



PORT COLBORNE

Meeting
Environmental Advisory Committee
August 10, 2022 6:00 p.m.

The following were in attendance:

Staff: Cassandra Banting
Janice Peyton

Council: Councillor Mark Bagu
Councillor Harry Wells

Public Members: George McKibbon
Jack Hellinga
Katherine Klauck
Tim Lamb
Trent Doan

This was an online Microsoft Teams meeting.

1. Call to Order

Chair George McKibbon called the meeting to order at 6:00 p.m.

2. Adoption of the Agenda

Moved by Tim Lamb
Seconded by Harry Wells

That the agenda dated August 10, 2022, be accepted as circulated.
CARRIED.

3. Disclosures of Interest

Nil.

4. Approval / Review of Previous Meeting Minutes

Moved by Tim Lamb
Seconded by Katherine Klauck

That the minutes of June 8, 2022, be accepted as written.
CARRIED.

5. Public Works Update

Cassandra Banting, Environmental Compliance Supervisor, provided the following update:

a) Public Works Department Restructuring

Steve Shypowskyj is the new Director of Public Works. The Climate Change Coordinator, Mae Lannan now reports to the Director of Public Works.

b) Site Alteration By-Law

The site alteration by-law is likely going to fall under the Planning department moving forward. Cassandra has prepared a working draft and has sent it to Planning.

c) Urban Forest Management Plan

The Urban Forest Management Plan has been awarded to Williams and Associates Forestry Consultants. The consultants will specifically look at boulevard trees. There is emphasis on a collaborative approach with many departments being involved and a possible open house. Information on a public open house will be circulated to EAC members when details are available.

d) EV Charging Stations

The Climate Change Coordinator, has submitted applications for grant funding.

A Level 3 EV charging station was recommended for the Market Square by members of the committee.

The Fleet supervisor has been made aware of the suggestion of an electric Zamboni.

6. Draft Terms of Reference

George gave a review of the draft terms of reference and responded to comments and questions of committee members. George will make revisions accordingly and send to members for comment and consideration to adopt at the next meeting.

7. Proposal to Increase Technical Core Competencies on the EAC

The committee reviewed the Proposal to Increase Technical Core Competencies on the EAC, authored by Rod Tennyson. Some

amendments were recommended. George will have Rod make the necessary amendments and bring the revised proposal to the next meeting.

8. Draft Bill 109 and Municipal Environmental Planning

George gave an overview on a report he authored on Bill 109 and Municipal Environmental Planning. There were no comments or questions of the committee. A copy is attached to the minutes.

9. 2023 Budget

This item was deferred to the next meeting to be discussed along with terms of reference.

10. Other Business

George advised that the University of Guelph does work with respect to rural communities and sustainable agriculture. There are two reports that George feels will be of interest to the committee. George will send the reports/presentations to members and have them on the agenda for discussion at the next meeting.

George showed members an air quality monitor device that he recently purchased. The monitor is inexpensive and reliable. George asked if members would be interested in a presentation on the device at the next meeting. All agreed that this device could be useful and should be an item on the committee budget request. George will bring more information on the device to the next meeting.

11. Next Meeting /Adjournment

With no further business to discuss, the meeting was adjourned at 8 p.m.
CARRIED.

The next EAC meeting will be on Wednesday October 12th at 6 p.m.

DRAFT Bill 109 and Municipal Environmental Planning

Introduction: Before the June 2022 election, Bill 109, the More Homes for Everyone Act, received royal assent. Bill 109 is one of a stream of Planning Act amendments this administration is using to change how municipal planning is done in Ontario. We need to pay close attention to the changes that apply to Minister's Zoning Orders (MZOs).

These changes restructure how Port Colborne manages the build environment. We use this analysis to also support the re-organization of the Environmental Advisory Committee to better address climate warming.

Why is the Province making these changes? We are in a housing crisis. The Province seeks more housing more quickly. The Province is also not enamoured with "*planning*" and "*planners*". The changes will re-organize how municipal planning takes place.

