



Working together with our community

Council Meeting – March 29, 2022

Subject: Bill 109, More Homes for Everyone Act, 2022
Report Number: CD-22-046
Division: Community Development
Department: Planning
Purpose: For Decision

Recommendation(s):

THAT report CD 22-046 Bill 109, More Homes for Everyone Act, 2022 be received as information;

AND THAT the comments from report CD 22-046 Bill 109, along with any additional staff and Council comments, be submitted to the Ministry of Municipal Affairs and Housing as part of the provincial commenting period; including

- a) concern regarding provincial legislation that would financially penalize municipalities (and potentially impact taxpayers to offset fees that should be paid by growth) should stringent provincial development timelines not be met;
- b) the need for increased funding resources to assist with further staff capacity requirements to meet the timelines;
- c) clarity on timelines for agency feedback, provincial review, applicant obligations and other details about implementation of the proposed refunds;

AND FURTHER THAT the province continue to further consult and work with rural municipalities, their housing authorities and service managers, non-profits and industry stakeholders on funding plans for housing and for streamlined development approvals in rural municipalities.

Executive Summary:

A number of legislative changes, guidelines and feedback requests were recently posted by the province in follow up to the Housing Affordability Task Force Report with short timeframes for review and comment. The changes could have implications and require changes to the development procedures.

Discussion:

The province tabled [Bill 109, More Homes for Everyone Act, 2022](#) for first reading on March 30th, with second reading on April 4th, followed by Standing Committee

consideration the week of April 11th. The Bill is proposing changes to many acts, including the Planning Act, Development Charges Acts and others regarding new homes with the intent to make it easier and faster to build housing in Ontario. In part, it is a follow up to the Housing Affordability Task Force Report.

According to the [Environmental Registry of Ontario posting](#), the deadline for the commenting period is April 29th, 2022. A [Community Infrastructure Accelerator – Proposed Guideline](#) has also been posted for the same comment period. At the same time, the province has also posted a proposal for feedback on [Housing Needs in Rural and Northern Municipalities](#). On April 13th, staff received the first notification and of a provincial-led, municipal staff webinar scheduled for April 20th on Bill 109. This does not provide much time for reviewing the implications and commenting. As such, a preliminary snapshot of information and initial comments are provided for consideration at this time with additional monitoring and follow-up expected. Several municipalities and groups are also in the midst of reviewing and reacting.

A summary of the proposed changes is appended to this report as Attachment A along with a chart summarizing the proposed development application refund timelines as Attachment B, the Draft Guideline for the Community Accelerator Tool as Attachment C and the discussion questions for feedback on Housing Needs in Rural and Northern Municipalities as Attachment D. The main items along with initial implications and comments are outlined below.

Refunds for Municipal Indecision

Municipalities that do not process site plan applications, zoning amendments, and official plan amendment applications within the legislated timelines will need to gradually refund the application fees starting at 50% of the fee after 60 days of receiving a completed application, to a full refund of the fee if no decision within 120 days of receiving a completed application. This is proposed for applications as of Jan. 1, 2023.

Initial Considerations / Implications

The review of development applications involves circulation to a variety of departments and agencies (including provincial ministries), such as engineering, parks operations, conservation authority, school boards, etc. The information posted by the province primarily refers to and notes benchmark timelines in the Greater Golden Horseshoe – such as it takes on average 12-30 months' time for site plan approval, 7-25 months for subdivision approval, and 9-25 months for a zoning amendment. Preliminary information gathered by staff from a sample of rural municipalities indicates a wide range of timelines, including some jurisdictions processing official plan amendments in 5-8 months for straight-forward applications and longer for more complicated proposals. Common notes from smaller, rural municipalities relates to minimal resource capacity, high volumes and increasing complexity.

