Committee Report

Report PDR-PCD-03-14

To: Chair and Members of the Planning and Community Development Committee
From: Randy Scherzer, Sarah Morrison, Alisha Buitenhuis and Scott Taylor
Meeting Date: December 17, 2013
Subject: Comments on the Provincial Land Use Planning and Appeals System and Development Charges
Status: Recommendation adopted by Committee as presented per Resolution PCD07-14 December 17, 2013; Endorsed by County Council January 9, 2014 per Resolution CC14-14;

Recommendation(s)

THAT Planning Report PDR-PCD-03-14 be received and the comments contained therein be accepted with respect to the consultations on the Land Use Planning and Appeals System and the Development Charges Review;

AND THAT staff be directed to forward this Report to the Ministry of Municipal Affairs and Housing as the County of Grey comments on the Land Use Planning and Appeals System consultation and the Development Charges Review with respect to the Environmental Bill of Rights Postings 012-0241 and 012-0281;

AND THAT this Report be forwarded on to municipalities within Grey County for their consideration in formulating comments on the on-going Provincial consultations.

Background

In late October 2013, County Planning staff received notification that the Province is conducting a review of the Land Use Planning and Appeal System (hereafter referred to as LUPAS) and a Development Charges Review (hereafter referred to as DCR).

County staff also had the benefit of attending a LUPAS consultation workshop session in Kitchener in November. As part of the LUPAS review the Province has released a
consultation guide with a series of 17 targeted questions within, which they are seeking input in. The review has been divided into four general themes, as per below.

A. “Achieve more predictability, transparency and accountability in the planning/appeal process and reduce costs;
B. Support greater municipal leadership in resolving issues and making local land use planning decisions;
C. Better engage citizens in the local planning process; and
D. Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions, and support job creation and economic growth.”

At the consultation workshop and within the consultation guide provincial staff noted that the LUPAS review will not consider the following:

- “elimination of the Ontario Municipal Board (OMB);
- the OMB’s operations, practices and procedures;
- removal of the provincial government’s approval role;
- the restriction of the provincial government’s ability to intervene in matters; and
- matters involving other legislation, unless housekeeping changes are needed.”

Any comments received on the above topics will not be the focus of the consultation, but will be shared with the ministries or agencies responsible.

The focus of this report will be providing comments on LUPAS; however some select comments have also been raised on the DCR. Similar to LUPAS, the DCR also has its own consultation guide which provides targeted consultation questions. County staff will not be providing a question by question review of the entire guide, but rather have focused on a few key considerations for the DCR.

Comments on LUPAS and DCR are due by January 10, 2014.

County Comments on the Land Use Planning and Appeal System (LUPAS) Consultation

County staff have summarized prospective comments below to the 17 discussion questions in the consultation document. County staff have also included a question 18 to further capture a few comments.

1. How can communities keep planning documents, including official plans, zoning by-laws and development permit systems (if in place) more up-to-date?
The restriction of appeal opportunities, the delegation of some provincial approvals and a timeframe for provincial policy and plan updates would aid in municipalities being able to keep their planning documents up-to-date.

Although it may be tough to implement, the province should consider restricting some appeal rights when municipalities are simply implementing provincial policy. Such restrictions may be difficult to enforce (i.e. many planning document amendments would go beyond a 'straight-forward' implementation); however the province could consider such restrictions where the province remains the approval authority, or where provincial ‘sign-off’ has been provided on the amendment.

In some cases the province should consider additional delegation of approval authorities, such as the provincial approval of a regional or county official plan five year review. In doing so the province could still require mandatory consultation on such amendments. The province would still remain the approval authority on new regional or county official plans. Service guarantees for plan reviews or new approvals would also be beneficial (e.g. a decision will be rendered within 6 months of adoption, unless a municipality requests a deferral).

More dependable timeframes for provincial policy or provincial plan reviews would aid municipalities in being able to schedule their own municipal plan reviews. Although there are commencement dates for the Provincial Policy Statement (PPS) and provincial plan reviews, the completion timeframes of said reviews are nebulous and difficult to schedule around. Service guarantees for reviews would also be beneficial. In having such timeframes municipalities could also better budget financial and staff resources for their own reviews.

2. Should the planning system provide incentives to encourage communities to keep their official plans and zoning by-laws up-to-date to be consistent with provincial policies and priorities, and conform/not conflict with provincial plans? If so, how?

