



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	July 6, 2021
<b>SUBJECT/REPORT NO:</b>	Bill 276, Amendments to the <i>Planning Act</i> – Division of Land (PED21139) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Anita Fabac (905) 546-2424 Ext. 1258 Jamila Sheffield (905) 546-2424 Ext. 4144
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department

**RECOMMENDATION**

- (a) That Council adopt the submissions and recommendations regarding proposed changes to the *Planning Act* in force with Bill 276, as provided in Report PED21139;
- (b) That the Director of Planning and Chief Planner be authorized and directed to confirm the submission made to the Province attached as Appendix “A” to Report PED21139.

**EXECUTIVE SUMMARY**

On April 15, 2021, the government introduced Bill 276, the *Supporting Recovery and Competitiveness Act*, 2021. Schedule 24 of the Bill, amends the *Planning Act* related to the division of land (subdivision control, plans of subdivision, consents and validations), as well as other housekeeping or consequential changes.

Bill 276 was ordered referred to the Standing Committee on General Government on April 26, 2021. The Ministry held stakeholder meetings and solicited feedback through the Environmental Registry of Ontario with a deadline for comments of May 25, 2021.

Bill received Royal Assent on June 3, 2021. It is anticipated that Bill 276 will not be proclaimed until January 1, 2022 because the Province needs to update the applicable Ontario Regulations regarding Consents and Validation of Title to ensure alignment between the Planning Act and the associated implementing regulations. The Province has not released draft Regulations at the time of preparation of this report.

The Province has indicated that the changes are intended to remove administrative burden, reduce costs and save time and provide greater clarity and certainty to the subdivision control provisions of the *Planning Act*. Several of the changes respond to Private Member's Bill 88, the proposed *Planning Amendment Act, 2019*, which was introduced on March 25, 2019.

The deadline for comments on the ERO posting was May 25, 2021. As such and given the timing, staff-level comments were submitted to the Province and through this Report and are attached as Appendix "A" to Report PED21139. If the recommendations of this Report are approved by Council, the Director of Planning and Chief Planner will notify the Province that the submission made by staff has been adopted by Council and of any amendments made by Council for the City of Hamilton to said submission.

#### **Alternatives for Consideration – N/A**

#### **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: N/A

Staffing: N/A

Legal: N/A

#### **HISTORICAL BACKGROUND**

Through Bill 276, changes are proposed by the Province related to the division of land to:

- Remove administrative burden and provide greater clarity and certainty to the subdivision control provisions of the *Planning Act*;
- Make elements of subdivision control clearer, provide greater flexibility for applicants, make the system simpler and in some instances would remove the requirement for a landowner to obtain a consent for certain activities; and,
- Reduce costs and save time for owners, purchasers and lease holders and reduce costs for certain insurance providers.

Several of the proposed changes respond to Private Member's Bill 88, the proposed *Planning Amendment Act, 2019*, which was introduced on March 25, 2019.

Amendments are being proposed by the Province that include technical, administrative and policy changes to provisions in Sections 50, 51, 53, 54, 55 and 57 of the *Planning Act* related to control of the division of land, as well as other housekeeping amendments to the Act. Section 50 of the *Planning Act* has its primary effects on real estate law and real estate transactions.

Some of the changes proposed would require municipalities to modify some of their land division applications and review processes. The Province has advised that the changes would not be proclaimed immediately and that the transition period timing is still to be determined. This would ensure that municipalities have time to understand the changes, train staff and modify processes and application forms as necessary.

The Ministry has also indicated that they will develop support materials to explain the changes and will work closely with municipalities to ensure the changes are understood. As part of the implementation, MMAH will need to consult on changes to O. Reg. 197/96 (consents) and the revocation of O. Reg. 144/95 (validation criteria).

## **ANALYSIS AND RATIONALE FOR RECOMMENDATIONS**

The proposed changes to the Act are summarized below along with a summary of the comments provided to the Province. The formal comments submitted to the Province are attached as Appendix “A” to Report PED21139.

### **Subdivision Control and Part Lot Control**

- Prevent lots from merging where lands were previously owned by, or abutted land previously owned by joint tenants and where the ownership would have merged as a result of the death of one of the joint tenants.
- Permit additional types of abutting lands (other than whole lots or blocks within registered plans of subdivision) to be retained without violating subdivision control.
- Allow interests in land acquired for the purpose of an energy line to be disposed of to owners of abutting land.
- Permit agreements, like leases, that involve part of a building and the use of lands ancillary to the use of the building and clarify that these agreements can have a duration equal to the lifetime of an individual.
- Remove unique rules for foreclosures or exercises of powers of sale, including removing a unique process for those subject to a mortgage so that these transactions could only occur if the same lands could be conveyed without offending subdivision control. These activities would follow the same process as conveyances and would need to obtain a regular consent.
- A lawyer, for any purpose relating to confirming compliance with Section 50 of the Act only needs to investigate title since the time of the last deed or transfer if at

that time a lawyer has provided a statement confirming that there had been no contravention of subdivision control.

- Align the requirements for public notice, information and public meetings for plans of subdivision with other instruments under the Act and for the approval authority to forward to the LPAT information as required.
- Minister now has authority for cancellation in addition to consent and validation.

Staff had no concerns with the above proposed changes.

### **Consents**

- Permit a purchaser of land or the purchaser's agent to apply for a consent.

