



SUBJECT: City of Markham Comments on Certain Proposed Regulations Under the Planning Act and Local Planning Appeal Tribunal Act related to Bill 108, More Homes, More Choice Act, 2019

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Planning and Urban Design
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RECOMMENDATION:

1. That the report entitled “City of Markham Comments on Certain Proposed Regulations Under the *Planning Act* and *Local Planning Appeal Tribunal Act* related to Bill 108, *More Homes, More Choice Act, 2019*”, dated July 26, 2019, be received;
2. That this report, with recommendations from the City of Markham on certain proposed regulations to the *Planning Act* and the *Local Planning Appeal Tribunal Act* related to Bill 108, *More Homes, More Choice Act, 2019*, (Environmental Registry of Ontario Proposal No. 019-00181 and Proposal No. 19-MAG007) be forwarded to the Minister of Municipal Affairs and Housing, and York Region;
3. That the proposed transition rules under the *Local Planning Appeal Tribunal Act, 2017* apply to *Planning Act* appeals where the Tribunal has not provided written notice that an appeal is valid, and that appeals which have received a Notice of Validation proceed under the Bill 139 requirements;
4. That the Province maintain the ability to appeal a community planning permit system implementing by-law from Ontario Regulation 173/16 “Community Planning Permits” when the Minister issues an order to require a local municipality to adopt or establish a system;
5. That the City of Markham supports the proposed Regulations pertaining to additional residential units as long as they do not preclude the ability of the City to restrict through the zoning by-law where additional units are permitted, in accordance with the Regulations;
6. And that staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

This report provides staff comments on the Province's proposed Regulations under the *Planning Act* (ERO 019-0181) for transition matters related to appeals, the community planning permit system, additional residential units, and housekeeping regulatory changes, related to Bill 108, *More Homes, More Choice Act, 2019*. The report also provides comments on the proposed Regulations under the *Local Planning Appeal Tribunal Act, 2017* (Proposal No. 19-MAG007) for transition matters for *Planning Act* appeals.

BACKGROUND:

On May 2, 2019 the Province released the More Homes, More Choice: Ontario Housing Supply Action Plan that aims to make it faster and easier for municipalities, non-profits and private firms to build housing. In support of the Housing Action Plan, the Province introduced Bill 108, *More Homes, More Choice Act, 2019* (Bill 108) which proposed to amend thirteen different statutes.

Eight of the thirteen statutes (those underlined below) impact the municipal land use planning and development approval process, and funding mechanism for provision of community services resulting from new development.

- *Planning Act*
- *Development Charges Act, 1997*
- *Local Planning Appeal Tribunal Act, 2017*
- *Conservation Authorities Act*
- *Endangered Species Act*
- *Ontario Heritage Act*
- *Education Act*
- *Environmental Assessment Act*
- *Cannabis Control Act*
- *Labour Relations Act*
- *Occupational Health & Safety Act*
- *Workplace Safety & Insurance Act*
- *Environmental Protection Act*

City of Markham comments on Bill 108 were endorsed by Council on May 28, 2019 and submitted to the Province prior to the June 1, 2019 commenting deadline. On June 6, 2019 Bill 108 was enacted and received Royal Assent though the majority of Bill 108 is not yet in force, as certain sections have not yet been Proclaimed by the Lieutenant Governor. Changes to the various statutes resulting from Bill 108 are summarized in Appendix 'A' and Council's May 28, 2019 comments on proposed Bill 108 are attached in Appendix 'B'.

Among the few changes made to Bill 108 prior to Royal Assent were the permission for ambulance services to be included in a development charge by-law, and allowing development charges for non-profit housing to be made in 21 rather than 6 annual installments. The *Planning Act* amendments under Bill 108 regarding decision timelines for development applications, additional residential units, inclusionary zoning, community benefits charges by-law, community planning permit system or parkland dedication were generally passed as proposed.

