

Ontario Smart Growth Network
Understanding and Applying
Planning Law

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What is Planning?

- Ontario's Planning Act defines its purposes as:
 - to promote sustainable economic development
 - in a healthy natural environment
 - within the policy and by the means provided under that Act
 - to provide for a land use planning system led by provincial policy

Planning Act purposes cont'd

- To integrate matters of provincial interest in provincial and municipal planning decisions
- to provide for planning processes that are fair by making them open, accessible, timely and efficient
- to encourage co-operation and coordination among various interests
- to recognize the decision-making authority and accountability of municipal councils in planning

Planning Act purposes cont'd

- It's always useful to refer to one or more of the purposes of the Planning Act when engaged in any planning issue
- Courts always refer to the purposes of a statute when interpreting that statute
- Purpose statements are reflection of legislative intent in passing the statute

Provincial Interest

- S. 2 of the Planning Act outlines matters of provincial interest “such as”:
 - the protection of ecological systems, including natural areas, features and functions
 - the protection of the agricultural resources of the Province
 - the conservation and management of natural resources and the mineral resource base

Provincial Interest cont'd

- The conservation of features of significant architectural, cultural, historical, archaeological or scientific interest
- the supply, efficient use and conservation of energy and water
- the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems
- the minimization of waste

Provincial Interest cont'd

- The orderly development of safe and healthy communities
- the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies
- the adequate provision and distribution of educational, health and social, cultural and recreational facilities
- the adequate provision of a full range of housing

Provincial Interest cont'd

- The adequate provision of employment opportunities
- the protection of the financial and economic well-being of the Province and its municipalities
- the co-ordination of planning activities of public bodies
- the resolution of planning conflicts involving public and private interests

Provincial Interest cont'd

- The protection of public health and safety
- the appropriate location of growth and development
- It is imperative in any planning issue that you are involved in to consider these provincial interests and how they are at play in your issues
- Conflict may seem inevitable - are there creative solutions to meet multiple objectives?

Provincial Policy Statement

- Planning Act section 3 authorizes any Minister of the crown to issue policy statements approved by cabinet from time to time on matters that the Minister considers are of provincial interest

Provincial Policy Statement

- Previously, all decisions by municipal councils, local boards, planning boards, Ministers, boards, commissions or agencies including the Ontario Municipal Board (OMB) were required to “have regard to” the policy statements issued under the Planning Act
- With the 2005 amendments, they are required to “be consistent with” those policy statements

Provincial Policy Statement

- Similarly, ministers', ministries', boards', commissions' or agencies' advice regarding a planning matter must now “be consistent with” the provincial policy statement
- We have a newly revised provincial policy statement as of this year
- The Planning Act requires that every provincial policy statement be reviewed every five years

Provincial Policy Statement

- Because of the requirement for consistency, it is imperative to consider and frame your issues in a particular matter in light of the provisions of the Provincial Policy Statement.

Land Use Provisions

- Municipal land use decisions are made under the Planning Act
- Part III provides for Official Plans - their mandatory content includes contain goals, objectives and policies primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it

Official Plans

- Official plans may also contain description of the measures and procedures proposed to attain the objectives of the plan
- 20 days to appeal to the Ontario Municipal Board after notice of adoption
- Any person may apply to amend the Official Plan but not in respect of an amendment to the boundary of a settlement area as of the 2005 Planning Act

Official Plans

- If no decision is made by the municipality after 180 days, the person who requested the amendment may appeal to the OMB
- Now no appeal to the OMB to alter the boundary of an urban settlement area (unless it's a boundary of a lower tier municipality and the proposal conforms to the official plan of the upper tier municipality)

Provincial Interest

- The Minister may identify matters of provincial interest regarding an appeal of a requested official plan amendment and in that case the decision of the OMB is not final and binding in respect of those areas identified unless the Lt. Gov. in council confirms (or may vary or rescind the Board's decision) s. 22(11.1 to 11.4); similarly where the Minister has requested a council to amend an Official Plan s. 23

