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

SUBJECT: Pre-Application Process Improvement Review
DATE: 2024-04-16
REPORT #: CDS-24-063
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DEPARTMENT: Community & Development Services

BACKGROUND INFORMATION

Introduction of Bill 185 – Cutting Red Tape to Build More Homes Act, 2024

On April 10, 2024, following the completion of this report, the Province introduced Bill 185, the “Cutting Red Tape to Build More Homes Act, 2024”. Bill 185 is an omnibus bill that will affect several pieces of legislation, including the *Planning Act*.

The Bill proposes changes to several of the provincial government’s previous legislative changes, some of which may impact details contained in this report, including:

- Revoking the fee refund provisions implemented through Bill 109 that are applicable when a municipality does not make a decision within a specified time frame.
- Pre-application consultation meetings with municipalities will be voluntary and not mandatory. The authority to pass a pre-consultation by-law which requires applicants to consult with the municipality or planning board before submitting an application will be removed.
- Applicants are permitted to bring a motion to the Ontario Land Tribunal at any time during voluntary pre-consultation for a determination as to whether the requirements for a complete application are reasonable or have been met.

The Bill was ordered for the second reading stage of the legislative process on April 10, 2024. A link to the Bill and its status can be found on the Legislative Assembly of Ontario website here: <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-185>

Staff will monitor the Bill and will be preparing comments on the proposed changes by the commenting deadline of May 10, 2024. Staff will also provide Council with information on impacts of all the proposed legislation released yesterday in a future report.

Purpose of the Report

The purpose of this report is to provide information to identify improvements to the application review process and to seek Council direction to commence work on the next steps.

The direction for this report arose at the February 27, 2024, Council meeting through the following motion:

WHEREAS under the Planning Act (through Bill 109) municipalities are required to refund application fees to developers if plans are not approved within a set timeframe; and

WHEREAS meeting the mandatory timeframes can be challenging; and

WHEREAS other municipalities have imposed mandatory pre-application meetings that include provisions such as checklists, fees and public hearings prior to the submission of a complete application to start the mandatory timeframe;

THEREFORE BE IT RESOLVED that Staff investigate opportunities for efficiencies such as imposing a mandatory pre-application meeting before the official timeframe process starts, to address the tight deadlines and improve the application process; and

BE IT FURTHER RESOLVED that Staff report back to Council in April 2024 with recommendations to improve the development application process.

Niagara-on-the-Lake's Current Application Process

The Town's current process of submitting a planning application requires a landowner/applicant to attend a pre-consultation meeting to determine which applications are required for their proposal and the studies and rationale needed to support it. The Town arranges the pre-consultation meetings and invites Town Staff from various departments, the Region of Niagara (if required), and other applicable agencies. Once the pre-consultation meeting is held, the landowner/applicant receives a record of the comments made and studies required for a complete application via a pre-consultation agreement. The pre-consultation agreement is valid for one (1) year.

When all information is ready, the applicant will submit their application with all required supporting studies and documentation to the Town. Under the *Planning Act*, the Town has 30 days to deem an application complete or incomplete. When applications are deemed complete, a notice of complete application must be circulated within 15 days. As part of the notice of complete application, the Town advises members of the public of the date and time of the associated Open House and statutory Public Meeting.

An Open House is held virtually by the Town to provide the public with an opportunity to hear a presentation from a landowner/representative about a planning application. Members of the public can attend the Open House to gain a better understanding of the proposal and ask questions directly of the landowner/representative.

At the time of the Public Meeting, Staff prepare an Information Report to provide an overview of the application(s) and a high-level summary of the applicable policy framework. The purpose of

the Public Meeting is to gather comments from the public and Council. The comprehensive review of the application, including a full policy review and any additional information requested through the agency circulation, is completed at the time of the Recommendation Report.

Application Refund Provisions Introduced by 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 introduced several regulatory changes which have had a significant impact on the *Planning Act* and the development review process.

The changes to the *Planning Act* are focused on reducing the amount of time it takes municipalities to process certain applications and ensuring that decisions are made within the timeframes set in the *Act*. Based on Bill 109 changes, the *Planning Act* now requires municipalities to refund planning application fees to the applicant when a decision or approval is not issued within the prescribed timeframes.

The refund provisions set out in the *Planning Act* are applicable to applications for an Official Plan Amendment, Zoning By-law Amendment and/or Site Plan Control when a decision or approval has not been made within the prescribed timeframes. The refund provisions apply to applications submitted on or after July 1, 2023. **Table 1** provides an overview of the required fee refunds.

