

December 12, 2022

Mayor Frank Scarpitti and Members of Council

Markham Civic Centre
101 Town Centre Boulevard.
City of Markham, ON
L3R 9W3

Sent via email to clerkspublic@markham.ca

RE: CITY OF MARKHAM RESPONSE TO BILL 109 AND AMENDMENTS TO THE PLANNING ACT

8.3.1 City of Markham's Response to Bill 109 – More homes for Everyone Act, 2022

The Building Industry and Land Development Association (BILD) acknowledges that it is Council's intent to adopt item *8.3.1 City of Markham's Response to Bill 109 – More homes for Everyone Act, 2022*. **For the reasons contained in this letter, we are submitting this request for deferral of the City's proposed changes in response to Bill 109.** For your reference, our previous submission that was provided to staff on December 2nd is attached.

On behalf of our York Chapter members, BILD appreciates the opportunity to provide the following comments regarding this work.

Due to recent updates from the province and the anticipated new implementation date of July 1, 2023 for Bill 109 legislative requirements, BILD is requesting that Council defer its decision on the item and refer the matter back to staff. A deferral on this matter will provide staff with additional time to fully develop the proposed new pre-consultation system as originally intended by the legislation.

For example, on December 5th, City of Pickering Council referred the City's response to Bill 109 back to staff with the intention of having them report back to Council with clearer direction no later than June 30, 2023. Within York Region, the City of Vaughan deferred this item on December 12th with similar intentions as Pickering. We commend the Cities of Pickering and Vaughan for this approach and are encouraging other municipalities to consider it.

As well, the delay to the implementation date to July 1, 2023 will provide for additional time for the industry to better understand the expected next steps forward and avoid miscommunication regarding the processing of any already active or future development applications. A deferral on this item is crucial to ensure that the implementation of changes to the City's processes in response to Bill 109 can be communicated clearly to all stakeholders involved, especially considering that many municipalities in the GTA are responding to the legislative requirements in unique ways. Time will be needed for the industry to adjust to the impacts of these changes in order for the implementation to be successful.

We would like to reiterate our intent to continue to move forward with our municipal partners through a transparent and collaborative approach. We hope these process changes will be the start of new way of thinking, and working together that will benefit current and future generations.

Thank you again for the opportunity to submit these comments. As your community building partner, we trust that you will take them into careful consideration as you finalize this work.

Kind regards,

A handwritten signature in black ink, appearing to read "Victoria Mortelliti".

Victoria Mortelliti, RPP, MCIP
Manager of Policy & Advocacy

CC: Mayor Scarpitti, City of Markham
Arvin Prasad, City of Markham
Brad Roberts, City of Markham
Gabe Di Martino, BILD York Co-Chair
Mike McLean, BILD York Co-Chair
Paula Tenuta, SVP, BILD
Danielle Binder, Director, BILD
Members of the BILD York Chapter

The Building Industry and Land Development Association is an advocacy and educational group representing the building, land development and professional renovation industry in the Greater Toronto Area. BILD is the largest home builders' association in Canada, and is affiliated with the Ontario Home Builders' Association and the Canadian Home Builders' Association. It's 1,500 member companies consists not only of direct industry participants but also of supporting companies such as financial and professional service organizations, trade contractors, as well as manufacturers and suppliers of home-related products.

December 2, 2022

Mayor Frank Scarpitti and Members of Council

Markham Civic Centre
101 Town Centre Boulevard
Markham, ON
L3R 9W3

Sent via email to clerkspublic@markham.ca

RE: CITY OF MARKHAM RESPONSE TO BILL 109 AND AMENDMENTS TO THE PLANNING ACT

Statutory Public Meeting and City of Markham's Response to Bill 109 - More Homes for Everyone Act, 2022 File No. PR 22 260697

The Building Industry and Land Development Association (BILD) is in receipt of staff report entitled City of Markham's Response to Bill 109 - More Homes for Everyone Act, 2022 File No. PR 22 260697, dated November 29, 2022. We are submitting this information in advance of the City's commenting deadline of December 2nd for the December 6th Public Meeting, and prior to City Council's consideration of the item for approval.

On behalf of our York Chapter members, BILD appreciates the opportunity to provide the following comments regarding this work.

Reflecting on *Bill 109, More Homes for Everyone Act, 2022*

We acknowledge that the purpose of *Bill 109, More Homes for Everyone Act, 2022* is to increase housing supply and choice for families and individuals across the province. According to the provincial government, Bill 109 is an attempt to implement some of the Housing Affordability Task Force's recommendations, as outlined in a report released in February this year. We also understand that we all have a role to play to ensure that the true intentions of this Bill are carried forward correctly.

