financing of ‘soft’ services in terms of improving predictability (for municipalities and development), revenue neutrality and/or the supply of affordable housing. In fact, it appears the change could have a negative impact on these objectives, if not carefully considered and implemented.

Following are a number of more specific points with respect to the proposed CBC:

- The Province should consider the option of maintaining the ability for municipalities to continue to utilize the existing PA parkland provisions and DCA provisions for ‘soft’ services and simply making the CBC an optional financing tool that municipalities could chose to implement (e.g. similar to the current Community Planning Permit System provisions, where municipalities have the flexibility to determine if that particular tool is necessary or beneficial in their particular context).
- Use of Land Value for CBC Cap – A fundamental issue and concern is how percentage of land value is specifically intended to be utilized in the determination the CBC funding cap, as this is key to understanding the potential impacts of implementing this new tool. Land value is not directly related to the cost of providing most ‘soft’ services and is also volatile and unpredictable (e.g. can quickly change due to factors such as market conditions, land speculation, interest rates, economic factors and land use policies/approvals). Further, the need for site specific appraisals to establish land value will likely result in increased administrative demands, time delays and costs, particularly if disputed. Land value also seems to be a more subjective, unpredictable and ad-hoc basis for determining the cap for most ‘soft’ services than the current DCA regime, as well as being more prone to dispute and ‘gaming’ of the system. As such, the appropriateness of using land value as the basis for the CBC cap should be carefully considered as part of the consultation with municipalities on the implementation details of this tool.
- Exemptions from CBC – the rationale for and potential consequences of exempting a number of the proposed development types (e.g. retirement homes, non-profit housing and universities/colleges) requires more thorough consideration. Further, these exempted use types should be further scoped and defined so that the potential impacts of providing such exemptions can be properly assessed and to reduce the potential for unintended consequences and/or ‘gaming’ of the system. Is the intent to exempt such uses from the requirement to contribute toward the cost of all ‘soft’ services as well as parkland? It would seem that a number of these uses could increase the demand for many ‘soft’ services and/or parkland.
- Excluded CBC services – The County agrees with the MFOA position that municipalities should have the flexibility to determine what services are required to support growth (e.g. no services should be specifically excluded) as well as the need to recover the associated costs from development, provided appropriate justification is provided (e.g. as is currently required by the DCA for eligible services).
 - Scope of services eligible for CBC – The CBC provisions indicate that it will allow Council to impose a changes against land to pay for the capital costs of ‘facilities, services and matters required because of development or redevelopment of an area to which the by-law applies’. We would request further clarification with respect to the scope of services that municipalities will have the ability to recover for through the CBC (e.g. is it only ‘excluded services’ and services that continue to be covered by the DCA that won’t be eligible under the CBC?). For example, would ‘soft’ services, like arts and cultural facilities, social and health services and affordable housing be eligible for funding under the CBC?

Further, will municipalities continue to have the ability to recover the cost of growth related studies (e.g. secondary plans and servicing studies, comprehensive reviews for settlement expansions, CBC strategies etc.) from new development under the CBC regime? This is key concern, as these studies are often costly and typically entirely, or almost entirely, required for growth, so should not be funded from taxation.

- Other implementation related comments/questions
 - To ease transition, increase certainty and reduce administrative burden, the Province should consider simply adopting the current DCA regime for the determination of charges for 'soft' services under the CBC, which would allow the Province and municipalities to focus their efforts on how the charges for the other services to be covered by the CBC will be determined (e.g. parkland, services provided in exchange for height and density bonuses etc.). Alternatively, the Province could consider expanding on the existing provisions of the DCA to ensure they address the full range of municipal services that are intended to be covered under the CBC (e.g. parkland, affordable housing etc.), so that two different processes are not required to be undertaken.
 - Many municipalities currently use Section 37 (Bonus Zoning) to incent the provision of a range of various facilities, services or matters including, but not limited to: affordable housing, enhanced urban design features/open space, day care facilities, preservation of built and/or natural heritage features, green infrastructure, arts and cultural facilities etc. To understand the impacts of the proposed changes, more detail is required with respect to the extent to which the proposed CBC regime will provide the ability to continue to allow for increased height and/or density in exchange for the provision of such facilities, services or matters.
 - Parkland requirements – Will the proposed CBC approach allow municipalities to continue to require that land be conveyed for park or other public recreation purposes, not just the ability to collect a charge? This authority to require conveyance of lands is critical for municipalities to ensure land for park and public recreation facilities can be obtained in appropriate locations at the time of development. Currently the only reference in the CBC provisions of the PA seems to be to the ability for municipalities to recognize in-kind contributions in lieu of cash. This wording would not seem to provide the same level of authority to require the conveyance of land as the current PA parkland provisions.
 - What is the rationale for excluding site plan approval from the list of development/redevelopment that can trigger the CBC?
 - The PA states that the CBC maximum is the percentage of the value of the land the day before the date the first building permit is issued. Will the CBC have a mechanism to allow for additional charges to be applied if further development is proposed on the same site in the future (e.g. may only require a minor planning approval such as a site plan amendment, or just a building permit)? If so, would a new land value then be established for the purposes of the cap?
- Timeframe to transition to the CBC framework – Given the risks and complexity likely to be associated with the development of the proposed CBC framework, the County does not feel the January 1, 2021 date will provide sufficient time to properly evaluate implementation approaches and impacts, carry out the necessary studies and undertake adequate consultation.
- Community Planning Permit System (CPPS) - Although there are currently no CPPS in place in Oxford, some of Area Municipalities in the County may wish to consider establishing such a system in the future. In this regard, further clarification/response from the Province on the following questions and concerns would assist the County in evaluating the potential impacts of the proposed changes to the CPPS and determining

the potential benefits of, and process for, implementing such a system in the County in the future:

