

To: Economic and Development Services Committee

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

Report Number: ED-23-203

Date of Report: November 1, 2023

Date of Meeting: November 6, 2023

Subject: Delegation of Consent Granting Authority

Ward: All Wards

File: 12-12-4206

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## **1.0 Purpose**

On September 27, 2023, pursuant to its consideration of Report 2023-P-22 dated September 5, 2023, Regional Council passed the following motion related to the downloading of Durham Region Land Division responsibilities to the Region's local area municipalities as a result of Bill 23, More Homes Built Faster Act, 2022 ("Bill 23"):

- "A) That the Regional Solicitor be authorized to present a By-law under Section 54 of the Planning Act delegating to the Council of each of the Region's area municipalities, the authority to grant consents, and that this by-law be passed by Council at its meeting on October 25, 2023;
- B) That By-laws 07-2023 and 09-2023, authorizing appointments to the Regional Land Division Committee be repealed effective December 31, 2023;
- C) That the area municipalities be requested to pass a by-law to expand the role of their Committees of Adjustment to include Consent applications effective January 1, 2024;
- D) That a copy of Report #2023-P-22 of the Commissioner of Planning and Economic Development be provided to the Regional Land Division Committee, and each of the Region's area municipalities; and
- E) That at the appropriate time, the Chair of the Land Division Committee and all Committee Members be thanked for their contributions and service to the Region."

In accordance with Part A of the above noted motion, an appropriate by-law was prepared by the Regional Solicitor and subsequently adopted by Regional Council at its meeting on October 25, 2023.

The purpose of this Report is to:

- Update Council on the status of the downloading of authority for granting or refusing consents under Section 53 of the Planning Act, R.S.O. 1990, c. P.13 (the “Planning Act”) from the Region of Durham to area municipalities including the City of Oshawa;
- Recommend that Council adopt an amendment to the City’s Delegation of Authority By-law 29-2009, as amended (the “Delegation By-law”), to delegate the authority for granting or refusing consents to the Oshawa Committee of Adjustment (the “C.O.A.”) in accordance with Subsection 54(2) of the Planning Act;
- Recommend that Council adopt amendments to the City’s General Fees and Charges By-law 13-2003, as amended (the “Fees By-law”), to implement new fees related to the administration of consent applications; and,
- Recommend that the remuneration for C.O.A. members be changed from \$75 per member per meeting to \$125 per member per meeting.

This Report includes a recommendation that Council waive the notice requirements of the City’s Notice to the Public By-law 147-2007, as amended. Owing to the timing of this Report and the need to establish new City fees in relation to consent applications in anticipation of receiving consent applications effective immediately, the matters addressed in this Report are of a time-sensitive nature. Furthermore, the cumulative fees paid to the City and Region for consent applications by applicants will remain relatively consistent despite the change in procedure and responsibility.

If Council does not delegate consent granting or denial authority to the Committee of Adjustment, all consent applications will have to be considered by Council and certain administrative duties related to consent applications would be the responsibility of Legislative Services rather than the Economic and Development Services Department.

## **2.0 Recommendation**

That the Economic and Development Services Committee recommend to City Council:

That, pursuant to Report ED-23-203 dated November 1, 2023, concerning the delegation of consent granting authority:

1. That the proposed amendments to the Delegation of Authority By-law 29-2009, as amended, to delegate to the Committee of Adjustment authority to grant or refuse consents under Section 53 of the Planning Act in accordance with Subsection 54(2) of the Planning Act be approved, and the appropriate by-law be passed generally in accordance with Section 5.4 of said Report;

2. That the proposed amendments to the General Fees and Charges By-law 13-2003, as amended, to implement new fees related to consent applications be approved and the amending by-law be passed generally in accordance with Section 6.1 of said Report, and that the requirement for public notice in Notice to the Public By-law 147-2007, as amended, be waived due to the time sensitive nature of the matter; and,
3. That the remuneration for Committee of Adjustment members be increased from \$75 to \$125 per member per meeting effective February 1, 2024.

### **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
- City Clerk
- Commissioner, Corporate and Finance Services
- City Solicitor
- Region of Durham
- City of Pickering
- Town of Ajax
- Town of Whitby
- Municipality of Clarington

### **5.0 Analysis**

#### **5.1 Background**

On November 28, 2022, the Province passed Bill 23. Bill 23 made several changes to the Planning Act amongst other legislation. The Province's stated purpose of Bill 23 is to change various components of the land use planning and development processes to make it easier and less expensive to build new homes in Ontario and provide increased certainty of development processes and costs to home builders.

Although Bill 23 received Royal Assent on November 28, 2022, certain amendments to the Planning Act as a result of Bill 23 have not yet been proclaimed and are not yet in effect. A proclamation date for certain amendments relating to the administration of consent applications is not yet known, as noted below in this subsection.

