



City of
Peterborough

TO: Members of the Planning Committee

FROM: Ken Hetherington, Manager, Planning Division

MEETING DATE: May 24, 2011

**SUBJECT: Report PLPD11-038
Delegation of Council Approval Authority for
Plan of Subdivision and Site Plan Control Applications**

PURPOSE

A report to recommend the delegation of Council's authority to approve site plans, plans of subdivision, plans of condominium and applications for part lot control exemption to the Director of Planning & Development Services or his/her designate.

RECOMMENDATIONS

That Council approve the recommendations outlined in Report PLPD11-038 dated May 24, 2011, of the Manager, Planning Division, as follows:

- a) That By-law Numbers 97-54 and 00-121, being by-laws respecting Site Plan Control, be repealed in their entirety and replaced with a new by-law in accordance with Exhibit B of Report PLPD11-038 to delegate the authority noted therein to the Director of Planning & Development Services or his/her designate including the authority to approve Site Plan Applications for residential developments containing up to 50 dwelling units; and,
- b) That Council pass a by-law to delegate its approval authority with respect to the approval of plans of subdivision, plans of condominium and applications for part lot control exemption in accordance with Exhibit C of Report PLPD11-038 to the Director of Planning & Development Services or his/her designate.

BUDGET AND FINANCIAL IMPLICATIONS

There are no budget or financial implications associated with receiving this report.

BACKGROUND

At its meeting held on April 4, 2011, Council requested staff to prepare a report on the feasibility of delegating the authority to approve site plans and plans of subdivision to the Director of Planning & Development Services or designate. This report responds to Council's request by reviewing application legislation, current City policy and practice, and practice in other municipalities.

Applicable Legislation and City Policy Regarding Delegation of Council Authority

For many years, the Ministry of Municipal Affairs held responsibility for approving all plan of subdivision applications in the City of Peterborough. In 1989, however, the Province passed Ontario Regulation 516/89 to delegate its approval authority for plans of subdivision to Council. Additionally, Section 41 of the *Planning Act, R.S.O. 1990* empowers Council with approval authority respecting site plan control. Accordingly, wherever the terms "approval authority", "council" or "municipality" are used in Section 41 (Site plan control area) and Section 51 (Plan of subdivision approvals) of the *Planning Act*, the power or duty contained therein rests with Council. Similarly, because Section 9(2) of the *Condominium Act, 1998 S.O. 1998, C.19* specifies that the provisions of sections 51, 51.1 and 51.2 of the *Planning Act* also apply to a proposed plan of condominium, Council is currently responsible for approving plan of condominium applications.

For many years, Sections 41(13)(b) and 51.2(1) of the *Planning Act* have enabled Council to delegate, by by-law, much of its authority with respect to site plan control and plan of subdivision approvals to an appointed officer of the municipality.

In 2006, the *Municipal Statute Law Amendment Act, 2006* (Bill 130) amended the *Municipal Act, 2001* to provide municipal councils with enhanced opportunity to delegate routine administrative matters. The intent of the amendment was to help create an effective and efficient governance structure that enables councils to focus on their priorities.

Sections 23.1 to 23.5 of the Municipal Act, 2001 enable municipalities to delegate certain council responsibilities to:

- One or more Councillors or a Council Committee;
- A body having at least two members of whom at least 50 per cent are Councillors, individuals appointed by Council, or a combination of Councillors or individuals appointed by Council; and,
- An individual who is an officer, employee or agent of the Municipality.

When considering delegating any of its authority to an individual, the *Municipal Act* requires that Council be satisfied that the power being delegated is of a minor nature having regard for the number of people, the size of geographic area and the time period affected by an exercise of the power. Additionally, Section 270(1)6 of the *Municipal Act* requires the City to adopt and maintain policies with respect to the delegation of its powers and duties.

With respect to Council powers and duties related to applications made under the *Planning Act*, the *Municipal Act* clarifies that Council does not have the ability to delegate its power to adopt an official plan or an official plan amendment, pass a zoning by-law, or adopt a community improvement plan if the plan contains certain financial decision-making provisions.

In accordance with Section 5(3) of the *Municipal Act*, any Council delegation of authority must be effected by by-law.

In 2008, Council approved City Policy No. 004, Delegation of Powers and Duties (attached as Exhibit A). Section 4.6 of that policy permits Council to delegate legislative powers such as approval authority related to site plan control and plans of subdivision to a member of staff provided the power being delegated is minor in nature.

