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DATE: September 12, 2006

TO: Chair and Members of Planning and Development Committee
Meeting Date: October 2, 2006

FROM: Edward R. Sajecki
Commissioner of Planning and Building

SUBJECT: **Proposed Bill 51 Regulations**

RECOMMENDATION: That the report titled "Proposed Bill 51 Regulations" dated September 12, 2006 from the Commissioner of Planning and Building be adopted as Mississauga's response to the proposed regulations resulting from Bill 51, *Planning and Conservation Land Statute Amendment Act, 2006* and be forwarded, by the City Clerk, to the Ministry of Municipal Affairs and Housing.

BACKGROUND: The Province of Ontario has released for public comment proposed regulations, resulting from Bill 51, *Planning and Conservation Land Statute Amendment Act, 2006*, which also include amendments to matters in existing regulations under the *Planning Act*.

The notices posted regarding the regulations are descriptive in nature; consequently, a detailed analysis of the regulations is not possible as it would hinge upon a review of the actual regulations. Consequently, the following comments are, by necessity, general in nature.

PRESENT STATUS: The regulations are draft and comments have been requested by the Ministry of Municipal Affairs and Housing by October 2, 2006.

COMMENTS:**1. EBR Registry RFO6E0002 - Transition Provisions for Bill 51**

The short description indicates that Bill 51 would apply to all applications made on or after the date Bill 51 comes into effect. This means that any applications filed prior to Bill 51 coming into effect will not be subject to the enhanced regulatory framework provided under Bill 51.

Since this provision provides certainty to the planning process, it is supported.

2. EBR Registry RF06E0003 - Complete Applications, Content and Preparation of Official Plans**(a) Complete Applications**

It appears that the proposed regulation will require much of what Mississauga currently requires from applicants in support of official plan and zoning by-law amendments. The City's current practices will acquire substantial meaning with consequences if the applicant fails to comply with these requirements.

The proposed regulation, however, will require a more thorough Planning Justification Report as applicants will now be required to address consistency with the Provincial Policy Statement (PPS) and provincial plans.

There needs to be clear direction, however, with respect to the requirement for technical reports or studies to meet the PPS or Provincial Plans. The regulations should provide for the ability to scope the issues so that only the relevant studies are requested. In some cases, PPS policies can be satisfied without doing a specific technical study. For example, Environmental Impact Studies are often scoped, or the potential impact is addressed through a buffer or zoning. In these instances, the requirement for a study is waived, especially if the anticipated impacts are minimal and the requirements are standard.

Further, in this regard, the Committee of Adjustment is concerned that the requirement for a Planning Justification Report may be inappropriate given the minor nature of some applications, and the fact that it would complicate and make applications too costly for the average homeowner or business owner. They suggest that the Secretary-Treasurer have the ability to identify the need for these reports based on the individual applications.

Although not addressed in the proposed regulations, the requirement for a “sketch” submitted in support of variance and consent applications should be updated to require a site plan drawn to scale. This will allow for the best possible review by staff and expedite the application process.

(b) Content of Official Plans

The description of the proposed regulation does not appear to suggest anything significant for Mississauga Plan, except for one item: the requirement that performance monitoring policies measuring the implementation of the PPS, provincial plans, and official plan policies be included.

Depending on the actual regulation, monitoring these matters could have a significant impact on staff resources and the Department work plans. It is uncertain how this would dovetail with the requirement for a five-year review of official plans, and what might be the implications if municipalities are not achieving satisfactory compliance.

More importantly, this may be a tool by which the Province might evaluate local municipal decision-making and become involved in local planning. Clarification of these matters is required.

(c) Information and Materials in the Preparation of Official Plans

Bill 51, if passed, would require that Mississauga submit to the approval authority (Region of Peel) background studies and reports demonstrating consistency with the PPS and provincial

plans, as well as such matters as housing, population, employment and land supply forecasts. Depending on the wording of the regulation, there may be some potential for duplication with the Region. Clarification is required.

3. EBR Registry RF06E0004 – Zoning With Conditions

The proposed regulation appears to be consistent with the City's practice where an application to amend the zoning by-law is approved in principle, subject to meeting certain conditions within 18 months. It almost appears that, given the description of the conditions which could be imposed, the Province is adopting the Mississauga model.

The proposed regulation, however, appears to contain additional measures which go beyond the City's practices (e.g. phasing of development, heritage preservation, performance criteria). Mississauga Plan will need to be amended to incorporate policies allowing for the use of conditional zoning.

This process may be a cumbersome approach for dealing with technical issues to pass zoning by-laws. Mississauga's approach, which ensures that many conditions are addressed prior to the passage of the by-law, results in a simplified site plan and building permit process. Further, zoning with conditions is not as transparent as using holding provisions which are listed in the Zoning By-law.