The key amendment we are addressing through this correspondence is the proposed changes to the approval process for zoning by-law amendment and site plan applications, which would require municipalities to refund application fees on a graduated basis (i.e. 50%, 75% or 100% depending on the number of days following the application) if a decision is not made within the legislative timelines. This change would apply to applications made on or after January 1, 2023. The intent of this change is to incentivize municipalities to make timely decisions.

General Sentiments of the Legislative Timelines Amendment

BILD and our members recognize the pressure that this amendment creates for municipalities to uphold the legislative timelines that have lengthen over the years. We also recognize that BILD members too have a role to play to be in keeping with the timelines by being timely with their responses to application comments and other requests for information. With this amendment, both the industry and the municipalities have a collective interest to meet the timelines; developers' project proformas are based on municipal timelines as well, and any delay in the approval process can result in carrying costs incurred by our members and violations associated to purchase and sale agreements.

BILD's Response to the City of Markham's Approach

As identified in the aforementioned staff report, and something that has been explored by some municipalities is that approach to frontload substantive issues that are identified in the project proposal prior to deeming an application complete. This also means that an applicant must ensure that a development application is complete prior to the start of the 'clock' of the legislative timeline. BILD and its members believe that parsing out large segments of the development application process before allowing the 'clock' to start on the legislative timelines is not in keeping with the spirit and intent of the legislation. It effectively removes the bulk of the process that would take the majority of the time to address in a typical development application.

As part of Bill 109, municipalities must adhere to the legislative timelines for the approval of a development application. As a matter of law, any policies or procedures that aim to circumvent or delay the typical timeline should be avoided. That means that municipalities must ensure that the application timeline is triggered once an application has been submitted. It also means that delaying the date that the clock starts on an application, through the pre-application or otherwise should also be avoided. In this regard, please find enclosed correspondence from Cassels regarding the municipal implementation of Bill 109 on the topics of pre-application, complete application requirements and potential waivers.

Additional Considerations in the Markham Approach

Concurrent Applications

Part II, Section 1.3 b) of the City's proposed Official Plan Amendment includes a provision that may require that a development application for an Official Plan Amendment be first approved by the Regional Municipality of York prior to a concurrent application for a Zoning By-law be deemed complete. Municipalities that currently have concurrent planning application processes (OPA, ZBA, SPA) should not be decoupled into sequential applications in order to allow for additional time to process applications. This is not keeping with the spirit and intent of the legislation.

Development Application Review Fees

We acknowledge that the City will undertake a review of Planning Application fees for 2023. As previously communicated to staff, BILD looks forward to the continued engagement with the City throughout this review.

Final Sentiments

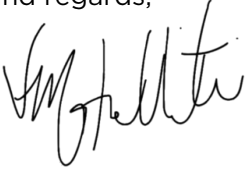
As industry, we would like to move forward with all our municipal partners to create system of enhanced trust and collaboration that has clearly been eroded over the years and is diminishing our collective successes. We want to continue to work with you, as our partners in prosperity and community building, to develop a transparent and cooperative development application process that works for all parties. Understanding that this is a seismic shift in process, it will take some time to identify best practices and create efficiencies.

Some initial thoughts in this regard are to pre-qualify consultants such that there would only need to be cursory review of submitted materials and limiting Council override on professional recommendations.

BILD also acknowledges that the City is undertaking a “LEAN” review process to identify ways to address the intended timelines provided by Bill 109. The staff report also considers adding staffing resources that may be required for City departments in the development review process. BILD is supportive of these improvements to the underlying structure of the development review process where inefficiencies may currently exist. We hope these process changes will be the start of new way of thinking, and working together that will benefit current and future generations.

Thank you again for the opportunity to submit these comments. As your community building partner, we trust that you will take them into careful consideration as you finalize this work.

Kind regards,

A handwritten signature in black ink, appearing to read "Victoria Mortelliti".