- Is the Province's intention that any municipality would be able to request a Minister's order to adopt or establish a CPPS for any area in their municipality, if they deem it to be appropriate? If not, what Provincial requirements/conditions would need to be satisfied for a municipality to obtain such an order? Updated Provincial guidelines outlining the new CPPS process and associated considerations would be of assistance to municipalities considering potential implementation of this tool.
- Other than by being a municipality 'prescribed through regulation', the establishment of a CPPS appears to be the only way for municipalities to establish inclusionary zoning outside of a major transit station area (Note that there are no such areas currently in Oxford). As such, we would request further clarification on which, if any, municipalities are expected to be prescribed through regulation and what factors the Province would consider in making that determination. If expectation is that it would generally only be permitted through a CPPS, that would be helpful to have clarified.

In conclusion, the County generally commends the Province for considering new and innovative financing tools and sources that can assist municipalities in achieving Provincial and local planning and community building objectives, including increasing the supply of affordable housing. However, we have a number of concerns with respect to the mandatory nature of the proposed CBC tool, the timelines for migration and the significant risks associated with improper implementation that we hope can be addressed through this consultation process.

ERO no. 019-0184 – O. Reg. 82/98 under *Development Charges Act*

- Types of development subject to DC deferral – Institutional, industrial and commercial developments should not be eligible for automatic DC deferrals. DC deferrals for some of the other proposed development types (e.g. non-profit housing, long term care homes, some rental housing developments) warrants further consideration, but they should be further scoped and defined to properly assess potential impacts and considerations. See Watson and MFOA comments as previously referenced for more detail.

To simplify administration and avoid challenges associated with non-payment, the Province should consider allowing municipalities to add DC deferrals to the tax roll and charge interest in the same manner as unpaid taxes. Notwithstanding that authority would be a clear deterrent at an interest rate of 1.25% per month or 18% per year, it would simplify administration of upper and lower tier deferrals.

- DC rate freeze – Again, municipalities have the best understanding of their local circumstances, so should have the authority to determine when a rate freeze may be appropriate. For example, not every zone change application should be considered sufficient grounds to freeze rates (e.g. a 'complete' application for a site specific zone change associated with a specific development, versus a more general amendment). If the freeze provisions are to be maintained, an approved site plan (or at minimum complete application) would be a more appropriate trigger, as it provides a more 'concrete' indication of commitment to a particular development.
- Additional dwelling units – We are concerned with the 'mandatory' DC exemptions for additional dwelling units, particularly for those in new buildings (e.g. new dwellings and

ancillary structures) and in larger apartment buildings (unless they are clearly affordable housing units). If a significant number of such dwelling units were to be created in a particular community (e.g. in existing dwellings and new builds), it could result in a substantial shortfall in DC revenue in comparison to the cost of municipal services required for such growth. We feel a more appropriate approach would simply be to ensure the DC charge established for such units is reflective of their expected additional demand on services (e.g. if PPU/demand on services is similar to a bachelor/one bedroom apartment unit, then apply a similar rate). If the Province feels financial incentives are necessary to facilitate the creation of affordable additional units, a Provincial rebate to homeowners (e.g. to offset some or all of the local DC charge) would be a better alternative, as it would not compromise the ability of municipalities to sustainably finance growth related services.

- Increased administration – it appears that many of the proposed changes (e.g. multi-installment payment plans, freezing development charges and the new appraisal process) will increase the administrative burden on municipalities, without a clear benefit in terms of increasing the supply or affordability of housing. Providing further detail on the property value based approach to the CBC cap and leaving the CBC, multi-installment payment plans and development charge freeze provisions as optional tools that could be implemented by municipalities, if and when deemed appropriate, may help to address many of these concerns.

For the reasons noted above, the County would urge the Province not to proceed with proclaiming/bringing into force the proposed amendments until such time as fulsome consultation with municipalities on the full text of the draft regulations and implementation details of the CBC has been undertaken and all significant concerns have been addressed.

Thank you for the opportunity to provide input on the draft regulations. We would be pleased to discuss any of the contents of this correspondence with the Province in more detail, if that would be of assistance.

If you have any questions or wish to discuss any of these comments further, please feel free to contact me at pmichiels@oxfordcounty.ca or (519) 539-0015 ext. 3209.

Yours Truly,



Paul Michiels
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