Ontario Association of Architects

March 12, 2019

The Honourable Steve Clark
Minister of Municipal Affairs and Housing
777 Bay St., 17th Floor
Toronto, ON
M5G 2E5

Dear Minister,

As you may be aware, the OAA has long been in favour of critical reforms to the Site Plan Approval (SPA) process. Established in 1889 and incorporated by the *Architects Act, 1890,* the OAA "regulates the practice of architecture…in order that the public interest may be served and protected." It is with both of these objectives in mind that we write to you today.

Overview

Responding to feedback from our membership, the building industry and from government itself, the OAA commissioned an independent study in 2013 entitled *A Review of the Site Plan Approval Process in Ontario*. This report, which studied a 100-unit condominium apartment and a 50,000-square-foot office building, found that inefficient SPA added significant costs to end users (homeowners and businesses). The total cost to all stakeholders, including government, on the 100-unit condominium was estimated to be between $396,500 and $479,800 per month. For the 50,000-square-foot office building, the estimated total cost was $123,400 to $136,800 per month. The report went on to identify a series of recommendations aimed at reducing the delays (and costs) associated with SPA.

While the report was well received and widely lauded in professional, policy and media circles, it left an important question unanswered: How much is this all costing the province? As the project-specific analysis did not provide an answer to this question, the OAA engaged Altus Group Economic Consulting to provide another independent report. Released in July 2018, this report quantified the effects of site plan delays and found a staggering provincial cost of $100 million per month Ontario-wide. As we know, the average time for SPA is six or more months (some can take years), and the total cost of delays was found to cost as much as $900 million per year in Ontario.

This number is astounding, but may actually be understated due to Altus' conservative interpretation of the total volume of building permit data that would be subjected to SPA. It is very possible, and perhaps even quite likely, that the cost to the provincial economy exceeds $1 billion per year.

In light of these findings, the OAA has proposed a series of updated recommendations that are focused on improving administrative and procedural matters regarding Site Plan Approval—none of which should be misconstrued as diminishing design. The OAA is committed to design excellence. Design Review Panels are also something the OAA recommended back in 2006, and we continue to recommend them as a mechanism through which a committee of qualified experts and practitioners can provide design feedback on a project. These panels exist outside of Site Plan Approval and deal with a much broader set of considerations. Just as they existed prior to the introduction of design control in 2006, we are confident they will continue to exist going forward to improve matters of design that affect the public realm.

Why This All Matters

The OAA has long heard stories about how SPA adds significant costs to businesses and increases the price of housing. It has threatened to derail building projects and, at times, has even killed businesses before they open their doors.

In 2006, the American Institute of Architects (AIA) released a report from PricewaterhouseCoopers entitled *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*. This report found that "communities with a more efficient building permitting process can gain millions of dollars in tax revenues and significantly bolster their economic development." Commenting on the report, PricewaterhouseCoopers noted that "Inefficient permitting processes are equivalent to a drain on economic development" while "efficient and predictable permitting processes will attract investment by reducing the risk of scheduling delays and cost overruns."

While we have perhaps collectively been asleep at the wheel on this issue, the international community has taken far more notice. Each year, the World Bank Group publishes an annual report, *Doing Business*, with a subsection on *Dealing with Construction Permits*. It is important to keep in mind that while the ranking is assigned to Canada, it is based on a construction project in Toronto. Therefore, while the ranking refers to Canada, it can be viewed as a direct proxy for Ontario.

In 2019, the World Bank Group ranked Canada 63rd in terms of dealing with construction permits. This is one behind the Maldives and just narrowly ahead of Mozambique. Comparing against some of Canada's G7 counterparts, the United Kingdom ranks 17th, France 19th, Germany 24th and the United States 26th. In Canada, SPA is the predominant factor in this ranking, taking 180 of the 249 days (or 72.3 per cent of the total time required). According to the report, the average total time in high-income OECD countries is 153.1 days, almost 100 days faster than in Canada. The average duration to obtain a construction permit amongst the top 10 ranked countries is only 67.9 days. The United States takes only 80.6 days.

The report also assigned scores based on a "building quality control index." Of the 42 countries achieving a comparable or better building quality, Canada places 39th in terms of time (days). Only Romania, Lebanon and Albania rank worse. Canada (Ontario) has more processes and takes longer than virtually any other comparable country, yet achieves no better building quality as a result.

