



Bill 189: *The Coronavirus Support and Protection Act, 2020* and LPAT Update: All In An Hour

Friday, April 24, 2020

Denise Baker and Raj Kehar

WELCOME



WeirFoulds^{LLP}

Agenda

- Bill 189: The *Coronavirus Support and Protection Act, 2020*
 - Amendments to the *Development Charges Act, 1997*
 - Amendments to the *Education Act*
 - Amendments to the *Planning Act* (25 Minutes)
- Local Planning Appeal Tribunal Update (10 Minutes)
- Your Questions Answered (25 Minutes)

Development Charges Act, 1997

The amendment to the *Development Charges Act, 1997* provides that development charge by-laws that expired on or after March 17, 2020 and before April 14, 2020 are deemed not to have expired and remain in force until the earlier of:

- the earlier of the day the by-law is repealed; and
- 6 months after the termination of the emergency declared under the *Emergency Management and Civil Protection Act*, (the “**Specified Date**”)



Development Charges Act, 1997

Also a development charge by-law that expires on or after April 14, 2020 and before the specified date, remains in force until the earlier of:

- the day the by-law is repealed; and
- 6 months after the termination of the emergency declared under the *Emergency Management and Civil Protection Act*

Education Act

The *Education Act* provides that an education development charge by-law that expired on or after March 17, 2020 and before April 14, 2020 is deemed to not have expired and remains in force until the earlier of:

- the earlier of the day the by-law is repealed; and
- 6 months after the termination of the emergency declared under the *Emergency Management and Civil Protection Act*

Education Act

The *Education Act* provides that an education development charge by-law that expired on or after April 14, 2020 and before the specified date is deemed to not have expired and remains in force until the earlier of:

- the earlier of the day the by-law is repealed; and
- 6 months after the termination of the emergency declared under the *Emergency Management and Civil Protection Act*

Planning Act

- The amendment to the Planning Act under Bill 189 was that it authorized the Minister to make regulations in connection with an emergency declared under the *Emergency Management and Civil Protection Act*. The Act itself didn't make the amendments to the Planning Act that we are going to speak about, but rather allowed for the passage of regulations, which is easier and faster than amending legislation.
- The legislation allows the regulations to apply on a retroactive basis.
- Bill 189 also provides that an order made under subsection 7.1 (2) of the *Emergency Management and Civil Protection Act* does not apply, and in certain cases is deemed to have never applied, with respect to the Planning Act or the regulations or section 114 of the *City of Toronto Act, 2006*.

Planning Act

- There are a number of Orders made under subsection 7.1(2) of the *Emergency Management and Civil Protection Act*, however the most relevant Order is 73/20 which states:
 - Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period shall be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020.
 - Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020.
- Bill 189 made it clear that this Regulation DOES NOT APPLY to Planning Act matters

Planning Act

So what types of Regulations does Bill 189 authorize?

(a) governing the application of periods of time described in provisions of this Act or the regulations or in section 114 of the *City of Toronto Act, 2006* during the period of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act*, including,

- (i) providing that the period of the emergency shall not be included for the purposes of counting a period of time,
- (ii) providing that a period of time that ended on or after the day the emergency was declared and before the day a regulation made under this clause is filed is deemed not to have ended, and prescribing such rules as are necessary or advisable to address any issues that arise as a result of the period of time being deemed not to have ended, including,
 - (A) requiring or permitting any persons or public bodies to take certain steps or actions, or
 - (B) deeming an appeal of the failure or neglect of a municipal council or other decision-maker to make a decision or give notice of a decision within the period of time not to have been made;

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

- The Regulation permits an Approval Authority to continue to process and approve municipally-initiated planning instruments and development applications during the declared emergency.
- However, where an Approval Authority wishes to pause these activities during the declared emergency, the Regulation permits that to occur.

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

- It is helpful to think of the rules the in Regulation in terms of two categories – 1) special rules that apply to certain steps taken prior to the Regulation being made; and 2) special rules that apply throughout the declared emergency.
- 1) Special rules that apply to certain steps taken prior to the Regulation being made – these rules affect certain decisions, notices of decision, non-decision appeals and motions for complete application that were made prior to April 15, 2020. It appears the point of these rules is to provide an Approval Authority the opportunity to retroactively pause a municipally-initiated planning instrument and/or development application, where steps have already been taken prior to the passing of the Regulation that would otherwise preclude that from happening.
- 2) Special rules that apply throughout the declared emergency – these rules provides an Approval Authority the option to either continue to process or pause a municipally-initiated planning instrument or development application.

