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PROCLAMATION OF BILL 51 – *THE PLANNING AND CONSERVATION LAND STATUTE AMENDMENT ACT, 2006* AND ASSOCIATED REGULATIONS

The Planning and Economic Development Committee recommends the adoption of the recommendations contained in the following report dated March 12, 2007, from the Commissioner of Planning and Development Services:

1. RECOMMENDATIONS

It is recommended that:

1. Committee and Council endorse the recommendations contained in this report for implementation of the Bill 51 *Planning Act* changes.
2. That Council authorize collection of an additional fee of \$8,000 for Notice of Receipt of an Official Plan Amendment Application as required by Bill 51.
3. The Regional Solicitor be directed to prepare an amendment to by-law A-0373-2005-108 to provide for the collection of the additional fee.
4. That Council adopt the resolution appended as *Attachment 3* requesting that the Minister of Municipal Affairs and Housing prescribe the Regional Municipality of York as an upper-tier municipality for the purposes of Section 28 of the Act dealing with Community Improvement Plans.

2. PURPOSE

The purpose of this report is:

- To advise Committee and Council of the passing of Bill 51 – *The Planning and Conservation Land Statute Amendment Act, 2006* on October 19, 2006 and it's Proclamation along with associated Regulations on January 1, 2007.
- To review the new provisions and procedures relating to the *Planning Act* and other Acts.
- To advise Committee and Council of changes that should be made to the Regional Official Plan and changes to administrative procedures to permit the Region to use the Bill 51 provisions to implement the Region's Centres and Corridors Strategy and Provincial Places to Grow Plan.

Planning and Economic Development Committee at its meeting of January 10, 2007 requested this report as well as a report on the implications of changes to the *Municipal Act, 2001* and *City of Toronto Act*.

Regional Council at its meeting of June 22, 2006 endorsed Clause 30 of Report 6 of the Finance and Administration Committee which reviewed proposed changes to the City of Toronto Act as well as the *Municipal Act*. The June 2006 report is appended as *Attachment 1* to this report. On January 25, 2007 Council endorsed Clause 17 of Report 1 of the Finance and Administration Committee which reviewed the contents and implications of Bill 130, the *Municipal Statute Amendment Act, 2006*. A copy of that report is appended as *Attachment 2* to this report.

3. BACKGROUND

Bill 51 makes changes to a number of Provincial Statutes. While the most significant of these changes occur to the *Planning Act*, changes also deal with the *Conservation Land Act*, the *Conveyancing and Law of Property Act*, the *Land Titles Act*, and the *Municipal Act, 2001*.

The new *Planning Act* and Regulations are effective as of January 1, 2007.

Regional Council at its meeting of February 16, 2006 endorsed comments on the proposed Bill 51 and on September 21, 2006 endorsed comments on the proposed Regulations. The following sections of this report identify the changed provisions of these Acts, their impact of Regional plans and procedures and the requirements for changes to the Regional Official Plan to allow the Region to use the Bill 51 provisions and to Regional procedures and fee schedules.

4. ANALYSIS AND OPTIONS

4.1 Changes to the *Planning Act* made by Bill 51 and its Regulations

As previously reported to Committee and Council, *Planning Act* changes made through Bill 51 can be divided into three key areas:

- Implementing Places to Grow – The Growth Plan for the Greater Golden Horseshoe
- Planning Process Changes, and
- Ontario Municipal Board Reform

4.1.1 Implementing Places to Grow

Bill 51 effects a number of detailed changes to assist both upper and lower tier municipalities to implement Places to Grow. The following key changes to the *Planning Act* are included:

- **Second Suites:** Allows municipalities to establish second suite policies in their official plans and zoning by-laws as of right, without appeal of the decisions to the Ontario Municipal Board unless these policies are included at the time of the 5 year Official Plan review.