Currently, for development applications involving a public process and council decision, in Norfolk when the steps involved after deeming an application complete, to circulation

for departments/agencies/public to comment, report preparation and legislative notice period for statutory public meetings and report submission period for Council are added up it equals approximately 70 days. With the requirement of 90 days to a decision for zoning amendments (ZBA) and 120 days with an official plan amendment (OPA), this does not leave much time for issue resolution nor neighbourhood public meeting for larger applications. Norfolk has made strides over the last 2 years to deliver these types of applications in an efficient manner. Of the 28 land use amendment applications submitted in 2021:

- Average days of ZBA from complete to statutory public meeting = 72
- Average days of ZBA from complete to council decision = 118
- Average days of OPA/ZBA from complete to statutory public meeting = 84
- Average days of OPA/ZBA from complete to council decision = 175
- Number of applications that would require refunds under proposed changes = 10 @ 50%, 8 @ 75%, 1 @ 100% (9 with no refund)
- To date in 2022, approximately 75% of these applications are within the timelines with several brought to statutory public meeting and council decision in <60 days

Site plan statistics are being gathered and summarized, although at a high level, it is highly likely that the majority exceed the timelines to receive final approval/agreements and would require some amount of refund under the proposed changes. It is highly likely that Norfolk would further need to overhaul its site plan process considering the proposed legislative changes – which is currently being considered.

Norfolk has accessed the Municipal Modernization Program provincial grant funding for undertaking a review of the pre-consultation and site plan processes with changes and new efficiencies being incrementally adopted. There are a number of other development processes that require lean reviews – such as subdivisions, condominiums, committee of adjustment, agreements, etc. and staff continue to review the thresholds for technical study needs. The challenge is overhauling a number of processes at the same time as record levels of development and resource limitations (about 50% capacity currently).

The proposed legislation does not reduce the complexity of the development process for municipalities/developers (may actually add to it) and does not necessarily directly address the issues creating the long development timelines. As some areas are putting it, the Bill appears to indicate ‘municipalities do it faster or we will penalize you’ but the proposed legislation does not provide a municipality meaningful tools, resources or processes to improve.

Some municipalities have gone to the extent of requiring all technical studies be submitted, reviewed and approved before the application is deemed complete and the “clock starts”. This would be a big change for the Norfolk process and would have implications to the development industry. The proposed changes may instigate having to look at this option. Another option is that neighbourhood public meetings may have to be held prior to a complete application. Staff are also in the midst of following up on additional streamlining options, such as delegated approvals under Bill 13.

Although not at full cost recovery, the development application fees are a major source of funding for resourcing the Planning Department.

Comments

- How do proposed refund changes take into account issues and response raised by technical departments, agencies or the public as part of the review process?
- If an applicant is to provide additional information to respond or further technical justification, can they wait until the time period expires to provide it and then get a refund?
- Can the municipality implement penalties on agencies that are part of the process if it contributes to the time period expiring?
- This could further restrict meaningful public engagement.
- Confirmation that a site plan approved in principle subject to conditions and agreement qualifies as an 'approval' for the purposes of the refund stipulation (vs final approval once all conditions are completed by the applicant)
- Should the refund provisions be retained, additional leeway or flexibility for applications deemed 'major' would be appropriate and assist?
- What funding opportunities and tools exist for small or rural municipalities to access for resourcing or streamlining processes?
- Demand for planning and engineering professionals in Ontario is high and a challenge for smaller or rural municipalities to compete and recruit. Are there steps that the province could assist with to help with the supply of trained professionals or level the field?