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

Special Rules applicable to Certain Decisions and Notices of Decision issued prior to the Regulation being made

- If a decision was made on an official plan or official plan amendment, zoning by-law or zoning by-law amendment, draft plan of subdivision or its conditions, a consent or its conditions, and/or a community planning permit and a notice of decision was issued after February 26, 2020 and before April 15, 2020, the decision stands but the notice is deemed to not have been completed.
- If a decision was made on one of the above after March 2, 2020 and before April 15, 2020, but a notice of decision was not given, or its was not completed by April 15, 2020 the decision stands but the notice is deemed to not have been completed.
- In either scenario, a new notice of decision is required to be issued no later than 15 days after the declared emergency ends. It could be issued earlier if the Approval Authority wishes to continue processing the municipally-initiated planning instrument and/or development application. Section 4(5) of the Regulation states that you do not need to wait for the notice of decision in order to file your notice of appeal.

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

Special Rules applicable to Decisions on Minor Variance applications issued prior to the Regulation being made

- If a decision was made on a minor variance application on or after February 26, 2020 and before April 15, 2020, the decision stands however a new notice of decision shall be issued regardless of whether the notice was previously given.
- The new notice of decision is required to be issued no later than 10 days after the declared emergency ends. It could be issued earlier if the Secretary-Treasurer of the Committee of Adjustment wishes to continue processing the minor variance application. Section 4(5) of the Regulation states that you do not need to wait for the notice of decision in order to file your notice of appeal.

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

Special Rules applicable to Non-Decision Appeals filed prior to the Regulation being made

- If a non-decision appeal was filed for an official plan, official plan amendment, demolition permit or its conditions, zoning bylaw amendment, removal of “H” hold symbol, site plan application, subdivision application, consent application or a community planning permit, on or after March 17, 2020 and before April 15, 2020, that non-decision appeal is deemed to not have been filed if the right to appeal for non-decision arose after March 17, 2020. In such instance, a new appeal will likely need to be filed after the declared emergency ends.
- If the right to appeal for non-decision for one of the above arose before March 17, 2020, a non-decision appeal remains filed or may be filed during the declared emergency. However, in such instance, the Approval Authority’s timing obligation to forward the appeal record to the Tribunal is paused for the period of the declared emergency.

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

Special Rules applicable to certain Motions filed prior to the Regulation being made

- If a motion for a complete application for an official plan amendment, zoning by-law amendment and/or plan of subdivision was filed after March 17, 2020 and before April 15, 2020, that motion is deemed to not have been made if the right to make the motion arose after March 17, 2020. Such motion would have to be made after the declared emergency ends. However, if the right to make the motion arose before March 17, 2020, the motion remains.

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

Decisions on or after April 15, 2020

- On or after April 15, 2020 and during the declared emergency, if a decision is made by an Approval Authority on a *Planning Act* matter, including an official plan or official plan amendment, zoning by-law or zoning by-law amendment, draft plan of subdivision or its conditions, a consent or its conditions, a community planning permit or minor variance:
 - A notice of decision must be issued in accordance with the ordinary *Planning Act* rules – i.e. in the case of a zoning by-law amendment within 15 days of the date the by-law is passed.
 - Appeal rights commence after the notice of decision is issued in accordance with the ordinary *Planning Act* rules.
 - If no appeal is filed, the instrument comes into effect after the appeal period expires in accordance with the ordinary *Planning Act* rules.
 - If an appeal is filed, the Approval Authority's obligation to forward the appeal record to the Local Planning Appeal Tribunal ("LPAT" or "Tribunal") within a stipulated timeline is paused for the period of the declared emergency, however this does not preclude the Approval Authority from forwarding the appeal record if it so chooses to.

