Goodmans LLP Update

Municipal Law

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Province Proposes Changes to the Planning Act and Development Charges Act

The Ontario Ministry of Municipal Affairs and Housing ("MMAH") recently proposed a number of changes to the *Planning Act* and the *Development Charges Act, 1997*.

Bill 73 received first reading on March 5, 2015. Although the bill is subject to revision as it is considered at second and third readings and in committee, the extent of any potential revisions is unclear because of the majority government.

The Provincial government indicated that the changes outlined in Bill 73, entitled the *Smart Growth for Our Communities Act, 2015*, are designed to:

- streamline the land use planning and appeal process;
- enhance public consultation for new developments; and
- expand municipalities' ability to use development charges to fund community services such as transit.

The proposed changes, if passed, would alter Ontario's planning process in significant respects. For example, the proposed two-year moratorium on certain planning applications would require participation in the public process for any new official plan or comprehensive zoning by-law and potentially increase the need to appeal such an instrument at the time of enactment. Similarly, the proposed two-year moratorium on minor variance applications following an owner-initiated zoning by-law amendment could encourage the preparation of more detailed zoning/site plan drawings prior to enactment of the proposed amendment to ensure full compliance and avoid potential delays.

Proposed Changes to the Planning Act

Key proposed changes to the *Planning Act* include the following:

- *Ten-year review cycles for provincial policies and municipal official plans* – The amendments provide that the province must review its policy statements for potential revision every ten years, rather than every five years. Similarly, a municipality must review a new official plan within ten years of it coming into effect, rather than five years. The five-year review cycle remains applicable for official plans after the first such review, until the plan has been replaced by a new official plan.
- *Two-year moratorium on certain planning applications* – The amendments introduce a moratorium on applications to amend a new official plan or comprehensive zoning by-law, for a two-year period from the date the official plan or by-law comes into effect.
- *Minor variances* – Similarly, minor variance applications may not be made in the two-year period following an owner-initiated amendment to a zoning by-law. The criteria for a minor variance may be refined by regulation (which has not yet been released).
- *Prohibition on certain official plan appeals* – The amendments prohibit appeals of the entirety of a new official plan. Appeals of a part of an official plan are still permitted. Further, no appeals are permitted of any part of an official plan implementing certain matters relating to: vulnerable areas under the *Clean Water Act*; the Lake Simcoe watershed; a Greenbelt, Protected Countryside or specialty crop area under the *Greenbelt Act*; the Oak Ridges Moraine Conservation Plan Area; Growth Plan forecasts; or settlement area boundaries in lower-tier official plans.

- *Alternative dispute resolution* – The amendments introduce mediation, conciliation and other dispute resolution techniques at the option of the municipality for official plan, zoning by-law, plan of subdivision and consent appeals. Participation in an alternative dispute resolution process by an appellant is voluntary, but where invoked by the municipality its deadline to forward an appeal to the OMB is extended from 15 to 75 days.
- *Payments in lieu of parkland dedications* – The amendments reduce the amount that a municipality may require a developer to pay as cash in lieu of a parkland dedication for residential developments where the municipality has official plan policies authorizing the use of an alternative requirement. Specifically, the maximum payment in lieu is calculated at a rate of one hectare per 500 dwelling units, rather than one hectare per 300 dwelling units, which continues to be the rate applied where parkland is actually conveyed. The amendments would also deem any municipality's parkland by-law to be amended to comply with the new maximum for cash in lieu.
- *Parks plan* – The amendments require that, before adopting official plan provisions allowing the use of the alternative parkland rate for residential development, the municipality must prepare a plan examining its needs for additional parkland.
- *OMB decision-making* – The amendments provide that the Board must "have regard to" the information and material before municipal council or an approval authority not only when hearing an appeal from their decisions, but also when hearing an appeal from their failure to make a decision on a matter.
- *Enhanced community consultation* – Under the proposed amendments, official plans must describe the consultation procedures the municipality intends to use to obtain the public's input on amendments to official plans, zoning by-laws and other documents. Such descriptions are currently optional. The amendments also require most municipalities to establish planning advisory committees that include at least one citizen representative so that the public can provide input throughout the decision-making process.
- *Impact of public submissions* – The amendments require municipal councils, approval authorities, and other decision-makers to provide brief explanations of how written and oral submissions received from the public affected their decisions.
- *Financial transparency* – The amendments require municipalities to publicly disclose annual financial statements detailing how they spend money obtained from section 37 agreements related to density bonusing and payments in lieu of parkland dedications.
- *Development permit systems* – Under the proposed amendments, MMAH may issue regulations requiring municipalities to adopt a development permit system (which are currently optional). Upper-tier municipalities may also impose similar requirements on their lower-tier municipalities. Further, the MMAH may issue regulations preventing applications for amendments to official plans or by-laws respecting development permit systems for an initial five-year period.
- *Appeals to specify inconsistency / non-conformity* – Appellants must explain any alleged inconsistency or non-conformity with provincial policy, provincial plans or official plans in their notices of appeal.

Proposed Changes to the Development Charges Act, 1997

Key proposed changes to the *Development Charges Act, 1997* include the following:

- *Increased charges for transit services* – The amendments propose to increase the development charges that municipalities may impose for transit services. The amendments provide that the government may, by regulation, prescribe services that are exempt from the current requirement that service increases funded by a development charge are limited by the ten-year historic average service level provided by the municipality. The government has indicated it intends to include transit in that exemption. The amendments would also exempt transit from the list of services to which a 10% reduction in service increases are applied in calculating development charge rates.

- *Area- and service-specific development charges* – The amendments provide that regulations may be made to require municipal councils to use development charge by-laws only with respect to specific areas and only to fund specific services.
- *Restrictions on the use of unauthorized development charges* – The amendments impose restrictions on the use of charges related to development that are not authorized under the *Development Charges Act*, *1997* or other legislation, and empower the MMAH to enforce compliance with these restrictions. Those restrictions would not apply to existing obligations.
- *Asset management plans* – The amendments require municipalities to integrate their use of development charges with their long-term funding strategies through an asset management plan.
- *Greater transparency* – The amendments require municipalities to publicly disclose annual reports detailing how they spend money obtained from development charges.

Please contact any member of our Municipal Law Group for more information about Bill 73 and its implications.