

**CITY OF VAUGHAN**

**EXTRACT FROM COUNCIL MEETING MINUTES OF MAY 19, 2015**

Item 23, Report No. 20, of the Committee of the Whole, which was adopted, as amended, by the Council of the City of Vaughan on May 19, 2015, as follows:

***By approving the recommendation in Communication C2 from the Interim Commissioner of Legal & Administrative Services/City Solicitor and the Commissioner of Planning, dated May 13, 2015, as follows:***

- 1. That this communication be received for information and be considered in conjunction with the earlier staff report and attachments; and***
- 2. That the Ministry of Municipal Affairs and Housing, Provincial Planning Branch be advised that the City of Vaughan does not support the proposed Planning Act amendment to change the Cash In Lieu alternative rate to 1 Ha per 500 units for the payment in Lieu of parkland.***

**23 COMMENTS TO THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING  
BILL 73 – SMART GROWTH FOR OUR COMMUNITIES ACT, 2015  
AN ACT TO AMEND THE DEVELOPMENT CHARGES ACT, 1997 AND THE PLANNING ACT**

The Committee of the Whole recommends approval of the recommendation contained in the following report of the Commissioner of Planning and Commissioner of Finance & City Treasurer, dated May 5, 2015:

**Recommendation**

The Commissioner of Planning and Commissioner of Finance & City Treasurer, in consultation with the Acting Director of Policy Planning and Director of Development Finance & Investments, recommend:

1. THAT this report and the comments set out in Attachments 1 and 2 be submitted to the Ministry of Municipal Affairs and Housing, Provincial Planning Policy Branch and the Municipal Finance Policy Branch as the City of Vaughan's response to the proposed amendments to the Planning Act and Development Charges Act, as set out in Bill 73 – Smart Growth for Our Communities Act, 2015;
2. THAT staff provide a Communication to the Council meeting of May 19, 2015 providing further articulation of the City's response to the Bill 73 amendments to the Planning Act in respect of the calculation of Cash in Lieu of Parkland and use of the Alternative Parkland Dedication Requirement; and other matters as may be appropriate.
3. THAT the Ministry of Municipal Affairs and Housing be requested to take the City's comments into consideration in its finalization of Bill 73 and it is further requested that representatives from the City of Vaughan be considered for membership in the Development Charge Working Groups appointed to provide advice on the development of the associated Regulations; and
4. THAT this report be forwarded to the Members of Provincial Parliament for the City of Vaughan, the Regional Municipality of York and the York Region Municipalities.

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#### **Contribution to Sustainability**

The Planning Act is the enabling legislation that establishes the land use planning system in Ontario. One of the Act's purposes is to support sustainable economic development in a healthy natural environment within the policies and means provided by the Act. A municipality, in carrying out its responsibilities under the Act shall have regard to matters of provincial interest. This includes, among others, the protection of ecological systems, the conservation and management of natural resources, the efficient use and conservation of energy and water, the minimization of waste, the development of safe and healthy communities, the adequate provision educational, health and social and cultural facilities and the protection of the financial well-being of the Province and its municipalities. The Act through its policies and regulations provides the framework for sustainable planning, which is established through the municipal official plan (VOP 2010) and supporting documents, like Green Directions Vaughan.

Likewise, the Development Charges (DC) Act is the enabling legislation that establishes a financial framework for municipalities to recover the capital costs associated with growth. This Act ensures that a municipality is given the authority to recover capital costs from development so as to ensure its financial sustainability by following the philosophy that "growth pays for growth".

It should be noted that the current DC Act does not fully comply with this philosophy given the 10% discount (co-funding) on soft services and the list of ineligible services.

#### **Economic Impact**

There are no immediate economic impacts resulting from the preparation of this report. However, some significant financial impacts could be experienced if the final amendments reflect the current Bill, in respect of both the Planning Act (CIL Parkland provisions) and DC Act provisions.

Some of the changes proposed in the Planning Act, if approved, may have financial impacts on the City in respect of requirements for increased documentation and process. This may require additional staffing and resources. Such issues will be addressed in the comments when warranted. In addition, a potential significant financial issue relates to the new Cash in Lieu of Parkland provision. A review of the implications of the proposed changes is being undertaken with additional information to be provided in a follow-up Communication to Council, which would confirm the impacts and the appropriate response.

The changes proposed to the DC Act, if approved, may have some positive financial impacts for the City, however the magnitude of those impacts will only be determined upon the finalization of the associated Regulations. Increasing the eligibility list of capital works will serve to increase the recovery amount for growth related capital works. Additionally, if the list of services where no 10% non-DC reduction is mandated then this may serve to reduce the property tax burden currently placed on the DC program. It should be noted, however, that the removal of the 10% reduction is currently believed to be contemplated only for transit related services and therefore the City may not see the benefit of this change given that transit is administered at the upper-tier. The changes sought for reporting may require additional administration, and will require additional time and effort by City staff.

