



Committee Report

To: Councillor Steve Hammell, Chair and
Members of the Planning and Development Committee

From: Mark Paoli
Director of Planning and Development

Date: April 21, 2022

Re: Proposed Changes to Planning Act (Bill 109)

Staff Recommendation:

That the Appendices to the “Proposed Changes to Planning Act (Bill 109)” report be forwarded to the Ministry of Municipal Affairs as Bruce County’s Comments on the EBR Registry numbers 019-5284, 019-5285, and 019-5287 and 019-5286.

Background:

The Ontario Provincial Government has proposed Bill 109, titled the “[More Homes for Everyone Act, 2022](#).” This Bill would amend several pieces of legislation including the City of Toronto Act, Development Charges Act, New Home Construction Licensing Act, New Home Warranties Plan Act, and the Planning Act.

The four appendices to this report offer analysis and comments related to proposed changes to the Planning Act through Bill 109, as well as a provincial Environmental Registry posting titled “Seeking Feedback on Housing Needs in Rural and Northern Municipalities” and a posting titled “Opportunities to increase missing middle housing and gentle density, including supports for multigenerational housing.” Staff offer this analysis for Committee consideration in forwarding County feedback to the Ministry of Municipal Affairs. We note also Association of Municipalities Ontario comments, available [here](#). Comments are due to the Ministry of Municipal Affairs by April 29, 2022.

Financial/Staffing/Legal/IT Considerations:

There are no financial, staffing, legal or IT considerations associated with this report.

Planning Act changes, if implemented, could impact revenues for application fees if partial refunds are required from 2023 onward.

Interdepartmental Consultation:

Human Services – Contributed to the recommended ‘Feedback on Housing Options for Rural and Northern Municipalities’ and ‘Opportunities to increase missing middle housing and gentle density, including supports for multigenerational housing.’

Staff facilitated a conversation with several development officials and CAOs from Local municipalities to inform the feedback offered here and through local municipal councils.

Link to Strategic Goals and Elements:

Goal 7: Stimulate and reward innovation and economic development.

- A. Streamline and Simplify our Planning Processes (Official Plan, Zoning By-law)

Goal 9: Coordinated, concerted effort to advance our agenda.

- B. Politicians and staff lobby associations and government in support of local policy needs
- C. Make political and staff participation in provincial and federal committees a priority

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Departmental Approval:

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Approved for Submission:

Christine MacDonald
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Appendix 'A': Comments on ERO Posting [019-5284](#): Proposed Planning Act Changes (the proposed More Homes for Everyone Act, 2022)

Summary:

We hope that the Province will consider the County's comments in its further review and debate of the legislation.

The changes outlined in the ERO Posting include:

- Building homes faster by expediting approvals;
- Providing increased certainty of parkland requirements for Transit-Oriented Communities (not applicable to Bruce County);
- Providing increased certainty of development costs
- Increasing transparency in the planning process
- Supporting dispute resolution

Comments related to Building Homes Faster by Expediting Approvals:

Proposal:

Require municipalities to partially refund application fees to applicants who do not receive a decision on their zoning by-law amendment applications within 90 days (or 120 days if submitted concurrently with an official plan amendment application) and on a graduated basis thereafter for applications made on or after January 1, 2023.

Comment:

The proposed change applies to all zoning amendment applications. The purpose of the statutory process for plan and zoning amendments is to provide for agency and public circulation and engagement. The province is not proposing any changes to other statutory timeframes such as the 20-days of notice that are required before a public meeting.

Most zoning changes in Bruce County are completed within, or near, the 90/120 day timeframes provided under the Planning Act after which an applicant may appeal to the Tribunal for a decision. Applications take longer to process when problems with the information in the submission are identified during agency or public circulation or when the community identifies issues and Councils direct the applicant to address them before a decision is made. It is also not uncommon for an applicant to request an application be placed on hold. Some local Councils also make a formal decision at a separate meeting from the public meeting, to provide additional time for deliberation. The proposed change would result in taxpayers subsidizing the processing costs of applications that take more time to process due to quality, community issues, or applicant requests.

Establishing a financial penalty related to the application review timeframe would not encourage collaboration. It would not encourage developers to prepare and complete quality submissions, or to work collaboratively to resolve issues as the refund deadline approaches.