Community Infrastructure and Housing Accelerator

Bill 109 proposes the creation of a Community Infrastructure and Housing Accelerator, which would be a new tool to help accelerate the municipal planning process (although perhaps similar to the Ministerial Zoning Order). Municipalities would need to pass a council resolution and submit a formal request to the Minister of Municipal Affairs and Housing to utilize the tool. At this time, staff are not aware of how this process would work and what stages of development approvals would be accelerated. The draft guideline and provincial posting provides some additional information:

- An order may be considered where the Minister believes it is in the public interest to do so
- An order can be used to regulate the use of land and the location, use, height, size and spacing of buildings and structures to permit certain types of development.
- The Minister can:
 - provide an exemption for other necessary planning-related approvals from provincial plans, the Provincial Policy Statement and municipal official plans, but only if this is specifically requested by the municipality; and,
 - impose conditions on the municipality and/or the proponent.
- The following types of priority developments may be considered:

- community infrastructure that supports the quality of life for people and communities by providing public services for matters such as health, long-term care, education, recreation, socio-cultural activities, and security/safety;
 - any type of housing, including community housing, affordable housing and market-based housing;
 - buildings that would facilitate employment and economic development; and,
 - mixed-use developments.
- The Minister, upon request of a local municipality, could provide that specific subsequent approvals would not be subject to provincial plans, the Provincial Policy Statement and municipal official plans.

Initial Considerations / Implications

This appears to be proposed provincial legislation to allow an out clause for provincial legislation, policies and local official plans. This seems similar to the Ministerial Zoning Order tool. While it is recognized that broad policies may not fully capture all possibilities across the province or may encumber the delivery of a needed development, it seems as though this proposed tool allows for pretty much any type of development. It should likely be used in more rare circumstances.

If this is put in place and regularly utilized, it may add more pressure and demands for even more development and at potentially large scales – thus increasing the demands on already lean resources and taking the focus away from getting developments to the finish line (engineering clearances, registration, etc.). There may be instances where this tool is beneficial with Council support.

Comments

- Clarification is required on what supporting materials would be needed to determine if using the tool is appropriate, supportable or for any submission to the Minister
- Agriculture is critical in many municipalities in Ontario – is agri-business included within “buildings that would facilitate employment and economic development” or is the intent that there should be no provincial policies or plans that would need exemptions?
- Utilizing this tool should likely be reserved for special circumstances and with the appropriate supporting justification
- If there are so many matters that are priorities and may require exemption from provincial policy and plans (and local plans that conform to such), shouldn’t those be reviewed (vs. exemption process)?

Surety Bonds

The proposed changes would empower the Minister of Municipal Affairs and Housing to make a regulation to authorize landowners and applicants the use of types of surety bonds and other prescribed instruments as part of the local development agreement security process for planning matters.

Initial Considerations / Implications

Many development agreements, such as for subdivisions and site plans, require developers to post securities to ensure that infrastructure, landscaping, lighting, etc. will be constructed to an approved standard. This is typically in the form of a Letter of Credit (or cash); however, the cost of providing and carrying the security can be significant depending on the scale of the development and the length of the construction process. Occasionally, if a developer is not able to complete the works, the municipality would draw upon this security to have the construction completed. There is also a timeframe associated with the review and release of securities.

Staff had already begun to review this issue in combination with dialogue with development industry stakeholders. Further review with Risk Management, Engineering, Finance or others is required.

Comments

This proposed change could be helpful provided the necessary assurance that infrastructure and site works would be completed while assisting developers with reducing costs or encumbrances.

Other Items

There are a number of other proposed legislative changes as part of the Bill that require further review including:

- establishment of a regulation-making authority to prescribe complete application requirements for site plans, to prescribe what cannot be required as a condition of subdivision approval, to require public reporting and data on development applications and approvals
- establishment of a one-time discretionary authority to re-instate old, lapsed draft plans of subdivision
- provisions for the Minister to have new discretionary authority to make decisions to “stop the clock” for ministerial decisions on all official plan matters or to refer all or part of an official plan matter to the Ontario Land Tribunal for a recommendation or decision

Additional clarification or examples of when these actions may be utilized would assist in determining potential implications or implementation. Other items such as requiring new site plans made after July 1, 2022 be delegated to staff (currently exists for Norfolk), changes to parkland requirements for Transit-Oriented Communities and amendments to the City of Toronto Act are not as applicable.