What do Bill 109's amendments to the Planning Act do? Schedule 5 of Bill 109 contains 9 series of amendments to the Planning Act¹ described briefly below.

- Changes #s 1 and 2 address matters where the Minister of Municipal Affairs is the approval authority. It provides an expedited way in which the Minister can obtain LPAT advice before approving a plan. In Niagara Region nothing appears to change immediately where the Region is the approval authority.
- Change #3 provides rules whereby a municipality may have to refund all or part of an applicant's application fees if decisions are not made by certain dates after the application is deemed complete. This substantial amendment will affect Port Colborne.
- Change #4 sets out revisions to Minister's zoning orders. It is an important section reviewed in detail below.
- Change #5 requires the regular review of community benefit charge bylaws and sets rules for these reviews.
- Change #6 involves new rules where consultations on plans and drawings where applications are deemed complete and sets rules whereby municipalities have to refund site plan review application fees if decisions are not made in a timely fashion. This substantial amendment affects Port Colborne.
- Change #7 addresses parkland requirements on lands designated transit-oriented communities under the Transit Oriented Communities Act 2020.
- Change #8 addresses new rules where extensions of approvals by approval authorities are granted.
- Change #9 provides a new section providing the Minister the authority to enact new surety bonds and other instruments to implement land use planning approvals.

¹ Bill 109, March 30, 2022, Schedule 5

These changes are detailed and numerous. But the changes to the MZO provisions may be most profound because two parallel standards are established for approving municipal planning decisions.

The first is the long standing Planning Act requirements that decisions need to be consistent with the Provincial Policy Statement 2020 (PPS) and conform to Provincial and Official Plan policies. The second is the newly minted requirement that municipalities need to exercise “*due diligence*” where MZO decisions are made. MZOs are exempted from the requirement to be made consistent with the PPS and Provincial Plans and upper tier official plans.

Analysis: This analysis applies to MZOs. It addresses three factors:

1. what is a Minister’s Zoning Order (MZO);
2. how these orders fit into Ontario’s municipal planning framework; and
3. the changing role of the municipal planning profession.

1. What is an MZO?

A Minister’s Zoning Order (MZO) is a regulation provided for by section 34 of the Planning Act. Minister of Municipal Affairs uses MZOs to exempt developments from Official Plan and Zoning Bylaw requirements. Between 2000 and 2018 this planning device was rarely used. Sometimes MZOs were used to protect natural heritage features and agricultural lands or to enable industrial developments to occur e.g., automobile plants, casinos. Occasionally an MZO was used where there are no organized municipalities.

Usage was limited to isolated instances where the Minister of Municipal Affairs was concerned Provincial and municipal planning instruments didn’t address Provincial interests properly or a Provincial interest was put at risk.

Between 2018 and 2021, the Minister began using MZOs much more frequently mostly for residential and long term care facilities. Frequent application of this discretionary tool in what is an arbitrary fashion led the Auditor General to conclude the Province’s planning system wasn’t being supported as required by the Planning Act.

Other interpretations of the Auditor General’s Report are available to the reader: one is the Provincial planning system isn’t working; there is little performance monitoring to determine whether planning targets are being met; and the Province isn’t administering the legislation to address all Provincial concerns.

At the same time, through the series of Bills described below, the Province significantly re-oriented the Planning Act’s focus.

1. Bill 139, the Building Better Communities and Conserving Watersheds Act 2017, included provisions removing the public’s ability to appeal Minister’s Zoning Orders to

the Ontario Land Tribunal. Together with other legislation, Conservation Authority powers were strictly confined to further strengthen MZOs.

2. Bill 66, the Restoring Ontario's Competitiveness Act 2018, included provisions to exclude certain development projects from having to be consistent with or conform to the Provincial Policy Statement; Provincial Plans; municipal official plans; and zoning bylaws.
3. Bill 197, The COVID-19 Economic Recovery Act 2020, expanded the power of Minister's Zoning Orders to override municipal site plan control.
4. Bill 257, the Supporting Broadband and Infrastructure Expansion Act 2021 eliminated the requirement of having Minister's Zoning Orders be consistent with the Provincial Policy Statement 2020.