We know that we do not have an efficient—or even predictable—permitting process, and we know that SPA is the culprit. We have fallen behind our peers by any measure, and must take decisive action to fix this problem if we are genuinely committed to cutting red tape, increasing housing supply and making Ontario open for business.

Recommendations

Given the exorbitant cost to the province, the OAA contends that SPA reform is possibly the most significant red tape issue before the government today. As a result, the OAA encourages the province to put SPA front and center in the current red tape reduction process. Due to the interconnected parts, SPA reform may require consultation and feedback from a number of stakeholders.

It is important to note that the OAA is not proposing to eliminate SPA. Architects recognize the importance of the process and are only concerned with ensuring that it functions more efficiently. Architects similarly understand the importance of design for the communities in which we live, work and play. These proposed recommendations are envisioned not to hamper the quality of architecture in the province, but to enable it to flourish.

With that said, representatives from the OAA had the pleasure to meet with MPP Donna Skelly, Parliamentary Assistant to the Minister of Economic Development Job Creation and Trade, on

October 1, 2018. During that meeting, Ms. Skelly asked the OAA to issue its own recommendations on how to solve this crisis. As a result, the OAA recommends the following:

1. Restoring the Section 41 exclusions of the Planning Act

In 2006, the *Planning and Conservation Land Statute Amendment Act* was introduced, making a number of changes to the *Planning Act*. Prior to 2006, the *Planning Act* exempted the "colour, texture and type of materials, window detail, construction details, architectural detail and interior design of buildings" as conditions of SPA. After the legislation passed, many of these exclusions were removed and only interior design, the layout of interior areas and the manner of construction and standards for construction remained exempted. We refer this to this as the implementation of design control within the *Planning Act*. It is an action that may have put the *Planning Act* into conflict with the *Architects Act* and, as one lawyer opined in 2006, may actually violate the Canadian Charter of Rights and Freedoms.

In July 2006, the OAA had issued the following caution to the Standing Committee: "the OAA is extremely concerned that such authority will focus design review on architectural details that have little impact on the public realm and could frustrate the design review and planning approval process."

After more than a decade, these concerns seem to have been well-founded, with stories of long and protracted fights between the development community and city planners over such minor elements as the colour of a church door. SPA is generally considered by architects to be a technical review of elements such as set backs, lot coverage, greenspace, building height and parking. Perhaps with a few notable exceptions such as heritage buildings, site plan should not have been applied to such things as the colour of doors based on personal preferences.

Concerns have been raised, including by municipal staff outside of their planning departments, that municipal planners are contravening the *Architects Act* by trying to design buildings by proxy, relying on the apparent authority given to them by the *Planning Act*. This suggests that the *Planning Act* may need to be amended to avoid a legislative contradiction even independent of our recommendations.

In the OAA's 2006 submission regarding the *Planning and Conservation Land Statute Amendment Act*, the OAA encouraged the Government to "focus on issues related to the public realm, not issues of architectural 'style.'" In the end, our recommendation comes full circle as the OAA asks for the pre-existing design exemptions be restored to the *Planning Act*.

This change will expedite the process, making it far more predictable by refocusing on the technical issues that truly matter, including public safety, as opposed to a planner's personal preferences regarding aesthetics. Existing mechanisms such as Design Review Panels and urban design guidelines are the appropriate mechanism for municipalities to engage with design. In particular, Design Review Panels pre-date the 2006 changes to the *Planning Act* and there is no reason to believe that restoring these exclusions to the *Planning Act* would have an impact on their ability to continue operating and delivering value to municipalities.

Refocusing on technical issues is expected to significantly reduce costs and help incite investments on the residential, commercial and industrial side. This will also have the added benefit of speeding up the review process by freeing up more of a planner's time to review site plan applications.

2. Increasing Accountability to the Public

In 2011, the City of Toronto adopted a requirement that architectural recognition be prominently affixed near the main entry or prominent façade of the structure for any building over a certain size threshold. The sponsoring Councillor at the time wrote:

> *By requiring that all new buildings…be required to display the name of the Architect of Record or primary Design Architect, an ongoing record of the history and development of the City of Toronto can be created. This will also serve to engage the public more in the debate about architecture, design and creativity that is growing in Toronto. Such debate can only lead to better design as the public will increasingly demand it.*

The OAA supported architectural recognition then and continues to support architectural recognition now. We believe this is an important move not only to further public dialogue about architecture, but also to enhance accountability to the public for the legacy that architects leave behind on our built environment.