On the other hand, zoning with conditions would address some of the issues that have arisen through Bill 124 such as the inability to require noise fences through the development agreement, as development agreements are technically not considered as applicable law.

The Building Division will need to set up a process similar to that of Development Services to clear conditions for Building Permits. Tying conditions to building permits may create some uncertainty in managing building permit applications.

Mississauga Plan would need to be amended to incorporate policies allowing for the use of conditional zoning.

Further clarification is required regarding the prescribed conditions.

4. EBR Registry RF06E0005 - Community Improvement Plans

The proposed regulation appears to focus on prescribing which upper-tier municipality may have authority to designate community improvement areas and to prescribe community improvement plans. It appears to limit upper-tier authority in this area to regional transportation corridors and regional infrastructure. However, there is the potential, in our Regional structure, for some competition for resources if the Region embraces community improvement planning, especially as Mississauga endeavours to develop the Urban Growth Centre. The City will need to monitor Regional initiatives in this regard.

5. EBR Registry RF06E0006 - Enhanced Public Record

The proposed regulation pertains to certifying that notification requirements have been met, one of which is the holding of at least one open house. Previously, Mississauga was concerned that the proposed requirement in Bill 51 mandating open houses for all Official Plan Amendments (OPAs) is unnecessary. Not all OPAs need that level of input. For example, an OPA in an employment district, away from residential homes, may not require the same input as more controversial applications in an established residential neighbourhood. These open houses are an additional expense for municipalities and could slow down the development review process.

The proposed requirement for a statement indicating how the decision of City Council is consistent with PPS and applicable provincial plans that are in effect may be difficult to achieve. City Council generally does not provide its own planning review over and above what is provided by staff. The staff report will address conformity with the PPS and provincial plans. This proposed requirement is unnecessary.

6. EBR Registry RF06E007 - Local Appeal Bodies

The proposed regulation would enable municipalities to establish a Local Appeal Body to hear appeals related to applications for minor variances and/or consents to sever.

The proposed regulation would establish such administrative matters as the term of office for member of a local appeal body, qualifications and eligibility requirements, and rules of procedure.

One of the eligibility criteria is that a person must be a ratepayer of the municipality. While “ratepayer” has not been defined by the Ministry, it may exclude persons who live in rental accommodation. If so, the criteria should be amended to simply require that the person be a resident of the municipality.

The Committee of Adjustment raised a question under the section “Proposed restrictions for Local Appeal Board appointment”. The question regards the requirement “Limitations on agent representing land use planning matters before the OMB or Committee of Adjustment”. It is unclear what the intent of this actually means other than a literal interpretation that anyone who is, or was, an agent is not eligible for appointment to the Local Appeal Body. Clarification is required.

Any additional comments will depend on whether or not City Council decides to establish such a body.

7. EBR Registry RF06E0008 - Timeframe for Council to Consider New Information from the OMB

Bill 51 proposed that information and material that was not provided to the municipality before the council makes a decision on official plan and zoning by-law amendments and draft plans of subdivision, shall not be submitted into evidence at OMB hearings unless:

- the OMB is of the opinion that it was not reasonably possible to provide the information to the municipality before the council made its decision ;or

- the information and material was introduced into evidence by a public body.

If the OMB determines it was not reasonably possible to provide the material before the council makes its decision, and if the OMB determines that it could have affected the council's decision, it will not be admitted into evidence until the council has an opportunity to reconsider its decision in light of the new material, and makes a written recommendation to the OMB. The OMB will then consider the council's decision if considered within the prescribed time period.

This regulation establishes a timeframe of 30 days for municipal council to reconsider its decision on an application based on new information and material, and provide a recommendation to the OMB.

The 30-day timeframe is an insufficient amount of time to review the new material, prepare a report, schedule the matter on a City Council agenda, and allow City Council an opportunity to evaluate the new material. Thirty days would also be problematic during the summer recess, or other holiday periods. It is suggested that 45 days would be more reasonable.

In addition, limiting information that may be heard before the OMB "to that presented before Council" could be potentially a problem for interest groups such as ratepayers. For example, ratepayers often express their concerns at public and community meetings. To take away their right to appear before the OMB seems unfair. Finally, clarification is needed with respect to "not reasonably possible to provide the information."

8. EBR Registry RF06E0009 - Development Permits

The City of Mississauga has not been identified as a geographic area where development permits would be permitted. Consequently, this regulation does not apply to Mississauga.

FINANCIAL IMPACT: Not applicable

CONCLUSION: The proposed regulations resulting from Bill 51, *Planning and Conservation Land Statute Amendment Act, 2006* are largely administrative in nature, however, clarification is required on certain matters.

Original Signed By:

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