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Planning Act Timelines and Public Planning Meetings Information Report to Council

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In accordance with the Procedure By-law, any member of Council may make a request to the Town Clerk that this Report be placed on an upcoming Committee of the Whole agenda for discussion.

Executive Summary

On April 15, 2020, the Province introduced changes to the Planning Act to help municipalities to better manage resources so they can focus on the COVID-19 pandemic during the provincial emergency declared on March 17, 2020 (the “**Provincial Emergency**”). The changes include new rules that suspend the usual timelines under the Planning Act that apply to specific land use planning matters during the period of the Provincial Emergency. The new Planning Act rules allow municipalities to pause or proceed with making decisions on land use planning matters during the period of the Provincial Emergency, and cease once the Provincial Emergency ends. If a municipality is unable, or chooses not, to render a decision on land use planning matters during the Provincial Emergency, a decision is not required to be rendered until after this state of emergency is terminated. No appeal rights arise from such non-decisions during the period of the Provincial Emergency. If a municipality chooses to proceed to render a decision during this state of emergency, it may do so and the usual Planning Act notice obligations and appeal timelines will apply to the decision.

In order to keep planning projects moving and in line with the majority of other York Region municipalities, Town Staff have adopted the approach to proceed with processing planning applications during the Provincial Emergency, including seeking Council decisions on such applications and holding statutory public meetings, where

required, using virtual technology. Staff's approach also includes moving forward with Committee of Adjustment matters (i.e. minor variances and consents) through similarly facilitated virtual means.

Staff's approach to move forward and continue to advance these matters is necessary for the continued administration of the Town during the Provincial Emergency and aligns with the Procedure By-law Amendment (defined below).

Purpose

The purpose of this report is to (a) provide Council with information summarizing the details of recent legislative changes to the Planning Act related to timelines affecting land use planning matters, and (b) inform Council of Staff's preferred approach to continue to move forward with reviewing and processing planning applications including: seeking Council decisions, holding related statutory public meetings, where required, and Committee of Adjustment meetings, while following the advice of the Province's public health authorities regarding physical distancing and any other relevant emergency orders during the period of the Provincial Emergency.

Background

In response to the current COVID-19 pandemic and to give municipalities time to focus their resources on the pandemic and municipal emergency response activities, the Province of Ontario passed Ontario Regulation 73/20 on March 20, 2020. The effect of the regulation was to suspend limitation periods and procedural timelines under any statute, regulation, rule, by-law or order of the Government of Ontario (the "**Suspension Order**"). However, it was the prevailing legal opinion that this regulation did not apply to Planning Act timelines. In response, the Province enacted further legislation called Bill 189, Coronavirus (COVID-19) Support and Protection Act, 2020, which provides the Minister of Municipal Affairs and Housing the authority to temporarily and retroactively suspend certain Planning Act timelines during a provincially declared emergency. Through this ministerial authority, a separate regulation, Ontario Regulation 149/20 was enacted on April 15, 2020 (the "**Planning Act Amendment**").

On April 27, 2020, Council enacted By-law 2020-24 (the "**Procedure By-law Amendment**"), which amended Procedure By-law 2020-12. permitting members of Council and Committees, including Committees of Adjustment, to participate in electronic meetings and be counted towards a quorum during a municipally or provincially declared emergency. Under the Procedure By-law Amendment, matters of discussion at such electronic meetings must be those necessary for the continued administration of the Town and/or the provision of essential or high importance municipal services, as determined by the Mayor and CAO.

Discussion

New Planning Act Rules During Declared Emergency

The Planning Act Amendment clarifies that the Suspension Order does not apply to land use planning timelines, and introduces new rules under the Planning Act that are in effect during the period of the Provincial Emergency regarding: (a) notices of decisions that may have been interrupted by the issuance of the Suspension Order; and (b) suspension of timelines for procedural and administrative matters, decision making and appeals. The timeline changes to the Planning Act are retroactive to the start of the Provincial Emergency (March 17, 2020) and apply for the duration of the period of the Provincial Emergency.

A. Notices of Decisions

The Planning Act Amendment provides for those notices of municipal decisions and related appeal periods that may have been interrupted by the issuance of the Suspension Order to be restarted so that those decisions may be formally finalized. In such instance where notices of decisions were issued or required to be issued and were impacted by the period of the Suspension Order, the Planning Amendment Act requires that municipalities **re-issue notices** of Council or Committee of Adjustment decisions on planning matters after the Provincial Emergency ends, or **extends the deadline to issue notices** of these decisions until after the Provincial Emergency ends. The notice provisions apply to: official plans and amendments; zoning by-laws and amendments; plans of subdivision; consents; and applications for community planning permits.

The regulation clarifies that any appeals related to notices of decisions that may have been received during these interrupted appeal periods continue to be valid.

