



**MORE HOMES, MORE CHOICE ACT,
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OR

BACK TO THE FUTURE

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AGENDA

Topics

- Shortened Timelines on Non-decisions
- Community Benefits Charges
- De Novo Hearings
- Ontario Heritage Act

LET'S GET MOVING

**SHORTENED TIMELINE:
NON-DECISIONS**

SHORTENED TIMELINE – NON-DECISIONS

- **Change to timelines for non-decisions on:**
 1. Official Plan or Official Plan Amendment
 2. Zoning By-law Amendment
 3. Holding Provision in Zoning By-law
 4. Plan of Subdivision
- **In effect as of September 3, 2019**
- **Key Sections: 17(40), 17(40.1), 22(7.0.2), 34(11), 34(11.0.0.0.1), 36(3), 51(34) of the *Planning Act***

SHORTENED TIMELINE –NON-DECISIONS

Official Plan or Official Plan Amendment

- Time for an Approval Authority to decide reduced from 210 days to 120 days
- Becomes appealable “Non-decision”
- Eliminated option to extend timeline by 90 days
 - Section 17(40.1) was repealed and not replaced
- Previously, up to 300 days ➡ Now, maximum 120 days

SHORTENED TIMELINE – NON-DECISIONS

Zoning By-law Amendment

- **Time for municipal council to decide reduced from 150 days to 90 days**
- **Where a Zoning By-law Amendment also requires an Official Plan Amendment:**
 - Reduced from 210 days to 120 days

SHORTENED TIMELINE – NON-DECISIONS

Holding Provisions in Zoning By-laws

- **Time for municipal council to make a decision on whether to remove a holding provision in a zoning by-law reduced from 150 days to 90 days**
- **Case law – Marjerrison v. Ottawa (City)**

SHORTENED TIMELINE – NON-DECISIONS AND LIMITED APPEAL RIGHTS

Plans of Subdivision

- Time for an approval authority to decide reduced from 180 days to 120 days
- approval of plans of subdivision may only be appealed by:
 - The applicant, municipality, or Minister
 - A public body that made submissions prior to approval
 - The list of persons set out in s.51(48.3) of the Planning Act (primarily including utility companies, railways, etc).

SHORTENED TIMELINE – NON-DECISIONS

Impact

- **Official Plans, Official Plan Amendments, Zoning By-law Amendments and Plans of Subdivision will move faster through the approval process**
- **Removal of Holding Provisions in Zoning By-laws will move faster through the removal process**

BRINGING PREDICTABILITY TO THE PROCESS - COMMUNITY BENEFITS CHARGES

COMMUNITY BENEFITS CHARGES

- **Significant changes to how municipalities obtain funding for soft services or acquire land**
- **Key Changes:**
 1. New Community Benefits Charge By-law system
 2. Removal of conveyance of land for parkland where Community Benefits Charge By-law in place
 3. Development charges applicable to fewer services
- **None of these changes are currently in force (on a date to be proclaimed)**
- **Key Sections: 37 and 42 of the *Planning Act*; 2(4) of the *Development Charges Act***

COMMUNITY BENEFITS CHARGES

- **Height and density bonus under section 37 is eliminated**
- **Previously, municipalities could agree to increase the height and density of development otherwise allowed in a zoning by-law in exchange for an agreement to provide facilities, services or other matters**
- **Negotiation heavy process – highly political – High uncertainty**

COMMUNITY BENEFITS CHARGES

- Replaced with option for municipalities to pass Community Benefits Charge By-laws
- No overlap with facilities, services or matters addressed by Development Charges
- Maximum amount of community benefits charges payable will be based on a percentage of the value of the land (to be prescribed in regulations)
- “No person shall construct a building on the land proposed for development [...]” – until payment and/or provision of services and facilities has been made under the community benefits system
 - Or arrangements for the payment and/or provision of services and facilities that are satisfactory to the council have been made
- Many details to be prescribed through regulation