The province could consider tying funding or provincial grants to the adoption of official plan policies which are consistent with provincial policy, as an incentive for up-to-date planning documents. If the province were to utilize such a system it is recommended that it be tied to the adoption date of new policy, so that appeals or a lengthy provincial approval process would not prejudice municipalities against future funding. Alternatively the province could simply consider a ‘priority point system’ for funding requests, whereby municipalities with up-to-date planning documents would get priority or bonus points in the scoring or grading of the funding evaluation process.
3. Is the frequency of changes or amendments to planning documents a problem? If yes, should amendments to planning documents only be allowed within specified timeframes? If so, what is reasonable?

The ‘drill down’ of provincial policy through upper and lower tier municipal planning documents can cause conformity issues. For example when new legislation, or new provincial policy, is passed it can take a while for counties or regions to update their planning documents, and then some time longer for the member lower tier municipalities to then go through and update their official plans and zoning by-laws. The end result can be upper and lower tier policies which can be considered in conflict with each other or in conflict with provincial policy. Although the Planning Act provides conformity deadlines for bringing documents into conformity, the reality is that many municipalities do not have the resources to meet these deadlines, and nor would it ever be politically palatable for a county or region to strictly enforce said deadlines.

The province should also include transition policies in any amended policies or legislation, as well as indicating which changes need to be made locally immediately and which changes can wait until the next scheduled five year review.

4. What barriers or obstacles may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?

The below comments are prefaced by the fact that the County is cognizant of the fact that the regulations associated with the Planning Act represent minimum standards; however the regulations could be updated to recognize modern technology. For example, materials associated with any application should be posted on municipal websites and the Act should provide for the ability to have digital circulations (at the very least between municipalities and required agencies). Further consideration of digital correspondence should also be considered e.g. does a Facebook post on a municipal page constitute participation in the process which would later give somebody the ability to appeal the file to the Board? Alternative consultation methods, such as web meetings or webinars should also be considered in addition to the traditional public meeting structure for amending planning documents.

The wording in the Planning Act regulations should also be rewritten such that it is written in plain language and is interpretable by the general public.

The County has also heard from the public on numerous occasions that the required 120 metre circulation distances for official plan / zoning amendments and plans of subdivision/condominium are not sufficient for rural areas. For example in the case of a proposed gravel pit, this minimum circulation distance may only capture the immediately abutting neighbours to the north, south, east, and west.
5. **Should steps be taken to limit appeals of entire official plans and zoning by-laws? If so, what steps would be reasonable?**

As per the comments above in question number one, there should be some restrictions on appeals where a municipality is implementing a provincial policy or legislative change. For example, after the province approves an update to a provincial plan (e.g. the Niagara Escarpment Plan), individual municipalities should not need to defend the implementation of said policies at an official plan stage at the Ontario Municipal Board. The aforementioned scenario could be replicated in a number of other situations whereby there has already been a high level approval on a document or plan which has had significant input, and municipalities have been tasked with implementation.

There should also be increased education to the public on what an appeal to the OMB actually entails i.e. it can be much more than just submitting the form and $125.00 cheque. Alternatively it may be appropriate to provide a graduated scale for appeals whereby a minor variance may be a very simplified process and fee, whereas an entire official plan may be much greater.

In dealing with the appeal of an entire official plan, it may also be appropriate to order a mandatory pre-hearing of all parties and participants within 30 days of the last date of appeal. This mandatory pre-hearing would act as a service guarantee, but also be similar to the complete application process, in that it would allow the Board to discuss early on exactly what will be required and what will transpire as part of the upcoming hearing process. This would also allow the Board to scope exactly what is under appeal, and order the rest of the plan or by-law in force and effect. In the current system there is no incentive for an appellant to scope their appeal, or to refrain from simply including the entire plan or by-law as being subject to their appeal.

6. **How can these kinds of additional appeals be addressed? Should there be a time limit on appeals resulting from a council not making a decision?**

Yes there needs to be a time limit on additional appeals being submitted following the initial appeal of a council non-decision. It may be appropriate to set a deadline following the first appeal i.e. a municipality must give notice of appeal and all further appeals must be received within 20 days of the giving of notice. If there is no deadline for new appeals then the Board process can be significantly impaired as additional appellants come forward. Those who have not appealed may also have the ability to petition the Board for party status.

In this regard there should also be a timeframe added for the change of conditions on a plan of subdivision i.e. a municipality must give notice of change of conditions and all appeals must be received within 20 days of the giving of notice.
7. **Should there be additional consequences if no decision is made in the prescribed timeline?**

Based on the complexity of planning documents and development applications there should not be additional consequences if no decision is made, unless a municipality has been found to be acting in bad faith.

8. **What barriers or obstacles need to be addressed for communities to implement the development permit system?**

The County of Grey does not currently have a development permit system (DPS) in place. Although the County has not explored such a system yet, one barrier to implementation would be funding for such a system.