Current City Practice with respect to Subdivision Applications

Presently, there are no City by-laws delegating Council's authority to an appointed member of staff with respect to the approval of plans of subdivision or condominium. Accordingly, Council is currently responsible for the following approval authority functions:

- Granting or refusing to grant approval to a draft plan of subdivision or condominium application (Planning Act - subsection 51(31));
- Imposing conditions to the approval of a plan of subdivision or condominium (Planning Act - subsection 51(25));
- Determining whether parkland dedication or cash-in-lieu of parkland dedication will be required in conjunction with the approval of a plan of subdivision or condominium (Planning Act - section 51.1);
- Imposing lapsing provisions to the approval of a plan of subdivision or condominium (Planning Act - subsection 51(32));
- Granting a time extension to the approval of a plan of subdivision or condominium (Planning Act - subsection 51(33));
- Withdrawing the approval of a draft plan of subdivision or condominium or changing the conditions of Draft Plan Approval (Planning Act - subsection 51(44));
- Determining whether a change made by Council to the Conditions of Draft Plan Approval made pursuant subsection 51(44) of the Planning Act is minor (Planning Act - subsection 51(47));
- Determining whether conditions of approval have been or will be satisfactorily fulfilled and granting final approval to a plan of subdivision or condominium (Planning Act - subsection 51(58));
- Withdrawing final approval of a plan of subdivision or condominium if the plan is not registered within 30 days of approval (Planning Act - subsection 51(59));
- Granting or refusing to grant approval to an application to exempt a parcel of land from Part Lot Control (Planning Act – subsection 50(7));
- Granting or refusing to grant approval to an application to exempt a proposed plan of condominium from Sections 51 and 51.1 of the Planning Act (Condominium Act – subsection 9(7)).

Subsection 51(26) of the Planning Act enables Council to enter into registered agreements with applicants in order to secure implementation of Conditions of Draft Plan Approval. Typically, the authority to sign these agreements is delegated by Council to the Mayor and City Clerk by resolution at the time that Council grants Final Approval. Similarly, at the same time, Council typically authorizes the Director of Planning and Development Services to sign the final plans of subdivision on behalf of the Corporation of the City of Peterborough once they are received by the Planning and Development Services Department.

Current City Practice with respect to Site Plan Control Applications

By-law No. 1985-211 (as amended by By-law 1989-172) designates the whole of the City of Peterborough as a site plan control area. Furthermore, By-law No. 97-54, as amended by By-law No. 00-121 delegates all authority of Council with respect to the processing and approval of site plan applications made pursuant to Section 41 of the *Planning Act* to the Planner, Urban Design and to the Development Engineer for the City save and except for the following classes of development:

- any non-residential development or mixed use development having a building floor area greater than 2500 square metres;
- any residential development containing more than 25 units;
- any development where Site Plan Approval by Council is stipulated as a requirement of a rezoning application; and,
- any development of a group home where a rezoning is required.

Additionally, By-law 97-54 authorizes the Mayor and the City Clerk to execute any Site Plan Agreement required for Site Plan Approval on Council's behalf.

In staff's opinion, By-law 97-54 provides efficiency for both Council and development proponents by ensuring that only developments of a major scale or developments in which Council has identified a desire to exercise its approval authority are subject to Council approval.

Often, as a property is re-zoned, a Holding Symbol “H” will be included in the zoning by-law to prevent the property from being developed until a site plan has been approved. Once a site plan is approved by either Council or delegated staff, the Holding Symbol may be removed by Council approval of an amending zoning by-law. Pursuant to Section 23.3(1) of the *Municipal Act*, Council is unable to delegate its authority to approve a zoning by-law.

Other Municipalities

In preparing this report, staff surveyed other municipalities to understand their practice with respect to delegating Council approval authority for plans of subdivision and site plans. With respect to plans of subdivisions, all municipalities surveyed delegate all or part of their Council’s approval authority to either staff or a committee of Council however the scope of authority delegated varies widely. For example, the City of Hamilton delegates all of it’s Council authority to staff however their delegation by-law provides opportunity for applicants to have their applications referred to Council for decision if they disagree with staff’s proposed decision. The City of London requires Draft Plan Approval to be recommended by Council however all other functions of Council are delegated to staff.

