

To: Economic and Development Services Committee

From: Warren Munro, HBA, MCIP, RPP, Commissioner,
Economic and Development Services Department

Report Number: ED-23-180

Date of Report: October 11, 2023

Date of Meeting: October 16, 2023

Subject: Planning Application Fee Refund Waivers

Ward: All Wards

File: 12-03-3524

1.0 Purpose

The purpose of this Report is to present proposed amendments to the Delegation of Authority By-law 29-2009, as amended (the “Delegation By-law”), to Council for approval. The proposed amendments would delegate to the Commissioner of Economic and Development Services and the Director of Planning Services the execution of planning application fee refund waivers with willing applicants for applications for site plan approval and applications to amend Zoning By-law 60-94, as amended.

The use of fee refund waivers is another potential “tool in the toolbox” to help the City avoid having to refund certain planning application fees if decisions are not made within prescribed timelines.

This action is being recommended in response to certain amendments made by the Province to the Planning Act, R.S.O. 1990, c. P.13 (the “Planning Act”), including amendments resulting from:

- Bill 109, More Homes for Everyone Act, 2022, S.O. 2022, c. 12 (“Bill 109”); and,
- Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023 (“Bill 97”).

A copy of Bill 109, which received Royal Assent on April 14, 2022, can be found at the following link: https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-04/b109ra_e.pdf.

A copy of Bill 97, which received Royal Assent on June 8, 2023, can be found at the following link: <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-97>.

2.0 Recommendation

That the Economic and Development Services Committee recommend to City Council that, pursuant to Report ED-23-180 dated October 11, 2023, the proposed amendments to the City's Delegation of Authority By-law 29-2009, as amended, be approved as generally outlined in Section 5.3 of said Report and the appropriate amending by-law be passed.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

The following were consulted in the preparation of this Report:

- Chief Administrative Officer
- Commissioner, Corporate and Finance Services
- City Solicitor
- Town of Whitby
- Town of Ajax
- City of Pickering
- Town of Milton
- City of Orillia
- Town of New Tecumseh
- City of Brampton
- Town of Whitchurch-Stouffville

The Building Industry and Land Development Association ("B.I.L.D.") was advised that the City was investigating the use of planning application fee refund waiver agreements.

5.0 Analysis

5.1 Background

Bill 109 resulted in several amendments to the Planning Act. The stated purpose of Bill 109 by the Province is to have homes built faster by expediting approvals and providing increased certainty of development timelines and costs to developers.

One of the changes to the Planning Act introduced through Bill 109 has the effect of requiring municipalities to start refunding application fees to applicants if the municipality does not make a decision on a Zoning By-law Amendment ("Z.B.A.") application within 90 days of the submission of the complete application or 120 days if submitted concurrently with an Official Plan Amendment ("O.P.A.") application.

Bill 109 stipulated that a refund would be required to be provided on a graduated basis for applications made on or after January 1, 2023. The fee refund structure is as follows:

Table 1: Refund Structure for Zoning By-law Amendment Applications

Time Period for Decision (Days) – Standalone Z.B.A.	Time Period for Decision (Days) – Combined O.P.A. and Z.B.A.	Fee Refund (%)
90 or less	120 or less	0
91 to 149	121 to 179	50
150 to 209	180 to 239	75
210 or more	240 or more	100

In addition to the refund entitlement outlined in Table 1 above, an applicant also has the right to appeal to the Ontario Land Tribunal (“O.L.T.”) if the municipality fails to make a decision on a complete Z.B.A. application within 90 days of the submission of the complete application or within 120 days if it is combined with an O.P.A.

Similarly, another change to the Planning Act as a result of Bill 109 has the effect of legislatively requiring municipalities to start refunding application fees to applicants if the municipality does not approve plans and drawings submitted with a site plan application (“S.P.A.”) within 60 days of the submission of the application and on a graduated basis thereafter for applications made on or after January 1, 2023. The fee refund structure is as follows:

Table 2: Refund Structure for Site Plan Approval Applications

Time Period for Approval (Days)	Fee Refund (%)
60 or less	0
61 to 89	50
90 to 119	75
120 or more	100

In addition to the refund entitlement outlined in Table 2 above, an applicant also has the right to appeal to the O.L.T. if the municipality fails to approve the plans and drawings submitted with a site plan application within 60 days of the submission of the application. There is no mechanism for a municipality to formally deny a site plan application. While a municipality may not approve an application, an applicant could appeal the unapproved application to the O.L.T. 60 days after the submission of the application and demand a refund in accordance with Table 2 above.

The refund rules created by Bill 109 require municipalities to refund application fees in accordance with the timelines outlined in Tables 1 and 2 above, regardless of whether the

applicant wants a refund or not (i.e. the Planning Act states the municipality “shall” refund the fee).