#### **Communications Plan**

On March 5, 2015 the Ministry of Municipal Affairs and Housing posted Bill 73 on the Environmental Registry with a 90 day period for public review and comment. Comments to the Ministry are required by June 3, 2015. All comments received prior to June 3, 2015 will be considered as part of the decision-making process.

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#### **Purpose**

The purpose of this report is to: Advise Council of the changes to the Ontario Planning Act and Development Charges Act proposed by Bill 73 – Smart Growth for Our Communities Act, 2015; and to confirm the City's position on the amendments for the purpose of advising the Ministry of Municipal Affairs and Housing

#### **Background - Analysis and Options**

##### **a. Background**

##### ***Bill 73 Originated with the Provincial Consultation Process on Development Charges and Land Use Planning and Appeal System Reform (2013-14)***

In 2013 the Ministry of Municipal Affairs and Housing announced that a consultation process was to be undertaken on the reform of the Development Charge and the Land Use Planning and Appeal systems. The mandate of the consultation process was to ensure that these systems are “predictable, transparent and cost effective.” The comment period commenced on October 24, 2013 and the deadline for submitting responses to the Ministry was January 10, 2014. Consultation papers were provided by the Province, addressing both aspects of the review. Each paper posed questions and identified issues for the consideration of the development industry, municipalities and other stakeholders, in preparation of their responses.

##### ***The Review of the Land Use Planning and Appeals System was Shaped by Several Key Parameters***

The consultation process was underpinned by the premise that there had been a number of changes to the planning system over the previous years and that this review was not to represent an “overhaul” of the system. Instead, it was to focus on four key themes:

- Achieve more predictability, transparency and accountability in the planning/appeal process and reduce costs;
- Support greater municipal leadership in resolving issues and making local land use planning decisions;
- Better engage citizens in the local planning process;
- Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions, and support job creation and economic growth.

The Ministry provided the following guiding principles for any feedback to be provided by the responding parties:

- The public is able to participate, be engaged and have their input considered;
- The system is led by sound policies that provide clear provincial direction/rules and is also led by up-to-date municipal documents that reflect matters of both local and provincial importance;
- Communities are the primary implementers and decision-makers;
- The process should be predictable, cost-effective, simple, efficient and accessible, with timely decisions;
- The appeal system should be transparent; decision makers should not rule on appeals of their own decisions.

Specific areas were ruled out for consideration through this process. These included:

- The elimination of the OMB;

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- The OMB's operations, practices and procedures;
- The restriction of the provincial government's ability to intervene in matters;
- Matters involving other legislation, unless housekeeping changes are needed.

#### ***Several themes were identified by the Ministry to help shape the consultation on the DC Act***

Over the lifetime of this legislation, municipalities had repeatedly cited concerns that the framework did not go far enough to address the principle of “growth paying for growth” and that reform was required. This concept was of special interest in light of several transit funding issues identified in Metrolinx's “The Big Move” regional transportation plan. Conversely, the development industry had cited concerns that the legislation had allowed DCs to rise steadily affecting housing affordability and working against intensification policies.

The province's consultation on DCs involved addressing questions and issues surrounding the following themes:

- The DC Process
- DC Eligible Services
- DC Reserve Funds Reporting
- Section 37 (Density Bonusing) and Parkland Dedication
- Voluntary payments
- Growth and Housing Affordability
- High Density Growth Objectives

While Section 37 and Parkland Dedication are rooted in the Planning Act, rather than the DC Act, these consultations had been grouped with DCs to reflect the potential linkage between these tools and funding for growth related municipal capital infrastructure where intensification pressure is present.

#### ***The City of Vaughan Responded to the Planning and DC Act Consultation on December 10, 2013***

On December 2, 2013 a report was submitted to the Finance and Administration Committee entitled *Provincial Consultations: Development Charges, Land Use Planning and Appeal System Reform*. This report provided an overview of the process and broad general conclusions. Through a subsequent communication to Council on December 10, 2013 staff provided more detailed input, in the form of responses to the structured questions posed through the provincial consultation documents (Attachment 3). On December 10, 2013 Council approved the following recommendation:

1. That the Mayor be requested to sign a letter substantially in the form of Attachment 1, setting out Council's position on Development Charges, Land Use Planning and Appeal System Reform;
2. That Council endorse Attachment 2 as the City's official position on matters related to Development Charges, Land Use Planning and Appeal reform; and
3. That to meet the Provincial Consultation deadline, the City Clerk forward such correspondence and documentation, prior to January 10, 2014, to the Premier, local Members of Provincial Parliament, the Minister of Municipal Affairs and Housing, Regional Municipality of York and York Region Municipalities.