The County of Peterborough, being the subdivision approval authority for its constituent municipalities, delegates all authority of Council to staff where it is determined that an application and its proposed decision is undisputed by the applicant, staff, commenting agencies and area residents. The City of Kawartha Lakes, on the other hand, limits its delegated authority to minor functions such as minor changes to conditions of Draft Plan Approval, authorizing Final Approval, and granting time extensions to Draft Plan of Subdivision Approval.

With respect to Site Plan Control, all municipalities surveyed delegate some part of their Council’s approval authority to either staff or a committee of Council however the scope of authority delegated varies widely. For example, some municipalities delegate all site plan approval authority and provide a means for applicants to appeal decisions to Council or a committee of Council should disagreement arise (e.g. Kawartha Lakes, London, Oakville) while others only delegate the most minor authority functions, such as making minor adjustments to an existing site plan agreement (e.g. Collingwood). Similar to Peterborough, the City of Barrie has implemented a middle-ground approach whereby staff has been delegated approval authority for all site plans except for major applications.

Discussion

The purpose of delegating Council authority is to facilitate efficiency in both the delivery of City services and the operation of Council. With respect to site plan applications, it is staff's opinion that the City's current practice has served well to streamline the number of applications requiring Council approval thereby allowing Council to direct its focus toward other priorities. Between 2005 and 2010, the City received an average of 25 site plan applications annually. In that same time, only approximately 2 to 3 applications per year required Council approval.

However, in the future, as the City works to achieve the intensification and density objectives of the Growth Plan for the Greater Golden Horseshoe, staff foresees an increased demand for residential developments with between 25 and 50 dwelling units. These developments, which will be located in accordance with Official Plan designations and zoning permissions, will need to form an important part of future residential development in both the downtown Urban Growth Centre and in new suburban developments if the City is to achieve the density targets established in the Growth Plan. In order to accelerate the municipal approval process for such applications, staff recommends that the current authority delegated to the Planner, Urban Design, and the Development Engineer to approve residential site plans be expanded to include developments with up to 50 dwelling units instead of the current limit of 25 dwelling units. Furthermore, on a technical matter, delegation authority should be granted to the Director of the Department rather than to specific staff within the Department. Accordingly, staff is also recommending that the authority to approve site plan applications be given to the Director of Planning and Development Services or his/her designate.

In order to provide clarity with respect to by-laws affecting Site Plan Control, staff has recommended that By-laws 97-54 and 00-121 be repealed and replaced with a new By-law that captures the content of the former by-laws as amended by the recommendations discussed above. This draft by-law is attached hereto as Exhibit B.

With respect to plans of subdivision and condominium, there are a few areas where an expansion of staff's delegated authority could achieve greater efficiency both for Council and the development approval process. Such areas include:

- Granting a time extension to the approval of a plan of subdivision or condominium;

- Making minor amendments to the approval of a draft plan of subdivision or condominium or conditions of Draft Plan Approval; and,
- Determining whether conditions of approval have been or will be satisfactorily fulfilled and granting Final Approval to a plan of subdivision or condominium.

Typically, these functions are carried out by Council however the nature and scope of potential affect of these functions is minor. For example, granting a time extension to an existing Draft Plan Approval typically does not generate changes to a draft plan or conditions of approval; they are most often required to reflect the pace of subdivision registration which is usually driven by market conditions. Where minor changes to Conditions of Draft Plan Approval are proposed, they are typically made in response to issues that arise during the detailed design phase of subdivision development; they are not made in order to change fundamental aspects of Council's original Draft Approval decision.

Similarly, the granting of Final Approval by Council typically requires staff to confirm to Council that all conditions of Draft Plan Approval have been satisfied or will be satisfied through means such as a subdivision agreement. In many municipalities, the function of granting Final Approval is delegated to staff often with a requirement for staff to report regularly to Council advising of all subdivision approval activity undertaken by staff.

For Developers, one advantage of delegating Final Approval to staff is to provide greater timing efficiency for the receipt of Final Approval. Often, the granting of Final Approval is time-sensitive for developers due to commitments they make with home buyers, contractors and others with respect to site servicing and house construction. Unfortunately, because Council meets in three-week cycles (six-week cycle during summer months) and because corporate procedures require staff reports to Council to be completed in draft form approximately 6 weeks prior to the Council meeting, seeking Final Approval can be both time-consuming and problematic from a developers' perspective.