On December 22, 2022, the then Minister of Municipal Affairs and Housing issued a letter to all heads of municipal councils. In the letter the then Minister committed to bringing forward legislation in 2023 that would delay the effective date of the fee refund rules established through Bill 109 from January 1, 2023 to July 1, 2023. The letter also stated that in the event that any fee refunds become due to applicants before the legislative changes are made, “municipalities might consider not issuing refunds in the interim” given the Minister’s “express commitment” to introduce legislation that, if passed, would retroactively cancel the requirement.

On June 8, 2023, Bill 97 received Royal Assent. Bill 97 further amended the Planning Act to delay the effective date of the fee refund rules introduced under Bill 109 to July 1, 2023. The Planning Act also now stipulates that any refunds that were due prior to July 1, 2023 are canceled.

Bill 97 also establishes regulation-making authority allowing the Minister of Municipal Affairs and Housing to exempt municipalities from the fee refund provisions in the future, if needed. No exemptions have been proposed by the Province at this time, and further information about this potential exemption (e.g. criteria) have not been made available.

A summary of the changes resulting from Bill 97 was outlined in Report ED-23-112 dated May 3, 2023. Report ED-23-112 was presented to Council on May 29, 2023 and can be found at the following link: <https://pub-oshawa.escrimemeetings.com/filestream.ashx?DocumentId=12262>.

To date, the City of Oshawa has not issued any refunds to applicants. Any Z.B.A. or S.P.A. applications that were submitted prior to July 1, 2023 are not eligible for a refund regardless of the time it takes for a decision to be made by the City.

The graduated refund rules introduced under Bill 109 do not take into account that delays may occur for reasons beyond the control of municipalities, and are, therefore, punitive towards municipalities. For example, the legislation does not include a mechanism to “stop the clock” while the municipality waits for the applicant to address matters, unless the municipality can deem an application to be incomplete at the time it is originally submitted due to the omission of information or material the municipality requires to consider the application and which are outlined in the municipality’s Official Plan.

Prior to the implementation of the fee refund rules, applicants could submit their Z.B.A. and S.P.A. application in order to start the review process and receive technical feedback from municipal departments and commenting agencies. In the case of Z.B.A. applications, there would also be a statutory public meeting to receive feedback from the community and councillors. Applicants could then revise their plans as necessary and resubmit to the municipality for further consideration. While this process would take more than 90 days, the municipality and applicant would make the investment of additional time in order to come to a positive outcome.

Under the new refund rules, municipalities are incentivized to deny applications that are not supportable based on their initial formal submission to the municipality.

Earlier in 2023, City Council adopted Pre-consultation By-law 22-2023 (the “Pre-consultation By-law”) pursuant to [Report ED-23-22](#) dated February 1, 2023. The by-law was subsequently amended in June 2023 pursuant to [Report ED-23-122](#) dated May 31, 2023. The purpose of the Pre-consultation By-law, as amended, is to require potential applicants to consult with the City prior to submitting certain types of planning applications. This allows both preliminary and technical reviews of proposals and discussions with applicants to occur prior to the formal submission of the planning application(s), in an effort to substantively improve the content and quality of the application(s) at the time they are formally submitted.

The City also strongly encourages potential applicants to undertake public consultation as part of the pre-consultation process. Mandating that pre-consultation take place and providing the public with an early opportunity to comment on a proposal prior to the formal submission of an application is prudent, reasonable and reduces the review timelines once the formal application is submitted.

This process is similar to processes adopted by many other Ontario municipalities in order to deal with Bill 109.

From the applicant’s perspective, requesting the municipality to undertake the technical review as part of the pre-consultation process is advantageous in a number of ways. Not the least of these is the fact that it avoids potentially running afoul of circumstances that could result in a municipality choosing to deny an application on the basis of insufficient technical information, and thereby avoid having to issue a refund. It is not unreasonable to assume that under such circumstances the applicant would appeal Council’s denial decision to the O.L.T., likely resulting in an extended rather than reduced timeline to bring the application process to a final conclusion.

5.2 Fee Refund Waivers

Since the introduction of Bill 109, staff have had conversations with individuals in the development industry and the consulting industry regarding the new fee refund rules. Most applicants have indicated that they do not wish to collect a refund of their application fees and do not want the municipality to deny their planning applications if forced to make a decision before the prescribed timelines for refunds come into play (e.g., within 90 days of the submission of a complete Z.B.A. application or 120 days if combined with an O.P.A. application). Many applicants and consultants are aware of the awkward situation it places both municipalities and applicants in, despite the fact that both parties may be willing to work together to achieve a positive planning outcome that may take more time than prescribed in the Planning Act for the issuance of refunds.

Although the City’s robust pre-consultation process is intended to result in improved submissions to the City, it may not resolve all issues and an applicant may submit an application that City staff or City Council cannot support in its current form. There may be instances where the applicant is working with City staff to respond to technical or public comments before a recommendation can be made, but where a decision of Council or

approval will not or cannot be made within the prescribed timelines. Further, an application can potentially be submitted at a time when it may not be technically possible for Council to approve or deny the application unless a special Council meeting is convened. For example, a Z.B.A. application that is submitted on June 15 of any given year must be approved or denied by September 13 (90 days after) of that same year. Owing to the typical Committee and Council meeting calendar where there are no regular Economic and Development Services Committee or Council meetings scheduled during July and August, there is not enough time for Council to make a decision during this time frame.

