
MEMORANDUM

CWCD 2022-110

Subject: Response to More Homes for Everyone Act, 2022, Provincial Bill 109

Date: April 29, 2022

To: Regional Council

From: Michelle Sergi, Commissioner

As outlined in CWCD 2022-71, the Housing Affordability Task Force released a report on February 8, 2022, that outlined 55 recommendations to increase the supply of housing in Ontario and address issues of housing affordability. Both the Ontario housing market and affordability are complex topics that are affected by supply, demand, prices and incomes. Not all of these factors can be controlled or corrected by municipal government and as such, all those involved must contribute to the development of the solutions.

On March 30, 2022, the Province announced the More Homes for Everyone Plan and introduced Bill 109, *More Homes for Everyone Act, 2022* as a “first step” response to the Housing Affordability Task Force’s report. This memo will be focusing on the changes most applicable to the Region and its processes and will be submitted to the Province. Bill 109 contains legislative amendments to:

- The *Planning Act*
- The *City of Toronto Act*
- The *Development Charges Act*
- The *New Home Construction Licensing Act*
- The *Ontario New Home Warranties Plan Act*

Feedback on the Bill 109 is open until April 29, 2022, allowing thirty (30) days for public consultation. However, on April 14, 2022, Bill 109 received Royal Assent from the Ontario Legislature and is now in force and effect. Below is an overview of Bill 109 changes and staff’s view of how these changes will impact the Region and our local municipalities.

Additionally, Bill 109 introduces a new tool referred to as “Community Infrastructure and Housing Accelerator” (CIHA). This memo will also be providing comments on the CIHA guideline.

Refund of Application Fees

Section 34 of the *Planning Act* is revised to include new rules that require municipalities to refund application fees if a decision on a site plan application, zoning by-law amendment (ZBA), or combined ZBA and official plan amendment (OPA), is not reached within the legislated timeframes, as outlined below:

Application Type	0% Refund	50 % Refund	75% Refund	100% Refund
ZBA	Decisions made within 90 days	Decisions made within 91 to 149 days	Decisions made within 151 to 209 days	Decisions made 180 days or more f
OPA/ZBA	Decisions made within 120 days	Decisions made within 121 to 179 days	Decisions made within 180 to 239 days	Decisions made 240 days or more
Site Plan	Decisions made within 60 days	Decisions made within 61 to 89 days	Decisions made within 90 to 119 days	Decisions made 120 days or more

Niagara Region is supportive of continuous improvement to the development approvals process; however the changes being proposed do not factor in delays that occur as a result of other participants in the review process, including the applicant, the public, commenting agencies and the Provincial Ministries. Further, the changes being made do not consider the quality of the submissions, and does not allow for a pause in the review time as the municipality awaits resubmission of an application. Refunding changes to the site plan approval process will cause more upfront work by the applicant to ensure the required permits and approvals from commenting agencies, including the Region, are obtained before a local municipality accepts an application as complete.

The refunding timeline measures will have financial impacts for the Region and our local municipalities as they are the approval authorities. At this time it is not clear what the total costs will be, but it is important to note that the loss of revenues due to refunds will have to be absorbed by the tax levy. There will also be a need to increase staffing at the

local municipalities and the Region to be able to meet these assertive changes in the development approval process.

Niagara Region and our local municipal development fees have been established on a cost recovery basis. Regional staff do not support this change as it will significantly increase the financial costs to our local municipalities and the Region to cover potential losses as a result of these refunds potentially putting additional pressure on the levy. In addition, these changes may unintentionally result in more applications being refused and subsequently referred to the Ontario Land Tribunal (OLT) if issues with the application have not been resolved within the required planning timeframe.

Site Plan Applications

Bill 109 introduces four key changes to Section 41 of the *Planning Act*, which regulates site plan control:

1. As of July 1, 2022, municipalities will be required to delegate site plan approval to staff. Currently, some of our local area municipalities have delegated authority for site plan approval.
2. As of January 1, 2023, the timeline to issue site plan approval will be extended from 30 days to 60 days.
3. Municipalities are now required to use the complete application requirements applicable for OPAs, ZBAs, and draft plans for site plan applications as well.
4. Municipalities may pass a by-law requiring pre-consultation prior to the submission of a site plan application.

Staff are support of the changes to the site plan approval process as it allows for an expedited process, and can provide certainty as to what will be required for approval.

Plan of Subdivision Applications

The addition of Subsection 51(25.1) of the *Planning Act* gives the Province authority to prescribe, by regulation, what cannot be required as a condition of subdivision approval. There are no details yet on what conditions cannot be requested and, as such, it is difficult to determine the impact this would have the Niagara Region and our local municipalities.

Bill 109 also introduces an enabling mechanism that would allow the Province the one-time discretionary authority to reinstate draft plans of subdivision that have lapsed within the past five years. The local municipalities are the approval authority for plan of subdivision applications and would have the ability to administer this. Staff support this change.

Minister Decision Making Powers

Through Bill 109, the Province has established new rules related to appeals, referrals and time suspensions for new official plans and official plan amendments (OPA) that are under their approval authority.

The Minister is now authorized to refer all or parts of new official plans and OPAs to the OLT for a recommendation prior to making a decision, or to request that the OLT make a decision in its stead. Additionally, there is no appeal right when the Minister refers all or part of an official plan to the Tribunal.