COMMUNITY BENEFITS CHARGES

Proposed regulation

- **Consultation period completed in August**
- **Highlights:**
 1. Exemptions for (1) long-term care homes; (2) retirement homes; (3) universities and colleges; (4) memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion; (5) hospices; and (6) non-profit housing
 2. “A range of percentages” to take into account varying values of land – No concrete numbers yet
 3. No Community Benefits Charge By-law where a Community Planning Permit System is in place (in the Ottawa area, currently only Carleton Place)
 4. January 1, 2021 – proposed as the specified date for municipalities to transition to community benefits charges

COMMUNITY BENEFITS CHARGES

Proposed Regulation

- “For any particular development, the **community benefits charge payable could not exceed the amount determined by a formula** involving the application of a prescribed percentage to the value of the development land. The value of land that is used is the value on the day before the building permit is issued to account for the necessary zoning to accommodate the development.”
 - <https://ero.ontario.ca/notice/019-0183>

COMMUNITY BENEFITS CHARGES

Proposed Regulation

- **Disputing Charges – Under the community benefits system, payment is made under protest.**
- **The proposed regulation provides the owner with 30 days to provide the municipality with an appraisal report**
 - **In turn, the municipality would have 45 days to respond with its appraisal report**
 - **If the difference is greater than 5%, the owner can select an appraiser from an approved list and that appraiser's report must be provided within 60 days – to be used for determining the charges.**
- **In case of dispute, the amount of charges would be determined within a maximum of 135 days.**
- **By contrast, under the *Development Charges Act*, a party must make a complaint within 90 days and there is no prescribed time for municipal council to decide after holding a hearing – could extend far beyond 90 days.**

COMMUNITY BENEFITS CHARGES

Proposed Regulation

- Proposes similar restrictions on facilities, services or matters to be funded by community benefits charges, as are seen in the current *Development Charges Act*.
- The only difference from the current list of ineligible services in the *Development Charges Act* is with respect to **land acquisition for parks**.
- Land acquisition for parks would not be excluded from community benefits charges (although it has been excluded from the development charges system).

COMMUNITY BENEFITS CHARGES

Development Charges Act

- **Section 2(4) lists services that are ineligible for funding – leaving any unlisted service open to funding**
- **New section 2(4) will enumerate specific services which can be funded and excludes all others**

COMMUNITY BENEFITS CHARGES

Development Charges – Applicable Services

Previous	New
<p>Enumerates ineligible services:</p> <ul style="list-style-type: none">• Cultural or entertainment facilities• Tourism facilities• Land acquisition for parks• Hospitals• Landfill sites• Waste incineration facilities• Municipal administration headquarters	<p>Enumerates eligible services:</p> <ul style="list-style-type: none">• Water supply services• Waster water services• Storm water services• Services related to a highway• Electrical power services• Emergency services (Police, Fire, Ambulance)• Toronto-York subway extension• Transit services• Waste diversion

COMMUNITY BENEFITS CHARGES

Conveyance of Land for Park Purposes

- **Conveyance of land for park purposes as a condition for development of land NOT applicable where a Community Benefits Charge By-law is in place**
- **If a municipality has not passed a community benefits charge by-law:**
 - The alternative requirement of 1 hectare per 300 dwelling units is eliminated
 - In such case, the municipality can only require 2% or 5% of land or payment in lieu under s.42

COMMUNITY BENEFITS CHARGES

Impact

- **Developers may be expected to contribute less toward community benefits than under the previous system.**
- **More certainty in quantity required to contribute once regulations are put into place**
 - Less negotiation based
 - Where Community Benefits Charge By-law is in place – other avenues for contribution are excluded
- **Faster and cheaper process for challenging charges**
 - Comparing timelines under the *Development Charges Act* and the timeline in the proposed regulation on community benefits
 - Referral to list of approved appraiser, no hearing

