
The Corporation of the Town of Niagara-on-the-Lake Information Report to Council

SUBJECT: Bill 109 - Implementation of Planning Processing and Fee Changes
DATE: 2022-12-13
REPORT #: CDS-22-098
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BACKGROUND INFORMATION

The purpose of this report is to advise Council that Staff propose to initiate changes to the planning review process and bring forward amendments to local planning documents as a result of changes made through Bill 109.

On March 30, 2022, the Province announced Bill 109, the *More Homes for Everyone Act, 2022*. On April 14, 2022, Bill 109 received Royal Assent from the Ontario Legislature and is now in force and effect. Bill 109 incorporates some of the recommendations of the Housing Affordability Taskforce Report (released in February 2022). The “Taskforce” report outlined 55 recommendations to support the construction of 1.5 million new homes in 10 years to address the housing affordability problem.

Staff provided a summary of the key changes in Report CDS-22-010 to the May 16, 2022, Committee of the Whole (General) meeting. Of particular importance are the changes related to a sliding scale of fee refunds for certain planning applications where a decision is not made within the prescribed timeframe in the *Planning Act*. This requirement will take effect on January 1, 2023.

Staff noted changes to Site Plan Control applications, the introduction of the Community Infrastructure and Housing Accelerator tool, changes for areas of finance related to securities and consultation, approval of Official Plans, and monitoring requirements.

Since then, Staff has been reviewing the implications of the changes to development planning process and the budget. In addition, the Niagara Region has advanced a coordinated review effort to assist with a consistent approach to implementation among area municipalities. Municipal staff from all 12 local area municipalities participated in this engagement exercise.

Several municipalities outside of Niagara have also taken steps to adjust their development process, implement new processes, amend planning documents, and assess staffing requirements resulting from Bill 109. Staff have been monitoring these changes to explore all options available for the municipality.

To implement changes to address the requirements of Bill 109, amendments are required to the Official Plan, Site Plan Control By-law and fee schedule. Staff propose to amend the existing Official Plan, with policy direction to be incorporated into the adopted Official Plan.

At this time, based on internal staff discussion and jurisdictional best practices review, Staff has identified the need to review and include or update the following:

1. Pre-consultation requirements, including a revised submission process for Official Plan and Zoning By-law Amendments and Site Plan applications, would allow staff to review study information before deeming an application complete.
 - For example, a pre-consultation meeting (Step 1) would be held to review the proposal, provide initial feedback and identify the studies required to be submitted for a complete application. Before submission of the application (Step 2), the applicant would be required to submit the plans and studies, with approvals (if applicable), as outlined in the pre-consultation meeting. Staff will review the submission to determine completeness. Once staff determines that the submitted materials are complete, the applicant will submit the application fee, and the “clock” will start for the *Planning Act* timeframe.
 - The pre-consultation by-law will be updated to reflect the applicable legislative requirements and any changes to the process. Provisions in the by-law will also outline circumstances for what is complete or incomplete.
2. Complete application requirements and the list of requested studies in Schedule J of the Town's Official Plan.
 - The Official Plan's complete application policies will be reviewed and updated to align with the requirements of the new legislation. Staff will also review the list of studies that can be requested as part of a complete application.
 - As part of the Region's review, there is a desire to have a general framework, or Terms of Reference, for various studies among all local municipalities. This approach will help with the pre-consultation process identified above, as applicants will be provided with study expectations prior to preparing and submitting studies.
3. Delegation of certain approvals.
 - In recent years, the *Planning Act* has been amended several times to add delegation responsibilities of certain applications and approvals, including:
 - Lifting of part lot control
 - Removal of holding symbol on a zoning by-law
 - Minor zoning by-law amendments
 - Draft plan approval of subdivision and condominium and authority to sign the agreements
 - Undisputed consents

Staff will provide additional information on delegated authority in a comprehensive report in Q1 2023.

Site Plan Control

Bill 109 extended the timeframe for issuing site plan approval from 30 to 60 days under the *Planning Act*. As noted below, the municipality would be subject to a financial penalty for not meeting this prescribed time requirement.

Staff recommend the site plan process be reviewed, including:

- Site plan review and circulation process;
- Information required to deem a site plan application complete; and,
- Standard requirements for conditional approval.

Bill 109 requires that all decisions on site plan applications be delegated to an official, agent or Staff for applications made on or after July 1, 2022. The Town's Site Plan by-law currently delegates decisions to Staff for site plans that do not require a zoning change. Applications with an associated Zoning By-law amendment are required to be presented for Council approval. Any applications received after July 1, 2022, are to be Director-approved per the requirements of the *Planning Act*. Staff will bring forward a revised, consolidated Site Plan Control By-law that reflects this requirement.

Fee Schedule

Based on the Bill 109 changes, the *Planning Act* now requires municipalities to refund planning application fees when decisions are not made within the prescribed timeframe. The minimum partial refund is 50% for no decision made beyond the required timeframe. When the decision exceeds the prescribed timeframe, the refund increases on a graduated scale of 75% to 100%.

Amount of application fee to be refunded if beyond the timeframe	Number of days processing application without a decision on Official Plan Amendment (OPA) and/or Zoning By-law Amendment (ZBA), or failure to approve Site Plan
50%	90 days for ZBA 120 days for OPA & ZBA 60 days for Site Plan
75%	150 days for ZBA 180 days for OPA & ZBA 90 days for Site Plan
100%	180 days for ZBA 240 days for OPA & ZBA 120 days for Site Plan

Staff propose changing the fee schedule to implement the revised submission process. Currently, the Town allows the fee for the pre-consultation to be credited to the application fee when a formal application is submitted. It is suggested that the pre-consultation fee no longer be used as credit toward the application. Staff spend a significant amount of time preparing and coordinating information for pre-consultation, and retaining the fee would reflect the work required for this preparation.

A pre-submission (Step 2) fee should be established to address Staff time to review the submitted studies and plans. It is suggested that this fee could be used as credit and applied to a formal complete application. This second step results in an initial application review when a complete formal application is nearly ready to be submitted.

Staff are reviewing the most appropriate fee structure for each type of Planning application to represent the work undertaken at each step accurately. Town planning application fees are also scheduled to be comprehensively reviewed in 2023 and may result in fee changes.

Staff will need to monitor the changes to the application approval process.

In addition, uncertainty remains regarding how to process partial/full refunded application fees. Staff are exploring options.

Some municipalities are creating development fee waivers that applicants will sign to confirm their commitment to work with the municipality rather than receive a refund. This approach is being explored with the Town's solicitor.

In addition, Town Staff continues to consult with area municipalities and the Niagara Region to assist in establishing a fair and consistent process and fee structure for development application review.

NEXT STEP / CONCLUSION

To process the changes required above, Staff propose to schedule a Public Meeting for the January COTW (Planning) meeting with an Information Report and draft an Official Plan amendment and other implementing documents to reflect the proposed changes. Input will be collected on the proposed amendment, and Staff will bring it back expeditiously for approval.

Staff will continue to monitor the implementation timelines for Bill 109 as refund requirements may be delayed to July 1, 2023. Minister Clark identified this in his recent correspondence to the Association of Municipalities of Ontario on November 30. In recognition of most municipalities doing their best to accelerate the issuance of housing permits and approvals, the government will introduce legislation that, if passed, would delay the implementation of development application refund requirements set out in Bill 109 by six months, from January 1, 2023, to July 1, 2023.