In bill 109, an MZO no longer has to be consistent with the PPS 2020 or conform to Provincial Plans (except the Greenbelt Plan) or to official plans (Regional and local plans) and zoning bylaws. Instead MZOs have to have regard to the Planning Act's Section 3 objectives and be made while exercising "due diligence".

To put these changes and item #4 in Bill 109 into context, the Environmental Advisory Committee reviewed the following documents:

1. Report of the Ontario Housing Affordability Task Force Report², February 8, 2022
2. A Blueprint for Action: An Integrated Approach to address the Ontario Housing Crisis, Association of Municipalities of Ontario
3. 10 Recommendations, One Toolkit: Taking action to meet Ontario's Housing Challenges, Ontario Professional Planners Institute, 2022.
4. Meeting in the Middle: A plan to end exclusionary zoning and tackle Ontario's housing crisis, Toronto Region Board of Trade, December 2021.
5. Value for the Money Audit: Land Use Planning in the Golden Horseshoe, Office of the Auditor General of Ontario³, December 2021

Among the five documents listed above, two are of particular interest: The Auditor General's Audit of municipal planning in the Golden Horseshoe; and the Report of the Ontario Housing Affordability Task Force.

² The Housing Task Force Report addresses affordable housing which is very much in the public's mind. A central recommendation made in the Report is the Province should eliminate single family residential zoning in favour of higher densities.

³ The Auditor General assumed the responsibilities of the Environmental Commissioner under the Ontario Bill of Rights earlier. Her reports employ excellent program evaluation techniques and are a marvel to read. The analyses are detailed and thoughtful. Further the Province responds to each of the Auditor's recommendations setting out what the Ministry of Municipal Affairs intends to do. In some instances, the Ministry doesn't respond to the recommendation. Where this occurs, the Auditor states there has been no response. These interactions between the Auditor General and the Ministry help put context into the amendments and suggest what further changes are coming in the next four years.

The Auditor General measures whether the Growth Plan's four targets for residential and employment intensification in urban areas; urban and job densities; major transit station residential densities and greenfield residential and employment densities were achieved from 2006 to the present. Her finding is implementation of the 2006 Growth Plan targets is not being monitored and where monitoring data is available the efforts are failing. In fairness to the current administration, these failures predate the current administration.

The Auditor General lists and finalizes her recommendations based on her understanding how the existing legislative and policy framework is designed to work. That understanding is rooted in the evolution of Ontario's planning system enshrined by the Comay (mid 70s) and Sewell Royal (early 90s) Commissions on the Planning Act.

The Housing Task Force report is critical of Ontario's planning system generally. "Planning" is the culprit and the recommendations expedite approvals by, among other things, eliminating single family residential zoning as exclusionary, many local and Provincial policy requirements and municipal council and public participation of new housing proposals.

Bill 109 appears to address the Auditor General's criticisms of MZO usage by creating a more complete package whereby municipal councils initiate their usage⁴. The Ministry is also re-organizing and consolidating its administrative offices in support of this initiative.

*"The Minister has publicly stated that he expects that before a municipality requests an MZO it does its due diligence, which includes consultation in their communities, connecting with conservation authorities and engaging with potentially affected Indigenous communities."*⁵

"Due diligence" means "the care that a reasonable person exercises to avoid harm to other persons or their property" or "research and analysis of a company or organization done in preparation for a business transaction" (Merriam Webster).

The review standard being used by the Auditor General is one in which planning applications are reviewed in terms of consistency with the Provincial Policy Statement 2020 and conformity with applicable Provincial Plans and Regional and local official plans. Our reading of Bill 109 in this analysis is the "consistency" and "conformity" tests are being replaced with one in which Council uses "due diligence" to make decisions.