Housing Needs for Rural and Northern Communities

The province is requesting feedback on housing needs in rural and northern municipalities. In January 2022 as part of a Housing Summit, the province announced more than \$45 million funding for a new Streamlined Development Approval Fund to modernize and accelerate process for managing and approving housing applications. This was indicated for the largest 39 municipalities. A Rural Housing Affordability

Roundtable was held as well. At this point, it is not clear if there is funding available for small and rural communities, such as Norfolk, beyond the Municipal Modernization Program Fund.

The need for housing stock in our communities is supported by/included in our 10 year housing and homeless plan which was approved by Council in December 2021. Part of the plan does include action items/ideas on potentially offering reduced fees, etc., to encourage housing development.

Our Housing Services programs also includes The Homeownership Program that provides down payment assistance to first time homeowners who are qualified low-to-moderate income households wishing to purchase a home.

Some response to the discussion questions:

1. Key Barriers - We tend to have the majority of those experiencing homelessness congregating in our towns. This is partially due to limited public transportation, and the location of supports and services. It can be challenging to find housing solutions in areas outside of the towns that work for people with limited transportation options. We also need to be cognizant of the age of those seeking housing. For example, although there are many families seeking housing, we have an increasing aging population in this area who may need different housing options available as they age.
2. Flexibility - To be able to increase opportunities for increased rental housing as well as home ownership options while maintaining the cohesive community of many of our hamlets and towns. We need affordable, accessible, appropriate housing options for all residents.
3. Tools / Policies – Deployment of the national housing strategy and funding, support and funding of the 10-year Housing and Homelessness Plan
4. Other Suggestions - New housing in more rural areas can put pressure in terms of traffic, need for community services, infrastructure, etc.

Financial Services Comments:

Finance Staff have reviewed information as able, however as noted previously in this report the volume of information provided when coupled with the time prevented a fulsome, holistic view. Accordingly, the following items were noted as the key points to highlight for Council's consideration and awareness (in order of importance):

- 1) Refunding of Planning Fees
- 2) Surety Bonds vs Irrevocable Standby Letters of Credits (ISLOC)
- 3) Increased Reporting on Adjustments in Projects in Development Charge Study
- 4) Community Infrastructure Housing Accelerator (CIHA)

Refunding of Planning Fees

As outlined in Attachment B the proposed legislative changes would require a refund of planning fees if applications are not processed within 60, 90 or 120 days, based on the application type.

From a financial standpoint, the total revenue from applications in scope for this change were approximately \$170,000 in 2021. The potential risk to the levy is still being quantified, with in-depth analysis into application processing timelines, by type of application underway. Initial estimates are that at least 25-50% could be liable for refund (more than \$70,000 using 2021 applications as a measure). Finance and Community Development Staff are planning further discussions in this area, but an emphasis on filling existing vacancies, and implementing any process efficiencies would look to be prioritized first, with the potential FTE impact being reviewed thereafter. Note also that given recent trends in the volume of applications, it may be possible for additional revenues to be used to offset any additional FTE impacts, but Staff would like additional time to review as well as to see how 2022 application volume trends.

Surety Bonds versus Irrevocable Standby Letters of Credit (ISLOC)

Proposed Legislative changes suggest that developers can utilize surety bonds, rather than Irrevocable Standby Letters of Credit (ISLOC) as deposits for development. This proposed change is being made in an attempt to provide developers with the preference of surety bonds rather than mandating ISLOCs to be used in an attempt to drive additional liquidity for the developer (business or landowner).

Finance staff would note that other municipalities have begun to allow surety bonds for security deposits, and while it would appear to be feasible with the right protocols and agreements in place, costs would be incurred to develop these agreement templates and amend existing agreement templates. Particularly, a fulsome legal review would be required, with a County specific agreement likely being needed to ensure adequate language and/or assurance is provided with the surety bonds as currently achieved with ISLOCs to protect the municipality's interests and liquidity of the instrument.

