Municipal & Planning Law

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Bill 73 Amendments to the *Planning Act* Update: In-force Date and Proposed Regulatory Amendments

By Patrick Harrington

In December 2015, we provided an overview of the major changes to the *Planning Act* proposed by Bill 73, the *Smart Growth for Our Communities Act, 2015*. We noted that while some of the Bill 73 amendments came into effect right away, the majority of the amendments were awaiting proclamation by the Lieutenant Governor.

The Lieutenant Governor has now proclaimed that the remaining Bill 73 amendments shall come into force on July 1, 2016.

It is expected that on July 1, the Province will also issue a series of regulatory amendments as well as a transition regulation. The Province had previously posted notices on the Environmental Bill of Rights Registry indicating its intention to issue a new transition regulation as well as amendments to various existing *Planning Act* regulations. Descriptions of what the Province is proposing were uploaded to the Registry on February 29, 2016, and the public was allowed to submit comments up to and including April 14, 2016.

The following is a summary of the regulatory amendments expected to be issued on July 1. Please note that these summaries are based on the descriptions posted to the Environmental Bill of Rights Registry and should not be relied upon as a substitute for reviewing the actual regulations once they are issued.

Transition

As reviewed in our previous newsletter, the Bill 73 amendments impose a number of new process requirements and restrictions. These include:

- A two-year "timeout" for new official plans, new comprehensive zoning by-laws and minor variances of site-specific zoning by-laws.
- A requirement for "enhanced reasons" as part of an appeal letter.
- A prohibition on "global appeals" of new official plans.

These and other restrictions/requirements will apply to new planning instruments or appeal periods that commence after July 1, 2016. For example, when a municipality approves a new official plan after July 1, applications to amend the new official plan will not be permitted until after the second anniversary of the new official plan's adoption. The only exception will be if council has declared by resolution that a private official plan amendment can proceed.

Official plans that are already in force as of July 1 will still be capable of being amended by private application. However, private appeals filed from municipal decisions issued after July 1 will require "enhanced reasons" that explain why the decision of council is inconsistent or fails to conform with provincial or upper-tier policies.

New requirements applicable to municipalities will also apply to instruments adopted or appeals filed after July 1. For example, a municipality's ability to extend the time for sending an appeal record to the Ontario Municipal Board to allow for alternative dispute resolution will only apply to appeals filed during appeal periods that commence after July 1. Similarly, the new requirement that council decisions contain an explanation of the effect that written or oral submissions had on council's decision will only apply to new matters that come before council after July 1.

As with any new procedural regime, there will be unique circumstances requiring a close reading of the transition rules to determine which procedure applies. We recommend consulting with a member of our Municipal & Land Use Planning Group if you are unsure how the Bill 73 amendments might affect your matter.

Changes to Notices

In an effort to modernize how notices of public meetings, decisions, etc. may be given, the Province will be amending the existing *Planning Act* regulations to allow for the issuance of notices by email. Details of how this will occur (for example, how the distribution list must be assembled) have not yet been released.

The Province is amending the requirements for issuing a notice of decision concerning a zoning by-law to match the notice requirements for official plans. Currently, the regulations require wider notice for a zoning by-law than for other planning matters.

There will be changes to the contents of various notices published in a newspaper or posted on land. These notices will direct readers to where they can find essential information on participating in the approvals process, preserving their appeal rights, etc. The goal is to simplify these notices so there is less public confusion.

Finally, as discussed in our previous newsletter, Bill 73 introduces an amendment that provides approval authorities with the ability to "cut-off" appeals of non-decisions by issuing a notice establishing a 20-day time limit for receiving additional appeals of a non-decision. The requirements for this notice will be prescribed by amendments to existing O. Reg. 543/06 "Official Plans and Plan Amendments," but the details of these requirements have not yet been disclosed.

Public Consultation Strategy

Existing regulations under the *Planning Act* currently set out minimum requirements regarding the information that must be submitted with each new application. These requirements are usually expanded upon by the relevant municipal official plan in terms of what constitutes a "complete application."

The Province proposes to amend its existing regulations to require that applicants submit a "public consultation strategy" as part of their complete application. What is involved in preparing a "public consultation strategy" has not yet been described by the Province. Many applicants will be familiar with existing informal requirements to hold community consultation meetings or open houses, in addition to the statutory public meeting. The new "public consultation strategy" requirement would appear to make this additional public engagement mandatory, though it will be interesting to see if the regulation will also allow for web-based forms of public engagement.

Community Planning Permit System

The Province is amending O. Reg. 608/06 "Development Permits" to re-name the "development permit system" to the "community planning permit system." The Province is also amending its regulation to remove the ability to apply for an amendment to a community planning permit system within five years of the system coming into effect (unless council passes a resolution to allow applications during the five-year period).

There has been little municipal uptake of the development permit system since it was first introduced as an alternative. It is not clear if the Province is proposing any other changes to what will now be the community planning permit system to encourage implementation. However, we do note that the proposed five-year ban on system amendments is longer than the two-year "timeouts" introduced through Bill 73. Also, the proposed five-year ban is to be implemented through regulation, whereas the two-year "timeouts" appear in the *Planning Act* itself.

Minor Variance Minutes

O. Reg. 200/96 "Minor Variance Applications" currently prescribes the contents of a record to be forwarded to the Ontario Municipal Board upon receipt of an appeal of a minor variance. The Province proposes to amend this regulation to require that minutes of the public hearing concerning the minor variance be included in the record to be forwarded to the Board. While the Province indicates that this new requirement will enhance citizen engagement, it may pose challenges for Committees of Adjustment and other minor variance decision makers that currently do not produce detailed minutes of their public meetings.

If you have questions regarding any aspect of municipal, land use, planning or development law, please contact any member of the Aird & Berlis LLP Municipal & Land Use Planning Group:

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