



Town of Niagara-on-the-Lake

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REPORT #: CDS-23-243 **COMMITTEE DATE:** 2023-12-05
REPORT TO: COTW-Planning **DUE IN COUNCIL:** 2023-12-12
SUBJECT: Planning Fee Refund Waiver

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Council receive the Planning Fee Refund Waiver, attached as **Appendix I**, for information; and,
- 1.2 Council authorize the Director of Community and Development Services to sign Planning Fee Refund Waivers with registered property owners.

2. EXECUTIVE SUMMARY

- On April 14, 2022, Bill 109 received Royal Assent from the Ontario Legislature and is now in force and effect.
- Based on these changes, as of July 1, 2023, the *Planning Act* now requires municipalities to refund planning application fees when decisions are not made within the *Planning Act* prescribed timeframe.
- Staff have worked with the Town's legal counsel to prepare a Planning Fee Refund Waiver (the "Waiver"). It is intended that the waiver could be used when the applicant and Town work in good faith to advance an application to a recommendation report, but additional time is needed to resolve the outstanding issues.
- It is acknowledged in the waiver that by signing it, the waiver does not in any way bind the Town to approve the application and does not in any way limit the Town's discretion in approving, modifying, or denying said application.

3. PURPOSE

The purpose of this report is to provide information on the waiver and request authorization for the Director of Community and Development Services to sign the waiver on the Town's behalf. It is intended that applicants will sign the waiver to confirm their commitment to work with the Town to resolve issues rather than receive a refund.

4. BACKGROUND

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. Initially, Bill 109 set the provisions for fee refunds to take effect on January 1, 2023. Bill 97 was subsequently passed to revise this date to July 1, 2023.

Based on the Bill 109 changes, as of July 1, 2023, 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 by 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 the 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

The timelines under the *Planning Act* have been in place, although altered through several different Bills, for many years. Before the Bill 109 changes, the implication for not meeting timelines was a potential appeal by the applicant for non-decision. With the changes, in addition to the potential appeal, a municipality is financially impacted by fee refunds when the timelines are unmet.

5. DISCUSSION / ANALYSIS

For ZBA or combined OPA and ZBA applications, the *Planning Act* now requires the Town to provide full or partial refunds of any fees paid by the Applicant under Section 69 of the *Act* if the Town does not adhere to the processing timeline and provide a decision on the application.

For Site Plan applications, the *Planning Act* now directs that the Town shall provide full or partial refunds of any fees paid if the Town does not adhere to the processing timeline and provide approval of the application.

Staff has worked with the Town’s legal counsel to prepare a waiver template, attached as **Appendix I** to this report. It is intended that the waiver could be used when the applicant and Town work in good faith to advance an application to a recommendation report, but additional time is needed to resolve the outstanding issues. By using the waiver, Staff could continue to work toward a favourable resolution with the applicant rather than recommend refusal or the use of Holding provisions in a decision.

The waiver would be signed voluntarily by the applicant and would be used where an applicant wishes to avoid the costs, risks, and significant delay that an appeal under the Act would entail, should the Town deny the application due to the outstanding concerns that may be resolved with additional time. Even with the extra time afforded by a signed waiver, the Town will work expeditiously towards a decision on all applications in a timely manner.

As noted above, the timelines for site plan applications are shorter than those for ZBA or combined OPA/ZBA. Accordingly, the Town could not process combined applications as approval of the site plan would be required ahead of a decision on the amendment application(s). In some instances where it is appropriate, the signing of a waiver could facilitate the concurrent processing of planning applications (e.g. rezoning and site plan).

The waiver also acknowledges that it does not in any way bind the Town to approve the application and does not in any way limit the Town's discretion in approving, modifying, or denying said application. Further, the waiver contains a clause that specifies that should the Town not decide on the application within 90 days of the date of execution of the waiver, the applicant may, upon written request to the Town, be released from the waiver.

The waiver also does not impact appeal rights should an applicant wish to appeal a future Council decision or non-decision to the Ontario Land Tribunal (the "OLT").

It is recommended that the Director of Community and Development Services be authorized to sign the waiver when an applicant is agreeable and a prescribed timeline is approaching.

6. STRATEGIC PLAN

The content of this report supports the following Strategic Plan initiatives:

Pillar

4. Optimize Organizational Excellence

Priority

4.1 Streamline & Modernize

Action

4.1 a) Streamline Processes

7. OPTIONS

- 7.1 **Option 1:** That Council receive the waiver template and authorize the Director of Community and Development Services to sign the waivers, where required, on the Town's behalf. **(Recommended)**
- 7.2 **Option 2:** That Council prescribes a process where waivers are presented to Council. This option is not recommended, as Staff will need to focus on continuing to process the application. **(Not Recommended)**
- 7.3 **Option 3:** That Council not approve the attached waiver or for the Director of Community and Development Services to sign the waivers on the Town's behalf.

8. FINANCIAL IMPLICATIONS

There are financial implications related to planning application fee refunds. The use of the waiver will allow Staff to continue to work with applicants rather than recommend the refusal of applications where issues could be resolved if more time was provided. Refusals may also lead to an increase in appeals to the OLT, which could become quite costly to the municipality.

9. ENVIRONMENTAL IMPLICATIONS

Not applicable; there are no direct environmental impacts.

10. COMMUNICATIONS

Information on the waiver will be communicated to applicants as required.

11. CONCLUSION

Staff are of the opinion that executing a waiver when required allows the Town to continue to work with an applicant towards a positive planning outcome while minimizing financial impacts to the Town.

12. PREVIOUS REPORTS

N/A

13. APPENDICES

- **Appendix I** – Planning Fee Refund Waiver Template

Respectfully submitted:

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Submitted by:



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