



# Corporate Report

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**DATE:** November 28, 2013

**TO:** Chair and Members of Council  
Meeting Date: December 11, 2013

**FROM:** Ed Sajecki  
Commissioner of Planning and Building

**SUBJECT:** **Land Use Planning and Appeal System Review: Consultation  
Submission to the Ministry of Municipal Affairs and Housing  
(MMAH)**

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- RECOMMENDATION:**
1. That the report entitled "Land Use Planning and Appeal System Review: Consultation Submission to the Ministry of Municipal Affairs and Housing (MMAH)", inclusive of Appendix 1, City of Mississauga Response to Land Use Planning and Appeal System Questions, and Appendix 2, Mississauga Council Resolution 0048-2013, from the Commissioner of Planning and Building, dated November 28, 2013, be approved by Council for submission to the Ministry of Municipal Affairs and Housing (MMAH) for consideration during the Provincial Land Use Planning and Appeal System Review.
  2. That Council endorse the following key recommendations for changes to the Provincial land use planning and appeal system to:
    - if a municipality has an in-effect official plan that has been reviewed and updated in accordance with Provincially established timeframes, there should be no right of appeal to a Council's refusal of an application to amend the official plan;

- there should be no appeal to official plan amendments that have been brought forward to conform to Provincial policy or legislation or an upper-tier municipal plan;
- require mandatory mediation if a municipality deems insufficient reason for an appeal has been provided;
- appeals to the entire official plan or zoning by-law should not be permitted;
- establish cut off dates for the submission of appeals where an upper tier approval authority does not make a decision within the 180 day approval period;
- an extension, with notice, to the 180 day approval time for upper-tier governments in approving lower-tier official plan amendments should be permitted, after which if no decision is rendered the official plan amendment should be deemed approved;
- link conformity to new Provincial policy or legislation to a municipality's five year review;
- allow official plans to extend beyond 20 years so that land use policies can align with infrastructure and public service facility planning; and
- increase the legislated timeframes within which Council must make decisions on complete development applications before an appeal to the Ontario Municipal Board can be made.

**REPORT  
HIGHLIGHTS:**

- The Province has initiated a review of the Land Use Planning and Appeal and Development Charges Systems.
- The Province will be consulting with the public, municipalities and stakeholders on what changes are needed from October 2013 to January 2014.
- The Province released a *Land Use Planning and Appeal System Consultation Document* that focuses on four key theme areas and provides a series of questions to focus responses. Comments are to be submitted to the Province by January 10, 2014.
- City staff have identified a number of recommendations for changes to the *Planning Act* in this report and in Appendix 1 that focus on, among other matters, the protection of official plans against extraneous appeals, mandatory mediation, alignment of

policy and infrastructure planning, and increased timeframes for Council and upper-tier level government approvals.

- The Consultation Document was circulated to staff from all City departments. Appendix 1 represents the consolidation of staff comments being recommended for consideration by the Province on the Land Use Planning and Appeal System.
- A companion report titled “Development Charge System Review: Consultation Submission to the Ministry of Municipal Affairs and Housing (MMAH)” from the Commissioner of Corporate Services and Chief Financial Officer will also be considered by City Council on December 11, 2013.

**BACKGROUND:**

The Province has initiated a review of the Land Use Planning and Appeal and Development Charges Systems to ensure that the systems are predictable, transparent and cost effective. The Province is consulting with the public, municipalities and stakeholders, from October 2013 to January 2014, on what changes are needed.

Consultation sessions for the Land Use Planning and Appeal System are being held throughout Ontario. A workshop is scheduled for December 5, 2013 in Mississauga. Staff will be in attendance.

The Province has made available two discussion papers, the first on the Land Use Planning and Appeal System, the second on Development Charges in Ontario. Both contain a list of questions for stakeholders to comment on. These papers are intended to focus discussion and identify what potential changes to the systems are needed. The submission deadline for comments is January 10, 2014.

This report will present the City’s comments on the land use planning and appeal system. A companion report titled “Development Charge System Review: Consultation Submission to the Ministry of Municipal Affairs and Housing (MMAH)” from the Commissioner of Corporate Services and Chief Financial Officer will present the City’s comments on the *Development Charges Act*. This report will also be considered by City Council on December 11, 2013.

**COMMENTS:**

The Province is taking a look at the way cities and towns plan for development and how to help pay for it. As such the Province has initiated a review of the Provincial Land Use Planning and Appeal System and *Development Charges Act* and related legislation.