While architectural recognition is currently already in place in the City of Toronto and other municipalities are actively working toward adopting similar provisions, there has been discussion as to whether municipalities have the statutory authorities to require this as a condition of SPA. Consequently, the OAA has proposed for this authority to be formally integrated into the *Planning Act*.

3. Setting and Enforcing a New Timeline

Efforts to expedite the process mean little without adequate enforcement mechanisms. It is important to note that municipalities are already compelled to issue a decision on a site plan application within 30 days under Section 41(12) of the *Planning Act*, though this deadline is widely disregarded by municipalities throughout the province. Section 41(12) states:

> **Appeal to L.P.A.T. re approval of plans or drawings**
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> (12) If the municipality fails to approve the plans or drawings referred to in subsection (4) within 30 days after they are submitted to the municipality, the owner may appeal the failure to approve the plans or drawings to the Tribunal by filing with the clerk of the local municipality a notice of appeal accompanied by the fee charged under the Local Planning Appeal Tribunal Act, 2017. 2017, c. 23, Sched. 3, s. 13 (1).

While this right to appeal by Tribunal must be preserved, we must also recognize that an appeal to the LPAT will not result in an expedited SPA, which is the ultimate and necessary goal. For this, we must (re)set a rigid deadline for approval and then add in deemed approval for failure to issue a decision within the prescribed timeframe.

To consider how this could work, the OAA looked to language within the Ontario Building Code (OBC) that deems an application to be approved if the municipality fails to render a decision:

> **1.3.1.3 Period Within Which a Permit is Issued or Refused**
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> **(1)** Subject to Sentences (2) and (3) and unless the circumstances set out in Sentence (6) exist, if an application for a permit under subsection 8 (1) of the Act that meets the requirements of Sentence (5) is submitted to a chief building official, the chief building official shall, within the time period set out in Column 2 of Table 1.3.1.3 corresponding to the class of building described in Column 1 of Table 1.3.1.3 for which the application is made,
>
> (a) issue the permit, or
>
> (b) refuse to issue the permit and provide in writing all of the reasons for the refusal.

Table 1.3.1.3 separates classes of buildings into four larger groupings, and assigns approval timelines of 10, 15, 20 or 30 days.

The OAA proposes that approval or refusal must be issued in writing on or before the 30th day. By this deadline, a failure to either approve, or refuse to approve (listing all of the reasons for the refusal in writing), will result in the application being deemed approved.

The clock on when a review period commences will be set to the immediate business day following a submission, and not when those on staff commence their review. While the OAA is extremely sympathetic to resource concerns, delays within municipal planning departments can no longer come at the detriment of the process, the applicant, the end user or the province on the whole.

The phrase “completed application” raises concerns as the term is currently used in good faith for incomplete applications and, in bad faith, to restart the clock on the 30-day approval deadline that currently exists. Each change, no matter how trivial, can lead to numerous resubmissions and an indefinite period of delay. In the aforementioned instance of the OBC, failure to clarify a process beyond refusing to issue a permit can theoretically put a project into permanent limbo as no subsequent process or timelines are defined.

To address these concerns around the phrase “completed application” and deemed approval, municipalities should give deference to requirements already identified in Section 42 of the *Planning Act* and to ensure that any additional requirements are clearly defined in terms of both what is required and the manner in which it will be required. It must be made explicitly clear what a completed application means, so there can be a fair and objective measure of when an application is incomplete.

As currently enabled in the *Planning Act*, municipalities could still consider pre-application consultation meetings for certain applications where a list of required studies, reports or drawings will be formally set and agreed to, along with guidelines or formal terms of reference for each study, report or drawing required. While this list could be useful in helping to objectively determine what constitutes a completed application, pre-application consultations must not be used to further delay the process. For this reason, the OAA recommends that pre-consultation meetings be held within five days of an applicant expressing their intention to submit an application.

However, the OAA proposes that a new requirement be implemented for a cursory review to occur on or before the fifth day. This cursory review will not be based on the planning merits of the application, but rather to notify an applicant in writing of any missing studies, reports or drawings that the municipality will require to consider, and subsequently either approve or refuse the application. In effect, what will be required to be considered a “complete application.”