On June 21, 2019 the Province released the following proposed Regulations that implement changes to the *Planning Act*, *Local Planning Appeals Tribunal Act, 2017* and *Development Charges Act, 1997* resulting from Bill 108:

- Proposed Regulations under the *Planning Act* under Environmental Registry of Ontario (ERO) Proposal No. 019-0181 for transition matters for appeals, the community planning permit system, additional residential units, housekeeping regulatory changes (commenting deadline by August 6, 2019)
- Proposed Regulations under the *Local Planning Appeal Tribunal Act, 2017* for transition matters for *Planning Act* appeals under Proposal No. 19-MAG007 (commenting deadline by August 5, 2019)
- Proposed Regulations under 1) the *Planning Act* for the community benefits authority, under ERO 019-0183, and 2) the *Development Charges Act, 1997* for transition matters, development charges deferral, period for development charge freeze, interest rate during deferral and freeze of development charges, additional dwelling units, under ERO 019-0184 (commenting deadline by August 21, 2019)

This report provides comments on the proposed Regulations for the *Planning Act* under ERO 019-01081 and for the *Local Planning Appeal Tribunal Act, 2017* under 019-MAG007 only.

Comments on the proposed Regulations under the *Planning Act* for the new community benefits authority (ERO 0190183) and under the *Development Charges Act, 1997* (ERO 019-0184) are addressed in a separate report which will also be considered by Council on July 26, 2019.

OPTIONS/ DISCUSSION:

The proposed Regulations released by the Province are intended to implement Bill 108. A Regulation is a law created under the authority of a statute or act (e.g. *Planning Act*), which provide instructions to ensure the intended implementation, interpretation, and administration of the statute is carried out.

A summary of the proposed Regulations, staff comments and recommendations are provided below for transition matters, community planning permit system, additional residential units, and housekeeping regulatory changes under the *Planning Act*, and also for the changes to the *Local Planning Appeal Tribunal Act, 2017*. It should be noted that the proposed Regulations were released as principles rather than as specific text changes.

1. Transition Matters Related to Appeals

Changes to the *Local Planning Appeal Tribunal Act, 2017* from Bill 108 largely bring back the procedures that were in place under the previous Ontario Municipal Board. The *Local Planning Appeal Tribunal Act, 2017* maintains the Local Planning Appeal Tribunal (Tribunal) as the appeal body for Council's decisions regarding planning applications.

Changes to the *Planning Act* from Bill 108 have re-introduced the “de novo” hearing where the Tribunal can consider a development proposal as if no decision were made by a council.

Proposed Regulatory Content

The Province has proposed changes to Ontario Regulation 102/18 “Planning Act Appeals” related to the procedures of the Tribunal under the *Local Planning Appeal Tribunal Act, 2017*. These changes are to be read in conjunction with changes to the *Planning Act*, to establish transition rules for major land use planning appeals before the Tribunal.

The Province is also proposing to revoke the timelines, time limits, practices and procedures related to appeals under the *Planning Act* brought into force under the previous Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017* (Bill 139). Previously, the Regulations directed certain actions to be taken by the parties in an appeal, and for an appeal to be disposed of within a certain timeframe. Practically, it has been difficult for municipalities, private parties and the Tribunal to meet those timeframes.

The proposed transition regulations centre upon whether a hearing has been scheduled as follows:

- The Bill 108 changes apply to a major land use planning appeal commenced under the previous *Ontario Municipal Board Act* (pre-Bill 139 appeals), with the exception of case management conferences.
- Bill 108 changes will not apply to a pre-Bill 139 (Ontario Municipal Board process prior to the Tribunal process from Bill 139) appeal if a hearing has been scheduled.
- If an appeal was brought forward prior to Bill 108 coming into force, and the Tribunal has scheduled a hearing of that appeal, then the rules under Bill 139 continue to apply. If the Tribunal has not scheduled a hearing, then Bill 108 applies.
- Any appeals received on the day of, or after Bill 108 comes into force shall proceed under Bill 108.