9. **How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?**

In general better education on the planning process in Ontario would assist in fostering better cooperation and collaboration. The general public often has little knowledge of how the planning system works until they find themselves in an adversarial position related to a neighbour's proposal or their own proposal. The public often raises questions over developers hiring their own consultants, and there can be the perception that these consultants are not impartial, who have been paid to support a particular position. In some cases the need for better education on the professional duties and obligations of these consultants would aid in a better public understanding of their roles. However, better education on the development review process including the detailed agency, provincial, and municipal review (including possible peer reviews), would assist in helping to ensure the public that developments are thoroughly scrutinized.

The public is often also concerned with how their comments have been considered in either an official plan, or a development application process. There can be the perception that ratepayers have taken the time to come to a public meeting, or write a letter, and cannot see how their input has been considered in the final recommendation. Certainly municipal staff could do a better job in rationalizing how the public input was considered. However, the province could also adopt a process under the Planning Act, similar to the Aggregate Resources Act, where any concerns must be responded to within a legislated timeframe and then the objector must reply as to whether or not their concerns have been addressed.

Education and detailed regulations should also be updated with respect to the First Nations/Metis and who bears the ‘Duty to Consult’. Many municipalities and developers are confused with who bears responsibility for consultation, how that consultation is
completed, and who pays for the consultation and possible accommodation requests. Other than where there is a First Nations Reserve, the *Planning Act* regulations are currently silent on this topic.

Another suggestion for better collaboration may be the requirement for an independent third party mediator, where there are outstanding concerns prior to a final decision by council. Just as developers fund independent peer reviews, there may also be benefit to non-binding mediation, for contentious files, prior to a file going before council. In situations where a file is ultimately appealed to the Ontario Municipal Board the results of this pre-council mediation could be a starting point for discussions.

A final suggestion for local mediation would be for Board mediators to act within local communities (post appeal), rather than forcing people to travel great distances, and incur significant expenses to participate in mediation (e.g. mediation at the Board offices in Toronto).

**10. What barriers or obstacles may need to be addressed to facilitate the creation of local appeal bodies?**

The most significant impediment to the creation of a local appeal body is the financial and staff/board members required to initiate and operate the local appeal body.

**11. Should the powers of a local appeal body be expanded? If so, what should be included and under what conditions?**

No comment.

**12. Should pre-consultation be required before certain types of applications are submitted? Why or why not? If so, which ones?**

Mandatory pre-consultation should be required on all *Planning Act* applications and such consultations should be free of charge. Municipalities should simply build in the cost of pre-consultation into their application fees which are required if the consultation proceeds to an application stage.

Within pre-consultations there should also be an effort to work between upper and lower tier municipalities and key agencies such as conservation authorities, such that consultation is effective and efficient for all parties.

**13. How can better coordination and cooperation between upper and lower-tier governments on planning matters be built into the system?**

See questions number 4, 9 and 12 above. In general better communications at all stages, from pre-consultation through until a decision is rendered would be recommended. Service guarantees for receiving feedback would also be beneficial.
14. *What barriers or obstacles may need to be addressed in order for citizens to be effectively engaged and be confident that their input has been considered (e.g. in community design exercises, at public meetings/open houses, through formal submissions)?*

See questions number 4 and 9 above. It is crucial that the planning process be as ‘plain-language’ as possible, and that consultation be done in a format which is convenient to the public. Public meetings are not always well attended, unless there is a contentious development at stake. Where public input is most crucial is at the policy development stage and there needs to be measures taken to better engage the public, on their terms, in a manner that is not confrontational and can provide valuable input. To further paraphrase the above, the planning process needs to find better ways of going out to the public and not making the public come to us. As discussed above, the use of new technology and social media could aid in this engagement.

As discussed above in question 9, the need for greater education on the planning process and the requirement for formal responses to inputs or concerns could also aid in the public understanding how their input is considered.

15. *Should communities be required to explain how citizen input was considered during the review of a planning/development proposal?*

Yes both municipal planners and private developers should be required to rationalize how citizen input was considered as part of the policy/development planning process. In the municipal sector this could be done as part of a municipal staff report, and in the private sector this could be done following the public meeting, as an addendum to their initial planning report, but prior to a final municipal staff recommendation.

16. *How can the land use planning system support infrastructure decisions and protect employment uses to attract/retain jobs and encourage economic growth?*

Municipalities should be able to extend official plan planning horizons beyond a 20 year timeframe when planning for infrastructure. The need to better incorporate infrastructure planning at an official plan stage should be further mandated.

17. *How should appeals of official plans, zoning by-laws, or related amendments, supporting matters that are provincially-approved be addressed? For example, should the ability to appeal these types of official plans, zoning by-laws, or related amendments be removed? Why or why not?*
There should either be no private appeals on such provincially approved matters, or else the province should assist municipalities in defending against such appeals.