- **Protection of Employment Lands:** Allows municipalities to protect employment lands by removing the appeal provisions from decisions which support the protection of employment lands, except at the time of the 5 year Official Plan review.
- **Development Permit System:** This system, which combines, zoning, site plan and minor variance processes is now extended to all the municipalities in Ontario. In order to establish a development permit system, a lower or single tier municipality must meet certain criteria as established in the regulation. Since development permits effectively marry zoning, site plan and minor variances processes, this may be a tool that a number of area municipalities wish to consider.
- **Upper Tier Community Improvement Plans:** Changes to the *Planning Act* now permit “prescribed” upper tier municipalities to use Community Improvements Plans for infrastructure, affordable housing and land and buildings adjacent to transit rights-of-way. At the present time the Region of York has not been prescribed and further action by Council is required as identified in Section 4.4.2 of this report.
- **Energy EAs may be Exempt from the Planning Act:** Changes have been made to permit Cabinet through Regulations to exempt Environmental Assessments undertakings for energy from *Planning Act* approvals. The Regulation that provides more detail in regard to these provisions has not been released at this time.

4.1.2 Planning Process Changes

A number of key changes have also been made to provisions relating to Process

- **Open Houses:** Open Houses are required to be held not less than 7 days prior to the Statutory Meeting, but are only required for 5-year reviews of Official Plans and to institute a Development Permit system.
- **OP 5-year review Provisions:** 5-year review provisions have been strengthened and clarified to require an update to official plans with respect to provincial plans, matters of provincial interest, provincial policy statements and designated areas of employment.
- **Complete Applications:** Bill 51 has strengthened the requirements in the *Planning Act* for what constitutes a “complete application” by regulating the requirements for application submissions, and enabling municipalities to require additional information or materials to be submitted in support of an application if specified in the official plan. This provision may require an amendment to the Regional Official Plan to fully identify required supporting documentation.
- **Notice to the Public of OPA applications:** Once an application is received, the municipality has 30 days to advise the applicant if the application is complete and

within 15 days of that advice to the applicant, must advise the public of the receipt of a complete application, in the same manner as notice would be given for a public meeting. This latter requirement for public notice of an application is a new requirement and will require an amendment to the Region's fee schedule to require the applicant to pay for this advertisement in addition to the public meeting advertisement. Similarly, it appears from the Regulation that where Council refuses an application, Regional Council must advertise the refusal, which incurs an additional cost.

- **Local Appeal Bodies:** The *Planning Act* now permits municipalities to establish local appeal bodies to deal with variances, consents and conditions arising from those applications instead of the Ontario Municipal Board. Regulations require these municipalities have an Official Plan, that conforms to up-to-date provincial policy and pass a bylaw that specifies what applications and appeals can be dealt with and other matters relating to the composition and conduct of the Committee. This type of provision may be a useful streamlining tool for area municipalities in future in areas where Regional Council has delegated the responsibility for consent granting to the area municipalities.
- **Consultation:** Council may now require applicants to consult with a municipality and its staff prior to the submission of an application for an official plan amendment, zoning by-law amendment, site plan, or plan of subdivision.
- **Making materials for an Official Plan Amendment Available to the Public:** In the preparation of an Official Plan, adequate information and material, including a copy of the current proposed plan, shall be made available to the public, at least twenty days before the public meeting to be held in respect of the proposed plan.
- **Public Record:** Information and material that is required to be provided to a municipality or approval authority under the Planning Act must be made available to the public.
- **Notice of Refusal Requirements:** A Council that refuses a request to amend its official plan shall, not later than fifteen days after the refusal ensure that written notice of the refusal is given to: the person or public body that made the request, each person or public body that filed a written request to be notified of a refusal, the appropriate approval authority and any other person or public body prescribed by regulation.