BACK TO THE FUTURE - DE NOVO HEARINGS

DE NOVO HEARINGS

New Test on Appeals: Good Planning

- **Return to the test of “Good Planning” on OP and ZBL appeals**
- **Removal of restrictions regarding the basis of an appeal**
- **Previously had to show inconsistency with PPS, and failure to conform or a conflict with higher order planning documents**
 - Example 1: Lower-tier Official Plan Amendment
 - Existing parts to be amended are inconsistent with PPS or fail to conform or conflict with the Provincial plans or the upper-tier Official Plan; AND
 - The amendment consistent with PPS and conform and do not conflict with the above listed
 - Example 2: Zoning By-law Amendment
 - Existing parts to be amended are inconsistent with PPS or do not conform or conflict with the Provincial plans or Official Plan; AND
 - The amendment is consistent with PPS and conform and do not conflict with the above listed.

DE NOVO HEARINGS

New Test on Appeals: Good Planning

- **Does the proposal represent good planning?**
- **The test of “Good Planning” is more flexible**
- **It does not revolve as strictly on conformity**
 - The fact that the status quo conforms to higher order planning documents does not prevent appeals on the basis that a proposed amendment would represent a **better planning outcome**.
- **For example – Even where an existing document conforms, such as a zoning by-law, an amendment can be argued for on appeal if it represents good planning**
 - This would not be a valid basis for appeal under the old system

DE NOVO HEARINGS

- Ability to file evidence that was not before municipal council
- Tribunal **may** consider, on its own initiative or on a motion by any party, whether any new information and material could have materially affected council's decision
 - If the Tribunal determines that it could have done so – Council shall be given an opportunity to:
 1. Reconsider in light of the new information; and
 2. Provide a written recommendation to the Tribunal.
 - The Tribunal **“shall have regard to”** council's recommendation, if received.
- **Applicable to appeals of:**
 1. Official Plans and Official Plan Amendments
 2. Zoning by-laws and Zoning by-law Amendments
- **Key Sections: 17(44.3)-(44.6) and 34(24.3)-(24.6) of the *Planning Act***

DE NOVO HEARINGS

Impact

- **More flexibility in an appeal to the LPAT**
 - The test of “Good Planning” allows for a wider range of appeals – particularly where current zoning by-laws or official plans are in conformity with higher order documents
- **Reduced need to bolster case early in the planning process**
 - The ability to introduce new evidence, that was not before municipal council, means that parties do not need to go above and beyond – and to great expense – to ensure that every last detail of their case is supported by expert evidence at the municipal level (in anticipation of a potential appeal)
 - Where contentious issues become apparent after council’s decision, parties have the opportunity to solicit expert studies and opinion to bolster their case before the Tribunal at that time

ONTARIO HERITAGE ACT

ONTARIO HERITAGE ACT

- **More municipal council decisions can be appealed to the LPAT**
- **Rather than being referred to the CRB for a non-binding recommendation**
- **Not yet in force (on a date to be proclaimed)**
- **Key Sections: 29(11), 30.1(10), 31(9), 32(7), 33(9) of the *Ontario Heritage Act***

ONTARIO HERITAGE ACT

- **Impacted municipal council decisions:**
 1. By-law designating property as having cultural or heritage value
 - Any person who objects to the by-law may appeal
 2. Amendment of by-law designating property
 - The owner of the property may appeal an amendment to the by-law
 3. Repeal of by-law designating property
 - Any person who objects to the repeal of the by-law may appeal
 4. Application by owner to repeal by-law designating property
 - Refusal of the application – the owner may appeal;
 - Granted the application – any person may appeal.
 5. Application for permission to alter designated property
 - The owner of the property may appeal the refusal of an application for permission to alter

ONTARIO HERITAGE ACT

Impact

- **Less control for municipalities on heritage matters**
- **Tribunal can substitute its decision for that of municipal council**

QUESTIONS?




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