18. Are there any other general matters to be considered under LUPAS?

There should be processing and service guarantees both on OMB appeals (i.e. to get a hearing and a pre-hearing), as well as service guarantees on receiving a decision following a hearing.

Once an official plan or zoning decision has been rendered on a matter before the Board there needs to be some protection for those in support of the decision without having to represent their support at the Board. For example if a municipality adopts a new official plan with significant public input, and the public is satisfied with the plan which is adopted, then the public should not have to attend an appeal hearing on the plan whereby the policies adopted could change. Based on the system as it works today, one could argue that even if one is satisfied with council’s decision, one should ultimately attend the OMB hearing to ensure the Board does not significantly alter council’s decision.

County Comments on the Development Charges Review (DCR)

County staff were circulated on some comments on the DCR by the Municipal Finance Officers Association of Ontario (MFOA). County staff are in general agreement with the MFOA comments. The MFOA has raised the below three core changes to Development Charges legislation.

1. “Remove Section 5 (1), paragraph 8, the step in “Determination of development charges” that requires municipalities to reduce their capital costs by 10%.

2. Update Section 5(1), paragraph 4, which entails that the service levels development charges are based on is an average service level for the previous ten years, with a more flexible understanding of service levels. Municipalities should be able to adopt forward looking service levels, define the basis for service levels (inputs, outcomes, etc.) and broad service categories.

3. Eliminate Section 2(4), “Ineligible services,” so that all services are eligible for development charges.”

With respect to item number 1 above, the MFOA report entitled “Frozen in time: Development charges legislation underfunding infrastructure 16 years and counting” notes that a number of capital costs are only eligible for a maximum potential development charge recovery of 90% (i.e. the capital cost has been discounted by 10%). Some of the capital costs noted in the aforementioned report which have been discounted by 10% include;
‘transit vehicles,
other transit infrastructure,
municipal parking spaces,
development of parks,
arenas,
pools,
community centres,
library space and materials,
homes for the aged,
child care space,
health department space,
social services space, and
ambulance station space and vehicles.’

By discounting the capital costs of growth related to the above services, it forces municipalities to fund these costs out of other sources, including the general tax levy.

With respect to item number 2, the MFOA report has noted that using average service levels for the last 10 years is overly restrictive with respect to changes in demand and flexibility for future service levels. To paraphrase further, simply because a service has been provided in one manner for the past 10 years is not indicative of that service level need going forward. The MFOA report has recommended that municipalities be provided following three options:

a) “Adopt forward looking service levels: For ‘service firsts,’ the time horizon for the service standard could be the build-out period of an asset, the standard piloted in 2006 for the Toronto-York Spadina Subway Extension.

b) Define the basis for service levels: Rather than a historic average service level, a more dynamic service level for transport services, for example, might be trip times.

c) Define service categories: For example, a municipality might combine roads, Provincial Offences Act administration, parking, airport and transit services in a transport services category or police, fire, emergency medical and public health services into a health and safety category.”

With respect to item number 3, the MFOA has noted that there a number of services municipalities currently provide, and which can be exacerbated by new growth, that are currently ineligible for inclusion in the development charges calculations. The MFOA report lists the following ineligible charges:

• ‘electrical power facilities,
• provision of cultural, entertainment, tourism facilities and convention centres,
• acquisition of land for parks or woodlots,
• waste management services,
• hospital provision, and
• the provision of headquarters for municipalities or boards.’

Similar to item number 1, by making certain costs ineligible for inclusion in the development charges calculations, it forces municipalities to fund these costs out of other sources, including the general tax levy.

Planning staff have consulted with County Finance staff and are generally supportive of the MFOA recommendations as summarized above.

Financial / Staffing / Legal / Information Technology

Considerations

At this point there are no financial, staffing, legal or IT considerations. Should the province modify the planning system then policy modifications to the County Official Plan and the local Official Plans may be necessary.

Should changes be made to the Development Charges Act, the County could ‘re-coup’ further development related costs at the time of the County’s next development charges background study and resultant by-law.

Link to Strategic Goals / Priorities

Action 2.10, under Goal 2 of the County’s Strategic Plan requires the continued management of growth and the application of sound land use planning principles. The Planning Act and Provincial Policy Statement provides overall legislative and policy direction on matters of provincial interest related to land use planning and development. The County Official Plan helps manage growth and apply sound land use planning principles in Grey County. Should the province implement changes to this system to better streamline the process, it could aid the County in better service delivery and it will be important to update the County Official Plan to be consistent with the policies and legislation.

Respectfully submitted by,

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