Instead, it sets time for a specific part of the process as the measure of performance, not the overall progress of the project. The thick boxes in the table below illustrate the steps within the zoning approval process that would be subject to the refund requirement. It is important to note that Site Plan Control, infrastructure approvals, building and other permits and utility agreements are also often required prior to construction.

Presubmission Consultation and Preparation No time specified	Initial Review (deem complete / not complete) <30 days Restarts if application is incomplete	Complete Application Notice <15 days of deeming complete	Public Meeting Notice >20 days before meeting	Public Meeting	Decision <90/120 days from received complete	Issue Decision Notice <15 days of decision	Appeal period 20 days from notice of decision
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Focusing on the timeline for the public-facing part of the process will likely result in more time spent pre-submission, or in a submit-review-reject-revise cycle, to ensure that applications do not begin the time-limited process until every conceivable issue is addressed. Since pre-submission reviews are largely internal processes, doing all the work at this stage can result in their being a disincentive for proponents to make changes based on community input once the application is posted for public review and engagement as a 'complete application.'

Councils may also consider refusing applications if there are outstanding concerns as the deadline approaches to avoid the fee reduction, forcing applicants to either start over with a new application or appeal to the OLT. Neither supports a timely outcome.

For these reasons, Bruce County does not support the imposition of mandatory partial refunds after 90/120 days. As alternatives, we suggest:

- Support Municipal efforts to make community-wide updates to plans and by-laws so that they are more efficient at directing appropriate and desirable development. This would reduce the volume of site-specific applications that require processing in the first place.
- Municipalities could refund partial fees for applications that are deemed complete on first submission, to reward quality and recognize the time savings for processing these applications.
- Consider changes to appeal periods. Appeal rights for zoning decisions (Section 34 (19)) are limited to the applicant, people or public bodies that participated in the process, and the Minister (whose Ministry may not require circulation, and rarely comment on applications). Many zoning approvals are not controversial and see no concerns from public bodies and no public concerns. In these scenarios, the appeal period is a 3-week delay for no clear purpose. We suggest that the province consider eliminating or shortening the 20-day appeal period zoning for approvals where:
 - The applicant waives their right to appeal;
 - No public or public body submissions expressing concern with respect to the by-law have been recorded; and
 - No changes have been made to the by-law between the public meeting and its adoption by Council.

Proposal:

Establish a new Community Infrastructure and Housing Accelerator (CIHA) tool for municipal requests to expedite zoning outside of the Greenbelt area. The Minister shall also issue guidelines governing the scope of how this authority may be used, and the guidelines would need to be in place before an order could be made.

Comment:

Noting that this tool may not be used within the Greenbelt area, it would be helpful to clarify if the intent is also to exclude 'Urban Areas' in the Niagara Escarpment Plan, such as Lion's Head and Wiarton, from eligibility for this tool.

In contrast to the mandatory refunds for Municipal decision-making that takes more than 90/120 days, no timelines are provided for the Accelerator tool. The process appears to require municipalities to do the engagement and prepare the submission with no provision for application fees to recover their costs.

Further comments are offered under the posting for the draft guideline.

Proposal:

Streamlining development approvals processes and facilitate faster decisions by:

- Requiring decisions on site plan applications to be delegated to staff for applications made on or after July 1, 2022;
- Extending site plan application review from 30 to 60 days;
- Establishing regulation-making authority to prescribe complete application requirements for site plan applications; and
- Requiring municipalities to partially refund site plan application fees to applicants who do not receive a decision within the 60-day timeframe and on a graduated basis thereafter for applications made on or after January 1, 2023.

Comment:

Site Plan Control is administered by lower-tier Municipalities in Bruce County. The proposed changes relate to all classes of development and are not limited to residential development. The Planning Act currently includes provisions which establish the scope of Site Plan Control, and limit Site Plan Control requirements for residential projects under 25 units.

From discussions with development officials at local Municipalities, staff offer the following:

- Mandatory delegation of Site Plan to staff could result in Councils providing greater attention to design matters at the zoning application stage, while the project is within their decision-making authority.
- Increased standardization of Site Plan Control may offer advantages in terms of a clearer process and expectations across the province; however:
 - Most straightforward sites have already been developed, and many sites that remain available are infill or redevelopment, are otherwise constrained, or present complex design issues.