**Scope of Review**

The Province has limited the scope of the review to improvements to the land use planning system, including what can be appealed to the Ontario Municipal Board (OMB), the *Development Charges Act*, parkland dedication, and Section 37 of the *Planning Act* (Section 37 enables a municipality to negotiate with a developer for items such as affordable housing in exchange for permission for the developer to build in excess of zoning limits).

The Province will not be considering recommendations that would result in a complete overhaul of the *Planning Act* or the *Development Charges Act*. More specifically, the review will not consider the following:

- eliminating or changing the OMB's operations, practices and procedures;
- removing or restricting the Provincial Government's approval role and ability to intervene in matters;
- removing municipal flexibility in addressing local priorities;
- changing the "growth pays for growth" principle of development charges, the education development charges and the development charges appeal system; or
- other fees and taxes and matters involving other legislation.

**Input into the Review**

The Provincial discussion paper, with respect to the land use planning and appeal system, is focused on four 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; and
- protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions, and support for job creation and economic growth.

The list of questions contained in the Provincial discussion paper was used in focusing comments from departmental stakeholders. Departmental comments have been consolidated into a single response and are detailed in Appendix 1. Council Resolution 0048-2013 has been attached as Appendix 2 and supports the recommendations contained in this report.

### **Main *Planning Act* Issues**

Planning in Ontario is governed by the *Planning Act*. The *Planning Act* requires each municipality to have an official plan, outlines the approval process for land development and the minimum requirements for public consultation, and sets out appeal rights to the Ontario Municipal Board.

Current issues with the planning and appeal system affecting Mississauga include:

- the scope of matters that can be appealed and insufficient justification requirements for appeals;
- the ability to appeal an entire official plan or zoning by-law;
- the potential for appeals if no decision by the upper-tier government is provided within the 180 day review period;
- linking conformity to Provincial plans and legislation with the five year review of official plans;
- land use planning timeframes are limited to 20 years, while infrastructure planning has a long term horizon; and

- the timeframes municipalities have to review development applications.

Staff recommend that the Province, among other matters, make the following changes to the land use planning and appeal system:

- if a municipality has an in-effect official plan that has been reviewed and updated in accordance with Provincially established timeframes, there should be no right of appeal to a Council's refusal of an application to amend the official plan;
- there should be no appeal to official plan amendments that have been brought forward to conform to Provincial policy or legislation or an upper-tier municipal plan;
- require mandatory mediation if a municipality deems insufficient reason for an appeal has been provided;
- appeals to the entire official plan or zoning by-law should not be permitted;
- establish cut off dates for the submission of appeals where an upper tier approval authority does not make a decision within the 180 day approval period;
- an extension, with notice, to the 180 day approval time for upper-tier governments in approving lower-tier official plan amendments should be permitted, after which if no decision is rendered the official plan amendment should be deemed approved;
- link conformity to new Provincial policy or legislation to a municipality's five year review;
- allow official plans to extend beyond 20 years so that land use policies can align with infrastructure and public service facility planning; and
- increase the legislated timeframes within which Council must make decisions on complete development applications before an appeal to the Ontario Municipal Board can be made.

Detailed comments on the Land Use Planning and Appeal System are included in Appendix 1.

The aforementioned recommendations were presented and discussed at the Mississauga Building Industry Liaison Team (BILT) meeting held on November 27, 2013.

The City has representation on the Association of Municipalities of Ontario's (AMO) Planning Task Force and has provided input into AMO's response to the Province.

Regional and City staff have discussed the approach each will take in commenting to the Province. The Region will report to Regional Council on its recommendations in January 2014. The City of Brampton is also considering recommendations to the planning and appeal system.

**STRATEGIC PLAN:** The *Planning Act* requires each municipality to have an official plan. On September 29, 2010, City Council adopted Mississauga Official Plan. The policy themes of the Plan advance the strategic pillars for change which are: Move, Belong, Connect, Prosper and Green. The recommendations contained in this report will further strengthen the official plan and strategic pillars by protecting the integrity of Mississauga Official Plan, better linking policy planning with infrastructure planning, and including elements of the environment as infrastructure.

**FINANCIAL IMPACT:** Not applicable.

**CONCLUSION:** Staff from various City departments have reviewed the Province's discussion paper on the Land Use Planning and Appeals System and a number of comments and recommendations to improve the system are included in this report. Staff recommend that the requested changes in this report to the *Planning Act* be endorsed and that the report be forwarded to the Ministry of Municipal Affairs and Housing so that the City's position can be considered by the Province..