A copy of Bill 23 can be found at the following link:

[https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-11/b023ra\\_e.pdf](https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-11/b023ra_e.pdf).

Previous staff report CNCL-22-78 on Bill 23 can be found at the following link: <https://pub-oshawa.escribemeetings.com/filestream.ashx?DocumentId=10047>.

The following outlines a number of changes made to the Planning Act pursuant to Bill 23 that have not been yet been proclaimed and for which a proclamation date is as yet unknown:

- A new definition is proposed to be added for an “upper-tier municipality without planning responsibilities”. This definition would include the Regional Municipality of Durham; and,
- Upper-tier municipalities without planning responsibilities will no longer have decision-making authority over any Planning Act applications such as administering consent applications. This change would automatically download the authority for granting or refusing consents to lower-tier municipalities like the City of Oshawa.

“Consent” is the term used in the Planning Act when referring to the creation of new lots (i.e. severances), lot line adjustments, easements, rights-of-way, and permission for mortgaging or leasing parts of lots for more than 21 years. A proposal to create a limited number of new lots (generally three new lots or less) may proceed by way of a consent application, whereas proposals to create more than three new lots may require an application for a draft plan of subdivision.

The Planning Act allows the authority for granting or refusing consents to be delegated to a committee of council, an appointed officer, or a Committee of Adjustment. A municipal council may choose not to delegate the authority and instead deal with each consent application itself as the approval authority.

In 1974, Council of the Region of Durham created the Durham Land Division Committee (the “D.L.D.C.”) and delegated the authority to grant or refuse consents to the committee. The D.L.D.C. is comprised of 8 members of the general public, with each lower-tier municipality appointing one member. The D.L.D.C. meets and holds public hearings generally once a month to consider consent applications. The Region circulates the consent applications to the respective municipalities and applicable agencies in advance for comment and conditions of approval, as may be applicable. D.L.D.C. hearings for consent applications are advertised by mail and by a sign posted on the properties subject to a consent application.

For each application in Oshawa, the Economic and Development Services Department provides a report to the Region for the D.L.D.C.’s consideration. The report includes conditions of approval if staff have no objections to the approval of the application. Typically applications that are approved are approved conditionally, and the applicant has two years to satisfy the conditions. Once the City’s conditions are fulfilled, staff provide a clearance letter to the Region. Once all conditions are fulfilled, the Region issues a certificate authorizing the consent for the purpose of registering transfer and deed documents. According to the Region, an average of two (2) applications per month are submitted for each of Durham’s lakeshore municipalities.

## **5.2 Regional Delegation**

Once the above-noted changes to the Planning Act receive proclamation, the Region would be required to download its responsibility for the consent process to the area

municipalities including the City of Oshawa. Each lower-tier municipality would have to administer the consent applications in their respective municipality.

Although the above-noted changes to the Planning Act have not been proclaimed, the Region has decided to proceed with delegating its consent authority at this time. The Regional Commissioner of Planning and Economic Development prepared Report 2023-P-22 dated September 5, 2023 for consideration by the Region's Planning and Economic Development Committee and Regional Council on the matter. A copy of Report 2023-P-22 can be found at the following link: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=1950>.

As noted in Section 1.0 of this Report, on September 27, 2023, Regional Council passed a motion to request area municipalities to pass by-laws to expand the role of their C.O.A. to include the consideration of consent applications effective January 1, 2024.

On October 25, 2023, Regional Council adopted a by-law in accordance with Subsection 54(1) of the Planning Act to delegate to the Council of each of the Region's area municipalities the authority for the granting or refusal of consents.

### **5.3 Committee of Adjustment**

The City of Oshawa C.O.A. was established in 1958. It is currently comprised of five (5) members of the general public appointed by City Council to serve a four-year term (currently 2023 to 2026). The C.O.A. is currently only tasked with authorizing applications under Section 45 of the Planning Act (i.e. minor variances, enlargements/extensions of legal non-complying buildings and structures, and changes in legal non-conforming uses). The following list indicates the number of C.O.A. applications received between 2018 and 2023:

2018: 92  
2019: 92  
2020: 77  
2021: 91  
2022: 107  
2023 (as of November 1, 2023): 116

Under Section 54 of the Planning Act, a municipality can also delegate the authority to consider consent applications to the C.O.A. as well. In many municipalities across Ontario, C.O.A.s consider both types of applications.

The purpose of the Bill 23 changes to the Planning Act to remove consent granting authority from defined upper-tier municipalities without planning responsibilities is to eliminate a layer of government involvement in the development approval process. There are benefits to delegating the authority to grant consents to lower-tier municipalities' C.O.A.s, including the following:

- It is anticipated that proposals requiring both a consent to divide the property and a minor variance will be submitted concurrently. This helps reduce timelines for applicants pursuing approvals; and,

- Where a proposal requires both a consent and a minor variance, it allows the City and the public to consider the scope of the proposal holistically rather than in a piece-meal fashion.