In staff's opinion, once the conditions of Draft Plan Approval have been fulfilled, the granting of Final Approval is largely an administrative function that does not involve discretionary decision making. Accordingly, staff feel it would be appropriate for Council to consider delegating its role with respect to granting Final Approval. Based on the foregoing, staff have recommended that Council delegate the authority to grant time extensions to draft plan approval, to make minor amendments to the approval of a draft plan of subdivision or conditions of Draft Plan Approval, and to grant Final Approval to the Director of Planning & Development Services or his designate.

Should Council support delegating these functions to staff, the delegation by-law will also need to authorize the Mayor and Clerk to execute subdivision agreements on behalf of the Corporation in order to ensure Council authorization to execute such agreements is not required each time Final Approval is granted at a staff level (Site Plan Control By-law No. 97-54 contains a similar blanket provision authorizing the Mayor and Clerk to execute site plan agreements each time such approval is granted at a staff level). This provision has been included in the draft by-law presented in Exhibit C.

Additional areas that could benefit from the delegation of approval authority from Council to staff include the approval of application to exempt a parcel of land from Part Lot Control and the approval of applications to exempt a proposed plan of condominium from the plan of subdivision approval process. Section 50(5) of the *Planning Act* generally prohibits land within a registered plan of subdivision from being further subdivided and conveyed (Part Lot Control). However, Section 50(7) of the Act allows Council to pass a by-law to exempt certain land within a registered subdivision from that restriction if the municipality deems it appropriate.

Exempting lands from Part Lot Control typically occurs when a parcel of land has been planned through a subdivision approval process for a freehold multiple-unit dwelling such as street fronting townhomes or semi-detached units where it is more appropriate to determine the property boundary between units and establish individual lots once the building foundation is poured. When a parcel is exempted from Part Lot Control, a developer will proceed to construct the dwellings on the lot and then prepare and register a reference plan that establishes the lot lines in accordance with the as-built common walls between units.

From a staff's perspective, the approval of an application for Part Lot Control exemption is generally an administrative procedure because the planning for the property, including the provision of services and zoning, is addressed through the plan of subdivision approval process. In order to expedite the approval process for these applications, many municipalities have delegated the review and approval function for Part Lot Control exemption applications to a staff level however, because such approvals require the passing of a by-law, their Councils retain the responsibility for passing the necessary by-law. Staff feel it would be beneficial for the City to implement a similar approach and have therefore recommended that Council delegate the authority to approve applications for Part Lot Control exemption to staff with the provision that Council retain the authority to give effect to any staff approval through the passing of a by-law. This recommendation has been reflected in the draft by-law presented in Exhibit C.

With respect to proposed plans of condominium, the *Condominium Act* provides developers the opportunity to request Council to exempt the proposed development from the review and approval process typically applied to plans of subdivision. Often, these applications are made when condominium approval is being sought at the end of the detailed planning approvals process and any issues related to the development of the site have already been addressed through previous planning approvals including subdivision, zoning, and site plan approval. Alternatively, such exemptions are sometimes sought when multiple condominium corporations that exist within the same site wish to merge themselves as one corporation. If there are no outstanding issues related to a proposed plan of condominium, staff feel it is appropriate to exempt them from the typical subdivision plan review process. In order to expedite the approval of condominium plans which are largely administrative in nature, staff have recommended that Council delegate staff the authority to review and approve applications to exempt plans of condominium from the provisions of Section 51 and 51.1 of the *Planning Act*. This recommendation is reflected in the draft by-law presented in Exhibit C.

In order to provide applicants a means for expressing concerns to Council should disagreement arise over a proposed staff decision to be made in accordance with the delegated authority that has been recommended herein, the proposed by-law presented in Exhibit C enables Council to retain all delegated authority where the proposed staff decision is a refusal.

In staff's opinion, the recommendations made herein affect Council responsibilities that are minor in nature and are therefore suitable for delegation to staff in accordance with the *Municipal Act* and the City's Delegation of Powers and Duties policy. Should Council wish to amend the scope of authority delegated to staff with respect to either Plans of Subdivision and Condominium or Site Plan control beyond the recommendations made in this report, models exist in other municipalities that can be used as a guide to either expand or decrease the scope of authority delegated to staff.

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Attachments:

Exhibit A – City of Peterborough Policy No. 004 – Delegation of Powers and Duties
Exhibit B – Proposed By-law Respecting Site Plan Control
Exhibit C – Proposed By-law to Delegate a Part of Council's Delegated Authority with
Respect to Plans of Subdivision, Plans of Condominium and Part Lot
Control