Staff Comments

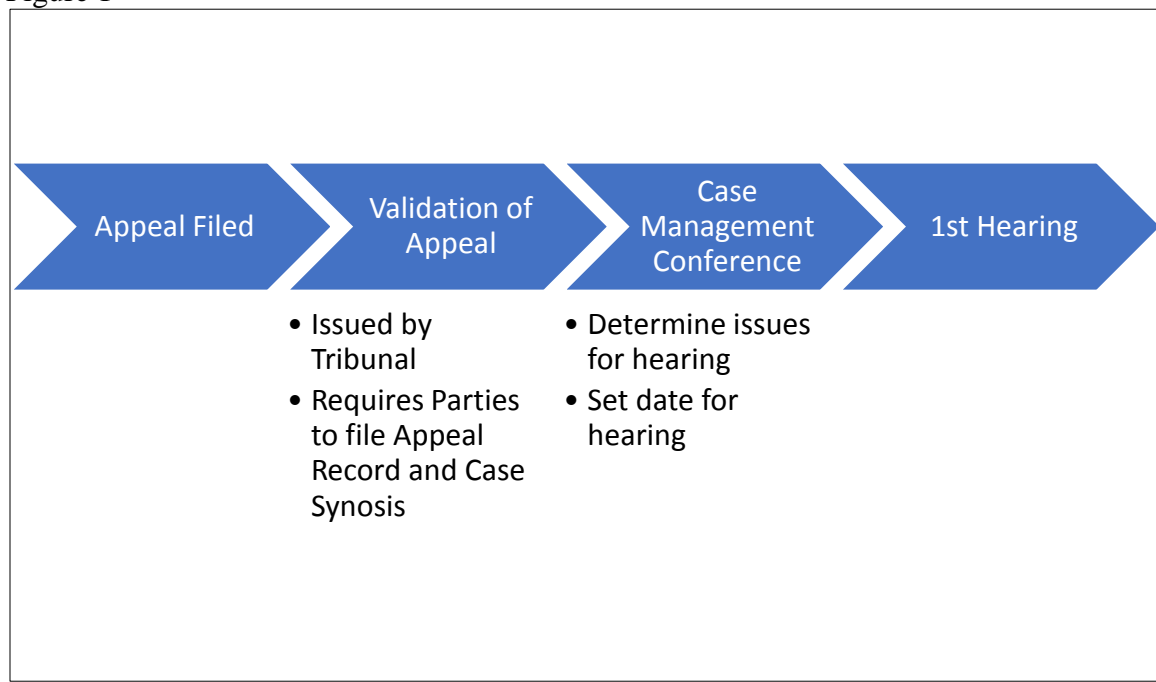
Currently, there are a number of pre-Bill 139 appeals that the City is a party to that would be largely unaffected by the transition rules. There is one appeal that was filed after Bill 108 was passed by the Legislature (Zoning By-law for Block 93, Registered Plan 65M-2599 – Marydale Avenue; filed June 17, 2019). Should a hearing of the appeal be scheduled after the Tribunal changes resulting from Bill 108 coming into force, the appeal would be transitioned to apply the changes under Bill 108.

Figure 1 is an excerpt of the current procedural steps in a *Planning Act* appeal after Bill 139. As noted below, if the LPAT determines that an appeal is valid, then the parties are required within a short timeframe to provide a detailed case synopsis and materials for

the “first hearing” of the appeal, and prior to a hearing being scheduled. At this time, the procedural requirements in Figure 1 still apply, as the Bill 108 changes have not yet been proclaimed.

Staff are concerned that where the City has been required to file materials for a “first hearing” under the pre-Bill 108 requirements, the City will have expended significant time and resources to defend the appeal prior to the scheduling of a hearing. As of the date of this report, a hearing has not yet been scheduled. If the matter is transitioned to the rules under Bill 108, which would require the hearing to proceed under Bill 108 if a hearing has not yet been scheduled, it would be changing the process “mid-stream” and the previous staff work would have little value. Therefore, staff request that the transition period be moved earlier in the appeal process to the time of the validation of the appeal, if/when the Tribunal issues that notice in writing.