Table 1: Refund Requirements Under the Planning Act

Application Type	Refund by Processing Days			
	No refund	50% refund	75% refund	100% refund
Zoning By-law Amendment	90	91	150	210
Official Plan Amendment Submitted with Zoning By-law Amendment*	120	121	180	240
Site Plan Approval	60	61	90	120

* The refunding of fees only applies to the Zoning By-law Amendment application when submitted concurrently with an application for an Official Plan Amendment.

With respect to the refunding of fees, the “clock” starts for the review of an application when deemed complete by the Town and there is no ability to “stop the clock”. Even if the applicant is required to provide further information or address comments provided by the Town and commenting agencies, the clock does not stop.

Before Bill 109 was in force and effect, the implication for not meeting timelines was a potential appeal by the applicant for non-decision. With the introduction of Bill 109, in addition to the potential appeal, a municipality is financially impacted by fee refunds when the timelines are unmet.

Staff worked with the Town’s legal counsel to prepare a fee refund waiver that was endorsed by Council in December 2023. The waiver is to be used when the applicant and Town work in good faith to advance an application to a Recommendation Report but need additional time to resolve outstanding issues. The waiver is signed voluntarily by the applicant.

While Staff strive to meet the timelines under the *Act*, it is not always possible for more

complex applications. Since its endorsement, there has been a positive response with applicants willing to sign the waiver and continue working with the Town.

Staff have received 16 Official Plan Amendment and/or Zoning By-law Amendment applications since July 1, 2023. Timelines have been met for six (6) of those applications. Staff were successful in obtaining signed waivers from three (3) out of the five (5) applicants where the timelines were not met. The applications for the remaining five (5) properties are still in process and are anticipated to be presented to Council for decision within the prescribed timeframe.

Two-step Application Process

The planning process is iterative. Many development applications are complex in nature and require time for in-depth technical review by Town departments and commenting agencies. Through this technical review, updates to supporting studies may be identified and comments are provided that must be addressed.

The time it takes for technical review, waiting for resubmission materials from the applicant and comments from external agencies, in addition to ensuring that public engagement requirements have been met, serve as potential sources of delay making it difficult to achieve the timelines set out in the *Planning Act*.

In response to the refund provisions, several municipalities have implemented or are in the process of implementing a two-stage pre-application process. For the purpose of this report, staff undertook a review of other municipalities which have or are in the process of implementing a two-stage pre-application process for development in response to Bill 109. This review included the Town of Milton, City of Oshawa, City of Waterloo, and City of Burlington.

In each of these municipalities, the application process generally includes a mandatory pre-consultation meeting with the applicant (Stage 1) and a pre-submission of materials with an initial review by the municipality and commenting agencies for completeness before a formal *Planning Act* application is submitted (Stage 2).

The intent of the two-stage process is generally to front-load the development review process by circulating application materials in advance of a formal *Planning Act* application for review by the Town and agencies regarding potential information that is incomplete. In order to follow this two-step process, a municipality must have clear direction for study and submission requirements. This initial review (Stage 2) is intended to ensure that an application provides the necessary supporting information to streamline the review process.

The two-stages involved are generally as follows:

1. **Pre-Consultation Meeting:** A meeting is held with the applicant, external agencies, and Town departments to discuss the proposal, provide initial feedback, and set out the requirements for a complete application. This step is currently taken for all applications at the Town.
2. **Pre-Submission Review:** In advance of submitting a formal *Planning Act* application, the applicant would submit all required materials, plans and studies to support a planning application based on the requirements set out at the Pre-Consultation Meeting. The

documents submitted are circulated to municipal departments and agencies for review. The documents are reviewed to determine whether everything has been submitted correctly and to provide a record of comments for the applicant to address, where applicable. The application is deemed complete or incomplete, with a record of comments setting out missing information if applications are incomplete. This initial review requires a quick turnaround.

Implementation for Process Improvements

Should Council wish to implement a two-stage pre-application process, Staff have the necessary next steps below. Staff have also made further recommendations below for streamlining and improving the application process.

Official Plan Amendment

Section 22.3 of the Town of Niagara-on-the-Lake Official Plan (“Town OP”) sets out that a pre-consultation meeting between the applicant, Town and commenting agencies is required prior to the submission of an application for an official plan amendment, zoning by-law amendment, draft plan of subdivision or condominium, consent or site plan control. Pre-consultation is a requirement for the submission of a complete application. This section of the Town OP also identifies requirements to submit a complete application.

An Official Plan Amendment (OPA) is required to update the requirements for a “complete” *Planning Act* application and identify examples of instances where an application may be deemed incomplete. For example, a *Planning Act* application may be deemed incomplete if a report or study does not address the requirements set out in the standard Terms of Reference. The OPA would address changes to the pre-application process and overall development review process.