4.2 OMB Reforms

A number of changes to the *Planning Act* have been made to better ensure the consistency of OMB decisions to the intent of municipal councils and to Provincial plans and policies. Specifically:

- **OMB decisions to “have regard”:** OMB decisions must now “have regard” to decisions made by municipal councils and approval authorities.
- **Reduction of designated areas of employment prohibited:** Official Plan and Zoning appeals to the Ontario Municipal Board involving the reduction of designated areas of employment are prohibited along with appeals to the OMB for a council decision refusing or failing to deal with an application for OPA or ZB to alter settlement area boundaries, and establish new settlement areas, which were previously prohibited by Bill 26 changes to the *Planning Act*.
- **Limit of information heard at OMB hearings:** Further changes to the *Planning Act* limit information and material which may be heard at an OMB hearing to generally that information and material that was provided to a municipality before the council made a decision for official plan, zoning by-law and plan of subdivision matters. However new information may be permitted if the OMB is of the opinion that it was not reasonably possible to provide the information and material to the municipality prior to council’s decision or the information and material was introduced into evidence by a public body. If the OMB determines that the new information and material could have materially affected the decision of a municipal council, then it is required to provide council with 60 days to reconsider its decision in light of the information and material and make a written recommendation to the Board. The 60 day period has been increased from the previous proposed 30 day window, but is less than the 90 days requested by Regional Council.

4.3 Regulations

Also proclaimed on January 1, 2007 were a series of regulations to facilitate the implementation of the Bill 51. The most significant from a Regional viewpoint include:

- Ontario Regulation 543/06 Official Plans and Plan Amendments.
- Ontario Regulation 548/06 Transitional Provisions under Section 70.5 of the Act – Continuation and Disposition of Matters and Proceedings.
- Ontario Regulation 549/06 Prescribed Time Period – Subsections 17 (44.4), 34 (24.4) and 51 (52.4) of the Act.
- Ontario Regulation 550/06 Prescribed Matters – Upper-Tier Community Improvement Plans.
- Ontario Regulation 551/06 Local Appeal Bodies.
- Ontario Regulation 608/06 Development Permits.

Regional staff is currently reviewing these Regulations in detail to determine their impact on current applications and Regional plans and procedures.

4.4 Recommended Changes to permit *Planning Act* provisions to be utilized

As previously indicated, the changes contained in Bill 51 require:

- New administrative procedures dealing primarily with Notices and Information.

- Passing of a by-law by Regional Council to enable Planning staff to carry out procedures in accordance with Bill 51.
- Changes to the Regional Official Plan that would enable the Region to implement or issue new plans, procedures and permits.

While Regional staff continues to review and determine the full extent of these changes, there are a number of modifications that are required as soon as possible. These include:

4.4.1 Administrative Changes

- Revisions to the application form for an amendment to the Regional Official Plan;
- Circulation of proposed amendments to the Regional Official Plan to prescribed public bodies which now include the company operating a railway line within 300m of the amendment area and Parks Canada if the amendment area adjoins a historic site, park or historic canal under the jurisdiction of Parks Canada.
- Notice for a complete application to the applicant and/or consultant.
- Notice of receipt of an application to the general public.
- Statement describing whether the decision of Council is consistent with the PPS and conforms to applicable Provincial plans that are in effect.
- A declaration from a municipal employee that requirements for giving notice of a complete application and making the information available for a public review have been complied with.
- Notices for Open Houses to be held in connection with OP updates, Development Permit Systems, and 5 year reviews of the OP.

Revised forms and notices are currently under development to comply and conform to the new provisions.

4.4.2 Fee Increase for Additional Public Notice

The additional requirement for notification of receipt of an application to amend the Regional Official Plan will require a change to the Region's application fee schedule. The current fee schedule includes a fee of \$8,000 for Notice and Public Meeting of a Regional Official Plan Amendment. This generally includes the advertising the statutory public meeting when the notice is given via the Toronto Star. In cases where the notice might be given via a local paper, then the excess in the collected fee is refunded to the applicant.

Since the notice of receipt of the application must be given in a similar fashion to the Statutory Public meeting notice, it is recommended that Council amend Schedule "A" to By-law No. A-0373-2005-108 to include an additional fee of \$8,000 to cover Notice of Receipt of an Official Plan Amendment Application. A recommendation is included and a by-law will be prepared for Council if endorsed by Committee.

4.4.3 Council Resolution Requiring Pre-consultation on Amendment Applications

Bill 51 advises that Council may, by bylaw require pre-consultation by applicants for amendments to the Regional Official Plan. While it is currently Regional practice to have pre-consultation on applications, with the change in wording in the Act there may be some confusion on the part of applicants, especially those unfamiliar with current practice, as to whether this is a requirement or just a suggestion to pre-consult. Such pre-consultation can determine, at an early stage, what studies are required to be submitted for the application to be deemed complete, whether staff is opposed to the application and costs associated with the proposal.