Zoning by-laws

- Under the Planning Act, municipalities may pass zoning by-laws restricting use of land for purposes set out in the by-law, restricting location or use of buildings, prohibiting buildings on steep slopes, rocky land, low-lying marshy land, unstable, hazardous land, on land that is contaminated, on land that is a sensitive ground water recharge area or head-water area or on land that contains a sensitive aquifer

Zoning by-laws

- Municipalities also have authority to prohibit any use of land and structures on significant wildlife habitat, wetland, woodland, ravine, valley or area of natural and scientific interest, a significant corridor, shoreline of a lake, river or stream, or land that is a significant natural corridor, feature or area

Zoning by-laws

- Zoning by-laws may regulate minimum areas of land parcels and density of development
- Zoning by-laws may prohibit specific uses of land unless municipal services are provided
- Exceptions are provided for land uses that pre-exist the by-law: “legal non-conforming”

Zoning by-laws cont'd

- If by-law refused or no decision within 120 days, applicant may appeal
- If by-law passed or amended, any person may appeal to OMB - 20 days
- Councils may pass interim control by-laws for a period not to exceed one year which may be extended for up to two years - where a by-law or resolution directs study of the land use in the area

Subdivision of Land

- Planning Act also controls subdivision of land
- One cannot convey land adjacent with same title holder unless in a registered plan of subdivision or a consent is given by the upper-tier or single tier municipality

Subdivision of land cont'd

- In considering a draft plan of subdivision, regard to be had to health, safety, convenience, accessibility for persons with disabilities and welfare of present and future inhabitants of the municipality
- also to consider effect on matters of provincial interest, whether the proposed subdivision is premature or in the public interest, conformity to official plan

Subdivision of land cont'd

- Additional factors include suitability of the land, highways and adequacy of them, conservation of natural resources and flood control, adequacy of utilities and municipal services, adequacy of school sites, physical layout of the plan having regard to energy conservation
- Conditions may be imposed as in the opinion of the approval authority are reasonable

Subdivision of land cont'd

- Subdivision agreements are entered reflecting the conditions imposed and they may be registered against the land and enforceable against subsequent owners of the land.
- Specific regulations apply to draft plans of subdivision and consents including notice provisions

Regulations cont'd

- Other specific regulations apply to zoning by-laws, holding by-laws, interim control by-laws, minor variance applications, delegations of authority, and development permits
- Development permits (only provided for in a few areas of the province at present) provide an up-front notice system that combines elements of zoning and building permits as well as other matters

Municipal Act

- A completely revised Municipal Act was passed in 2001, radically changing how municipal powers are framed
- The Municipal Act is no longer a minute list of specific issues and topics over which municipalities can exercise authority; rather it is framed in terms of general powers and spheres of jurisdiction with additional specific powers provided in part III.

Municipal Act

- Purposes clause states:
 - “Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for purposes which include,...

Purposes cont'd

- ...providing the services and other things the municipality considers are necessary or desirable
- managing and preserving the public assets of the municipality
- fostering the current and future economic, social and environmental well-being of the municipality and delivering and participating in provincial programs and initiatives

Municipal Act

- Spheres of jurisdiction provided to upper tier, lower tier or both types of municipalities include highways, transportation systems, waste management, public utilities, culture, parks, recreation and heritage, drainage and flood control, structures including fences and signs, parking, animals and economic development services

Municipal Act

- A potential additional sphere of jurisdiction has been recommended by the provincial Source Water Protection Implementation Committee, to provide for source protection powers to the upper or single tier municipalities.

