How Bill 73 Affects Municipalities and Best Practices

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Introduction

On December 3, 2015, the Ontario Legislature passed Bill 73, "Smart Growth for Our Communities Act, 2015". Bill 73 proposes the most significant reform to the planning and development law regime in almost a decade and involves over 120 amendments to the *Planning Act* and the *Development Charges Act, 1997*.

Bill 73 represents the response from the Ministry of Municipal Affairs and Housing (the "Province") after years of public consultation across Ontario. The public response strongly confirmed what those in the industry already knew — that the planning framework is ripe for change. A brief review of the legislation identifies the major issues driving the Province's approach to *Planning Act* amendments:

1. To minimize the number and complexity of appeals to the Ontario Municipal Board ("OMB"), the Province imposed new requirements on appellants and restricted the types of appeals that may be filed and when they may be heard;
2. To respond to calls for greater transparency and accountability, the Province imposed new reporting obligations on development funds collected by municipalities and required decision-makers to explain the effect of their decisions; and
3. To increase citizen engagement and foster more decision-making at the local level, the Province strengthened public consultation requirements and gave municipalities additional powers to resolve disputes through alternative dispute mechanisms.

While the Province's intentions may be noble, as the saying goes, the "devil is in the details". Instead of providing a complete solution to resolving the issues by legislative amendment, in some cases (and arguably, the more contentious ones)[1] the Province has delegated the challenge to the municipalities. Some of the amendments assign new responsibilities that may be difficult to implement in practice. Other amendments fail to clearly articulate the purpose or intent of the Province.

This paper will focus on some of the changes to the *Planning Act* that affect municipalities most. The authors will also attempt to suggest best practices or risk

management for municipalities in cases where the legislation is not particularly clear. Twelve key changes are identified in this paper for discussion.

Finally, despite the significant changes proposed by Bill 73, the Province has not announced when the majority of the amendments to the *Planning Act* will come into force and effect.[2] The changes to the *Development Charges Act, 1997* came into effect on January 1, 2016 with no prior notice to the public. Given the magnitude of the changes, the authors recommend that the public sector consider the issues raised in this paper now in anticipation of the legislation coming fully into force. Perhaps the Province will host public sector workshops on Bill 73, as with past land use legislation, to provide further guidance during this transition period.

[1] For example, one of the most common criticisms of the planning process is consistency as to what constitutes a minor variance under the *Planning Act*. Even though a stakeholder working group was formed by the Province in an attempt to provide guidance during the public consultation process, to date no regulation has been made by the Province.

[2] Although certain provisions of Bill 73 are in force as of Royal Assent (December 3, 2015), the majority of the amendments will come into force on a day to be named by proclamation of the Lieutenant Governor. As of the writing of this paper, the Lieutenant Governor has not named that date or dates. It may coincide with the making of regulations that guide implementation or transition. Some notices in respect of regulations have been posted on the Environmental Bill of Rights (EBR) Registry.

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Municipal & Land Use Planning, Government & Public Sector

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