In the response the City identified four key positions in regard to Land Use Planning and Appeal System reform.

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- Amend the Planning Act and provide more targeted support in the form of draft policy, updated ministry guidelines, training and resources for timely implementation of official plans that align with Provincial policies;
- Develop new and updated policies and proposed solutions to address intensification issues such as compact schools and parkland standards for Urban Growth Centres and Intensification areas;
- Minimize the “whole plan” appeal process through changes to the Planning Act; and
- Adjusted timeframes and information requirements related to OMB appeals of official plan amendments and zoning by-law amendments.

Similarly, the City also identified four key positions in regards to the Development Charge regime.

- Remove all or part of the list of ineligible services from the Development Charges Act and in particular: provision of local contributions towards hospitals, provision of headquarters for the general administration of the municipality, provision of cultural or entertainment facilities (including museums, theatres and art galleries), provision of waste management services;
- Remove from the Development Charges Act the 10 percent discount on all service categories to which it currently applies;
- Modify the 10 year historic average level of service capping methodology currently found in the Development Charges Act to utilize a 10 year forward looking level of service in order to better align with intensification servicing needs; and
- Continue to allow municipalities to define growth related capital costs and benefit to existing development utilizing the existing legislation.

These positions were more fully articulated in the response to the structured questions, which formed Attachment 2 to the December 10, 2013 report.

#### **b. The Introduction of Bill 73, Smart Growth for Our Communities Act, 2015**

As a result of the 2013-14 consultations, the Minister of Municipal Affairs and Housing introduced Bill 73 – Smart Growth for Our Communities Act, 2015. It provides for amendments to the Development Charges Act and the Planning Act. Based on the statement in the Environmental Registry Rights posting, the proposed changes are based on, “recommendations received from various partners and stakeholders”, which aim to:

- Allow for more effective citizen engagement in the planning process;
- Provide more stability for municipal planning documents and increase municipal accountability;
- Strengthen the protection of provincial interests;
- Encourage more up-front planning; and
- Provide enhanced tools at the local level.

According to the MMAH, the Bill would also:

- Give municipalities more opportunities to fund growth-related infrastructure, like transit;
- Make the development charges, Section 37 density bonusing and parkland dedication systems more predictable, transparent and accountable; and
- Support higher density development to create jobs and grow the economy.

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Bill 73 was given first and second reading in the Provincial Legislature in March 2015. It was also posted on the Environmental Registry on March 5 for public review and comment. A 90-day review period was provided with responses to the Minister of Municipal Affairs and Housing being required by June 3, 2015.

The Bill proposes approximately 23 amendments to Planning Act and approximately 8 substantive amendments to the DC Act, some of which affect multiple sections.

#### **c. Analysis of the Proposed Amendments to the Planning and DC Acts**

Given the number of changes contained in the Acts, a systematic review of each amendment or group of amendments has been necessary. The objective is to provide a set of responses to the Ministry that clearly establish the City's position. The following format is applied, which is designed to conclude with a recommendation to the Ministry.

The Proposed Amendment(s):	The purpose of the amendment or group of amendments is identified under this heading and is based on the Explanatory Notes provided in Bill 73 at First Reading.
Analysis and Commentary:	Under this heading the implications of the amendments are discussed including the potential drawbacks and benefits, leading to conclusions as to whether it is supportable and a recommended response.
Recommendation(s):	The proposed recommendation to the Ministry is set out under this heading.

These analyses are set out in Attachments 1 and 2 to this report.

#### **d. Overview of the Amendments**

##### ***There are a Number of Positive and Constructive Changes to the Planning and DC Acts***

Overall Bill 73 provides for some positive measures that will assist municipalities as they move forward with their planning programs. Some of the Act's positive impacts from a Planning Act perspective include:

- A prohibition on "Global" or "Whole Plan" appeals;
- Providing for the closing of the appeal period when a notice of decision has not been issued by the approval authority within the prescribed 180 days;
- Allowing for a 90 day extension to the post adoption review period for official plans and amendments at the initiation of the municipality;
- An opportunity for mediation is introduced in the event of an appeal to a planning document. Time required to send the appeal to the OMB would be increased by 60 days to 75 days.

From a financial perspective the majority, if not all, of the amendments to the DC Act are supportable. The question from a City perspective is whether the amendments have gone far enough to enable the municipality to deal with the growth related financial pressures it currently faces. The majority of the recommendations presented point to a need to move beyond just the transit related funding framework and begin to address those issues related to other soft services such as parks and open space, indoor recreation and libraries.