APPENDIX 1: City of Mississauga Responses to Land Use Planning  
and Appeal System Questions

APPENDIX 2: Mississauga Council Resolution 0048-2013

Ed Sajecki  
Commissioner of Planning and Building

*Prepared by: Shahada Khan, Planner, Policy Planning*



## Responses to Land Use Planning and Appeal System Questions

### Theme A: Achieve more predictability, transparency and accountability in the planning/appeal process and reduce costs

1. How can communities keep planning documents, including official plans, zoning by-laws and development permit systems (if in place) more up-to-date?

Mississauga regularly prepares omnibus amendments to its official plan and zoning by-law to deal with assorted housekeeping matters and minor issues as they come up. In addition, city initiated amendments are brought forward on specific issues as required. This allows these documents to be kept up to date and limits the matters that need to be addressed in the five year review of the official plan.

Conformity to new provincial policy should be required as part of a municipality's five year official plan review rather than a specified time period from when the new provincial policy comes into effect. If the provincial policy change is significant there should be a provision to extend the five year official plan review window to ensure that municipalities have sufficient time to conform to new provincial policies. Further, the Province should coordinate the release of new provincial policies so that all the policy changes can be considered comprehensively and in concert with local municipal matters.

2. Should the planning system provide incentives to encourage communities to keep their official plans and zoning by-laws up-to-date to be consistent with provincial policies and priorities, and conform/not conflict with provincial plans? If so, how?

There should be no right of appeal to amendments to bring municipal official plans into conformity with an in-effect upper-tier municipal official plan or provincial policy or legislation. If a municipality has an in-effect official plan that has been reviewed in accordance with established timeframes, there should be no right of appeal to a Council's refusal of an application to amend the official plan. (Council approvals of official plan amendments would remain appealable.)<sup>1</sup>

Other incentives could also be considered such as increased or expedited infrastructure funding and implementation grants to assist municipalities in bringing their zoning by-laws into conformity with official plans.

3. Is the frequency of changes or amendments to planning documents a problem? If yes, should amendments to planning documents only be allowed within specified timeframes? If so, what is reasonable?

<sup>1</sup> On March 27, 2013 Mississauga Council passed Resolution 0048-2013 (Appendix 2) requesting the Province to amend the *Planning Act* to prohibit the right of appeal to the Ontario Municipal Board for development applications submitted requesting densities to be located in areas other than those identified in Mississauga Official Plan.

The right to bring forward municipally initiated amendments so that a municipality can keep its documents current and to address emerging issues, should be maintained. Further, a municipality's right to approve applications deemed to propose good development that is in the public interest should also be maintained. However, municipalities should have the right to refuse official plan amendments in accordance with certain provisions (see #2 above). Proponents of refused applications would have the right to appeal the official plan as part of the five year review.

4. What barriers or obstacles may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?

In Mississauga, the material that is submitted in support of a development application is made available to the public in electronic format. The proponent agrees to this disclosure in writing by signing the application form. Anyone coming into the City's Planning and Building Department has access to review these documents in hardcopy at the customer service counter. Access to supporting documents promotes information sharing among all parties.

5. Should steps be taken to limit appeals of entire official plans and zoning by-laws? If so, what steps would be reasonable?

Yes, appeals to an entire official plan or zoning by-law should not be allowed. More rigour needs to be brought to the appeal process so that the resources and effort invested by municipalities to update their planning documents or consider amendment proposals are not undermined without proper justification.

An appellant should be required to provide justification for the policies that have been appealed and the municipality should have the authority to determine if sufficient reason has been provided. If the municipality deems that insufficient reason has been provided, it should notify the appellant who would have a defined time period (e.g., 30 days) to submit further justification for the appeal. If after that time period additional justification is not provided or the municipality is still not satisfied, mandatory mediation should be required before a prehearing is scheduled. This process will bring more rigour to the appeal process and allow the scoping of appeals without the municipality having to bring a motion before the Ontario Municipal Board. Requiring appeals to provide adequate reason, may limit the potential for extraneous participants to be added to the appeal.

The Province should consider increasing the cost of filing an appeal and differentiating the cost by the type of appeal. The fee should be substantial enough to discourage frivolous appeals but not so high as to dissuade appellants with a valid appeal.

6. How can these kinds of additional appeals be addressed? Should there be a time limit on appeals resulting from a council not making a decision?