The last D.L.D.C. meeting will be held on December 4, 2023. The last day to submit a consent application to the Region was October 20, 2023. Consequently, City staff anticipate receiving consent applications immediately, underscoring the time sensitive nature of this matter.

This Report recommends that Council adopt a by-law to delegate the authority for the giving of consents under Section 53 of the Planning Act to the Oshawa C.O.A.

If Council delegates this authority as recommended, the C.O.A. will start hearing consent applications at their second meeting in 2024 (February 14). This will give staff sufficient time to circulate any new consent application, receive comments and prepare a report for the C.O.A. meeting. Subsequently, the deadline for submission of an application for the next available meeting will be six weeks in advance of the intended meeting. This is consistent with the D.L.D.C.'s current practice. In contrast, the deadline for applications to the C.O.A. under Section 45 of the Planning Act (e.g. minor variances) is three weeks in advance of the intended hearing date. This is intended to continue, except that minor variance applications that are related to a consent application will be processed concurrently with the consent application on a six-week cycle instead of three.

Staff have already begun updating City procedures and preparing documents in order to receive and administer consent applications, including:

- Committee of Adjustment website;
- Manual;
- Procedures;
- Schedule;
- Application forms;
- Circulation forms;
- Notice templates;
- Sign templates;
- Report templates;
- Chair's notes;
- Decision templates;
- Notice of appeal/no appeal; and,
- Minutes templates.

The Region has committed to providing training to City staff and C.O.A. members. Planning Services staff have already advised C.O.A. members of the potential delegation of consent applications in the event City Council chooses to delegate this authority.

The Region will continue to be responsible for administering clearances and certificates for all consent applications approved by the D.L.D.C. prior to or on December 4, 2023.

In the event Council decides not to delegate consent granting authority to the C.O.A., all consent applications will have to be heard and adjudicated by City Council and

administered by Legislative Services, with staff reports prepared by the Economic and Development Services Department. The notices and signs that would have to be distributed for each application would have to inform interested members of the public to attend City Council and each individual that attends the Council meeting must be given the opportunity to provide oral comments on the application (similar to Planning Act public meetings held by the Economic and Development Services Committee).

In accordance with the Planning Act, Council has delegation options other than retaining the authority and delegating to the C.O.A.:

- Delegate to a committee of Council, such as the Economic and Development Services Committee; and,
- Delegate to an appointed officer of the City, such as the Commissioner of Economic and Development Services or Director of Planning Services.

This Report recommends that consent granting authority be delegated to the C.O.A.

#### **5.4 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 53.1, generally reading as follows:

<b>Item</b>	<b>Delegated Authority</b>	<b>Delegate</b>	<b>Source of Power or Duty</b>	<b>Delegation Restrictions</b>	<b>Communication</b>
53.1	Authority for the giving of consents under Section 53 of the Planning Act	Committee of Adjustment	Planning Act	None	Not applicable

## **6.0 Financial Implications**

### **6.1 Consent Application Fees**

The City's Fees By-law currently imposes the following fees related to Land Division applications:

- \$787 per application
- \$396 per clearance of City conditions

The Region currently imposes the following fees for Land Division applications:

- Application: \$1,350
- Review: \$500
- Special Meeting: \$500
- Tabling fee: \$300
- Stamping: \$1,000

- Re-stamping: \$250

On October 30, 2023, City Council considered Report CF-23-69 dated October 11, 2024 entitled “2024 General Fees and Charges By-law Update” which recommended changes to the Fees By-law based on Corporate and Finance Services Department’s regular annual review. Council passed By-law 123-2023 on October 30, 2023 to amend the Fees By-law in accordance with Report CF-23-69. The updated fees related to Land Division applications were only reflective of the normal 3% annual increase effective January 1, 2024.

It is recommended that the Fees By-law be further amended to delete the City’s existing fees related to Land Division applications and impose the following new fees for consent applications effective November 21, 2023, in consideration of the new responsibilities related to the administration and review of consent applications:

- Schedule “D” Department of Economic and Development Services:
  - Delete the Application for Land Division fee row (i.e. Row 19 of the first table in Schedule “D”), which reads as follows:

<b>Planning and Engineering Applications</b>	<b>Effective Through December 31, 2023</b>	<b>Effective January 1, 2024</b>
Application for Land Division (e.g. consent, including easements)	\$787 per application \$396 per clearance of City conditions	\$811 per application \$408 per clearance of City conditions

- Rename the “Application to the Committee of Adjustment” (Column 1 of Row 22 in the first table of Schedule “D”) to “Application to the Committee of Adjustment under Section 45 of the Planning Act (e.g. minor variance)”
- Add the following new table at the bottom of the first table of Schedule “D”, directly above the second table of Schedule “D” entitled “Permits for Dumping”:

