Ontario Passes New Legislation to Allow Municipalities to Introduce Inclusionary Zoning

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Background to Bill 7

On December 8, 2016, the Ontario Legislature passed Bill 7, *Promoting Affordable Housing Act, 2016*. Bill 7 is intended to help address affordable housing issues in Ontario by allowing municipalities to require affordable housing units to be provided in new development projects.

Since the First Reading, the Bill went through 10 sessions of parliamentary debate and was also considered by the Standing Committee on Social Policy. All of the changes recommended by the Standing Committee were adopted in the final version.

BLG previously reported on the significant changes to the *Planning Act* and the *Development Charges Act, 1997* proposed by this Bill in our publication, Province Introduces Bill 204, "Promoting Affordable Housing Act" to Permit Inclusionary Zoning on June 9, 2016.[1] The purpose of this bulletin is to highlight the key changes to Bill 7 affecting the *Planning Act* in the version that received Royal Assent from the original version introduced in May 2016.

Six Key Changes to the *Planning Act* since First Reading

As part of its public consultation process, the Ministry of Municipal Affairs and the Ministry of Housing received a number of comments from the public and private sector in advance of its August 16, 2016 deadline. Some of the criticisms received included the lack of transparency as to how affordable housing thresholds will be set, the lack of flexibility in where and how affordable housing units are to be provided and the concern that a "top-down, one-size-fits-all" approach may not be effective in addressing affordable housing issues among Ontario's diverse municipalities.

In response to these comments, the Ministry introduced six key changes to the Bill:

1. Before adopting inclusionary zoning policies in its official plan, a municipality must prepare an assessment report: The assessment report must be available to

the public prior to adoption of the inclusionary zoning policies and must include the information specified in the regulations. As long as the official plan contains inclusionary zoning policies, the assessment report must be updated every 5 years from the date the policies come into effect (and every 5 years thereafter from the date of the most recent updated assessment report) to determine whether the policies should be updated.

2. There is no appeal of a zoning by-law amendment that seeks to amend or repeal an inclusionary zoning by-law where council refuses or neglects to make a decision: The original version of Bill 7 prohibited appeals where council passes the inclusionary zoning by-law. This clarification extends the prohibition to appeals of zoning by-law amendments where the amendment seeks to modify the inclusionary zoning by-law.
3. Measures and incentives identified in the inclusionary zoning by-law to support inclusionary zoning policies can still be appealed in a zoning by-law application: The amendments clarify that where a municipality identifies certain measures and incentives (but not requirements) such as reduced setbacks, parking requirements, or other matters under subsection 34(1) of the *Planning Act*, in its inclusionary zoning by-law to support affordable housing units, such matters may still be appealed to the Board in a zoning by-law amendment application.
4. The inclusionary zoning by-law may require the gross floor area (GFA) of affordable housing units to be provided: Under Bill 7, an inclusionary zoning by-law must include, among other things, the number of affordable housing units to be provided. The amendments proposed by the Standing Committee also allow municipalities to identify the GFA of affordable housing units to be provided in a given development application instead of the number of affordable housing units. If a municipality adopts this approach, the municipality must also establish a procedure for monitoring and ensuring that the required GFA of affordable housing units is maintained.
5. Municipalities may locate affordable housing units off-site and may use Section 37 agreements to secure affordable housing units: Municipalities that pass inclusionary zoning by-laws may now authorize the provision of affordable housing units on lands, buildings or structures other than those that are subject of the development application and may use their powers under section 37 to require affordable housing units, subject to the limits prescribed by the regulations. However, municipalities are still prohibited from authorizing the payment of money in lieu of providing the required affordable housing units.
6. Regulations may exempt certain development applications from inclusionary zoning by-laws: The Minister may make regulations that exempt development, or certain classes of development, from being subject to inclusionary zoning by-laws and specify the circumstances in which the by-laws do not apply.

In our view, the amendments to Bill 7 since First Reading attempt to provide further flexibility and transparency to municipalities, developers and the public regarding how inclusionary zoning policies and by-laws will be implemented. For example, allowing municipalities to authorize affordable housing units off-site is a welcome change as it may promote further dialogue between the municipality and the developer as to where affordable housing units may be located to provide the most public benefit while maintaining the economic incentive to provide such units. The requirement for municipalities to prepare an assessment report prior to adopting inclusionary zoning policies introduces an additional period of public consultation for key stakeholders such as the development industry, resident groups and not-for-profit organizations to provide

feedback on the municipality's proposal since inclusionary zoning policies can only be appealed by the Minister once adopted.

Despite the amendments since First Reading, as noted in our initial bulletin, the implications and effectiveness of inclusionary zoning will not be fully understood until the regulations are released by the Province. This theme is echoed in the final version of Bill 7, as many of the key changes introduced by the Standing Committee, including the mandatory assessment report, the required GFA for affordable housing units, the authority for municipalities to locate affordable housing units off-site and the use of section 37 to secure such units are all subject to regulation.

Please contact a member of our Municipal Planning Law Group, for more information about Bill 7 and its implications.

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[1] Note that Bill 204 is virtually identical to Bill 7. Bill 204 was re-introduced as Bill 7 following the prorogation of the Ontario Legislature in September 2016.

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