In the situation where a lower tier municipality must have approval from an upper tier municipality, opportunity to have the 180 day approval period extended should be considered. For example, if an approval authority is not able to make a decision within the 180 day period it should be able to issue notice that it is invoking its right for an extension. This extension would be defined (e.g., 60 days) and reasons would have to be provided. If a decision is still not

forthcoming, it should be assumed that there are no concerns and the lower tier official plan should be deemed approved. The approval authority should have the following choices: approve, approve as modified, not approve or defer a decision. Deferred decisions should be appealable but the appeal should be against the approval authority, not the lower tier municipality.

The *Planning Act* needs to include cut off dates for the submission of appeals and set dates for when official plans should come into effect for those instances where no decision has been made within the 180 day approval time, to avoid an open-ended appeal window and to ensure official plans are not held up in approvals.

It is difficult to regulate planning at the local level during the approval time of an official plan. During this time, the process can become cumbersome and complicated for a number of reasons. Until an official plan is approved, in effect policies must be complied with, however, staff review and evaluate applications under both plans. As well, there may be conflicts with the in effect policies and the new proposed policies. If portions of the plan have not been approved, and eventually come into effect, staff must go through the upper tier municipality or Ontario Municipal Board to make modifications to the plan on policies which have already been approved by local Council. It is essential that approvals are made within the designated timeframes.

The existing legislated timeframes for when an applicant can make an appeal to the Ontario Municipal Board of Council's failure to make a decision on development applications (180 days for official plan amendments and subdivisions, 120 days for rezoning applications and 30 days for site plan applications) are unrealistic and should be increased.

7. Should there be additional consequences if no decision is made in the prescribed timeline?

## RESPONSES TO QUESTIONS 6 AND 7 HAVE BEEN COMBINED

8. What barriers or obstacles need to be addressed for communities to implement the development permit system?

Mississauga Official Plan includes a policy (19.12.1) indicating that consideration will be given to enacting a development permit system. The main obstacle is that it is an unfamiliar process to staff, politicians, developers and the community. The City is interested in pursuing the possibility of implementing a development permit system, however, there is a lack of resources available to further pursue this initiative at this time. The Province could provide a grant and guidance for those wishing to establish the system which could cover additional temporary staff.

## Theme B: Support greater municipal leadership in resolving issues and making local land use planning decisions

9. How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?

Better cooperation and collaboration can be fostered by using mediation to resolve disagreement. If one party wants to engage in mediation, then it should become mandatory for both parties. Education sessions could be planned for the community on planning issues affecting them. Tools for information sharing should be promoted.
10. What barriers or obstacles may need to be addressed to facilitate the creation of local appeal bodies?
Barriers or obstacles that may need to be addressed to facilitate the creation of local appeal bodies include: the additional costs, resources and administration required; ensuring the objectivity and independence of the local appeal body; and ensuring appropriate expertise for those appointed.
11. Should the powers of a local appeal body be expanded? If so, what should be included and under what conditions?
The powers of local appeal bodies could be expanded to include matters dealing with appeals related to heritage properties and related issues and site plan appeals under Section 41(12) that do not have related Rezoning or Official Plan Amendment applications.
12. Should pre-consultation be required before certain types of applications are submitted? Why or why not? If so, which ones?
Mississauga does engage in pre-consultation through the Development Application Review Committee (DARC). This committee reviews preliminary official plan amendments, rezoning, subdivision and complex site plan applications. The City has found this to be beneficial and it is recommended that pre-consultations be required.
13. How can better coordination and cooperation between upper and lower-tier governments on planning matters be built into the system?
See response to Questions 6 and 7.
<b>Theme C: Better engage citizens in the local planning process</b>
14. What barriers or obstacles may need to be addressed in order for citizens to be effectively engaged and be confident that their input has been considered (e.g. in community design exercises, at public meetings/open houses, through formal submissions)?
Mississauga actively engages with the residents on planning issues and applications. If the system is too regulated it can become onerous. Planning staff produce a two-report/public meeting process to allow opportunity for public input before taking a position on development proposals. In addition, Councillors may hold community meetings. However, due to the

restricted timeframe of 60 days for consultation, it is difficult to engage with the public in a more in-depth manner. The Province should consider updating the consultation requirements to encourage other options to engage the public (e.g. social media), in a cost-efficient manner.

For groups that do not feel like they have the opportunity to be effectively engaged, intervenor funding could be provided to relevant groups or duty counsel provided to residents.

15. Should communities be required to explain how citizen input was considered during the review of a planning/development proposal?

### RESPONSES TO QUESTIONS 14 AND 15 HAVE BEEN COMBINED

#### **Theme D: Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions and support for job creation and economic growth**

16. How can the land use planning system support infrastructure decisions and protect employment uses to attract/retain jobs and encourage economic growth?

