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Changes to Planning Act Timelines During Ontario State of Emergency

Apr 17, 2020

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As part of its various legislative and regulatory responses to the current COVID-19 pandemic, the Province of Ontario passed Ontario Regulation 73/20 (O. Reg. 73/20) on March 20, 2020. The effect of O. Reg. 73/20 was to suspend limitation periods and procedural timelines under any statute, regulation, rule or by-law in effect in Ontario. The result was a "pause" on various forms of litigation and administrative proceedings to allow parties, adjudicators, local authorities and the Province to effectively respond to the changing needs of the crisis.

In the land use planning context, O. Reg. 73/20 had the effect of suspending all timelines under the *Planning Act*, the *Local Planning Appeal Tribunal Act*, the Tribunal's *Rules of Practice and Procedure* and a number of other related statutes, regulations, rules and by-laws.

This week, during a limited session of Parliament, the Province moved to change the suspension of timelines in the land use planning context. This intended change was highlighted in an April 9, 2020 letter to the heads of Ontario's various municipalities advising that the Province was preparing to take legislative steps to ensure that municipal councils would not need to worry about decision timelines under the *Planning Act* during the state of emergency. The letter indicated that municipalities would shortly have the comfort of being able to re-deploy resources as needed to combat the COVID-19 pandemic without the fear of impending development-related appeals. Equally, where municipalities did wish to proceed with decision-making under the *Planning Act* during the state of emergency, the Province would be providing a mechanism to allow such decisions to be made.

The changes occurred through the enactment of Bill 189 (titled the *Coronavirus (COVID-19) Support and Protection Act, 2020*) and the passage of new Ontario Regulation 149/20 (O. Reg. 149/20). Through these enactments, the Province has (a) retroactively exempted the *Planning Act* from O. Reg. 73/20 and (b) created a new set of rules to govern the timelines for decision making and appeals under the *Planning Act*.

The timeline changes are intended to apply for the duration of the current state of emergency. The changes are retroactive to the start of the emergency (March 17, 2020) and are relatively consistent amongst the various decisions capable of being made under the *Planning Act*, including official plans and official plan amendments (ss. 17 and 22), zoning by-laws and zoning by-law amendments (s. 34), site plan approvals (s. 41 and s. 114 under the *City of Toronto Act, 2006*), minor variances (s. 45), plans of subdivision (s. 51) and consents (s. 53). The new rules provided by O. Reg. 149/20 can be summarized as follows:

1. If a decision was made after February 26, 2020, and a notice was issued before April 15, 2020, the decision stands, but the notice is void. The notice must be re-issued "no later than 15 days after the COVID-19 emergency is terminated or disallowed."

2. If a decision was made after March 2, 2020, but a notice had not been issued (or full notice circulation was not completed) before April 15, 2020, the decision stands, and the notice can lawfully be issued up to 15 days after the COVID-19 emergency is terminated or disallowed. Any notices given prior to April 15, 2020 are deemed to have not been given.

3. If a decision on a pending application was not made prior to April 15, 2020, a decision does not need to be rendered for the duration of the state of emergency. All timelines required by the *Planning Act* for the processing of an application and the rendering of a decision are suspended until the emergency is

over, after which the relevant timeline will resume. The effect of this suspension is that there can be no appeals from non-decisions until after the emergency has ended.

4. Appeal timelines that would have ended between March 17, 2020 and April 15, 2020 are deemed to have not ended, and any appeals or motions filed within that time period are deemed to have not been made or filed.

5. Where a Council or Committee does proceed to render a decision during the state of emergency, the usual *Planning Act* notice obligations and appeal timelines will apply to the decision. However, the timeline for the municipality to prepare a record and forward the appeal to the Local Planning Appeal Tribunal is suspended until the end of the state of emergency.

The rules for Committees of Adjustment differ slightly, but only for decisions made between February 26, 2020 and April 15, 2020. For these decisions, the secretary-treasurer must still give notice of the decision (regardless if notice has already been given), but the notice may be issued up to 10 days after the state of emergency is ended. As well, the appeal period under s. 45(12) is amended to allow appeals to be filed within 20 days after the new notice has been issued.

The result of the foregoing is that municipal councils and committees are empowered for the duration of the state of emergency to effectively control the decision-making and appeals process under the *Planning Act*.

- After April 15, where a municipal authority wishes to render a decision and issue notice on a *Planning Act* matter during the state of emergency, it may do so.
- Where a municipal authority is unable, or chooses not, to render a decision on a *Planning Act* matter during the state of emergency, a decision need not be rendered until after the state of emergency is over. No appeal rights from a non-decision will accrue.
- If a decision is rendered during the state of emergency, it will be subject to the usual notice requirements of the *Planning Act* and will create rights of appeal. If no appeal is filed, the decision is final. If an appeal is filed, the municipal authority is not obligated to forward the appeal record to the Local Planning Appeal Tribunal until after the state of emergency has ended.

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