The proposed amendments to Section 53 (1) and (1.1) of the *Planning Act* will allow a severance based on an agreement of purchase and sale whereas the existing regulation permits only an owner of a parcel of land. An agreement of purchase and sale is not ownership, nor does it require any significant financial investment. As a result, a severance can be granted to the prospective purchasers, the conditions fulfilled, then the agreement could be voided. Staff noted to the Province that the proposed changes will have a significant impact in prime agricultural areas where severances are limited to surplus farm dwellings.

Farm consolidation means the farm has been acquired and an agreement of purchase and sale does not fulfil this requirement. A test that requires a farmer to own (has acquired) the land has a higher degree of certainty that the severance is legitimate. In prime agricultural areas where additional residential lots are harder to create, a purchase and sale agreement can be created for the purposes of the severance and once all conditions are met, it could be terminated.

Staff advised the Province that they do not support any change to the *Planning Act* that facilitates a severance based on a purchase and sale agreement.

- Permit an application for a consent to be amended by an applicant prior to a decision about the consent being made and if amended the consent granting authority can impose terms related to the amended application.

It has been the practice of staff and the Committee of Adjustment to allow amendments to applications, a new review process and recirculation where necessary. If these changes are made, staff will review whether additional criteria need to be set out in the application forms.

- Provide that a regulation requiring a public meeting for a consent application could specify other requirements related to the public meeting.

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Consents currently do not require a Public Meeting, however it has been the practice of staff and the Committee of Adjustment to hold Public Meetings for all consents. At this time there is not a proposed regulation to review what additional requirements may or may not be required for Public Meetings prior to a decision regarding consents.

While staff would prefer that the requirements of a Public Meeting be specified in the *Planning Act*, rather than a regulation, when a regulation is proposed, staff requested that it be explicit that Virtual Meetings meet the test of a Public Meeting under this requirement.

- After a notice of appeal is received, a municipality or the Minister may be required by the LPAT to provide information and materials as specified by the LPAT.

Staff note that the LPAT is now known as the Ontario Land Tribunal. Staff have no concerns with this proposed change as it appears to be for clarity. It is the practice of staff to forward any documents requested by the Tribunal.

- Provide a municipality or the Minister with the authority to extend, by up to one additional year, the one year period during which the conditions of consent must be satisfied.

Staff noted in the submission to the Province that the Province should clarify if the request for an extension for an additional year under subsection 53(41.1) should be made at the time of application, or is it intended to be made in situations where the deadline for satisfying conditions is approaching and further time is needed. Staff requested that clarity be provided as to whether this power can be delegated to staff under Section 54(5).

Bill 276 was amended to change the time period to satisfy the conditions of consent from 1 year to 2 years. Planning staff support this change.

- Require a municipality or the Minister to issue a certificate to a consent applicant for the retained land in addition to the requirement to provide a certificate for the severed lands, if conditions are fulfilled. This would be subject to the applicant, as part of the application for consent, providing a legal description for the retained land which can be registered.

Staff had no concerns with this proposed change as a requirement for the certificate is to provide a conveyable legal description and may avoid issues in clarity of title. The Province should clarify the definition of “retained land” to avoid unforeseen issues. The assumption is that it is meant to apply to “retained land” that formed part of a consent application. However, the way the definition is worded, it could refer to any land that

abuts land for which a certificate of consent is issued, even if that abutting land was not part of the consent application.

Staff may need to update the consent application form to request the legal description for the retained lands and a survey of the entire lands.

- Provide clarity that criteria for land division and conditions may be applied to the lands that are the subject of the application and the remaining part of the lot.

Staff had no concerns with this proposed change as it provides clarity that criteria per Section 51(24) and conditions per Section 51(25) would apply to both the severed and retained parcels of land. One of the effects of the change would be that road widenings may be applied to both the severed and retained lands.

- Permit owners, charges, purchasers or their agents to apply to the municipality or the Minister for a certificate of cancellation in respect of land previously conveyed with a consent that, if approved and registered, would remove the application of specified exceptions from subdivision control in relation to the land.

The addition of Section 53(45) allows for an applicant to “cancel” a previously received consent, the decision of which would not be appealable. This would eliminate the principle of “once a consent, always a consent”. This enables the applicant to effectively merge properties that were previously severed. There are currently no proposed requirements for criteria for the cancellation certificate under the *Planning Act*, but the provisions do allow for Council/Minister to set out their own requirements (53(47)). Staff noted to the Province that the regulation should provide clarity in terms of the criteria to approve or deny a cancellation request.

The new subsection 53(42.1) allows an owner to request a certificate for retained land, and staff noted to the Province that they should clarify if the certificate is required for a conveyance under s. 50(6) or any future conveyance.

## **Validations**

- Require that a decision regarding a validation must conform with the same criteria which are applicable to consents.

The proposed new subsection 57(6) refers to the criteria for validation certificates being the same as that for the “criteria” for consents under Section 53. Currently the prescribed criteria for a validation certificate in O. Reg. 144/95 are clear. But there are no similar criteria in the regulations for consents (O. Reg. 197/96). Staff noted that the Province should clarify if there are anticipated changes in O. Reg. 197/96 that will

address this, or is it meant to refer to criteria under a particular subsection under Section 53. The Province should also clarify if O. Reg. 144/95 will be repealed.

### **Consultation**

The following were consulted in the preparation of this report and comments to the Province:

- Legal Services; and,
- Growth Management Division.

### **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

#### **Community Engagement & Participation**

*Hamilton* has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

#### **Our People and Performance**

*Hamiltonians* have a high level of trust and confidence in their City government.

### **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” – Letter submitted to the Province