

Planning to shape your municipal future

September 1, 2006

Recent changes to the Planning Act give municipalities more authority to control local development

On October 19, 2006, Bill 51 received Royal Assent, and changes to Ontario's Planning Act took effect. Bill 51 introduces a number of significant changes to the way in which municipal land use planning decisions are made changes that will have a profound impact on the role of municipalities in the decision-making process. Here is a brief overview of some of the key changes introduced by the legislation.

- **Municipalities entitled to more information from applicants.** Municipalities can now require that additional information and materials be submitted with various development-related applications. This will allow municipalities to make more informed decisions at the local level.
- **Ontario Municipal Board ("OMB") deference to municipal decision-making.** When making a decision, the OMB or other approval authority must now specifically "have regard to" any *Planning Act* decisions made by municipal council relating to the same matter.
- **Materials that can be relied upon at the OMB.** Parties appealing a decision to the OMB are now limited to relying upon only the information and materials that were before municipal council at the time of its decision, except where the OMB admits new evidence on the appeal in situations where such evidence could not reasonably have been before council when it made its decision. This limitation is not applicable to public bodies. As a result, private applicants are faced with the possibility of having to prepare a wider initial range of materials or reports if it is anticipated that there might be an appeal of the matter.
- **Focus placed on policies at time of decision.** Previously, planning decisions were based on the policies in place at the time an application was made. Now, decisions must be based on the policies in place at the time the actual decision is made. While this ensures that decisions reflect current policies, it could have drastic consequences for applicants whose application is reviewed under a different policy regime than the one that was in place at the time of application.
- **Powers for formation of local appeal bodies.** Municipalities will now be permitted to set up local appeal bodies to hear appeals of matters such as minor variances and severance applications. While municipal councils will have the power to appoint appeal body members, the province will establish the minimum criteria for conducting appeals and the processes to be used. While the formation of local appeal bodies places more decision-making at the municipal level, it may not be financially feasible for many municipalities to establish these tribunals.
- **Municipalities have greater power to create land-use policies.** The legislation provides greater powers to municipalities in terms of regulating a proposed development (both minimum and maximum height and density can be specified), exterior design, and sustainable infrastructure for subdivisions, such as the requirement for walkways, transit passages, and conservation measures.

In addition to the significant changes noted above, there are a number of further, and potentially significant, changes to the *Planning Act* that will affect municipalities and private development interests. These include: increased public participation in the decision making process; earlier minimum update requirements for Official Plans and zoning by-laws; additional matters of provincial interest to consider; restrictions on appellants; employment area restrictions; and amended community improvement plan provisions.

Municipalities should review both the scope of the new *Planning Act* changes and their Official Plan to ensure they're able to maximize the benefits provided by this new legislation. Landowners should review the changes to the *Planning Act* to determine the Act's effects on both short and long term development interests.

New regulation extends reach of *Aggregate Resources Act*

As of January 1, 2007, the *Aggregate Resources Act* will be extended to public land in southern Ontario and parts of central and northern Ontario not currently covered by the Act. Most public land in southern Ontario and all Crown land is already regulated.

The province is also increasing the annual fee and minimum royalty rate for aggregate operators. In addition to providing extra revenue for pit and quarry rehabilitation and additional enforcement officers, the additional fees will also provide municipalities with increased funding from aggregate operations.

Bill 130, *Municipal Statute Law Amendment Act, 2006*

This statute affects several others, including the *Municipal Act, 2001*, and the *City of Toronto Act, 2006*. The amendments to the *Municipal Act, 2001* would give municipalities most of the powers and duties that were given to the City of Toronto under the *City of Toronto Act, 2006*. Among the most notable are broad delegation powers, broad permissive powers to pass bylaws, including by-laws respecting business licensing, and broader powers to establish, change and dissolve certain local boards.

The Standing Committee on General Government held public hearings in Toronto in November 2006 to consider Bill 130. In light of this schedule, it is unlikely that the Act will come into force in January 2007, as originally anticipated.

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