Figure 1



Recommendation 1: That the proposed transition rules under the *Local Planning Appeal Tribunal Act, 2017* apply to *Planning Act* appeals where the Tribunal has not provided written notice that an appeal is valid, and that appeals which have received a Notice of Validation proceed under the Bill 139 requirements.

2. Proposed Regulation to Remove the Ability to Appeal the Implementing By-Law of a Community Planning Permit System

As described by the Province, the community planning permit system is a land use framework that combines and replaces the individual zoning, site plan and minor variance processes in an identified area with a single application and approval process. Ontario Regulation 173/16 “Community Planning Permits” outlines the various components that make up the system, including the matters that must be included in the official plan to establish the system, the process that applies to establishing the implementing by-law and the matters that must or may be included in the by-law. Once a community planning permit system is in place, a council of a municipality has 45 days to make a decision on the application within the affected area.

Bill 108 continues to authorize the Minister to require a local municipality to establish a community planning permit system but now permits the Minister to require a local municipality to specify the area or an area surrounding and including a specified location. Bill 108 also removes the ability to appeal the official plan policies required by Regulation to establish a community planning permit system when the Minister issues an order to require a local municipality to adopt or establish a system.

Proposed Regulatory Content

Ontario Regulation 173/16 “Community Planning Permits” is proposed to be amended to remove the ability to appeal the implementing by-law of a community planning permit system when the Minister issues an order to require a municipality to adopt or establish such a system. According to the Province, this change would support streamlining of development approvals in these areas.

Staff Comments

Staff does not support removal of the ability to appeal the implementing by-law for a community planning permit system when the Minister issues an order to establish such a system. As councils may not have input on the areas for which the Minister may require a community planning permit system, an avenue for appeal should be available for those cases where the order may not be consistent with municipal official plans or land use objectives.

Recommendation #2: That the Province maintain the ability to appeal a community planning permit system implementing by-law from Ontario Regulation 173/16 “Community Planning Permits” when the Minister issues an order to require a local municipality to adopt or establish a system or

3. Proposed Regulation for Requirements and Standards to Remove Barriers to Establish Additional Residential Units

As a result of Bill 108, the *Planning Act* now requires require municipalities to authorize in their official plans and zoning by-laws the use of an additional residential unit in both the primary residential unit (within detached, semi-detached, and row houses) and in an

ancillary building or structure (e.g., garages). This allows up to two accessory units per detached, semi or townhouse lot.

Proposed Regulatory Content

A regulation is proposed under section 35.1(2)(b) of the *Planning Act* setting out requirements and standards to remove barriers to the establishment of additional residential units, as follows:

- One parking space for each of the additional residential units which may be provided through tandem parking
- Where a municipal zoning by-law requires no parking spaces for the primary residential unit, no parking spaces would be required for the additional residential units
- Where a municipal zoning by-law is passed that sets a parking standard lower than a standard of one parking space for each of the additional residential units, the municipal zoning by-law parking standard would prevail
- “Tandem parking” would be defined as a parking space that is only accessed by passing through another parking space from a street, lane or driveway
- An additional residential unit, where permitted in the zoning by-law, may be occupied by any person in accordance with s. 35(2) of the *Planning Act*, and, for greater clarity, regardless of whether the primary unit is occupied by the owner of the property
- An additional residential unit, where permitted in the zoning by-law, would be permitted without regard to the date of construction of the primary or ancillary building

Staff Comments

The majority of the proposed requirements and standards to remove barriers to establish additional residential units are consistent with Markham’s current zoning by-law as follows:

- Under the proposed Regulation, the City can require an additional parking space for each accessory dwelling unit. The requirement for an additional space is consistent with the previous provisions for parking of an accessory dwelling unit.
- The proposed Regulations permit required parking in tandem, which is consistent with Markham’s current by-law for required parking of single detached, semi-detached, and townhouse dwelling units.
- The proposed Regulations further limit the City’s ability to restrict occupancy of a unit to the owner, or restrict the location of an accessory dwelling unit in an ancillary building based on the year of construction of the building. It is not the practice of the City to restrict occupancy to ownership, or to base permissions on the age of an ancillary building.