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

Special Rules that apply throughout the Declared Emergency

- An Approval Authority can pause processing municipally-initiated planning instruments and certain development applications for the duration of the declared emergency by making no decision on them.
- It appears to facilitate this the counting of a number of *Planning Act* timelines have been paused for the duration of declared emergency. These time periods include:
 - The time period for non-decision appeals of official, plan, official plan amendment, zoning by-law amendment, site plan and plan of subdivision;
 - The time period for deeming an official plan amendment, zoning by-law amendment or plan of subdivision application complete, and the time period for filing motions to challenge the completeness of these application;

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

- The time period for filing an appeal of a demolition permit;
- The time period for filing an appeal of a failure to remove an “H” hold symbol by-law;
- The time period for the length of an interim control by-law but only if it was in effect on March 17, 2020;
- The time period for filing an application for payment in protest of parkland fees;
- The time period for satisfying conditions of provisional consent, lapsing of consent and registration of a plan of subdivision;
- The time period for filing a fees appeal; and
- The time period for forwarding various appeal records to the Tribunal.

O.Reg 149/20: SPECIAL RULES RELATING TO DECLARED EMERGENCY

- Notably the Regulation does not pause the counting of the time period for lapsing of draft plan approval, which may be an issue for those draft plan approvals that will expire during the declared emergency.
- There are also special rules regarding the length of time an interim control by-law may remain in effect. If an interim control by-law was in effect on March 17, 2020 and not repealed before the Regulation was made, that interim control by-law is deemed to not expire during the declared emergency and its expiration date is extended following the declared emergency by the length of the declared emergency.



Local Planning Appeal Tribunal Updates

On April 2, 2020 the LPAT published the following (original available upon request)

The Province enacted O. Reg. 73/20 following its emergency declaration made pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*. O. Reg. 73/20 suspends any order of the Local Planning Appeal Tribunal (Tribunal) to establish any step in a proceeding retroactive to March 16, 2020. This includes the suspension of any procedural order of the Tribunal, and any other order, such as an administrative order to set a hearing date. Following the enactment of O. Reg. 73/20 the Tribunal suspended all hearing events until June 30, 2020.



WeirFoulds^{LLP}



Local Planning Appeal Tribunal Updates

O. Reg. 73/20 authorizes the Tribunal to exercise its discretion to lift the suspension of a Tribunal order. The Associate Chair of the Tribunal has determined that she will consider, on a case by case basis, the exercise of her discretion to lift the suspension and schedule a hearing event by teleconference or written submission to allow a settlement of the proceeding to be presented to the Tribunal.

The request may be considered in the following circumstances:

- the party who wishes to present a settlement for a specific case provides all relevant information that demonstrates that there is no prejudice to any other party for the Tribunal to proceed by teleconference or written submission;
- the party explains how the principle of “social distancing” is strictly adhered to throughout all steps necessitated in the presentation of the settlement to the Tribunal by either means; and
- if applicable, the party provides suggestions for technological support that may facilitate the presentation of the settlement to the Tribunal.





Local Planning Appeal Tribunal Updates

Tribunal will respond to a request for a settlement hearing and issue any directions when appropriate, including, if necessary, directions for email notice. It is unlikely that a settlement hearing will be scheduled before a first hearing event.

The Tribunal is prepared to schedule a settlement hearing during the week of April 6, 2020 and thereafter.

Stakeholders are also advised that the Tribunal will consider lifting the suspension of O. Reg. 73/20 to enable the Tribunal to conduct other hearing events in writing or by teleconference in the near future.

For all important Tribunal updates, please visit their website.



WeirFoulds^{LLP}



Local Planning Appeal Tribunal Updates

As of April 16, 2020 we are advised as follows:

- 4 settlement hearings have been held already via TCC;
- With respect to hearings occurring in the summer and beyond, it is currently the intention of the LPAT to proceed where at all possible. LPAT caseworkers are reaching out to counsel and parties to obtain status updates regarding these hearings. The LPAT is open to requests for a TCC to deal with these Procedural matters where necessary;
- The LPAT is also open to the idea of virtual mediations on a pilot project basis. Lyn Townsend specifically is willing to take on some virtual mediations. If parties want to make a request for mediation, they should contact Sandra Chan, who is the caseworker assigned to the mediation centre, to make this request. A mediation assessment will likely be required and the suspension will be lifted to accommodate the mediation;





Local Planning Appeal Tribunal Updates

As of April 16, 2020 we are advised as follows:

- The mailroom at the LPAT's offices is still not open but they are working on this;
- The issue about hearings straddling both sides of the June 30th date is still under review;
- The emergency order has been extended until May 12th which could be further extended. However even if it is not further extended, there are practical issues with proceeding with hearings prior to June 30th.




