

Bill 51: The Old Versus the New

GTHBA – UDI

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Key Planning Act Changes



- Restrictions on appeals of proposed conversions of **employment lands** to other uses
- Expansion of the scope of the site plan approval process to include controls on the **exterior design** of buildings

Key Planning Act Changes



- The requirement for the filing of more materials and information for a “**complete** application”
- **Restrictions on the appeal rights** of persons who did not make written or oral submissions to Council prior to its decision
- The ability to impose conditions on zoning approvals

Key Planning Act Changes



- A requirement for the OMB to have regard to the decision of the municipal Council and any supporting information and material that the Council considered in making its decision
- If a party seeks to introduce new information or material into evidence at the OMB that had not been before Council, the OMB can refer the evidence back to Council to make a recommendation to the Board where the new evidence “could have materially affected the Council’s decision”

- Where a municipality refuses or neglects to consider an Official Plan amendment or rezoning application to “remove any land from an area of employment” (even if other land is proposed to be added), there is **no longer a right to appeal** to the OMB.

- A municipality is required to revise its Official Plan every five years to confirm or amend its policies dealing with areas of employment. Employment area policies that are amended or confirmed as part of a municipally-initiated Official Plan review can be appealed to the OMB.

- **“Area of Employment”** means an area of land designated in an Official Plan for **“clusters of business and economic uses”**, including, without limitation:

- (a) manufacturing uses;
- (b) warehousing uses;
- (c) office uses;
- (d) retail uses associated with (a) to (c); and
- (e) facilities that are ancillary to (a) to (d),

or as otherwise prescribed by regulation.

■ Employment Lands Interpreted:

- In considering the Park Place application to permit the development of a general commercial and business park in a format referred to as a “Power Town” the Board determined that since retail and service commercial uses are employment-generating uses, **it was reasonable and appropriate to reference commercial as an employment use within the 2005 PPS.** (*North American Acquisition Inc. v. Barrie (City)* [2006] O.M.B.D. No. 1183)
- The City of Toronto states in its January 10, 2006 Report that Employment Lands under the 2005 PPS **do not include mixed use or regeneration area lands** as designated in the New Official Plan. (PPS Comprehensive Review and Application to Employment Lands, Report of the Chief Planner)

- A municipality is entitled to regulate “**matters relating to exterior design**” through the site plan approval process, “including, without limitation, the character, scale, appearance and design features of buildings, and their sustainable design”, provided its Official Plan and site plan by-law have provisions relating to such matters.

- The existing prohibitions against regulating the colour, texture and type of materials, window detail and architectural detail have been deleted.
- The following matters **are not subject to site plan control**: interior design, interior layout (other than interior walkways, stairs, elevators and escalators to which members of the public have access), and the manner of construction and standards for construction.
- Disputes about the scope of site plan control can be addressed by way of a motion for directions to the OMB.

New Application Requirements and Procedure



- The Province has “enhanced” the existing prescribed list of information and materials required for a “**complete application**”. The Planning Act Regulations now specifically list the information and material to be provided for each specific application:
 - Official Plan Amendments: O. Reg 543/06 Schedule 1
 - Plans of Subdivision: O. Reg 544/06 Schedule 1
 - Zoning By-Laws, Holding By-Laws and Interim Control by-Laws: O.Reg 545/06 Schedule 1

New Application Requirements and Procedure



- New Requirements (Official Plan Amendments O.Reg. 543/06)
 - Servicing Options Report and Hydrogeological Report (where Private or Communal Services Provided)
 - Current Applicable Official Plan Policies (where Altering or Establishing an Area of Settlement, or Removing Lands from an Employment Area)
 - Address Consistency with PPS and Conformity with Provincial Plans

New Application Requirements and Procedure



- A municipality is entitled to set out in its Official Plan additional information and material required for a complete application.

Complete Applications



- Within 30 days of payment of the application fee, the municipality shall notify the applicant whether the application includes all required information and material
- Within 30 days of a negative notice, the applicant may make a motion to the OMB to determine:
 - Whether the information and material was in fact provided; or
 - Whether the municipality's requirements for a complete application are reasonable.

New Application Requirements and Procedure



- A municipality can pass by-laws requiring applicants to consult with it prior to the submission of an Official Plan amendment, zoning, subdivision or site plan application – the “early consultation” process.

New Application Requirements and Procedure



- A person that is not a public body and who did not make oral or written submissions to the Council before approval of an OPA, rezoning, draft plan of subdivision or subdivision conditions **will not be able to appeal the matter to the OMB.**
- This new restriction replaces the previous provisions which allowed such a person's appeal to be subject to a motion to dismiss.
- A public body is exempt from this “no appeal” restriction, and will not be subject to a motion to dismiss where it appealed to the OMB despite failing to make submissions to the Council.

New Rules Regarding OMB Hearings



- An approval authority and the OMB will be required to “have regard to” any **decision** made by a municipal Council and any **supporting information and material** that the Council considered in making its decision.

New Evidence at OMB Hearings



- The unworkable “no new evidence rule” from the First Reading version of Bill 51 has been eliminated.
- Bill 51 no longer restricts the introduction into evidence at the OMB of information and material that was not provided to a municipality before Council made its decision

New Evidence at OMB Hearings



- The OMB, on its own initiative, or on the motion of any party, may consider whether the new evidence could have “materially affected the Council’s decision”

- If yes, the information and material shall not be admitted into evidence until Council has been given an opportunity to:
 - Reconsider its decision in light of the new information; and
 - Make a written recommendation to the OMB.

New Evidence at OMB Hearings



- The Board **shall have regard to Council's written recommendation** if it is received within the prescribed time frame (30 days), and may (but is not required to do so) have regard to it if it is received afterwards.

- Decisions on planning applications shall be consistent with provincial policy statements and plans in place **at the time of the decision.**

- Provincial Plans Include:
 - The Greenbelt Plan
 - The Niagara Escarpment Plan
 - The Oak Ridges Moraine Conservation Plan
 - A Development Plan under the *Ontario Planning and Development Act, 1994*, and
 - A Growth Plan under the *Places to Grow Act*

- Municipalities have been granted the authority to impose “**prescribed conditions**” in a **zoning by-law** on the use, erection or location of buildings, as long as a municipality’s Official Plan contains policies related to zoning with conditions.
- The Regulation concerning conditional zoning has not yet been released.

- Municipalities are able to establish local appeal bodies to deal with appeals of variances and consents, rather than the Ontario Municipal Board
- The City of Toronto and the Town of Oakville are currently considering establishment
- Concerns:
 - Cost : Toronto estimates 1.1 million (+) to hear 400 cases a year.
 - Independence from Political Pressure
 - Duplication of Resources including Staff