Standardized Terms of Reference

Standardized Terms of Reference (TOR) are necessary to set out the requirements for technical studies and reports that appear in Schedule J of the Town of Niagara-on-the-Lake Official Plan. Schedule J provides a list of studies and reports that may be required as part of a complete *Planning Act* application, as determined through the mandatory Pre-Consultation Meeting.

The purpose of the TORs is to provide clear expectations for required studies regarding what should be included in each study, at minimum. Applicants would be required to ensure that the technical studies and reports submitted fulfill the requirements set out in the TOR. If the requirements are not met, the application may be deemed incomplete at the Town’s discretion.

Staff have drafted standardized TORs for Planning Justification Reports and Functional Servicing Reports. The Region has also prepared standardized TORs for Agricultural Impact Assessment, Land Use Compatibility, Noise Study, Traffic Impact Study, and Shadow Study. The Town will use the Regional TORs as a guide for these studies and will look to refine them to meet the Town’s needs in the future. The TORs are attached as **Appendix I** to this report.

The TORs will be posted to the Town’s website for applicants to access and refer to when preparing materials. They will also be shared with applicants at Pre-consultation Meetings, and as part of the Pre-Consultation Agreements. Staff note that the TORs provide a general overview, and studies may be scoped at the time of pre-consultation for matters specific to the

location, context or other requirements. The TORs may be adjusted and refined, as needed, to ensure they are effective.

Staff will continue to create a TOR for each study outlined in Schedule J and post them to the Town's website as they are completed. Information will be provided to Council as this work progresses.

Delegated Authority

The above noted OPA may also include provisions to update Official Plan policies for Council to formally delegate authority to Staff for specific applications under the *Planning Act*. This could include removal of a Holding (H) symbol, approval of minor zoning by-law amendments, ability to amend conditions of draft plan approval, ability to authorize the temporary use of land, buildings or structures, approval of exemptions for parking and lifting of part lot control. Delegating approvals to Staff could provide flexibility to help establish that *Planning Act* timelines are met for certain types of applications. This direction will also require Council to pass a delegation by-law.

Website Revisions

The Town's website currently has a page dedicated to Planning Services which provides information regarding the planning and development review process. Staff are working on website updates to assist with improvements to the development review process. The intent of the revisions is to ensure transparency to residents, applicants, and consultants on the expectations for application submission, as well as provide an overview of the standard application process.

Timing of Recommendation Reports

Staff will begin to provide Recommendation Reports to Council at the time of the Public Meeting for applications as appropriate. An example of an appropriate application would be a Zoning By-law Amendment related to a Consent where there was no interest from the public at the associated Committee of Adjustment meeting or that did not receive any public input at the Open House or through correspondence. This action would eliminate the preparation of both an Information Report and a Recommendation Report, shorten the approval process and allow the Town to meet application timelines.

Amend Pre-Application Process By-law

The Town currently has a Pre-Application Process By-law in effect which outlines the requirements for the initial stages of the development review process for planning applications. Currently, the process requires that an applicant participate in a mandatory pre-consultation meeting and necessitates that a Pre-Consultation Agreement be provided as a record of the meeting. The Pre-Consultation Agreement identifies the technical studies and reports required to form a complete application.

An amendment to this By-law is required to set out the steps involved in the two-stage pre-application process and timing for those steps.

Amend User Fee By-law

The Town's User Fee By-law sets out user fees and charges for various services provided by the Town. Appendix E of the By-law provides a schedule for Planning Application User Fees and Service Charges, which includes a fee for pre-consultation meetings. The User Fee By-law may require an amendment to establish a fee for the review of materials submitted as part of

the Pre-Submission Review.

NEXT STEPS / CONCLUSION

The goal of this information report is to provide information to identify the steps involved in implementing process improvements and to seek Council direction to commence the work on these steps.

The current pre-consultation process at the Town involves internal departments, external agencies, and the development industry. Given that the Town is proposing a change to the process, with an associated Official Plan Amendment, engaging the public, external agencies, as well as the development industry, will be important in determining the preferred path forward based on the feedback and comments received.

Staff are seeking Council endorsement to begin working through the following components, which will be accompanied by a future report to set out the following:

- Outline the requirements of the approach for two-stage pre-application process.
- Draft Official Plan Amendment.
- Draft amendments to update the Pre-Application Process By-law and the User Fee By-law.
- Consult with commenting agencies and the development industry regarding the proposed approach.
- Continue drafting the standardized Terms of References.

ATTACHMENTS

- Appendix I – Standardized Terms of Reference