<b>Planning and Engineering Applications</b>	<b>Effective Through November 20, 2023</b>	<b>Effective November 21, 2023</b>
Consent (Application to the Committee of Adjustment under Section 53 of the Planning Act)	\$787 per application \$396 per clearance of City conditions	Application: \$2,200 Special Meeting: \$1,611 Tabling: \$327 Clearance of City Conditions: \$408
Consent Application Stamping Fee	Not applicable	Stamping: \$1,000 Re-stamping: \$250



The recommended fees are generally consistent with the existing C.O.A. fees in the Fees By-law (e.g. Tabling, Special Meeting), or are consistent with the existing combined City and Regional fee. For example, the current combined application fee to the City and Region is \$2,137 (\$1,350 + \$787, respectively), whereas the recommended new fee for the City is \$2,200 (note that the City's fee would otherwise increase 3% to \$811 on January 1, 2024).

The City collected \$10,324 and \$11,373 in fees related to Land Division applications in 2022 and 2023, respectively. It is estimated that the City will collect an additional \$28,000 in 2024 in consent application fees based on the new fees, and \$50,000 in 2025 and subsequent years due to the additional fees for stamping (assuming 20 applications per year).

These recommended Fees By-law changes were not reflected in Report CF-23-69 given that Regional Council had not delegated consent authority at the time the report was prepared and City Council had not yet given direction with respect to consent applications.

The downloading of consents to the City will add to the workload of staff in Planning Services and Legal Services. New duties related to consent applications will include:

- Planning Services:
  - Intake of additional applications;
  - Circulation of additional applications;
  - Administration of agency clearances;
  - Preparation and circulation of additional notices;
  - Preparation of additional signs;
  - Additional site visits;
  - Preparation and administration of additional decisions;
  - Preparation and administration of additional meeting minutes;
  - Distribution of additional notices of appeal/no appeal (final and binding);
  - Responding to additional inquiries from applicants and members of the general public regarding consent applications; and,
  - Stamping (certifying) of draft deeds once all clearances are received.
- Legal Services:
  - Checking of transfer/deed documents for accuracy.

These additional duties do not warrant an additional staff position, nor would the recommended fees cover the cost in salary of an additional staff member. However, they do add to the workload of existing staff in Planning Services and Legal Services and may result in impacts to overall work performance. Staff requirements for Planning Services will be considered as part of the 2024 budget deliberations.

## **6.2 Committee of Adjustment Member Remuneration**

It is also recommended that the C.O.A. member remuneration be increased from \$75 per meeting to \$125 per meeting considering the additional duties for members. Remuneration for C.O.A. members across southern Ontario varies widely, as demonstrated by the following sampling:

- Pickering: \$120 per meeting plus \$0.61 per kilometer for mileage;
- Clarington: \$53.66 per meeting;
- Whitby: \$65 per meeting and \$75 per meeting for the chair;
- Ajax: \$65 per meeting and \$70 per meeting for the chair;
- Brock: \$60 per meeting plus mileage
- Aurora: \$120 per meeting and \$125 per meeting for the chair;
- Brampton: \$175 per meeting plus mileage and expenses;
- Burlington: \$80 per meeting and \$100 per meeting for the chair;
- Hamilton: \$250 per meeting plus mileage; and,
- Belleville: Volunteer position with reimbursement for mileage.

The current \$75 remuneration level was approved by Council in 2005.

The Bank of Canada Inflation Calculator calculates the value of \$75 in 2005 as \$109.66 in 2023. The increase in remuneration to \$125 per meeting is appropriate since the fees have not been updated since 2005 and do not include any compensation for mileage.

Staff from other Durham municipalities have indicated they are also considering their C.O.A. member remuneration considering the delegation of consent authority.

In 2022 and 2023 (as of November 1, 2023), application fees collected by the City for C.O.A. applications were \$111,792 and \$136,248, respectively. Currently, remuneration to Oshawa C.O.A. members costs the City \$6,000 per year (or less depending on attendance by members). It is expected this recommended increase in remuneration could cost the City an additional \$4,000 per year (or less depending on attendance by members). Furthermore, the City has already realized annual cost savings in C.O.A. member remuneration of approximately \$2,250 by reducing the number of regularly scheduled meetings from 22 meetings per year in 2022 and years prior, to 16 meetings per year effective 2023.

## 7.0 Relationship to the Oshawa Strategic Plan

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

A handwritten signature in blue ink, appearing to read "Tom Goodeve".

Tom Goodeve, M.Sc.Pl., MCIP, RPP, Director,  
Planning Services

A handwritten signature in blue ink, appearing to read "Warren Munro".

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