Municipal Act cont'd

- Municipal by-laws cannot conflict with a provincial or federal Act or regulation nor an instrument such as an order, licence or approval issued under a provincial or federal Act or regulation
- Generally, municipal by-laws and resolutions apply only within its boundaries

Municipal Act cont'd

- Examples of specific municipal powers under the Municipal Act include specific provisions regarding the general spheres as well as additional matters
 - Health, Safety and Nuisance provisions including smoking in public places, dangerous places, refuse and debris, public nuisances, noise, odour and dust, health, safety and well-being, salvage yards to name a few

Municipal Act cont'd

- Example of exercise of section 130, health, safety and well-being of the inhabitants of the municipality is Toronto's pesticides by-law, just upheld by the Ontario Court of Appeal and following the Supreme Court of Canada's ruling in the Hudson decision
- Courts have recognized municipalities as "trustees of the environment" and as empowered to exercise the precautionary principle in line with developing international law

Municipal Act cont'd

- Part III also provides municipalities with authority to pass by-laws and regulate with respect to natural environment over such topics as tree by-laws, site alteration, including regulating removal of topsoil or altering the grade of land

Municipal Act cont'd

- Part IV provides for licensing and registration powers, including for example, licensing or registration of two-unit houses, trailers and trailer camps, and motor vehicle racing
- Part V sets out the process to be followed for municipal restructuring and gives powers to establish local boards, business improvement areas, corporations or to make changes to councils or wards

Municipal Act cont'd

- Part VI provides for practices and procedures including for example the roles of council, the head of council, of the officers and employees of the municipality, the clerk and the chief administrative officer

Municipal Act cont'd

- The role of council under the statute is:
 - to represent the public and to consider the well-being and interests of the municipality
 - to develop and evaluate the policies and programs of the municipality
 - to determine which services the municipality provides
 - to ensure administrative practices in place and maintain financial integrity of the municipality

Inspection of records

- Subject to the Municipal FOI and Protection of Privacy Act, any person may at all reasonable times, inspect any of the records under the control of the clerk including by-laws, resolutions, minutes and proceedings, records considered at a meeting

Municipal Liability

- No claims against a member of council or an officer, employee or agent for any act done in good faith in the performance of a duty or authority under Municipal Act or a by-law under it
- Exemption from liability not applicable to torts
- No negligence for policy decisions made in good faith exercise of discretion

Development Charges Act

- “The council of a municipality may by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies.”
- applicable when zoning by-law, consent, subdivision, minor variance, building permit etc. required

Development charges cont'd

- Cannot be imposed for cultural or entertainment facilities, including museums, theatres and art galleries but may be for public libraries.
- Cannot be for tourism facilities, including convention centres, the acquisition of land for parks, provision of a hospital, provision of waste management services and other matters
- Specific restrictions for industrial expansions
- Meant to cover increase in need for services caused by a development such as water supply services, including distribution and treatment services, waste water services, including sewers and treatment services, storm water drainage and control services, services related to a highway, electrical power services, police services and fire protection services.

Development charges cont'd

- Before passing development charges by-law, council must complete a background study, must have public meeting, must pass the by-law within one year of the study, and appeal to the OMB from the by-law may be taken (40 days)
- Provisions as to calculation of by-law quite prescriptive
- Council must establish separate reserve fund for each service to which the by-law relates

Development charges cont'd

- Provision for Front-end agreements for development charges
- Attractive to smaller municipalities, for example
- Notice of Front-end agreement must be given and may be objections filed within 40 days(heard by the OMB)

Environmental Assessment Act

- Purpose of the Act is the “betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment”

EA Act

- Applies to “enterprises, activities, proposals, plans programs... by or on behalf of Her Majesty in right of Ontario or a public body or a municipality
- Major commercial or business enterprises designated by regulations (e.g. energy, waste)
- Agreements to apply the Act

EA Act

- Undertakings are not to proceed unless the Minister or tribunal has given EA approval
- Proponent is to consult with “such persons as may be interested”
- Proposed terms of reference approved by Minister - either as outlined in the Act or as proposed to be varied by the proponent
- Public consultation and comment on proposed terms of reference critical

EA Act

- If the EA is to be prepared in accordance with section 6.1(2) contents, then includes purpose, rationale, alternative methods, alternatives to, description of environment affected
- Public notice of submission of environmental assessment; any person may inspect and comment

