



Report to: Development Services Committee

Report Date: March 24, 2015

SUBJECT: Request to Support Richmond Hill's Court Challenge of the Ontario Municipal Board's Decision Regarding Parkland Dedication Policies (OMB file no. PL1101189)

PREPARED BY: Andrea Wilson-Peebles, extension 5770
Marg Wouters, extension 2909

RECOMMENDATION:

- 1) That the report titled "Request to Support Richmond Hill's Court Challenge of the Ontario Municipal Board's Decision Regarding Parkland Dedication Policies (OMB file no. PL1101189)" be received;
- 2) That Council direct the City Solicitor and staff to support the Town of Richmond Hill's challenge of the Ontario Municipal Board's decision under OMB file no. PL1101189 regarding parkland dedication policies by seeking leave to intervene in any court proceedings relating thereto;
- 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 seek Council's instructions with respect to the Town of Richmond Hill's request (Appendix "A") that other municipalities support its appeal of the Ontario Municipal Board ("OMB") decision under OMB file no. PL1101189 regarding parkland dedication policies, by intervening as a friend of the court. Staff recommend that Council direct staff to support Richmond Hill as requested.

BACKGROUND:

Following a lengthy hearing process respecting the Town of Richmond Hill (the "Town") Official Plan policies respecting parkland dedication, the OMB issued a decision on January 15, 2015. The OMB determined that where the Town applies the alternate parkland dedication rate of 1ha per 300 units authorized by the *Planning Act* (the "Act"), a cap of twenty-five (25%) percent of the developable area of the site or the cash-in-lieu equivalent must be applied. The OMB's decision requires that this cap be applied regardless of the area of the site, the density of the development, or the number of units proposed.

The City of Markham staff support the principle of a unit/population based approach to calculating parkland requirements, as currently authorized by the Act, rather than the "cap" on site area introduced by the OMB in the Richmond Hill decision. The City of Markham's new Official Plan is currently under appeal before the OMB, including the parkland dedication policies therein. If the OMB decision is not overturned, there is potential that the OMB could impose the inclusion of a similar cap on the City's policies,

as well as in all other municipal Official Plans. It is staff's view's that the OMB exceeded its jurisdiction by imposing the cap.

It is important to note that the Province has recently tabled Bill 73, an Act to amend the Development Charges Act and the Planning Act. Among the many amendments proposed to the Planning Act are amendments to Section 42 respecting Parkland Dedication. Under the current Act, The Province allows municipalities to impose an "alternative parkland dedication rate" for residential development, up to 1ha/300 units. Under Bill 73 this rate would be reduced to 1ha/500 units for cash-in-lieu of parkland. The Province's introduction of Bill 73 in the Provincial Legislature represents the appropriate means for making any changes to the rates for parkland dedication.

OPTIONS/ DISCUSSION:

The Town has filed a request with the OMB for a review of the decision under section 43 of the *Ontario Municipal Board Act*. This is a request for the OMB to review its own decision. The Town has also filed a motion for leave to appeal to the Divisional Court under section 96 of the *Ontario Municipal Board Act*. The appeal to the Divisional Court cannot proceed unless the Court grants leave. The test for leave to appeal requires the Town to demonstrate that:

- (i) The proposed appeal raises an issue of law;
- (ii) The proposed appeal raises an issue of sufficient importance to warrant the attention of the Court;
- (iii) There is some reason to doubt the correctness of the Board's decision.

Part (ii) of the test requires that the Town demonstrate that there is a broader public interest in the proposed appeal, and to that end, the Town has requested that other municipalities intervene as "friends of the court" to further emphasize to the Court how important this matter is to municipalities across the province. Markham's participation will help to show that the OMB decision may have an impact on all Ontario municipalities that adopt Official Plan policies respecting parkland dedication. The City of Mississauga and the Town of Oakville have formally indicated their intention to support the Town by applying for intervenor status.

If the OMB were to order a cap on parkland acquired as a condition of development approval in Markham, the City would need to lower parkland standards, or seek to meet its parkland needs through another acquisition and funding strategy. As development charges cannot be used for parkland acquisition and other revenue tools for this purpose are limited, it is likely that the burden to maintain the same standard of parkland delivery for new residents and communities would primarily fall on the tax base. The impact of a cap would primarily be seen in new high density areas, where it would lead to a decrease in park acquisition through the development process.

The OMB decision in Richmond Hill could establish a precedent for appeals in other municipalities, and it is very likely that developers will seek to have a similar cap imposed through the current appeal of the City's new Official Plan. It is therefore

recommended that the City seek to intervene as a “friend of the court” in Richmond Hill’s motion for Leave to Appeal, and all of the court proceedings that follow.

FINANCIAL CONSIDERATIONS AND TEMPLATE:

Staff are currently reviewing the potential financial impact should a 25% cap on site area be applied in the City. The financial impact of the Richmond Hill cap increases as density increases, since the 25% cap is static and related to the size of the site rather than the density of the site. The loss over the long term planning horizon (i.e. to 2031) could exceed \$100 million.

