



Hamilton

City of Hamilton
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July 26, 2019

Planning Act Review
Provincial Planning Policy Branch
777 Bay Street
13th floor
Toronto, ON
M5G 2E5

Re: Proposed New Regulation and Regulation Changes Under the Planning Act, Including Transition Matters, Related to Schedule 12 of Bill 108 and the Local Planning Appeal Tribunal Act

Dear Sir or Madam:

On behalf of the City of Hamilton, I am pleased to provide this letter as Hamilton's submission on the proposed new regulations and regulation changes under the Planning Act, including transition matters, related to Schedule 12 of Bill 108. Please find attached to this letter an outline of the key submissions the City wishes to make.

We look forward to seeing the results of the consultation on Bill 108. City staff would be pleased to meet with you to discuss these comments in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Robichaud".

Stephen Robichaud
Director of Planning and Chief Planner
Planning and Economic Development Department

Copies to:

Anita Fabac, Manager of Development Planning, Heritage and Design

City of Hamilton Submission on Bill 108 – Proposed New Regulations and Regulation Changes under the *Planning Act*, Including Transition Matters, Related to Schedule 12 and the Local Planning Appeal Tribunal Act

The following are the City's comments:

Transition

LPAT Appeals

- Two regulatory changes include:
 - Revoking Ontario Regulation 102/18 "Planning Act Appeals"; and,
 - Creating a new regulation to establish rules for how or whether OMB Legacy appeals and the Bill 139 LPAT appeals will be transitioned.

Comment

The revocation of the "Planning Act Appeals" regulation has a number of significant consequences. As it currently stands, this is the regulation that contains the mandatory timelines for *Planning Act* appeals, which are currently set at ten months for decision/non-decision appeals of official plan or zoning matters, six months for other planning appeal types, and twelve months for approval authority non-decision appeals. The regulation also contains time limits on oral submissions at hearings as well as the restriction on witness examinations before a hearing.

While it is necessary to revoke the examination restrictions in this regulation in light of the Bill 108 changes, it is unclear how or why eliminating the time limits on the LPAT decision-making or oral submissions is consistent with the Province's objective for Bill 108 is to speed up the decision-making of planning approvals. Ultimately, these changes seem to allow unlimited time to be given for parties to make submissions and for the LPAT to making decisions, contrary to the Province's stated objectives for Bill 108.

- The new regulation includes rules for how existing and future planning appeals will be treated. The rules being proposed are as follows:
 - OMB Legacy appeals will be transitioned to be Bill 108 LPAT appeals, but without a requirement for a Case Management Conference ("CMC");
 - For OMB appeals that had previously been transitioned into Bill 139 LPAT appeals, if a "hearing of the merits" has been scheduled before Bill 108 comes into force, then the matter will be continued as a Bill 139 LPAT appeal. If a hearing of the merits has not been scheduled, then it will be transitioned into a Bill 108 LPAT appeal;

- For existing Bill 139 LPAT appeals, if a hearing of the merits has been scheduled before Bill 108 comes into force, then the appeal will continue as a Bill 139 LPAT appeal. If a hearing of the merits has not been scheduled, then it will be transitioned into a Bill 108 LPAT appeal; and,
- Appeals filed on or after Bill 108 comes into force will proceed as Bill 108 LPAT appeals.

Comment

As currently proposed, the critical factor in whether a matter will continue as a Bill 139 LPAT appeal versus a Bill 108 LPAT appeal is whether or not a “hearing of the merits” has been scheduled. Under the Bill 139 LPAT system, immediately after the initiation of an appeal, significant time and resources are required to be expended by the appellants and the City: significant documentation required to prepare the mandatory Enhanced Municipal Record has been undertaken, and the Tribunal’s Rules require an Appeal Record and a Responding Record be filed containing all documents and affidavits to be relied upon for the case. The appellant’s entire argument and case is required to be submitted through the appellant’s Case Synopsis, and the City’s responding case is also required. Effectively, each party’s entire case is required to be entered into the record prior to even the first case management conference, let alone hearing of the merits. If the Province proceeds with the regulation as proposed, this will effectively cause all of the time, money, and resources used to prepare those cases to be wasted – also significantly delaying the final outcomes for decisions on those matters.

In order to ensure that minimal time and resources are not wasted in the transition, as well as to ensure timely decision-making (both outcomes which are consistent with the purported objectives of Bill 108), the critical factor to determine transition should be whether the Tribunal has decided upon validation. At this point in the proceeding, an appeal letter has been filed but none of the other significant outlays of time and resources have been spent and cases have not been filed. Setting the transition at this point in the proceeding will provide certainty as to whether a matter is transitioned or not and not waste significant time and resources spent on preparing and submitting a case.

Appeals for Draft Plan of Subdivision

- Clarification on transition has been included which states that the removal of appeals other than by key participants for draft plans of subdivisions, conditions or changes to conditions would apply where: notice of the decision is given or conditions are appealed other than at the time of draft approval on or after the day the proposed changes come into force.

Comment

- Clarification should be given regarding “the day the proposed changes come into force” and whether this would be Royal Assent (June 6, 2019) or Proclamation.

Decision Timelines

- Reduction for decision timelines on applications for official plan amendments (120 days), zoning by-law amendments (90 days, except where concurrent with official plan amendments for same proposal) and plans of subdivision (120 days) would apply to complete applications submitted after Royal Assent.

Comment:

- While the City acknowledges that the new decision timelines would not be grandfathered for applications deemed complete prior to June 6, 2019, the City continues to not support the proposed changes to the timeframe for non-decision appeals contained within Bill 108 and continues to request the Province to retain the existing *Planning Act* timeframes.

Community Planning Permit System

- A change is proposed to the regulation that would remove the ability to appeal the implementing by-law.

Comment:

- The City has no comment.

Second Units

- A regulation is proposed which may require municipalities to permit tandem parking, not require parking for second units if the primary residential use does not require parking, and a definition for tandem parking, as well as permitting second units regardless of whether a primary unit is occupied by the owner of the property and without regard to the date of construction of the primary or ancillary building.

Comment:

- The regulation should clarify if this is to be mandatory for municipalities. If this will be mandatory, the Province should use the word "shall". The City supports the proposed regulation with the exception of tandem parking as tandem parking is not operationally feasible and not viable. It has the potential to create issues between occupants. The City continues to emphasize that issues such as compatibility, context and appropriate zoning standards need to be evaluated.

Housekeeping Regulatory Changes

- Housekeeping changes are required in Ontario Regulation 544/06 "Plans of Subdivision" and Ontario Regulation 543/06 "Official Plans and Plan Amendments" to remove reference to the redundant notice of a subdivision application and the notice requirements for non-decision appeals, which would no longer be necessary.

Comment:

- The City has no comment.
- Housekeeping changes are required in Ontario Regulation 232/18 "Inclusionary Zoning" to remove the restrictions and prohibitions in respect of the municipal authority under section 37 (Increased Density) with inclusionary zoning.

Comment:

- The City has no comment.