4.4.4 Changes to the Regional Official Plan

Amendments to the Regional Official Plan are also required to implement Community Improvement Plans at the Regional level, and to further identify and provide policy protection for areas of employment.

Community Improvement Plans (CIPs): As previously indicated, the changes to the *Planning Act* permit upper tier municipalities to utilize community improvements plans for infrastructure, land and buildings adjacent to transit and affordable housing, once the upper tier municipality has been “prescribed” by the Minister, once policies are approved in the Regional Official Plan and once a Community Improvement by-law has been adopted.

Recent discussions with Ministry staff have indicated that a Council resolution, requesting the Minister to “prescribe” the Region as an upper tier municipality for the purposes of Community Improvement Plans is required. This resolution will then trigger the Minister to pass a Minister’s regulation which would “prescribe” the Region for CIP purposes. Request for the regulation could precede initiation of a Regional Official Plan amendment identifying the conditions under which a Community Improvement Plans would be used. These actions would allow the Region to utilize the Community Improvement Plan provisions in the future.

To permit use of the Community Improvement Plan provisions it is recommended that:

- Council endorse the resolution appended to this report as *Attachment 3* requesting that the Region be “prescribed” by the Minister for the purposes of Community Improvement Plans (Section 28).
- That Regional staff commence discussions with area municipalities regarding appropriate format and policies for inclusion in the Regional Official Plan to effect the use of Community Improvement Plans for the regional issues specified in the Act.
- Once policies are formulated, Regional staff will initiate the amendment for CIPs with the notice provisions required under the new *Planning Act*.

Areas of Employment: Bill 51, the Provincial Policy Statement (2005), and the Growth Plan all provide direction with respect to enhancing the protection of employment lands.

The direction of these Provincial documents is under consideration and will be analyzed in separate reports to Committee and Council for their review and discussion.

As part of the Regional growth management initiative, Regional staff will consider the use of employment land use designations and will report back to Committee and Council on the results.

4.5 Relationship to Vision 2026

Bill 51 will assist the Region in implementing the Regional Official Plan Centres and Corridors policies and the Province's Places to Grow Plan. In this regard the changes provided through this Bill are consistent with the directions of Vision 2026

5. FINANCIAL IMPLICATIONS

While the majority of changes can be accommodated within the existing budget of the Planning Department, the increased requirement for Public Notices for receipt of an application and for public open houses for municipally initiated amendments, at least doubles advertising costs. In the case of receipt of an application for an amendment this cost is passed through to the applicant. The Regional fee by-law will require appropriate adjustment as recommended in this report.

6. LOCAL MUNICIPAL IMPACT

A number of the changes provided by Bill 51 are directly implementable through area municipal planning. As such area municipal planning staff will be assessing their plans for conformity and updating where necessary. Regional planning staff will coordinate with our area municipal partners to ensure consistency across the Region.

7. CONCLUSION

The *Planning Act* changes proclaimed on January 1, 2007 will be beneficial to the Region and its area municipalities as it proceeds to implement Places to Grow and the Regional Centres and Corridors Strategy. Some changes, such as the ability for upper-tier Community Improvement Plan involvement are new provisions and will require amendments to the Regional Official Plan, others, such as Development Permitting will require changes to area municipal official plans and by-laws. Other changes are more process in nature and will require modifications to the Regional and Area municipal processing and notice requirements for planning applications and fee bylaws.

It is recommended that Committee and Council endorse this report and the recommendations for changes contained within.

For further information about this report, please contact John Waller, Director of Long Range and Strategic Planning at 905-830-4444 ext. 1525 or john.waller@york.ca or Heather Konefat, Director of Community Planning at 905-830-4444, ext. 1502 or heather.konefat@york.ca

The Senior Management Group has reviewed this report.

(The attachments referred to in this clause are included with this report.)