If no deficiencies are identified on or before the fifth day, then the application will be considered no later than the prescribed deadline, on its merits and according to the documentation submitted. A municipality will not be permitted to introduce new requirements if it failed to do so during the cursory review.

If deficiencies are identified in writing on or before the fifth day, the municipality and applicant should agree to one of the following courses of action at this point:

a) For the applicant to return the missing information within the remaining five-day time allotment and for the application to be approved or refused by the prescribed approval deadline;
b) For the applicant to return the missing information by a revised approval deadline; or
c) For the applicant to resubmit their application at an undefined date, restarting a 30-day approval timeframe (if no other agreement can be reached).

In Option (a) or (b), the municipality will not be permitted to introduce any new requirements as a condition of approval.

Approval or refusal must be provided in writing on or before the prescribed deadline. As previously mentioned, a failure to approve or refuse an application in writing will result in the application being deemed approved.

In Option (c) (i.e. resubmission), the municipality will again not be permitted to introduce any new requirements as a condition of approval unless the applicant has altered their original submission beyond recommended or required changes identified by the municipality in writing during the first submission. As in the first submission, a failure to approve the plans or drawings by the prescribed deadline will result in the application being deemed approved.

4. Adjudication

The aforementioned changes will solve all situations with the exception of when a municipality refuses a resubmission by putting in writing that an applicant has still failed to resolve the deficiencies identified during the first submission.

In this instance, the *Planning Act* should be amended to allow for an appeal to be made not only before the LPAT (as is currently written), but also before an independent adjudicator. The costs associated with the adjudicator should be borne by the applicant unless a determination is made in their favour, in which instance the costs should be borne by the municipality. The awarding of costs is intended to discourage both frivolous appeals by the applicant and unsound refusals by the municipality.

First Submission	
Pre-consultation (optional)	
Submission received	Timeline begins on next business day after submission
Cursory review	Day 5
Approval/Deemed Approval/Refusal	Day 30
Resubmission (if needed)	
Resubmission received	Timeline begins on next business day after submission
Cursory review	Day 5
Approval/Deemed Approval/Refusal	Day 30
Dispute resolution*	
Adjudication	Decision rendered in 15 days
Length of process	No more than 75 days
*Current process***	*54% > 6 months, 36% > 9 months*

* Timing of decision by the LPAT at the Tribunal's discretion

** As identified in *A Review of the Site Plan Approval Process in Ontario* (Oct. 2013)

The OAA recognizes that making municipalities accountable to the already existing deadline in the *Planning Act* may prove challenging within some municipalities. The OAA believes that refocusing the SPA process on achieving regulatory compliance as opposed to discussions around subjective things like brick colour will significantly expedite the process. Certainty in the timeline should also reinforce the submission of complete applications. Put together, the significant time that will be freed up should allow municipalities to perform their necessary work within the prescribed timelines.

The government may wish to consider implementing a mandatory reporting period to ensure that its red tape objectives are being satisfied. Municipalities could be required to maintain and publicly report on their progress toward full compliance with the revised requirements of the *Planning Act*.

This change is expected to make the process more standardized and predictable, which will reduce costs and improve timelines (which is then expected to have significant impact on our world ranking). This will also reduce the costs associated with lengthy LPAT appeals, and will free up the Tribunal's docket to focus on important civic matters or files that are less suited for arbitration. These changes should spur investment on the residential, commercial and industrial side and will stop instances whereby projects are delayed for years and/or outright abandoned as a result of SPA.

Working Together

The OAA has been very encouraged by the preliminary response from the Ministry of Economic Development, Job Creation and Trade as well as the Ministry of Municipal Affairs and Housing. There is no better time than now to reform the SPA process, given the Government's actions toward making Ontario "Open for Business." Reforming SPA will spur economic development, create jobs and have the added benefit of delivering more housing faster and at a reduced cost.

We have attached proposed revisions to the *Planning Act,* which we believe would accomplish these objectives. Parallel changes would similarly need to be considered for the *City of Toronto Act, 2006*. We look forward to working with you on this important endeavour.

Sincerely,

Kathleen Kurtin, Architect

OAA, MRAIC
President

cc. The Honourable Todd Smith, Minister of Economic Development, Job Creation and Trade