- Increased prescription regarding Site Plan Control may limit the ability of Municipalities to innovate with applicants to accommodate non-standard developments or challenging sites.
- The building permit process is now well-standardized and prescribed; however, increased prescription regarding site plan control needs to recognize the variation between simple and complex projects, and between urban and rural settings.
- Comments above regarding mandatory refunds based on timing for Zoning applications apply also to Site Plan Control.
- Site Plan Control needs to consider more variables, in closer detail, and can include requirements for signoffs from external entities including agencies and other levels of government.
- Increasing the timeframe from 30 to 60 days is appreciated, but still is not a lot of time for complex proposals for reasons noted above.
- As an alternative to financial penalties to taxpayers, we suggest the province focus on standardization and reporting to understand the current timeline and common “pain points” where Site Plan Approvals slow down, then support efforts to address these areas, including appropriate resources where provincial sign-offs are required.

Proposal:

Establishing regulation-making authority to prescribe what cannot be required as a condition of subdivision approval.

Comment:

In approving a Plan of Subdivision, Approval Authorities like Bruce County are required to have regard for the Provincial Policy Statement, Provincial Plans, the Province’s Planning Act criteria for Subdivisions, as well as Official Plans that are approved by the Province, or must conform to plans that are approved by the province. Conditions of Draft approval are authorized by Section 51 (25):

(25) The approval authority may impose such conditions to the approval of a plan of subdivision as in the opinion of the approval authority are reasonable, having regard to the nature of the development proposed for the subdivision, including [land dedication for parkland or for various transportation needs, agreements, and shared facilities agreements in certain circumstances]

A change to specifically prohibit, by prescription, certain matters from Subdivision agreements must relate to concern that Municipalities have applied their opinion as to ‘reasonableness’ in consideration of the Planning tools they work with.

We would encourage the province to consult directly with approval authorities whose conditions have prompted this legislation to see if there are alternatives that address the planning issues without prescriptions that would apply province-wide.

Conditions offer a way to address a concern at the right time in the process. They reduce need for up-front investments in information before approvals are granted. Prescribing certain planning matters from being addressed as conditions in a Draft Approval could lead to their being required prior to granting draft approval, increasing time and/or up-front costs to developers.

Specific prohibitions, if warranted, would preserve the otherwise broad capacity established by the Planning Act for approval authorities to work with all parties to set out conditions and agreements that address provincial requirements and local contexts, and enable greater flexibility in the timing and scope of work required to advance land development projects.

Proposal:

Establishing a one-time discretionary authority to reinstate draft plans of subdivision that have lapsed within the past five years, subject to consumer protection provisions.

Comment:

Good idea. Discretion is important to ensure that the project continues to align with Municipal plans and standards. Opportunities to require some amount of dedicated affordable housing units in association with reinstatement of a lapsed draft plan may be advantageous and recognize the time savings afforded to the proponent compared to starting over.

Comments Related to Increasing Certainty of Development Costs:

Proposal:

Providing the Minister of Municipal Affairs and Housing with regulation-making authority to authorize landowners and applicants to stipulate the type of surety bonds and other prescribed instruments to be used to secure obligations in connection with land use planning approvals.

Comment:

This change relates to a recommendation in the [Affordable Housing Task force report](#) (page 16):

we were told that a shift in how builders are required to guarantee their performance would free up billions of dollars to build more housing. Pay on demand surety bonds are a much less onerous option than letters of credit, and are already accepted in Hamilton, Pickering, Innisfil, Whitchurch-Stouffville and other Ontario municipalities.

The change would move many municipalities from requiring letters of credit which can require dollar-for-dollar collateral, to other forms of performance bonds.

Securities related to developments in Bruce County are most often addressed within the Site Plan or Subdivision agreements related to Municipal infrastructure. Municipal officials we consulted with noted that broader acceptance and consistency in the approved types of securities, values, and release schedules could make the financing and securities aspect of development approval more efficient and predictable for developers across the province.

Comments related to Increasing transparency in the planning process

Proposal:

Establishing regulation-making authority to require public reporting on development applications / approvals.

Comment:

Bruce County currently reports on application volumes, lot creation, and unit counts, and Municipalities report on development activities. Reporting on additional parameters is technically possible and would be supported if value of the reports can be demonstrated.