B. Suspension of Timelines for Appeals of Non-Decisions

The Planning Act Amendment **suspends a number of timelines** under the Planning Act, including those that, once exceeded, allow proponents to **appeal non-decisions** on specified applications, including:

- official plan amendments (120 days)
- zoning by-law amendments (90 days)
- site plan approvals (30 days)
- plans of subdivision (120 days)
- consents (90 days)

Accordingly, where a municipal authority is unable, or chooses not, to render a decision on such matters, during the state of Provincial Emergency, a decision need not be

rendered until after the Provincial Emergency is over. No appeal rights from a non-decision will accrue during the period of the Provincial Emergency.

Alternatively, the Planning Act Amendment permits a municipality to continue to process development applications during the Provincial Emergency. If a municipality wishes to render a decision and issue a notice of decision after the passage of the new Planning Act rules (April 15, 2020) and during the period of the Provincial Emergency, it may do so. Where a Council or Committee does proceed to render a decision during this period of emergency, the usual Planning Act notice obligations and appeal timelines will apply to the decision. However, the timeline for the municipality to prepare a record and forward an appeal to the Local Planning Appeal Tribunal (the “**LPAT**”) is suspended until after the end of the Provincial Emergency.

C. Suspension of Timelines for Processing and Administrative Matters:

Planning Act timelines related to **processing or administrative matters** are also suspended for various matters for the duration of the Provincial Emergency under the Planning Act Amendment. The suspension includes timelines for:

- municipality advising of completeness or non-completeness of certain applications and related public notice of complete application
- municipality sending adopted official plan/amendment to approval authority
- committee of adjustment holding a hearing on a minor variance

D. Suspension of Timelines Regarding Interim Control By-law

The Planning Act Amendment also provides that any interim control by-law that was in effect during the Provincial Emergency is extended by the time of the emergency. Alternatively, the Town is permitted to amend or repeal an interim control by-law during this state of emergency if it so chooses.

The Town currently has an Interim Control By-law in effect, being Interim Control By-law 2019-04 that is associated with the Established Neighbourhoods Compatibility Study (the “**ICB**”). The ICB is set to expire on July 20, 2020, which is 125 days after the Provincial Emergency was declared on March 17, 2020. According to the new Planning Act rules, the ICB is in effect after the Provincial Emergency ends for a period of time which is calculated based on whether the ICB would normally expire before or after the end of the Provincial Emergency:

- if the **ICB expires before the emergency ends**, then the ICB continues to be in effect during the emergency period and 125 days after the date the emergency ends;
- if the **ICB expires after the emergency ends**, then the ICB continues to be in effect for the number of days between March 17 and the date the emergency ends.

Because the end date of the Provincial Emergency is not known, it is not possible to determine the extended end date of the ICB. As will be described in a future report to Council, Staff will be recommending that the ICB be further extended for a period of six months from July 20, 2020.

Statutory Public Planning Meetings

As discussed above, the effect of the Planning Act Amendment and the new rules under the Planning Act allows municipalities to determine whether to proceed with making decisions on planning applications during the Provincial Emergency period, or to pause decision making until after the said emergency period has ended without the risk of an appeal to the LPAT. If municipalities wish to make decisions on applications during this time, they are free to do so.

The Province issued a bulletin in April 2020 clarifying the intent of the new Planning Act rules indicating that municipalities have the discretion to determine if they wish to continue to review and make decisions on all or certain planning applications. In this regard, the Provincial bulletin also included that municipalities consider whether they can adequately review and process planning applications and hold statutory public meetings, where required, through the use of electronic and virtual channels to engage and solicit feedback from the public on land use planning matters while maintaining physical distancing. This may include a mixture of technologies to meet local public needs in combination with traditional forms, like written submissions (email or paper copy) and posting documents online. The Town has technology in place to allow for successful planning meetings, but Staff continue to investigate the use of these technologies, as well as the structure and forum, to engage the public in statutory public planning meetings based on best practices of other participating municipalities. Such best practices may include allowing both video and telephone deputations in place of physical in-person deputations, and encouraging written submissions on the development planning application. Public participation through electronic means using technology already in place will be tested at the upcoming Special Council meeting on May 19, 2020.

In an April 9, 2020 letter to the heads of Ontario's various municipalities, the Province highlighted the anticipated legislative changes in the Planning Act Amendment which would allow municipalities the discretion to make decisions on land use planning matters during the period of the Provincial Emergency if they so desired, and indicated that municipalities could consider using electronic and virtual channels as appropriate to engage and solicit feedback from the public on land use planning matters. The letter

further stated that advancing the administrative planning process was important for the economy and for continuing to create housing and to keep infrastructure projects moving.

Staff have undertaken a scan of other York Region municipalities to see if they are pausing Planning Act decisions and statutory public meetings, or proceeding with them (virtually) during the Provincial Emergency.

In addition to the Region of York, all but two York Regional municipalities are currently, or will soon be, proceeding with providing Planning Act decisions and holding virtual statutory public meetings (East Gwillimbury, Georgina, Markham, Richmond Hill, Vaughan and Whitchurch Stouffville). The two other municipalities (Aurora and King) are currently undetermined but investigating options on how to proceed.

