



Comments on "Proposed New Regulations and Regulation Changes under the Planning Act (1990)"

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Submitted to: Ministry of Municipal Affairs & Housing

Submitted by: Ontario Bar Association



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Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide feedback on the *Proposed new regulation and regulation changes under the Planning Act, including transition matters, related to Schedule 12 of Bill 108 – the More Homes, More Choice, Act, 2019* (the “**Proposals**”).

Land use planning is a unique field of practice. In addition to applying statutory and regulatory authorities, our members are challenged to integrate provincial, regional, and local policies that are further translated into regulatory instruments and implementation requirements. There are often multiple layers of approvals necessary in any given matter, leading to a complex intersection of planning, engineering, environmental stewardship, and local politics. Our members strive to ensure that the process of navigating and ultimately resolving these matters is completed in a fair, transparent, and supportable manner.

The OBA

Established in 1907, the OBA is the largest voluntary legal organization in Ontario, representing lawyers, judges, law professors and students from across the province, on the frontlines of our justice system and in no fewer than 40 different sectors. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year - both in the interest of the profession and in the interest of the public.

This submission was prepared by members of the OBA Municipal Law Section (the “**Section**”), which has approximately 300 lawyers who are leading experts in municipal and land use planning law matters representing proponents, municipalities, residents, developers, and other stakeholders. Though we represent a broad spectrum of clients with diverse and sometimes competing interests, our goal is to provide decision-makers with commentary that represents a balance of the various interests of our members and their clients.

Members of the Section often advocate before municipal councils and committees, all levels of court in the Province of Ontario, the various tribunals that comprise Tribunals Ontario, including the Local Planning Appeal Tribunal (“the **Tribunal**”) and the Toronto Local Appeal Body.



Overview

The Proposals seek to further the purpose of and provide a seamless transition for the recent amendments to the *Planning Act* made by Bill 108 – *the More Homes, More Choice Act*, 2019 that received Royal Assent on June 6, 2019. Given the diverse nature of the OBA's membership, it is beyond the scope of our mandate to provide substantive feedback on the nature of these Proposals and policy decisions on which they are based. Our comments instead focus on ways in which to implement these reforms that would support substantive, timely, just, and cost-efficient decisions.

The following feedback outlines a number of issues we have identified with regard to the implementation of the Proposals. Additionally, we have set out certain responses to the specific requests for feedback included in the proposal materials. Our feedback may be summarized as follows:

- Lack of clarity or uncertainty in the Proposals that may give rise to significant disagreement, and even costly litigation, thereby undermining the very goals of the Proposals. We recommend that further attention be given to clarify the central tenets and procedures of the proposed changes, as further discussed below.
- All stakeholders would benefit from the release of draft regulations prior to enactment, to allow for consideration of their impacts and the provision of feedback. We therefore request that the draft text of the new regulations and amendments to existing ones be provided for public comment.

Taken together, our comments are intended to assist with ensuring that these changes can be implemented in a manner that minimizes uncertainty, and that the stated goals of Bill 108 can be met as envisioned.

Comments and Suggested Revisions

Our comments regarding the Proposals are as follow:

- The proposed transition regulations would determine when certain amended provisions of the *Planning Act* set out in Schedule 12 of Bill 108 will apply. The Proposals mention that the scheduling of an appeal hearing with the Tribunal will be the transitional indicator. If a



hearing is scheduled before the coming into force of the associated provision, then certain new amendments will not apply to that appeal. It is unclear whether only the act of scheduling must take place before proclamation or whether the hearing date itself must also be before proclamation. It is also unclear how the transition rules will work in the situation where a hearing is scheduled before but then is rescheduled after the provisions have come into force. It is unclear which provisions would apply to the parties under an appeal in the given hypothetical situation. We therefore recommend that additional consideration be given to provide further clarity on how the transition regulations are intended to operate.

- Similar to the above-mentioned comment, the Proposals use submission of a “complete application” after Royal Assent as a transitional indicator for a different set of legislative changes. Our concern is that there may be some interpretation issues regarding what a ‘complete application’ may or may not entail. Given that a ‘complete application’ submitted after Royal Assent would be the indicator for the reduction in certain decision timelines, it would be beneficial for parties to know which timeline will apply in their situation. We therefore recommend providing further clarity on how the transition regulations are intended to operate.
- The Proposals would add a regulation associated with s.35.1(2)(b), which removes barriers to the establishment of additional residential units. The regulation sets out the required parking space rules for an added residential unit. However, it states that a municipal zoning by-law, if passed, will prevail over the rules in the regulation. To this point, the Proposals are silent regarding what would happen if an additional residential unit with access to a parking space was occupied prior to the passing of a by-law that removes the requirement for such parking space. It is unclear how the rules would affect the current occupant. We therefore recommend that additional consideration be given to identify transition policies in the regulation or to be included in a zoning by-law, to provide further clarity on how the proposed regulations would affect an occupant of an additional residential unit in this hypothetical but potentially common situation.



As a general comment, it is impossible to fully understand the legal implications of the Proposals without the draft text of the regulations themselves. Providing draft regulations would aid in our ability to provide meaningful and in-depth comments regarding the Proposals.

Conclusion

Our membership understands the challenges involved in seeking to address policies regarding municipal planning and the need to provide an increased supply of housing in Ontario. While it is difficult to critically examine the practical operation of the Proposals in the absence of the draft regulations, we hope that the above feedback, based on the high-level information currently available, is helpful moving forward.

We thank you for considering our input and look forward to responding to any questions you may have regarding our submission.