Victoria Mortelliti, RPP, MCIP
Manager of Policy & Advocacy

CC: Gabe Di Martino, BILD York Co-Chair
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December 2, 2022

Danielle Binder
Director, Policy & Advocacy
Building Industry and Land Development Association
20 Upjohn Road
Suite 100
Toronto, ON M3B 2V9

sleisk@cassels.com
Tel: +1 416 869 5411
Fax: +1 416 640 3218
File: 51989-3

Dear Ms. Binder,

Re: Bill 109 Implementation and the Pre-Application Process

You have asked us to consider generally the amendments to the pre-application consultation process a number of municipalities are proposing in response to Bill 109, *The More Homes for Everyone Act, 2022*. Commencing January 1, 2023, an increasing portion of application fees will be refundable if a municipality fails to make a decision within the applicable statutory timelines. We understand a number of municipalities are considering an enhanced pre-application process of detailed submissions, technical review and comment, and broader councillor and community engagement, prior to submission of an application under the *Planning Act* and the commencement of the statutory review period.

Bill 109 represents the first step in the Province's implementation of the recommendations of the Ontario Housing Affordability Task Force Report, meant to reduce overall cost, delay and cut red tape to achieve the goal of delivering 1.5 million new homes over the next 10 years. The clear purpose of the amendments is to encourage faster decisions to facilitate the delivery of housing.

We anticipate that enhanced consultation and cooperation between applicants and a municipality will be required in order to meet the timeframes imposed by the *Planning Act*, and that in many cases, applicants would prefer continued collaboration rather than a refusal and the need to pursue appeals to the Ontario Land Tribunal. There may be many applicants who will welcome early consultation and feedback prior to submission of a formal application. However, in our view, any such extra-statutory pre-application process must remain voluntary and a municipality cannot use this process as a means to prevent the lawful submission of an application and the commencement of the applicable review periods under the *Planning Act*.

Limits to the requirement to consult

Applicants have a statutory right to submit development applications to the applicable authority and to have these considered in accordance with the *Planning Act*, as well as other applicable policy and legislation. The only statutory pre-condition that a municipality may impose is a requirement to consult with the municipality prior to the submission of an application. In our view, the ordinary meaning of "consult" must be applied to determine the scope of permissible

pre-application requirements, commonly defined as seeking information and advice from another. Accordingly, the purpose and intent of this pre-application step is for municipalities to provide preliminary direction and advice in advance of the submission of a formal application and the commencement of the statutory review process and in our view does not include the ability to impose a non-statutory pre-application regime outside of the *Planning Act* or to otherwise prevent an applicant from exercising its statutory right to make an application.

Further, it is our view that the authority to require mandatory consultation with a municipality or planning board does not extend to mandatory consultation with review agencies, members of the public, or other persons and public bodies. The *Planning Act* has established these as municipal requirements and neither a plain and ordinary meaning or purposive interpretation of the *Planning Act* supports the imposition of additional requirements through the consultation process.

As stated by the then Ontario Municipal Board in *Top of the Tree Developments Inc, Re*, 2007 CarswellOnt 7921:

Yes, a Municipality can surely demand for materials and the information in the course of an evaluation of an application at any given time. There is and never was a legislative impediment for it to do so via its policy in an Official Plan. But the Municipality cannot demand it for the purpose of a complete application, and only pursuant to some tangential policy.

Limits on complete application requirements

While municipalities have the authority to require “other information and material” beyond the requirements prescribed under the *Planning Act*, such additional requirements for complete applications must be contained in adopted and in force official plan policies. Importantly, such requirements are limited to the submission of “information or material” and not a means to impose additional steps or processes, such as peer reviews or consultation, that a municipality does not have authority to impose directly.

Waiver Agreements

A number of municipalities have proposed a form of agreement for the withdrawal and resubmission of an application prior to the expiry of the legislated review period. In our view, while an agreement will not be enforceable to override statutory consequences, a voluntary agreement to withdraw an application in advance of a refund deadline may be possible, together with associated amendments to any applicable fee by-laws. However, we caution that the withdrawal and resubmission of an application will have significant implications under various statutes beyond the *Planning Act*, including but not limited to the *Ontario Heritage Act* and *Development Charges Act 1997*, that parties should be mindful of.

In summary, in our view, the establishment of additional mandatory requirements for submissions and engagement before otherwise valid applications will be received by a municipality for the purpose of preventing the statutory review period under the *Planning Act*

from commencing is contrary to the purpose and intent of the *Planning Act*, as amended, and beyond the authority of municipalities in Ontario and may be subject to judicial review.

We trust the foregoing is sufficient for your purposes. We would be pleased to respond to any further questions or concerns.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in black ink, appearing to read 'S.L.' with a stylized flourish at the end.

Signe Leisk
Partner

SL/AP