There needs to be a much stronger connection made between decisions and plans regarding infrastructure and the land use planning system. Official plans are prepared with careful consideration to existing and planned infrastructure investments. As such and as stated in the response to Question 2, if a municipality has an in-effect official plan that has been reviewed in accordance with established timeframes, there should be no right of appeal to a Council's refusal of an application to amend the official plan. Further, there should be no right of appeal to amendments to bring municipal official plans into conformity with an in-effect upper-tier municipal official plan (or provincial policy) which has also been prepared with consideration to infrastructure investments. An example of a possible application refusal would be a proposal for low density uses in an area where significant investment in infrastructure has been planned or where the local municipality has identified higher-order transit routes. Conversely, refusal of an application for higher density in an area where infrastructure investments have not been planned should also not be appealable.

The 20 year timeframe applied to official plans is another concern as infrastructure investments typically have a much longer term horizon. Timeframes for official plans should be extended provided certain master plans are in place and approved by Council (e.g. transit, water).

Green infrastructure is integral to well planned, healthy communities and includes natural heritage systems, urban forest and water resources. Most municipalities are facing a decline in natural areas and urban forest due to development, invasive species and severe weather events. Water resources are threatened by contamination, erosion, invasive species and other factors. In order to maintain and enhance our natural systems, the land use planning system must support protection and enhancement of and investment in green infrastructure. The PPS defines infrastructure as physical structures that form the foundation for development. However, the PPS does not include natural heritage systems and the urban forest in the definition of infrastructure. A review of the PPS is currently underway and presents an opportunity to expand the definition of infrastructure. Protecting and enhancing green infrastructure by aligning land use planning and infrastructure decisions will help protect long-term public interest and create

healthy sustainable communities.

The Province has already limited the ability to appeal applications to expand settlement area boundaries, employment land conversions and policies permitting second units. The Province should expand this list to include other matters of provincial interest and to protect in-effect official plans. Also, as stated earlier, appeals to official plans in their entirety should not be permitted.

17. How should appeals of official plans, zoning by-laws, or related amendments, supporting matters that are provincially-approved be addressed? For example, should the ability to appeal these types of official plans, zoning by-laws, or related amendments be removed? Why or why not?

**RESPONSES TO QUESTIONS 16 AND 17 HAVE BEEN COMBINED**

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RESOLUTION 0048-2013  
adopted by the Council of  
The Corporation of the City of Mississauga  
at its meeting on March 27, 2013

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0048-2013 Moved by: Jim Tovey

Seconded by: Pat Mullin

WHEREAS Municipalities are required to produce Official Plans;

AND WHEREAS Municipalities use these plans to invest large amounts of up front capital in infrastructure to service future growth according to those plans;

AND WHEREAS densities located in areas not identified in the Official Plan may require changes to long term infrastructure planning, at additional costs;

AND WHEREAS Municipalities are provided finite growth numbers and job numbers as a basis for their Official Plan;

AND WHEREAS densities approved by the Ontario Municipal Board to be located in areas not identified in the Official Plan subtract from, and limit, a Municipalities ability to implement the intensification policies of that plan;

NOW THEREFORE BE IT RESOLVED that the City of Mississauga request of the Province of Ontario to make amendments to the *Planning Act* as follows;

1. where a Municipality has an Official Plan, and
2. where that Official Plan has been approved by the Province of Ontario, and
3. where the Municipality is achieving all of their targets for densities as outlined in the Provincial Growth Plan

AND FURTHER where a Development application is submitted to the Municipality requesting densities to be located in any other area than those identified in the Municipality's Official Plan, that development application shall have no right of appeal at the Ontario Municipal Board. The decision of Council will be final;

AND FURTHER Despite subsection 22(7), there is no appeal in respect of the official plan policies of a municipality or a planning board, adopted to conform to the growth management population, intensification and employment targets and policies as set out in the *Provincial Growth Plan for the Greater Golden Horseshoe area* and related regulations and Provincial policies;

AND FURTHER that the resolution be forwarded to AMO.

	YES	NO	ABSENT	ABSTAIN
Mayor H. McCallion	X			
Councillor J. Tovey	X			
Councillor P. Mullin	X			
Councillor C. Fonseca	X			
Councillor F. Dale	X			
Councillor B. Crombie	X			
Councillor R. Starr	X			
Councillor N. Iannicca	X			
Councillor K. Mahoney	X			
Councillor P. Saito	X			
Councillor S. McFadden	X			
Councillor G. Carlson	X			

Carried (12, 0) Unanimously