



Report to: Development Services Committee

Meeting Date: November 23, 2020

SUBJECT: Improving the State of Infill Housing: A Strategy

PREPARED BY: Chris Bird, Director of Building Standards, ext. 4716

RECOMMENDATION:

1. That the infill housing strategy proposed by the Chief Building Official in the report titled “Improving the State of Infill Housing: A Strategy” dated November 23, 2020, be adopted by Council and implemented by all affected departments to minimize the impact of infill construction on existing residential neighbourhoods; and,
2. That the Chief Building Official monitor the actions in this Strategy and bring forth a status report in Q4 of 2021, and further,
3. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to bring forth a municipal strategy for an effective, coordinated and proactive response to residential infill construction projects. In developing this report, all affected Departments have been consulted to develop a set of actions to be implemented.

This report does not discuss or present recommendations on residential design matters or architectural control that may be regulated through zoning by-laws and other applicable laws.

BACKGROUND:

On July 13, 2020, the Chief Building Official brought forward a report to Development Services Committee presenting a work plan to develop a strategy to minimize the adverse effects of infill housing construction.

Representatives from Building Standards, Engineering, By-law Enforcement, Operations and Legal collaborated on the actions presented as part of that work plan. Our findings and recommendations for a comprehensive strategy are contained in this report.

For the purposes of this report, infill development means:

- Construction of a new house on a vacant lot
- Demolition of existing dwelling & construction of new
- Demolition of existing & no new construction
- Construction of substantial additions to an existing house

Understanding the Problem

Residential infill development can provide many positive impacts including improving the safety and energy efficiency of homes through new Code compliant construction, intensification within the existing urban boundary and improving property values. With that however, comes a different set of competing issues:

- Developers/builders building in mature neighbourhoods on confined sites and streets, frequently under the watchful eye of current residents;
- Increased demands for new homes or renovations within those mature neighbourhoods;
- Residents having their lives disrupted by ongoing construction activities and displeased with the changing character of their neighbourhood; and,
- City regulators trying to efficiently process development applications, enforce and communicate a range of by-laws and regulations, respond to complaints while at the same time, preserving the rights of everyone.

Markham has experienced a steady increase in these infill construction activities over the past 10 years as people look for development opportunities within mature neighbourhoods. The problem is not unique to Markham; almost all GTA municipalities are facing similar challenges within their urban boundaries.

While the Building Standards Department is responsible for authorizing construction through the issuance of building permits and inspections, many of the challenges posed by infill construction arise through construction activities that are not directly related to Building Code enforcement. Construction activities can cause disruption - they are messy, noisy and can pose potentially dangerous conditions to the surrounding community. Frequently, they are the source of complaints that are regulated via bylaws and regulations administered by multiple Departments. These include:

- Noise and work hour violations;
- Unauthorized road occupancy including equipment and vehicle parking;
- Unsightly construction sites littered with building materials and garbage;
- Mud tracking on roads;
- Dust and blowing debris;
- Excavations and encroachments that affect adjacent properties; and,
- Tree damage or unauthorized tree or tree protection removal

As the City continues to be challenged by these activities, a more comprehensive strategy is necessary.

OPTIONS/ DISCUSSION:

Building Standards and Engineering have implemented and continue to develop actions to address some of the more common problems and complaints associated with infill construction. These were set out in the work plan report but have been included in this Report as **Appendix “A”**. Proactive measures will continue to be developed and will form part of this strategy. Developers and builders must understand and respect their responsibility to comply with regulations, by-laws, standards and municipal expectations.

The Proposed Strategy

In the development of the proposed Strategy the following key principles were identified:

- Development approval processes must remain efficient - complicated and lengthy approvals can lead to frustration and potential antagonism;
- The City must provide clear, understandable and accessible information to the general public on infill construction related matters;
- Departments must work cooperatively towards effective, integrated enforcement;
- Proactive and preventative measures must be implemented;
- Resourcing needs to be considered;
- Public expectations must be reasonable; an informed public should help this; and,
- Builders must be held more accountable for maintaining safe, compliant and orderly construction sites

The Interdepartmental Working Group considered all issues common to infill housing and agreed that solutions could be addressed through the following main initiatives:

- Encouraging good construction practices to proactively address the problem.
- Improving communications within the community and between City Departments.
- Providing more effective complaints management and enforcement.

Encouraging Good Construction Practices

There are many good builders in Markham who contribute to the economic vitality of the City. However, there are also some that can tarnish the reputations of others and create tension within the communities they build in. Builders are challenged by customer demands and aggressive schedules, rising costs, regulatory requirements and confined construction sites. Construction activities can be messy and disruptive; effective construction management practices are critical. Proponents have the right to build and the right to an appropriate building permit but the community is entitled to safe and orderly development.

The Strategy must include a proactive communications protocol that sets out the City's rules and expectations to maintain order and ensure that poor, disrespectful construction practices are not to be tolerated. The following summarizes the issues, goals and actions of this initiative.