The OLT currently has a significant backlog of files. It is not clear how allowing the Minister to refer new official plans and OPAs to the tribunal will make additional housing units available faster. Instead, staff anticipate that this would actually cause further delays. For instance, if the Region's new Niagara Official Plan was referred to the OLT, could take up to two years to get a hearing date scheduled, and would require a significant amount of hearing time after the date was provided.

Additionally, a hearing of this magnitude would have significant financial costs to the Region as a result of retaining lawyers and consultants. Regional staff do not support this change as it would further delay approvals and potentially have significant financial ramifications because of the litigation process.

In addition, Bill 109 allows the Minister to "pause" or suspend the 120 day timeline currently required to make a decision on municipal Official Plans. Again, allowing the Minister to pause this timeline is inconsistent with punitive measures for municipalities who cannot meet timelines, and does not speed up the process of bringing housing online sooner.

Monitoring Requirements

Bill 109 includes the addition of Section 64 to the *Planning Act*, which allows the Minister to request municipalities provide reports on planning matters. A key element of the new Niagara Official Plan is monitoring growth how the Region is progressing towards growth forecasts as well as continuously seeking opportunities to improve our development approval processes. As such, Regional staff supports this change.

Development Agreement Securities

Under Bill 109, the Minister has power to determine the type of securities that can be used as part of development agreements. Niagara Region requires developers/land owners to post Letters of Credit (LOC) to guarantee that the works in subdivision and site plan agreements are undertaken in accordance with the approved plans. In the event where the developer does not undertake the work as required by the Region, the Region is able to utilize the Letter of Credit and complete the work. A LOC is preferred by the Region because it is issued by a financial institution with a commitment to advancing the funds to the Region in the event the developer does not comply with the approved plan.

With Bill 109 the minister can determine that instead of a LOC be used to guarantee works, a developer can potentially use a Surety Bond. A Surety bond is a guarantee by a third party and does not have the same carrying costs as a LOC to the developer. The Region does not accept Surety Bonds. Surety Bonds are a guarantee of a performance of an obligation. LOCs do not have this general stipulation and again can be drawn on demand and there is an obligation for a bank to pay. With a Surety Bond, bonding company often get involved in rights and equities of issuing payment – can disagree with municipality request that the contract was not performed and the bonding agent can argue no error in contract or performance of duties of the developer. This potential inability to recover costs, and added time involved in realizing surety bonds are why staff do not support this provision of the bill.

Development Charges/ Parkland Dedication/ Community Benefits Charge

The Province is proposing changes to development-related charges in order to create more transparency relating to fees or levies charged by municipalities to developers. Some of these changes include:

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- There is a requirement for municipalities to post annual financial reports for development-related charges on their websites. The Region currently reforecasts cost every 5 years and it is a very laborious process and the work is completed by an external consultant. To do this review in house each year will likely require incremental staffing resources at a cost and increase in taxes.
 - A mandated five-year review cycle of community benefit charges (CBCs) for municipalities that have implemented them. After the review, if a municipality does not pass a resolution outlining whether a revision is needed the community benefit charge by-law will expire. The Region does not have a CBC as only single-tier and local municipalities are able to levy these charges.
 - Changes also include implementing a tiered alternative parkland dedication rate that would only apply to Transit-Oriented Community (TOC) developments. For smaller sites that are 5 hectares or less, parkland dedication would be up to 10% of the land or its value. For sites larger than 5 hectares, parkland dedication would be up to 15% of the land or its value. A Minister's order could identify encumbered parkland and would be deemed to count towards any parkland dedication requirements imposed by the local municipality. Under the Act TOCs refer to specific Toronto transit lines or areas identified by the Minister. It does not currently apply to locations within Niagara.

Community Infrastructure and Housing Accelerator (CIHA)

Bill 109 introduces a new tool referred to as "Community Infrastructure and Housing Accelerator" (CIHA) order. According to draft guidelines, a CIHA order allows local or single-tier municipalities to submit a request to the Minister to expedite approvals for projects related to community infrastructure, housing, including market-rate housing, community housing, and affordable housing, mixed-use developments, and economic development.

The CIHA order is similar to a Minister's Zoning Orders (MZOs), but must be requested by the municipality through a motion of Council. The CHIA cannot be used for properties within the Greenbelt Plan area, including lands within the Niagara Escarpment. The Greenbelt Plan includes settlement area that are identified as Towns/Villages. The Greenbelt Plan policies for settlement areas support the achievement of complete communities, and as such municipalities should be able to use the CIHA tool within the boundaries of Towns and Villages. Additionally, municipalities must also be able to request MZOs within the Towns and Villages of the Greenbelt Plan.

A CIHA order can be used to regulate land use(s) and the location, use, height, size and spacing of buildings and structures to permit certain types of development. The Minister may also provide an exemption for subsequent planning-related approvals from Provincial land use plans, and local and Regional official plans, but only if this is specifically requested by the municipality.

Subsequent planning-related approvals include licences, permits, permissions, approvals, such as plans of subdivision or site plan approval, and other matters required before a land use permitted by the CIHA order could be established. In this case, the municipality must still demonstrate that the project “adequately mitigates any potential impacts”, including community and indigenous engagement and environmental protection or mitigation.

Staff are supportive of tools that can expedite approvals of priority projects, however these projects should align with Provincial, Regional and Local land use plans. Additionally, the process must consider Regional Planning comments (e.g., infrastructure, natural environment, etc.) and consultation with Upper Tiers should be a requirement of the process.

Respectfully submitted and signed by

Michelle Sergi, MCIP RPP
Commissioner Planning and Development