Proposal:

Requiring municipalities with a community benefits charge (CBC) by-law to undertake and complete a review, including consulting publicly, on their by-law at least once every five years after the by-law is passed, and every five years thereafter.

Comment:

Community Benefits Charges are not currently used in Bruce County or local municipalities. If applied, this review requirement appears to be similar to requirements related to development charges.

Comments related to Dispute Resolution:

Proposal:

Providing the Minister with new discretionary authorities when making decisions to:

- “Stop the clock” if more time is needed to decide on all official plan matters that are subject to Minister’s approval (with transition for matters that are currently before the Minister),
- Refer all or part(s) of an official plan matter to the Ontario Land Tribunal for a recommendation, and
- Forward all of an official plan matter to the Ontario Land Tribunal to make a decision.

Comment:

We note the contrast in this Bill whereby the province proposes to establish costs to Municipalities if they take too long to decide on private planning applications, while at the same time the province could suspend the County’s right to appeal if the province takes too long to review the new County Plan.

Appendix 'B': Comments on ERO Posting [019-5285](#): Community Infrastructure and Housing Accelerator - Proposed Guideline

Summary:

This tool appears to be very similar in function to the 'Minister's Zoning Order (MZO)' which has been used with increasing frequency. This tool would have an accompanying guideline that sets out the scope of use and expectations for community and indigenous engagement and environmental protection/mitigation. These issues are important to consider and address in decision-making.

The present MZO tool, and the proposed Accelerator tool, present an alternative decision-making pathway that appear to be intended to fast track priority approvals.

If such a tool is to be used, a guideline would be beneficial to enable municipalities to consider how it might be used.

The guidelines appear to permit this tool to be used for a broad range of development categories, including "mixed use development," with no clear threshold for the 'mix' or how much it must relate to the stated intent of 'housing and infrastructure.' This could result in the tool being applied to development at scales that would typically proceed through a neighbourhood planning process and careful change management that is led by and decided on by the elected Council of the Municipality, with public scrutiny and rights of appeal.

Although the guideline notes that the Municipality must 'support' the request, increasing the availability of Minister-ordered planning could have the effect of increasing the number of instances of setting aside the robust, municipally-led planning process.

Appendix 'C': Comments on ERO Posting [019-5287](#): Housing Needs in Rural and Northern Municipalities

Question 1: What are the key barriers impacting your municipality in meeting its housing needs that may be unique to northern and rural communities?

- Regional Market Areas (RMAs) for rural municipalities reinforce the imbalances of historic land designations that exist in some areas. Rural economies and homebuyers have less capacity to absorb high land costs associated with scarcity in urban areas, and have less regional infrastructure that needs to be planned at the County scale, so RMAs are less relevant.
- Lack of clarity or guidance for development on partial/private services - what is appropriate, including the role of new technologies?
- Municipalities have limited ability to drive local solutions on housing affordability, as the provincial and federal governments control the funding. Project funding announcements are unpredictable, have short turnaround requirements, and are tied to the fiscal year, which make it difficult for smaller service providers to plan, schedule, and deliver projects.
- Despite the significant rise in prices, the market for traditional 1-storey detached homes is large, based on a segment of the population with high incomes and/or who are relocating with equity from sales in higher-priced markets. Developers will build 1-storey townhouses, additional units in some homes, or high-density apartments, but no other forms of 'missing middle' housing because they can make more money on other housing forms.
- Timelines for updating housing policy are too long. We know what we want to see, but smaller Rural Planning departments struggle to keep up with the pace of legislative change. The province could provide for an 'emergency implementation' timeline to reduce statutory requirements.
- We need a lot of affordable housing throughout our communities, but with smaller communities, each project is not large enough to achieve economy of scale and larger projects would stress community capacity.
- Housing services providers cannot maintain or renew housing units because of the shortfall between provincial housing supports to tenants and the operating costs of the units.

Question 2: What kind of flexibility is needed to address housing needs in your municipality?