Issues: The most common issues related to infill construction practices include:

- **Prolonged construction schedules and unfinished buildings & external works**
The issuance of an Occupancy Permit is a mandatory document issued by the Chief Building Official that allows the building to be occupied for its intended use. It must be issued once the building meets all of the minimum health and safety provisions set out in the *Building Code*. It does not mean the project is completely finished. Frequently, final grading and landscaping remains outstanding. Prolonged inactivity in completing those works may, where they become problematic, be addressed through permit revocation, drawing on security deposits and/or pursuing actions through the *Infill By-law 2018-77*.
- **Concerns that construction may be deviating from approvals or by-laws**
Frequently, concerns are expressed that construction is varying from those plans or from zoning standards or minor variance approvals. Building Standards requires the submission of as-built surveys at foundation stage to determine early compliance with zoning.
- **Road construction and sewer & water service connections**
Municipal service connection activities can cause potential problems; including disruption to existing roadways and interface between municipal and private services that require careful coordination.
- **Construction fencing not being properly installed or maintained**
Construction fencing is required under the City's Building Bylaw. It must be shown on permit plans and is inspected by Building Inspectors. Maintenance is frequently lacking.
- **Construction sites not being properly maintained**
Disorganized material and equipment storage, garbage and other unsightly conditions create tensions within the neighbourhood. Building Standards now requires screening on all fencing surrounding the construction site to screen much of that from view and to minimize blowing dust and garbage beyond the site.
- **Demolition and excavation compromising adjacent properties**
Proposed excavation limits are reviewed at permit application but frequently excavation is cut too close to property lines that can compromise adjacent lots
- **Nuisance activities like noise, dust, garbage and site drainage**
- **Illegal road occupancy including material storage and parking**
Construction activities and material & equipment storage encroaching onto municipal property, resulting in damage to boulevards & municipal infrastructure.
- **Tree damage and/or illegal removal**
Damage to trees or the unauthorized removal of trees and tree protection barriers continues to be a problem

Goal: The goal in encouraging good construction practices is to:

- Promote a better understanding of regulations, City by-laws & expectations to promote safe, orderly and compliant construction sites
- Promoting a more respectful building environment
- Proactively reduce the need for and burden of active enforcement

Actions: The proposed Strategy will implement the following proactive measures to help mitigate those problems:

- Continued development of ‘Builder Tips’. Widely published and distributed by Building Standards, they are on the City’s web site and distributed with permits. There is an opportunity to consider how to improve this document and make it more widely available
- Implementing a Start of Construction mandatory inspection at the beginning of every project, to inform owners/builders of their obligations and responsibilities to build in compliance with the building code and City by-laws
- Development of a comprehensive “*Good Construction Guide*”.
- Ensuring the recently implemented Work Site Code of Conduct sign is appropriately posted
- In conjunction with the City solicitor, explore the effectiveness of implementing a Demolition Control By-law, authorized by s. 33 of the *Planning Act*.

Improving Communication

Effective communications is a key element of the Strategy. It must provide clear, transparent information accessible by all, provide access to information on approval processes and status, and to the extent possible, information on the nature of a development in the community being careful to protect privacy.

Some municipalities have implemented a practice of requiring the posting of a project notice board containing information about the development. This practice helps provide information to the community. The *Building Code Act* requires the building permit to be posted on the construction site; it is an offense not to do so. Bylaw 2018-77 (a By-law to Address Infill Construction Activities) provides for a Construction Information Sign. Part of the strategy would implement a consolidation of this information into a more organized sign board that would include permit information, builder contact, good construction practice principles and where appropriate, simplified building elevations.

Issues: Common communication issues expressed include:

- Difficulties accessing information about a development
- Difficulties accessing information about the status of approvals

Goal: The goal of a communication strategy is to:

- Through the effective use of technology, provide relevant information on City regulations, by-laws, standards and approval processes
- Provide the ability to conveniently access information through multiple channels about infill housing projects and status

Actions: The proposed Strategy will implement the following proactive measures to help improve communications throughout the City:

- Enhance the City web site with specific focus on infill housing and consolidate all information related to such in one place
- Leverage technology to improve complaint tracking and coordination of municipal response. This would be reliant on the implementation of AMANDA 7
- Develop a project notice board and implement its mandatory installation on all infill construction sites

Effective Complaints Management & Enforcement

An effective enforcement strategy should include good proactive measures to help mitigate its need. While construction within an established neighbourhood can be disruptive, it is important to note that most often municipal inspectors do not observe violations as they occur; instead residents alert the City in the form of complaints. A more effective complaints management and enforcement regime is necessary.

Building inspection staff conduct 7 mandatory inspections prescribed by the *Ontario Building Code* once various stages of construction are complete. The focus of their inspections is to determine building code compliance. Those inspections however do provide an opportunity for some oversight and reinforce municipal by-laws and expectations.