Further, staff interpret the proposed regulations as maintaining the authority of the City to continue to regulate where additional units are permitted through the zoning by-law, in accordance with the provisions of the Regulation.

Recommendation 3: That the City of Markham supports the proposed Regulations pertaining to additional residential units as long as they do not preclude the ability of the City to restrict through the zoning by-law where additional units are permitted, in accordance with the Regulations.

4. Housekeeping Regulatory Changes Related to Amendments to the *Planning Act*

A number of housekeeping regulatory changes are proposed to implement the changes to the *Planning Act* portion of the enacted Bill 108, as follows:

- Bill 108 provides for the removal of provisions in the *Planning Act* under section 51(20) for second notice of subdivision applications at least 14 days before a decision is made by an approval authority to give or refuse to give approval to a draft plan of subdivision. Ontario Regulation 544/06 “Plans of Subdivision” is proposed to be amended to remove the redundant notice of subdivision application.
- Bill 108 provides for the removal of provisions for some non-decision appeals for official plans/amendments. An example is the repeal of *Planning Act* section 17(41.1) where notice is no longer required to be provided upon an appeal of a non-decision to prescribed bodies and opportunity for others to appeal within 20 days of providing the notice has been removed. Ontario Regulation 543/06 “Official Plans and Official Plan Amendments” is proposed to be amended to remove notice requirements for non-decision appeals as a result of repealing *Planning Act* section 17(41.1) through Bill 108.
- Bill 108 also provides for the replacement of section 37 (increased density provision by-law) with the new community benefits charge. Ontario Regulation 232/18 “Inclusionary Zoning” is proposed to be amended to remove restrictions and prohibitions in respect of the previous section 37 (increased density) provisions.

As the proposed regulation changes merely reflect amendments already made through the Royal Assent of Bill 108, staff have no comments on these changes.

NEXT STEPS:

Staff recommends that this report be forwarded to the Ministry of Municipal Affairs and Housing and York Region as the City of Markham’s comments on the Province’s proposed Regulations under the *Planning Act* for transition matters related to appeals, community planning permit system, additional residential units, housekeeping regulatory

changes, as well as Regulations related to the *Local Planning Appeal Tribunal Act, 2017*, resulting from Bill 108, *More Homes, More Choice Act, 2019*.

The Province has not indicated when the *Planning Act* portions of Bill 108 will be Proclaimed to be in effect and when the related proposed Regulations will be passed. Staff will report to the Development Services Committee on the final Regulations once released by the Province.

FINANCIAL CONSIDERATIONS:

Not applicable

HUMAN RESOURCES CONSIDERATIONS:

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

The comments in this report on proposed Regulations under the *Planning Act* related to Bill 108, *More Homes, More Choice Act, 2019* support the City's efforts to manage growth by addressing impacts from proposed transition rules existing appeals to the Local Planning Appeal Tribunal and implementation details of the community planning permit system and additional residential units.

BUSINESS UNITS CONSULTED AND AFFECTED:

Comments from the Planning and Urban Design Department and Legal Services were included in this report.

RECOMMENDED BY:

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Commissioner, Development Services

Ron Blake, MCIP, RPP
Acting Director, Planning and Urban
Design

Claudia Storto
City Solicitor

ATTACHMENTS:

Appendix 'A': Summary of Bill 108 Given Royal Assent

Appendix 'B': City of Markham Council Endorsed Comments on Proposed Bill 108,
May 28, 2019