- Flexibility in defining regional market areas so communities can grow at and manage their pace of development relative to their capacity to implement the infrastructure requirements to achieve growth
- Opportunity to do infilling or rounding out of existing clusters (hamlets) whether within or outside of currently identified 'hamlet' settlement areas, where significant conflicts (such as 5 or more dwellings on separate lots in a defined area) have already been established. This provides an opportunity for rural living without introducing new land use conflicts broadly across the landscape.
- Employment land conversions - consider establishing a threshold for small conversions or adjustments, that can proceed without large scale processes.
- Consider an equivalent of Transit Oriented Development planning resources that can support node and corridor planning in fast-growing smaller communities.

Question 3: What potential tools or policies could the government consider to address housing needs in your municipality while balancing other provincial priorities?

- Brownfield Redevelopment costs are prohibitive to supporting reuse in our limited-size urban areas.
- Province could better resource their review / approval functions, ex. Filing of Record of Site Condition, water, sewer infrastructure approvals so that shovels can get in the ground faster, and consider supports to indigenous community capacity to engage in land use planning.
- Afford municipalities more flexibility in securing affordable/attainable housing development, such as an Inclusionary Zoning framework that is relevant to Rural municipalities
- Complete an update to the D5-4 Groundwater Quality Impact Assessment Guideline to address (among other things) the opportunities afforded by new wastewater treatment technologies. This could unlock higher densities for development on private services while ensuring groundwater resources are protected, and create a clear review standard.
- Use further resources to support the use of housing as homes, rather than as speculative investments.

Question 4: Do you have other suggestions for ways to improve housing supply and needs in rural and northern municipalities?

- Fund a % of municipal hard infrastructure, especially to 'finish the job' in communities with partial services [water or sewer] in place, to facilitate the development of complete communities at appropriate densities.
- Fund studies for infrastructure capacity and master planning so Municipalities can identify and get their best next step to accommodate growth "shovel ready."
- A more stable and predictable intake process for affordable housing project funding, with streamlined reporting requirements that can be supported within the funding envelope.

Appendix 'D': Comments on ERO Posting [019-5286](#): Opportunities to increase missing middle housing and gentle density, including supports for multigenerational housing

Question 1: What are the biggest barriers and delays to diversifying the types of housing built in existing neighbourhoods?

The people with the money to buy new homes outside large urban centres have a strong preference for one-storey ground-oriented dwellings. The market works to supply this preference.

As a result many homebuilders can fill their production schedules with single-detached dwellings and townhomes, and occasional apartment buildings with elevators. Changes to permit as-of-right additional units in homes are however starting to see some uptake.

While Additional Residential Units can offer increased supply, they are only one of several forms of needed housing, and they may not always be available: Owners may be deterred by the risks and responsibilities associated with being a landlord.

Some communities do not have adequate water/sewer infrastructure to accommodate higher density development.

Rural land supplies are less dynamic, with fewer total parcels available for development, and fewer dwelling types that developers are familiar with. Some landowners are not prepared to develop their urban lands; other developers can control supply of shovel-ready land, and only sell lots for products that they want to build and sell.

Question 2: What further changes to the planning and development process would you suggest to make it easier to support gentle density and build missing middle housing and multigenerational housing, in Ontario?

Offer Municipalities resources they need to implement legislative changes that have already been made. Policy changes to provincial legislation, such as Additional Residential Unit Policies, require implementation through Upper Tier and Local Official Plans and Local Zoning By-laws. Municipal Modernization grants have been helpful thus far in building efficiencies, cost alignment, and workflow management capacity.

With a high pace of change, including potential for increasing intensification opportunities, developers may also defer some middle-density projects if there is a reasonable possibility of higher densities being possible in the near future.

We would observe that the province has removed 3rd-party appeal rights for Plans of Subdivision, however appeal rights remain for land division by consent. Both consents and plans of subdivisions must meet official plan and zoning criteria.

Question 3: Are you aware of innovative approaches to land use planning and community building from other jurisdictions that would help increase the supply of missing middle and multigenerational housing?

Municipalities, community organizations, and the broader community could benefit from resources to help them become more comfortable with different land tenure structures such as land-lease, life-lease, cooperative housing, and different condominium forms.

Bruce County is working to deliver an Affordable Housing 101 toolkit focused on marketing opportunities to be part of the housing supply solution to developers and homeowners.

Question 4: Are there any other changes that would help support opportunities for missing middle and multigenerational housing?

Fund the infrastructure needed for partially-serviced communities to 'finish the job' and accommodate higher densities of development.