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Bill 73, the *Smart Growth for Our Communities Act, 2015*: Some Highlights

with Commentary by Erwin Dreessen

Bill 73, the *Smart Growth for Our Communities Act, 2015*, was introduced in the Ontario Legislature on 5 March 2015. The Bill would amend the *Development Charges Act* and the *Planning Act*.

Key Proposed Changes

+ Full transit extension costs to be financed by development charges and the costs can be estimated by looking forward 10 years instead of being limited to the level of service of the previous 10 years. (If so prescribed, the latter principle could also apply to piped services.)

+ Greater transparency in accounting for development charges accounts, Section 37 (community benefits) moneys, and payments in lieu of parkland.

+ Municipalities must establish a planning advisory committee.

+ In notices and decisions, higher profile for submissions made by the public.

+ If a decision on an application is not reached within 180 days then either side can extend the period once with up to 90 days.

+ Payment in lieu of parkland is reduced from 1 hectare per 300 dwellings to 1 hectare per 500 dwellings. Council can specify an even lower rate.

In more detail:

Changes to the *Development Charges Act*

1. The 10% reduction for transit services is repealed. *Comment:* This is something communities have been demanding for years.

2. When estimating the cost of an increase in the need for a service, the estimate must be for the planned level of service in the 10 years following the date of the Background Study. This will apply to "prescribed services" which will be set out in regulations. *Comment:* Presumably transit services will be so prescribed but will piped services as well? A multi-million dollar question.

3. The Background Study will have to include an asset management plan which will have to demonstrate that the assets are financially sustainable over their full life cycle.

4. In addition to opening and closing balances and transactions in the development charges accounts, the Treasurer's annual statement must also identify all assets and identify for each any other sources of funding. As well, Council must ensure that the statement is available to the public. *Comment:* If this would apply to <u>all</u> assets then it could be seen as a first step toward having a balance sheet for the Corporation of the City of Ottawa.

5. There is a peculiar new section which prohibits imposition of charges on the development industry other than those permitted under the *Development Charges* or any other *Act*. Exceptions are to be prescribed. The Minister is given powerful means to investigate compliance with this new section and to have the municipality pay the cost of the investigation to boot. *Comment:* Bribes? Shakedowns?

<u>Changes to the *Planning Act*</u>

6. Review of the Provincial Policy Statement would now take place every 10 years, instead of every five.

7. Council must establish a "planning advisory committee" whose members are appointed by Council and must include at least one resident who is neither a Councillor nor an employee of the City. Members may be paid remuneration and expenses as Council may determine. *Comment:* In the current *Planning Act*, having such an advisory committee is an option. This amendment would force at least some change to Ottawa's current set-up of advisory committees. Perhaps this is an opening to move toward the Region of Waterloo model (see attachment).

8. The Bill sticks to the structure of the Act, i.e., is repetitive in its clauses as it deals with Official Plans, Zoning By-laws, the Committee of Adjustment, Plans of Subdivision, and Consents, to name the major sections. Combining these parallel clauses:

(a) - a notice of adoption of an Official Plan (OP) or OP Amendment (OPA),
- a notice of approval of modifications to an OPA,
- a notice of refusal of a request to amend the OP,
- a notice of refusal to amend a zoning by-law,
- a notice of adoption of a zoning by-law,
- a decision by the Committee of Adjustment,
- a notice of approval or refusal to approve a draft Plan of Subdivision, and
- a notice of provisional approval or refusal to approve a division of land by Consent,

must explain the effect that written and oral submissions have had on the decision. The Bill specifies that this includes all written submission before Council made its decision and any oral submissions that were made at the public meeting. Similarly, in the current Act, when Council or the Ontario Municipal Board (OMB) make a decision, including a decision regarding an appeal of a Council's failure to act, the decision maker must "have regard to" various information and material, but that is now specified to include, "without limitation, written and oral submissions from the public".

(b) - when an appeal of an OP/OPA, or modification of an OPA, is filed,
- when a refusal to adopt an OPA is appealed,
- when a refusal to adopt a zoning by-law amendment is appealed,
- when approval or refusal to approve a Plan of Subdivision is appealed, and
- when approval of or refusal to consent is appealed,

then Council may use mediation, conciliation or other dispute resolution techniques. Protocols are set out; participation is voluntary. If taking that route, the City has 75 days to forward appeals to the Board instead of the regular 15.

9. Some new requirements or rules regarding Official Plans:
- they must contain a description of how the views of the public will be obtained when amendments to the Plan, to zoning by-laws, plans of subdivision or consents are proposed;
- the Minister must be given a copy of the proposed Plan or Amendment at least 90 days before Council issues a notice of adoption, if the Minister is the approval authority;
- a "global" appeal of a new Official Plan would no longer be allowed, nor can the part of a Plan that deals with a "vulnerable area" as defined in the *Clean Water Act, 2006*. (There are three other exceptions but they have no relevance for Ottawa.)
- a new OP cannot be amended until two years after coming into force;
- a new OP shall be revised at least 10 years after coming into effect, and every five years thereafter. *Comment:* Ottawa adopted a "new" OP in 2003 and has adopted comprehensive OPAs in 5-year cycles since. If it wants an OP to last 10 years, it would have to replace it with a "new" Plan.

10. If an appellant will argue that a decision is contrary to the Provincial Policy Statement, he/she must explain how that is so in the letter of appeal. Not doing so is ground for dismissal without a hearing.

11. Section 17(40) gives an applicant the ability to appeal to the OMB if Council does not make a decision within 180 days. A new clause offers either side the ability to extend that period for up to 90 days by giving notice to that effect. Only one extension would be permitted.

12. A new rule regarding zoning by-laws: If Council replaces all zoning by-laws, then they cannot be appealed until two years after they have come into effect.

13. The City Treasurer must report annually about any moneys related to Section 37 (the "community benefits" clause in return for higher density); the requirements are similar to those set out for the statement about the Development Charges accounts (see 4. above). And again, regarding cash-in-lieu of parkland (Section 42), the Treasurer must make an annual statement along the same lines.

14. Section 42 ("Conveyance of land for park purposes") contains the rule that commercial or industrial developments have to set aside 2% and other developments 5%. It also allows payment-in-lieu. Such payment would now be calculated "using a rate of one hectare for each 500 dwelling units proposed or such lesser rate as may be specified by by-law." There is a parallel amendment for Plans of Subdivision. *Comment:* This is a major reduction in compensation as the current rate is one hectare per 300 dwellings.

15. Regarding the Committee of Adjustment:

- a new clause states that a minor variance can be granted only if it conforms with prescribed criteria. *Comment:* One wonders whether the regulations will force conforming to the 2005 DeGasperis decision (see attachment);
- one cannot apply for a minor variance from a by-law until two years after the by-law was amended, unless Council explicitly declares that an application for a minor variance is permitted.

16. Clause 70.2 deals with the optional "development permit system" to control land use. Council must include policies regarding this system in its Official Plan and there is a long list of other requirements before Council can adopt such a system. Bill 73 references alternate terminology (""community planning permits") and states that the two expressions are equivalent. Whereas currently Cabinet can order a municipality to adopt such a system, now that power would reside with the Minister; however, the municipality could still decide what parts of its geographical area would be covered by the system. *Comment*: In response to a question at a public meeting on March 28, MPP Yasir Naqvi agreed that few municipalities have adopted such a development permit system but that some recent practices in Ottawa in fact meet the same intent, namely create greater certainty for all parties. Example: When a Community Design Plan is immediately translated into a zoning amendment.