



CITY OF
ST. CATHARINES

Corporate Report

Report from Planning and Development Services, Planning Services

Date of Report: June 25, 2013

Date of Meeting: July 8, 2013

Report Number: PDS-191-2013

File: 35.31.99

Subject: Bill 41, the Preserving Existing Communities Act, 2013

Recommendation

That Council receive the report from the Planning and Development Services Department dated June 25, 2013, for information purposes. FORTHWITH

Background

On April 22, 2013, Council approved a motion by Councillor Siscoe to direct staff to prepare a report on the implications of Bill 41 to the City of St. Catharines and how other communities are handling Bill 41.

Report

Bill 41 is a Private Member's Bill that seeks to amend the Places to Grow Act, 2005, to provide that certain municipal decisions rejecting development proposals involving intensification would not be subject to appeal to the Ontario Municipal Board (OMB).

The effect of Bill 41 would be that where a municipality has an Official Plan that conforms to provincial intensification policies, and the municipality can demonstrate that it is achieving the targets for densities as outlined in the Provincial Growth Plan, and where an application requesting densities in an area not designated for additional densities, then the decision of the municipality to deny such application would be final. There would be no right of appeal to the OMB.

The Places to Grow Act, 2005, and its companion legislation, the Growth Plan for the Greater Golden Horseshoe were designed to curb urban sprawl and create compact communities, in part, by accommodating a significant portion of growth through intensification.

As a result, many municipalities, including St. Catharines approved policies in official plans and designated intensification areas to accommodate provincially mandated growth targets. Recently, there have been cases (e.g. Mississauga) where development applications requesting densities outside designated intensification areas have been denied by the municipality only to have its decision overturned by the OMB.

The question of permitting high density development outside of designated areas is less of a concern in St. Catharines because the Garden City Plan (GCP) provides some flexibility so that some such development would be possible under certain appropriate circumstances that are outlined in the GCP policies.

Nevertheless, the larger question of how the OMB impacts the development process is important. While many municipalities consider the OMB to be a major deterrent to local planning autonomy, there are some compelling reasons to support the OMB's retention.

For example, The Building Industry and Land Development Association (BUILD), an association made up of the Greater Toronto Home Builders and the Urban Development Institute/Ontario states that "in our current planning system, an appeal to an independent, non-political, unbiased decision-maker is essential to ensure that any municipality, community, ratepayer association and non-profit agency, along with the landowner has an opportunity to present and test the merits of an application against sound planning principles. This role is currently fulfilled by the OMB".

The debate over the role of the OMB in the development process has a long history and is still very much relevant today. However, it should not be dealt with on a piecemeal basis, as is the context of Bill 41. Rather, a comprehensive review of the OMB as a land use tribunal is the preferred approach.

Conclusion

Bill 41 effectively takes away the right of a developer to appeal a Council decision to the OMB. While the focus of the Bill is narrow, (higher density development), it nevertheless opens the door to question when an appeal is or is not appropriate. A debate over the role of the OMB is useful, but not on a piecemeal basis. Staff prefer a comprehensive approach be taken to determine the role of the OMB on all land use decisions throughout Ontario.

Submitted by:

Judy Pihach, MCIP, RPP
Manager of Planning Services

Prepared by:

Rick Tapp, MCIP, RPP
Planner II

Approved by:

James N. Riddell, MPI, MCIP, RPP
Director of Planning and Development Services