From an ongoing operating impact, Finance staff would need additional time to investigate all the implications of utilizing surety bonds (eg. holding and discharge costs, ability to discharge partial amounts, process for initial receipt and discharge), however it is anticipated that after the initial costs to establish new processes and update all agreements with full legal review are incurred, that the ongoing operating impacts would be negligible and could be absorbed within existing budgets. Staff have also preliminarily identified potential concerns with drawing on surety bonds in comparison to ISLOC. Further review would need to occur to ensure that the County has the same access to the drawing on the instrument in the event of infrastructure deficiency that may be identified by the County during the development process.

Increased Reporting on Adjustments in Projects in Development Charge Study

The *More Homes for Everyone Act (Bill 109)*, proposes a change to O Reg. 82/98. If royal assent is received, this change would require the Annual Treasurers' Development Charges Statement to declare if any capital projects that were included in the Development Charge Background Study are no longer in scope, and if so, what the potential variance would be. Additional changes are also prescribed to enhance communication of where to find the Treasurers' Statement on the municipality's website.

While enhanced reporting to drive transparency is always welcomed by Finance staff, it should be noted that from a holistic perspective these changes are not anticipated to materially change development charge fees. While much thought and effort goes into the selection of projects to be included in the DC Background Study, it can occur where projects that were in scope are no longer anticipated to occur as time passes. This would create a positive balance in the DC reserve, but this balance would simply drive an adjustment in the next DC Background Study, with fees being adjusted by the positive reserve fund balance – no refund mechanism is contemplated, or currently exists for cases where anticipated capital projects are no longer pursued. Additionally, staff would note that in practice, given the County's current infrastructure needs and recent growth trends, it is likely that additional growth-related projects will come into scope as existing projects fall out of scope – as a result, no net-reduction in the fee would be expected.

Staff will continue to monitor potential legislative changes and adapt compulsory reporting as required. No ongoing operating impacts are anticipated to provide the additional reporting needs per the proposed legislation, however additional Freedom of Information (FOI) requests may be generated per the aforementioned changes and therefore the impact will need to be monitored.

Community Infrastructure Housing Accelerator (CIHA) Tool

As outlined by Planning Staff, the full implications of this new tool and its potential use are largely still in question. In a general sense, it would appear the legislation is allowing for local municipalities to be able to expedite review and approval in an attempt to help meet the newly prescribed timelines highlighted in the "refunding of planning fees" section.

Finance staff would like to continue to monitor this potential mechanism as it evolves, and in conjunction with Planning Staff understand where potential finance implications could exist, while also ensuring adequate controls and approval mechanisms with Council are put in place.

Interdepartmental Implications:

There could be implications to Planning, Engineering, Building and other departments involved in the development process along with Finance, Economic Development, Social Services and Housing.

Consultation(s):

There was minimal time for consultation, including no time for a legal review. Finance staff were advised and assisted with comments along with Social Services and Housing.

Strategic Plan Linkage:

This report aligns with the 2019-2022 Council Strategic Priority "Other".

Explanation: This topic could have implications to several priorities, including optimal place for business, focus on service, etc.

Conclusion:

The province is proposing further changes aimed at increasing the supply of housing. According to their information, 2021 saw the highest housing starts in Ontario in over 30 years. Most municipalities, including Norfolk, are experiencing record levels of development applications and building permits. Throughout the province, it appears as though there is a shortage and high demand for staff in nearly every aspect of the development review process – from planning to engineering to other technical and ministry staff. If the province implements the proposed requirements, many municipalities across Ontario may need to increase staff capacity. It will be even more competitive for municipalities (and the private sector) to recruit amongst a limited supply of potential employees – which is already a challenge in rural Ontario.

Attachment(s):

Attachment A: Bill 109 Summary (Ontario Home Builders' Association)
Attachment B: Bill 109 Proposed Changes Re: Development Application Refund Timing
Attachment C: Draft Guideline – Community Infrastructure and Housing Accelerator
Attachment D: Discussion Questions Regarding Feedback on Housing Needs for Rural and Northern Municipalities

Approval:

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