WeirFoulds^{LLP}



Questions and Answers



WeirFoulds^{LLP}



Question: Is the intent of the Provincial legislation to put everything on hold? What are the implications with the backlog of unprocessed applications when the process begins to move again?

Answer: I do not believe that it is the intention to put everything on hold, but rather to provide discretion to municipalities to best deploy their resources at this time. A letter did go out to Heads of Council from the Ministry encouraging that matters move forward in a timely fashion. We all know how much the development industry contributes to the economy both locally and provincially, so it is incumbent on all stakeholders to ensure that this process moves forward with development not only to deliver housing to Ontarians, but for job creation and economic benefits.



Question: Can a public meeting on a Planning Act application be held through a digital platform (electronically)? What tools would be appropriate to ensure reasonable opportunity for public input? What specific provisions need to be made to ensure statutory requirements can be met virtually?

Answer: Yes Council meetings can be held electronically, and Bill 187 was passed to allow for the holding of both open and closed session meetings. However, there are some practical issues associated with this. Consider for example s.34(12)(a) which states:

Before passing a by-law under this section, except a by-law passed pursuant to an order of the Tribunal made under subsection (26), (a) the council shall ensure that,

- (i) sufficient information and material is made available to enable the public to understand generally the zoning proposal that is being considered by the council, and
- (ii) at least one public meeting is held for the purpose of giving the public an opportunity to make representations in respect of the proposed by-law; and


(13) Notice of the public meeting required under subclause (12)(a)(ii)...,

- (a) shall be given to the prescribed persons and public bodies, in the prescribed manner; and
- (b) shall be accompanied by the prescribed information.



Question: The 2020 Provincial Policy Statement is to take effect on May 1, 2020. Will this still be the case?


Answer: Yes, the PPS, 2020 is already in effect and all decisions made on planning applications after May 1, 2020 will have to be consistent with the PPS 2020.



Question: Is it against OPPI's Statement of Values and Professional Code of Practice to conduct public consultation during this time because sectors of the population may not be able to fully participate?


Answer: No, in my opinion it would not be contrary to OPPI's Statement of Values and Professional Code of Practice to conduct public consultation at this time. At every public meeting, there are sectors of the population that are not able to participate in person for a myriad of reasons. There continues to be opportunity to participate through written statements to ensure that views are known on a particular application. However, this situation does present an opportunity to improve processes in terms of access to information for all segments of the population. Additionally stopping all public meetings also has to be balanced against the public interest of moving things forward, especially if interruptions continue for an extended period of time.






Question: Does O.Reg. 149/20 impact a municipality's ability to deem applications complete?

Answer: O.Reg. 149/20 is permissive, and therefore doesn't impact a municipalities ability to deem applications complete, but a municipality is not required to do so during the period of the Emergency Order.




Question: With O. Reg. 149/20 do the appeal periods remain open until the COVID-19 emergency is terminated and Notice of Decision with appeals periods are then issued?

Answer: Appeal periods for decision made prior to the Emergency Order that were not completed remain open until the new decision is issued and the appeal period in the new decision expires.



Question: If a municipality's office is closed and the applicant can't clear conditions of consent, does O. Reg. 149/20 suspend the 1 year time frame during the pandemic and allow additional time to be added onto the time frame to clear conditions?

Answer: O. Reg. 149/20 suspends the one year period for the duration of the Emergency, as well as the two year period to complete the transaction.




Question: Do the Planning Act timelines restart at the same point they were paused?

Answer: Yes.



Question: Do any of the amendments affect Community Benefit Charge By-laws?

Answer: No. However MMAH advises that the consultation period is now closed, although they will hold a few other clarification discussions with those who made submissions. The Regulations on CBCs still have to come out. The current proposal is that they will take effect one year following proclamation however no decision has been made with respect to that timeline.



THANK YOU, STAY SAFE
And
WASH YOUR HANDS



WeirFoulds^{LLP}