EA Act cont'd

- Ministry review within prescribed time
- any person may inspect
- Decisions made by mediation or by the Minister or by referral to tribunal of all or part of the decision (Environmental Review Tribunal)
- Any person may request that the Minister refer to the Tribunal for a hearing

EA Act cont'd

- Minister may review Tribunal's decisions
- Minister may reconsider an approval to proceed made by the Minister or the Tribunal if change in circumstances or new information and the Minister considers appropriate to do so

EA Act cont'd

- Prior to an approval, proponent may acquire property or property rights, prepare feasibility studies, engage in research and establish a reserve fund or other financing mechanism in connection with the undertaking; however the province or crown agency shall not give or approve a loan, grant etc. until approval to proceed is granted

Class Environmental Assessments

- EA Act provides for Class EA's
- A person may apply for approval of a class EA for a class of undertakings and thereafter if approved it governs all EA's in that class unless they follow an independent EA and approval
- E.g. Municipal Class EA's for water and sewer; Crown resources; Energy; Parks

Class EA's cont'd

- To find the requirements for a project covered by a class EA, you must review the approved class EA for the considerations and decision making factors, processes of consultation and participation, screening criteria etc.

EA Act Regulations

- The general EA regulation defines public bodies (e.g. Ontario Clean Water Agency, Toronto Area Transit Operating Authority, Ontario Realty Corporation etc.), sets out additional information requirements for EA's, and exempts several Ministries' undertakings from the Act (e.g. Minister of Finance, Minister of Labour, the Attorney General, Minister of Agriculture, Food and Rural Affairs, Minister of Municipal Affairs, etc.).

EA Act regulations cont'd

- Several Conservation Authorities Act works and undertakings are exempted from the EA Act as well such as soil and water conservation works, water quality improvement, all if under \$50,000 cost, or if the undertaking is for reforestation, woodlot management, restocking indigenous wildlife, flood-proofing, fish and wildlife habitat management and other examples

EA Act deadlines

- Deadlines regulation 616/98 sets out deadlines including for comment prior to the Ministry review of the EA (7 weeks) and for comments for the Ministry to consider when deciding the application for approval (12 weeks after public notice).

EA Review

- “Improving Environmental Assessment in Ontario: A Framework for Reform” - Report prepared by Minister’s Environmental Assessment Advisory Panel, March 2005
- Now posted on EBR for 90 days for comment with July 4, 2005 deadline
- Recommendations for reform and Energy, Transportation and Waste Table Reports

General Comments

- Know the specific approval authority / legislative jurisdiction
- Refer to purpose provisions and similar statements in the legislation including decision criteria
- Be prepared to adduce evidence
- Be alert for comment and participation time lines and appeal deadlines

Handy References

- Simcoe pilot project Natural Heritage Planning Policy in Ontario
www.wwf.ca/NewsAndFacts/Supplemental/SimcoeNHRReportAugust1999.pdf
(copy on display)
- Ontario Nature reports at www.ontarionature.org/home/reports.html:
- [A Review of Ontario Municipal Board Natural Heritage Decisions \(1996-2003\)](#)
- [Conservation Guidelines for the Identification of Significant Woodlands in Southern Ontario](#)

Additional resources

- Transit supportive guidelines MMAH -
excerpt on display -
www.mah.gov.on.ca/userfiles/HTML/nts_1_3173_1.html
- Alternative Development Standards, 1997,
MMAH, Illustrative case studies
- MMAH Citizens Guides (two examples on
display) www.mah.gov.on.ca/userfiles/HTML/nts_1_3119_1.html

Additional Resources

- **Municipal Act E-Guide:**
 - www.mah.gov.on.ca/userfiles/page_attachments/Library/1/3651840_e-guideJune16.pdf
- **Ontario's new Conservation Strategy:**
www.ontarioconserves.gov.on.ca/english/cons_strategy.asp
- **MMAH's Innovative Service Delivery Links - links to best practices and innovation in various jurisdictions:**
www.mah.gov.on.ca/userfiles/HTML/nts_1_3105_1.html



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