Administrative Monetary Penalties (AMPS) provides another enforcement tool. In 2016, the *Municipal Act* expanded AMPs programs to include any regulatory by-law. In June 2016, Markham City Council passed By-law 2016-84, a By-law to Implement Administrative Monetary Penalty for Non Parking Offences. Several other regulatory by-laws are “AMPs” ready including the Infill Construction By-law 2018-77

The Provincial Court System is significantly backlogged resulting in lower priority to lower tier offences. The City is currently assigned only six court dates per year for prosecutions. In 2019, budget pre-approval was granted to procure a modern E-Ticketing and Payment System Platform that will provide a valuable tool for shifting the remaining by-law prosecutions to the City’s Administrative Monetary Penalty System. This Platform should result in increased revenues because the City is allowed to retain all penalty revenue by legislation. Procurement of the new system is in the final stages of the evaluation process and on track to be awarded and implemented by the end of Q2 2021.

Issues

Complaints are an inevitable when constructing buildings within existing urbanized areas. Frequent sources of complaints include:

- Construction proceeding without the necessary permits or approvals
- Construction sites not being properly maintained
- Demolitions and/or excavations that compromise adjacent property
- A range of disruptive activities including noise, dust, garbage & fouling of roads

Goal: The goal of an effective complaints management & enforcement system is to:

- Receive & disseminate complaints in an organized and effective manner
- Provide efficient and coordinated interdepartmental response
- Control poor building practices with effective enforcement actions
- Where practical, implement the ticketing through AMPS for by-law infractions

Actions: The following actions will be taken to improve complaints management and enforcement:

- The re-assignment of a building inspector to a position of Infill Housing Inspector focusing solely on infill housing projects. In addition to *Building Code* inspections, this inspector will conduct Start of Construction inspections and act as a liaison between the various enforcing departments
- Where appropriate, registering *Building Code Act* Orders on title
- Explore the feasibility of implementing more securities to encourage compliance and act upon those already collected
- Review actions and necessary resources to implement an AMPS ticketing program by Bylaw Enforcement
- Operations is leading a review of the current by-law with a view to amend.

FINANCIAL CONSIDERATIONS

None in the preparation of this strategy.

HUMAN RESOURCES CONSIDERATIONS

The implementation of an effective enforcement strategy may require additional staff resources in the future in Building Standards and By-law Enforcement

ALIGNMENT WITH STRATEGIC PRIORITIES:

Exceptional Services by Exceptional People:

Leverage current technology to provide an improved complaints management system to enable city building and evolution / transformation of our services;

Engaged, Diverse, Thriving and Vibrant City:

Improved quality of life for residents

Safe, Sustainable and Complete Community:

Develop a strategy that helps improve that safety and quality of life for residents and the community

Stewardship of Money and Resources:

Provides a communication strategy that is more transparent and informative

BUSINESS UNITS CONSULTED AND AFFECTED:

By-law Enforcement

Operations

Engineering

RECOMMENDED BY:

A handwritten signature in black ink, appearing to read "Chris Bird", is positioned above a horizontal line.

Chris Bird
Director of Building Standards

ATTACHMENTS:

Appendix A: Current Implemented Practices

Appendix B: Summary of Initiatives

Appendix A: Current Implemented Practices

Building Standards has developed policies and procedures for the efficient processing of permit applications. In addition, departmental practices have evolved in an attempt to proactively address many of the concerns and complaints of infill. They include:

- Enhanced demolition procedures and inspections
- Detailed site plans showing construction fencing and proposed excavation limits;
- New shoring standards to control excavations and promote site safety;
- New safety fencing standards including screening to control blowing debris;
- As-built surveys to confirm zoning compliance at the earliest opportunity;
- Zoning preliminary review reports to better inform Committee of Adjustment;
- Participating with Tarion in their application for a Letter of Confirmation for an ‘owner/builder’ who seeks a permit to build their own home;
- Regular production of Builder Tips to guide contractors
- Notifying By-law Enforcement of the issuance of every permit for such works
- Notifying Operations of the issuance of every permit for such works

Engineering and Operations Departments collaborate on approving lot grading and servicing plans that include:

- Improved site grading approval practices incorporating tree protection requirements
- Lot grading undertakings and posting of Letters of Credit
- Requiring construction access mud mats to minimize mud tracking
- Servicing plans
- Implementing more stringent tree protection by-laws and permitting procedures and incorporating them into approved lot grading plans
- Issuance of Road Occupancy permits

Appendix B: Summary of Initiatives

Initiative: Encouraging Good Construction Practices		
Action	Responsibility	Implementation
Continued development of 'Builder Tips'.	Building	Ongoing
Start of Construction mandatory inspections	Building	Q1 2021
Develop a comprehensive good construction guide	All Departments	Q2 2021
Demolition Control By-law	Building/Legal	Q3 2021

Initiative: Improving Communications		
Action	Responsibility	Implementation
Enhance City web site with dedicated infill housing	All Departments	Q3 2021
Leverage technology to improve complaint tracking and coordination of municipal response	All Departments	Q1 2022
Develop a project notice board and implement its mandatory installation on all infill construction sites	Building	Q2 2021

Initiative: Complaints Management & Enforcement		
Action	Responsibility	Implementation
Implement dedicated Infill Housing Inspector		Q1 2021
Registering Building Code Act Orders on title		Q2 2021
Expanded use of Undertakings & Securities		Q3 2021
Review actions and necessary resources to implement an AMPS ticketing program by Bylaw Enforcement		Q3 2021
Amend tree protection by-laws		Q3 2021