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#### ***Some Amendments to the Planning Act are Not Supportable or Require Further Thought or Explanation***

There are several concerns respecting:

- The new Cash in Lieu of parkland provisions require further consideration, but a preliminary review would indicate that it is unsupportable. There remains uncertainty over the impact of the proposed amendments on the ability of the City to acquire and fund parks and related facilities, through the Cash in Lieu provisions. Staff will be following up with a Communication to Council on May 19, 2015. A recommendation to this effect has been provided. Further details on the proposed amendment are set out in Attachment 1, under paragraph 17.
- The requirement for notices of decision to address how all comments received from the public, including orally at the public hearing, affected the decision is of concern. This provision would duplicate work reported on elsewhere, e.g. in the Technical Report and increase workloads for the Clerk's and Planning Departments.
- Prohibitions on applying for amendments to the Official Plan and Zoning By-law for two years after a new comprehensive Official Plan comes into effect or two years after a comprehensive zoning by-law update are of concern. These measures may have unintended consequences, such as limiting the ability to make minor changes to projects to implement design and engineering measures through variances or to address extraordinary circumstances. .
- In a number of instances the language in the Bill should be clarified to provide certainty in interpretation.

The detailed comments in respect of the Planning Act amendments are set out in Attachment 1.

#### ***Working Groups on DC related issues will be announced in the near future***

The Ministry had announced in March 2015 that provincial working groups would be set-up to make recommendations to the Province by the end of 2015 on the issues related to the updating of the related Regulations to the DC Act. The working groups would be led by a Steering Committee and each working group is expected to deal with specific issues related to the amendments. The composition of Steering Committee and the working groups has yet to be announced, but Finance Commission staff have placed a request with the Ministry to be included. At a minimum it is expected that representation from the Association of Municipalities of Ontario (AMO), Municipal Finance Officers Association (MFOA) and leading municipal DC consultants such as Hemson Consulting Ltd. and Watson and Associates would be represented on the working groups to advocate for municipal government interests.

#### **Relationship to Vaughan Vision 2020/Strategic Plan**

Ensuring that the City's position on changes to Provincial enabling legislation is made known to the Province is important to protecting the interests of the City. In this instance, such comments reflect the strategic objectives of:

Organizational Excellence:

- Managing Corporate Assets and the continuing assessment of infrastructure requirements to ensure a sustainable future;
- Ensuring Financial Sustainability by using financial resources wisely and making informed decisions that take into consideration the effect on current and future operations of the City.
- Managing Growth and Economic Well-Being by creating a positive environment that encourages innovation and prosperity.

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Service Excellence:

- Leading and Promoting Environmental Sustainability through a commitment to protecting and enhancing the natural and built environments through the efficient use of resources.

#### **Regional Implications**

York Region staff will be reporting to Regional Committee of the Whole and Council on the amendments to the Development Charges and Planning Acts proposed by Bill 73. The Region will be focusing its comments on the matters of most importance to its jurisdiction. The local municipalities will be addressing issues of primary significance to them. In this regard, it is recommended that this report and Council minutes be forwarded to the Region of York and the other local municipalities in York Region, for their information. It should be noted that discussions between City and Regional staff surrounding DC reform, in particular, reveal that both tiers have largely similar positions on the issues, which is reflected in the responses of Attachment 2.

#### **Conclusion**

The proposed amendments to the Planning and DC Acts address a number of concerns that have been identified by City staff in the past. Overall there are positive changes which will minimize the impacts on some of the previously identified flaws in the Planning Act appeal processes. However, there remain areas of concern with some of the Planning Act amendments, foremost with the new Cash in Lieu of Parkland provisions. This will be further addressed in a Communication to Council. From a financial perspective, the DC Act amendments are generally positive, but the benefits accrue mostly to those municipalities who are responsible for transit. Other services should be considered for the same type of treatment.

The comprehensive responses to Bill 73 are set out in Attachments 1 and 2. It is recommended that this report be submitted to the Ministry of Municipal Affairs and Housing as the City's response to the Planning Act and Development Charges Act Amendments contained in Bill 73 – Smart Growth for our Communities Act, 2015.

#### **Attachments**

1. Comments and Recommendations to the Ministry of Municipal Affairs and Housing on Planning Act Amendments;
2. Comments and Recommendations to the Ministry of Municipal Affairs and Housing on Development Charge Act Amendments;
3. Report to Council: "Provincial Consultations: Development Charges, Land Use Planning and Appeal System Reform" December 10, 2013

#### **Report prepared by:**

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(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)