To avoid having to issue a fee refund or a potential refusal recommendation to Council in these scenarios, staff are proposing the use of a fee refund waiver. The fee refund waiver would be used in circumstances where a prescribed deadline is approaching but where a decision will not be made within the prescribed timeline. This allows for the applicant to continue working with staff towards a positive planning outcome.

If required, the fee refund waiver would be signed by the City and the applicant in good faith and would stipulate that the City will work expeditiously towards issuing a decision in a timely manner. With a signed waiver in place, the applicant would not be subject to a potential staff recommendation of refusal to Council prior to the prescribed timelines if a decision cannot be made within the prescribed timelines. Staff are proposing that the Commissioner of Economic and Development Services and the Director of Planning Services be delegated the authority to sign the fee refund waiver. It is staff's opinion that this delegation of authority is of a minor nature, pursuant to Section 23.2(4) of the Municipal Act, 2001, S.O. 2001, c.25, having regard to the number of people, the size of the geographic area, and the time period affected by the exercise of such power.

Staff are of the opinion that executing a fee refund waiver, when required, creates an opportunity for staff to continue to work with an applicant towards a positive planning outcome while minimizing financial risk to the City. Utilizing a fee refund waiver also reduces the potential for staff to make a recommendation of refusal to Council when a prescribed timeline is approaching and the resolution of key matters and comments identified through the review process remains outstanding.

The fee refund waiver could also be used in circumstances where an applicant desires to submit an S.P.A. application concurrently with a Z.B.A. application. Similar to other municipalities, since Bill 109 came into effect Oshawa has advised applicants that the City will not accept S.P.A. applications until the Z.B.A. application has been approved, since the City cannot reasonably approve a concurrent S.P.A. application if the zoning does not permit the proposal. This would necessitate the issuance of a fee refund on the part of the municipality, or result in an awkward situation where City staff conditionally approve an S.P.A. application subject to a requirement that the zoning be approved by Council, to avoid issuing the refund.

It is important to note that applicants are now seeking to submit their S.P.A. applications as early as possible in order to "lock in" their development charge rates and parkland dedication rates. This is as a result of other recent amendments to the Development Charges Act, 1997, S.O. 1997, c. 27 (the "Development Charges Act") and Planning Act by

the Province, whereby the determination of the development charges and parkland dedication are now based on the date an S.P.A. application is submitted.

Apart from the scenario described above, it is anticipated that the fee refund waiver will not be necessary for most S.P.A. applications submitted without a concurrent Z.B.A. application since they can be conditionally approved within 60 days if the zoning permits the proposed use.

The fee refund waiver does not impact appeal rights should an applicant wish to appeal a Council decision or non-decision to the O.L.T.

Although an applicant and a municipality may sign a fee refund waiver, the potential does exist for an applicant to nonetheless subsequently attempt to demand their refund based on the language of the Planning Act, given that the Planning Act stipulates municipalities “shall” refund the fee if the prescribed timelines are not met. As a result, some municipalities have not yet pursued the implementation of waivers. However, staff anticipate that most applicants that sign a waiver will not subsequently pursue the refund.

5.3 Recommended Amendment to Delegation of Authority By-law 29-2009, as Amended

It is recommended that a new row be added to the Delegation of Authority By-law 29-2009, as amended, as Item 48.4, generally reading as follows:

Item	Delegated Authority	Delegate	Source of Power or Duty	Delegation Restrictions	Communication
48.4	Execute agreements to waive the refund of fees for applications for site plan approval or for a zoning by-law amendment	Commissioner, Economic and Development Services or Director, Planning Services	Planning Act	Agreement to be in a form as approved by the City Solicitor	Not applicable

6.0 Financial Implications

The potential financial implications of being required to refund development application fees to applicants for Z.B.A. applications and S.P.A. applications in the event prescribed timelines are not met are substantial.

Development application fees are intended to help recover costs related to the processing and review of development applications, such as staffing. If an applicant is refunded their application fees, regardless of whom caused the delay, the cost to refund the developer would be borne entirely by the City and its taxpayers.

Without continuous process improvements, the City may have to refund up to approximately \$600,000 annually in Z.B.A. and S.P.A. application fees.

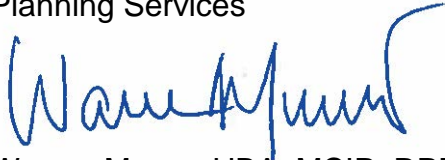
Fee refund waivers are another “tool in the toolbox” that will assist the City in an effort to avoid refunding certain planning application fees, while working with applicants towards achieving positive planning outcomes.

7.0 Relationship to the Oshawa Strategic Plan

The Recommendation in this Report advances the Accountable Leadership goal and the Economic Prosperity and Financial Stewardship goal of the Oshawa Strategic Plan.



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