

BY: TUNNOCK CONSULTING LTD.

# Bill 51 ...a New Future for Ontario's Planning

Comments and questions  
are invited by contacting:



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January 1, 2007 ushered in significant changes to Ontario's Planning Act. The *Planning and Conservation Statute Law Amendment Act, 2006*, commonly referred to as Bill 51 changes Ontario's Planning system. The effects are immediate and those building officials who have responsibility for land use planning are best advised to review this amendment as well as related Ontario Regulations. Much of the emphasis is on the front end of the planning process. This means ensuring applications are complete, that all relevant information is made available to the public before a decision is made and that people participate in public meetings held to consider applications, or they will lose their rights to appeal. This article summarizes many of the new planning tools, processes and procedures, some of which are optional, and others which are mandatory.

**Official Plan (OP):** municipal official plans must be updated not less than once every five years. This includes any OP which was approved by the Province or an approval authority prior to January

1, 2002. Updates must conform with provincial plans such as the *Greenbelt Plan* and the *Places to Grow Act*. They must also be consistent with the Provincial Policy Statement (PPS) and have regard to matters of provincial interest. Municipalities will be required to submit an affidavit when they file the updated OP with the Province, indicating that the Plan is consistent with the PPS, that it conforms with provincial plans, that servicing considerations are dealt with (if applicable) and that metric measurements are used.

When a 5 year review is initiated, municipalities are obligated to consult with the approval authority and other prescribed public bodies as well as hold a special meeting (Section 26(3)). Approval of a new Plan or an official plan amendment (OPA) reflecting a 5 year review reverts to the Province from an upper tier municipality.

**Zoning By-laws (ZBL):** must also be updated within three years of the approval date of the official plan.

**Complete Application:** planning applications for an official plan amendment (OPA), zoning by-law amendment (ZBLA), subdivision or consent are complete only if they include information prescribed under the corresponding regulations (O.R. 543-546/06) and include any additional information or material where it is set out on the municipality's official plan. An application can be refused if it is not complete and municipalities will have 30 days from the date the application is received (not necessarily the date it is signed) to determine if it is complete. When an application for an OPA, ZBLA or subdivision (but not a consent) is deemed to be complete, an affirmation notice must be sent out to the applicant and other prescribed public bodies. The application and all associated information must also be made available to the public. Time periods prescribed in the *Planning Act* for processing an application do not start until the application is complete, but are retroactive to the date the application is received.

Where an application is refused (as being incomplete) or if no affirmative notice is given, or where there is a question raised as to whether certain information may be requested, an applicant may appeal to the OMB to decide and the Board's decision is final.

Municipality's may pass a by-law requiring applicants to consult with them before submitting an application for an OPA, ZBLA, subdivision or site plan.

**Employment Areas:** are now defined in the *Planning Act* as well as the PPS. These are essentially areas designated for industrial, commercial and associated uses. Once designated and approved, an application to convert such lands to a non-employment use can be refused by a municipality and such refusal cannot be appealed to the OMB. Appeals may only be made during the 5 year (comprehensive) review.

**Public Open Houses:** an open house is mandatory and must be held a minimum of 7 days prior to a statutory public meeting held for the 5 year review of the OP, updates to the zoning by-law as a result of the 5 year review of the OP and for OPAs and ZBLAs associated with the implementation of a Development permit System.

**Notices:** the list of prescribed agencies required to be notified has been expanded to include Parks Canada, railway lines and in the case of a subdivision, shall include any telecommunications provider. Notice must now be given where an OPA or ZBLA is refused and must include a written reason for refusal as well as giving the last date for an appeal. Notice must now be given for the adoption of a Community Improvement Plan.

**Record of Submission:** the contents have been expanded for filing an application for approval of an OP/OPA or ZBL/ZBLA (related to the 5 year review) or adoption of a development permit system, to include an affidavit on holding an open house. Affidavits are also required for any applications requiring the issuing of an affirmation notice for a complete application, making information available to the public and conformity with the PPS, provincial plans and other information as prescribed.

**Development Permit System (DPS):** this new planning tool can be used to replace zoning controls, minor variances and site plan control in an area where a DPA is established. It is an optional tool. It could be used in association with any of many policy areas i.e. shoreline management, community improvement, brownfields redevelopment, source protection, energy efficiency, etc. The tool requires detailed policies in the official plan and a corresponding DPS by-law. It provides an opportunity for considering broader controls for specialized circumstances than are otherwise available in a zoning by-law or through site plan control (i.e. can incorporate site alteration, tree cutting, external design of buildings, exemptions for classes of development, bonusing for height and density). Approvals can be delegated to staff while the approval period can be shortened (i.e. 45 days vs 120 days). Conditions can be registered on title. The by-law must establish the DPS area, scope of permitted uses, minimum and maximum standards, review procedures, notification procedures, conditions of approval, delegated authority and amending process. Given the level of detail, the rights to appeal are limited once the DPS is in place. Applicants may only appeal a non decision after 45 days, or a council refusal to issue a development permit or a condition.

**Sustainable Development:** new tools have been added for sustainable development such as the option of grants and loans for energy efficient land uses (under community improvement); reducing cash-in-lieu of parkland for redevelopment if sustainability criteria met; optimizing the available supply, means of supplying and energy conservation in subdivision design; and, requiring land dedication for transit rights-of-way pedestrian and bicycle paths as conditions of subdivision approval.

**Community Improvement:** the authority for community improvement has been expanded to include construction, providing for affordable housing, allowing for the registering of CIP grants and loans on title, supporting sustainable development and offering grants/loans for energy efficient land uses. CIP has been extended for use by upper tier municipalities or through joint venturing between upper and lower tiers on loans and grants.

**Local Appeal Boards (LAB):** a local appeal board can be established (optional) by any municipality for the purpose of hearing appeals from a Land Division Committee, a Committee of Adjustment or Council on a consent or minor variance. Appointments to a LAB are prescribed and cannot include Council, Committee members or municipal staff. A LAB can only be established if the OP and ZBL are updated. A by-law to establish a LAB must address a list of 10 criteria prescribed by regulation. A LAB may be of benefit in a municipality with frequent appeals where there is a desire to resolve these locally rather than referral to the OMB. Where a LAB is not established the rules of appeal to the OMB will continue.

**OMB:** The role of the OMB has also been changed. The Board's powers to dismiss an appeal have been broadened to include appeals where the appellant has persistently and without reasonable grounds commenced Board proceedings that constitute an abuse of process; and on an application that is substantially different from the application that was before council at the time of its decision. The rights of appeal to the OMB are more limited. A person is not permitted to appeal if they did not make a submission to council as part of the public meeting process. The Board may however add a party to a hearing where there are reasonable grounds to do so. The Board may only consider the

intended to avoid parties by-passing council and proceeding to the Board or holding back or introducing new information that council did not have the opportunity to review. The Board will have the authority to consider information that could have affected council's decision and refer it back to council for consideration. Council will have 60 days to consider the information and whether it would affect their decision and report back to the Board.

**Summary:** Bill 51 provides us with new challenges and new opportunities. Yes, we will need to revise our procedures, develop new forms etc., but conversely, there will be greater accountability and transparency in our planning system as well as new tools to facilitate and control development.

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