Although the potential of cost consequences exists with all court proceedings, in this case any such cost consequences would be mitigated by the public interest nature of this matter.

HUMAN RESOURCES CONSIDERATIONS

Not applicable.

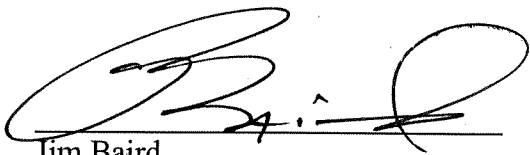
ALIGNMENT WITH STRATEGIC PRIORITIES:

This matter has policy implications on the new Official Plan, which relate to all strategic priorities of Building Markham’s Future Together, and specifically addresses the Growth Management priority.

BUSINESS UNITS CONSULTED AND AFFECTED:

Planning and Urban Design

RECOMMENDED BY:



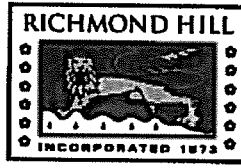
Jim Baird
Commissioner of Development Services



Catherine M. Conrad
City Solicitor

ATTACHMENTS:

Appendix A: Letter from Richmond Hill Mayor Dave Barrow dated February 27, 2015



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Office of the Mayor

MAR - 9 2015

February 27, 2015

Mayor Frank Scarpitti
City of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3

Dear Mayor Scarpitti:

Richmond Hill seeks the help of GTA municipalities

Despite the provisions of the Planning Act, the Ontario Municipal Board has rendered a precedent-setting decision that severely handicaps Richmond Hill's ability to set a parkland dedication rate that will provide the parkland our community needs.

This decision of the OMB will likely be used as a precedent for other communities experiencing high-rise intensification. Richmond Hill is seeking leave to appeal this OMB decision through the Ontario Divisional Court and I am asking for your support and asking that your municipality seek leave to become a "friend of the court" on this matter before March 20, 2015.

I urge you to join our fight for the right to determine our own futures and what is right for our communities. If you will join me in this challenge to the OMB, we can take a stand in defence of a Council's right to make decisions in the best interests of our residents.

Yours Sincerely,

Dave Barrow
Mayor

Attach.

O.M.B. Imposes Strict limits on Parkland Dedication

Following a lengthy hearing between the Town of Richmond Hill and several developer appellants to the Town's new Official Plan (OP) who received funding assistance from BILD, the Ontario Municipal Board (OMB) has determined in a January 15, 2015 decision that Richmond Hill's use of the alternate rate of 1 ha per 300 units authorized by the Planning Act must be capped at a maximum of 25 percent of the developable area of the site or the cash-in-lieu equivalent - regardless of the site area, the density, or the number of units proposed in a development.

Despite the Board not taking issue with the amount of parkland Richmond Hill has determined it needs through its detailed *Parks Plan*, the Town will not meet its parkland needs through Planning Act dedications and may need to utilize other sources such as the tax base to meet its needs. Development charges cannot be used for parkland acquisition, and other potential revenue tools for municipal parkland and recreational needs are extremely limited.

Impact of the OMB Decision

- This decision will set a precedent for OMB adjudication of all new Official Plans that are under appeal at present and in the future.
- The Development Industry may apply for Official Plan amendments in other municipalities and seek to have the OMB compel a lower park dedication rate as a matter of OP policy. As in Richmond Hill's case, it could be substantially lower than what the Planning Act authorizes.
- The Development Industry may use this decision to influence the Provincial Legislature's current review of Planning Act park dedication, thus lowering the park dedication rate for all Ontario municipalities.

What Richmond Hill is Doing

- The Town of Richmond Hill has requested that the OMB conduct an internal review of its decision as provided under Section 43 of the Ontario Municipal Board Act.
- The Town has recently brought an application for Leave to Appeal to the Ontario Divisional Court on a question of law under Section 96 of the Ontario Municipal Board Act. The Town intends to ask the Court to determine that the Board has erroneously interpreted the Planning Act regarding the use of the alternate park dedication rate.

What Your Municipality Can Do

- The Court must understand that this OMB decision may impact all Ontario municipalities that acquire parkland or cash-in-lieu through the development process, and not just Richmond Hill.
- Richmond Hill is requesting the assistance of municipalities to seek to become a "friend of the court" during Richmond Hill's leave to appeal hearing which will not only underscore the gravity of the OMB decision, but also identify the broader municipal impact and matters of public importance for other municipalities.
- A request by other municipalities to be a friend of the Court should be filed as soon as possible and by no later than March 23, 2015 – the date Richmond Hill's material in support of the Town's motion is to be filed with the Court.
- If this OMB decision is allowed to stand, residents of municipalities may be faced with less parkland than the previous generation or have no choice but to accept higher taxes just to sustain existing parkland service levels!

Richmond Hill appreciatively seeks assistance of other municipalities on this matter of importance to the future of our communities and municipal governance. Please contact Patrick Lee at (905) 771.2420 (patrick.lee@richmondhill.ca)