In light of the Provincial statement to see housing and infrastructure projects moving, and consistent with the approach adopted by most York Region municipalities, Staff's preferred approach is to proceed with processing planning applications, including seeking Council decisions on these applications and holding virtual statutory public meetings. Staff's approach is also necessary for the continued administration of the Town under the Procedure By-law Amendment.

Upcoming Statutory Public Planning Meetings

Staff have continued to accept and process new electronic development planning applications following the declaration of the Provincial Emergency. To date, these applications have been processed up until they require a statutory public meeting or Council decision. As public meetings are now being considered by Staff, two applications have been identified to be taken to the public:

- 292-294 Court Street (Zoning By-law Amendment)
- Charles and Prospect (Zoning By-law Amendment)

Both of these applications were previously scheduled for meetings on March 23 and May 4, respectively, but were cancelled due to the Provincial Emergency.

These will be the first two public meetings the Town will hold in the new COVID-19 reality, and Staff is considering new ways of handling many logistics, such as providing notice and ensuring that public participation opportunities are accessible. Staff intend to examine how other municipalities have addressed these logistical matters in developing the Town's procedures.

In proceeding with statutory public meetings, the Planning Act timelines will still apply, including the requirement to provide the Notice of the Public Meeting to surrounding landowners at least 20 days in advance of the meeting. Given that this Information Report may be discussed at the May 19 Council meeting, and approximately one week

is needed to prepare and mail the notices, the earliest these statutory Public Meetings can take place is the week of June 15.

Looking past June, there are several other statutory public meetings that Staff would like to begin scheduling, including those for the Urban Centres Technical Amendments and the Established Neighbourhood Study Amendments (both Town initiated), as well as those for a range of private, developer-initiated planning applications.

Committee of Adjustment Meetings

Similar to research undertaken above, Staff have also undertaken a scan of other York Region municipalities to see if they are calling Committee of Adjustment hearings at the present time, or if they have paused them. The table below summarizes the approaches of four local municipalities who have responded to Staff's inquiries:

Municipality	Status of COA Meetings
East Gwillimbury	First virtual meeting has been called for May.
King	All COA meetings cancelled until further notice. Township is still accepting applications.
Markham	Virtual meetings being considered for May.
Whitchurch-Stouffville	First virtual meeting has been called for May 13 th .

Similar to development applications, Staff have continued to accept and process new electronic Committee of Adjustment applications following the declaration of the Provincial Emergency up until the scheduling of Committee of Adjustment meetings. As a result, the Town has a number of outstanding Committee of Adjustment applications that have been paused to date up to the point of scheduling meetings. Given that the duration of the Provincial Emergency is unknown and in an effort to efficiently process these applications and avoid an accumulation of stalled Committee of Adjustment matters, Staff's preference is to continue to hold these meetings by virtual means during the Provincial Emergency. Similar to statutory public planning meetings, this approach will assist in achieving the Province's stated intent to advance administrative planning matters in support of creating housing opportunities.

The Town currently has 9 applications in queue for a Committee of Adjustment hearing. These applications were submitted just prior to, or during, the Provincial Emergency. Of these, Staff is aware of one in particular that supports not only the Provincial statement, but also Council's Strategic Priority of Vibrancy on Yonge, Davis and Mulock, being a Consent application for the redevelopment of 175 Deerfield Road.

Given Staff's preference to move forward with virtual statutory public meetings for Planning Act applications, Staff is confident that the Town can also accommodate virtual Committee of Adjustment meetings while providing for public input opportunities. In addition, Committee of Adjustment members have advised that they would be

comfortable holding virtual meetings and staff will ensure they have the required technology and training to do so.

In light of the above, it is also Staff's intention to move forward with all Committee of Adjustment applications at this time in support of advancing the administrative planning process of the Town.

Conclusion

The Planning Act Amendment suspends various timelines under the Planning Act during the period of the Provincial Emergency, and allows municipalities who want to proceed with planning applications to do so while allowing those that are not in a position to proceed to redirect efforts to deal with the COVID pandemic without fearing appeals for missing deadlines. The timelines would return to normal once the Provincial Emergency ends.

In keeping with other Region of York municipalities, Staff has taken the approach to continue to process planning applications (both development and Committee of Adjustment) and to align with Provincial sentiment that housing and infrastructure projects continue to be advanced.

Business Plan and Strategic Plan Linkages

This report aligns with the Rev-It Up recommendations for improving administration and service levels within the Town of Newmarket.

Consultation

Local Region of York municipalities were consulted in the preparation of this report and continue to be consulted to ascertain best practices regarding technologies and procedures to facilitate electronic and virtual channels to engage and solicit feedback from the public on land use planning matters.

Human Resource Considerations

None.

Budget Impact

Licenses for audiovisual communication technologies were acquired within the Town's existing operating budget.

Attachments

None.

Contact

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Approval

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