While this replacement has just begun and applies only to MZOs, there is an inevitability imbedded in the change. Two standards of review so divergent and widely available to municipal councils to use cannot be sustained over time. Further other criticisms the Auditor

⁴ See the Auditor's recommendation 9 on page 43 of the Auditor General's Report. The provisions for #4 to streamline development approval processes. Taken together with the changes proposed in Bill 109, additional funding is also being provided for smaller municipalities Municipal Modernization Program.

⁵ Ibid, Auditor General, 2021, page 46, While this statement refers to MZOs, Bill 109's amendments to Section 34

General raises in her analysis may better be addressed through Bill 109's amendments. More later on these points.

The days when planners can rely on consistency with the PPS 2020 as a planning rationale are coming to an end.

2. How do these MZO's fit into Ontario's municipal planning framework?

The simple answer is MZO's and in particular the revisions to the Planning Act proposed by Bill 109 don't fit.

For example, the Auditor General's Report describes clearly Ontario's municipal planning framework⁶. The Auditor General cannot find a rationale for the Provincial usage in the manner described over the last 40 years that isn't at face value arbitrary. Bill 109 addresses this concern by enlarging on a procedure originally designed to address extremely rare situations Provincial policy and legislation didn't address well to apply where the entire system. The presumption has to be the system isn't performing well.

This isn't the first time the Province has determined the municipal planning system could not provide for needed Provincial infrastructure. The Green Energy Act enacted an approvals process that replaced municipal approvals under the Planning Act with a regulation under the Environmental Protection Act.

3. The Changing role of the municipal planning profession.

The planning profession isn't as strong a profession as other design professions like engineering, architecture and landscape architecture. Depending upon the legal and administrative and municipal planning legislation can be undertaken very differently.

For example, municipal planners in Ontario are generally required to have certification as Registered Professional Planners to work in municipal planning departments. In New York State, municipal planners do not have to have to be members of the American Institute of Certified Planners in order to work as municipal planners.

Planners have different powers depending upon which Province or Territory they practice in Canada. For example, in Saskatchewan, a certified planner needs to "sign off" on community plans before they become official. In New York State, a planner may draft a master plan but lawyers have drafting and sign off responsibilities where a planning ordinance is concerned.

In New York State, a municipal ordinance can have the same legal status as State legislation: not so in Ontario, Ontario municipalities are subordinate to Provincial policy and plans. New York State municipalities may have master plans (read official plans) or they may not in order to enact a zoning ordinance. Where a municipality has a master plan, the ordinance has to

⁶ Ibid, Auditor General, pages 11 Figure 4: Key Land Use Planning Instruments in Ontario. Also see the appendices and portions of that report which describe how Ontario's planning system is intended to operate.

implement that plan's policy and that of other ordinances and policies the municipality has enacted. In Ontario, the conformity test applies solely to the municipal official plan.

The planning profession has evolved in Ontario. For example, circa 1966 the Niagara Region Development Council produced a report entitled "People Without Beaches"⁷. Among the authors mentioned are Norman Pearson, a planner with a considerable set of accomplishments in Ontario and Dr. John Jackson, who chaired the Geography Department at Brock University. At the time, Professor Pearson chaired the Centre for Resources Development at the University of Guelph (now the School of Environmental Design and Rural Development). Today in Port Colborne this kind of planning study was done by the special projects or parks staff.

The Auditor General's report also criticizes Provincial administration of the Planning Act as excluding essential policy considerations. For example, in 2014, the City of Toronto amended its Official Plan to improve energy and water efficiency and reduce greenhouse gas emissions. The Ministry of Municipal Affairs didn't circulate these amendments to the Environment Ministry for comment even though greenhouse gas emissions reductions are an Environment Ministry concern. In 2016 and 2018 Municipal Affairs didn't seek inter-ministry comment where the Region of Peel addressed age friendly communities and Niagara Region amended transportation master plan policies⁸.

What are the implications for Port Colborne?

1. Due diligence requires a very different analysis than that which is undertaken in municipal planning presently. At a minimum the Minister of Municipal Affairs defines "due diligence" as including community consultation, connecting with Conservation Authorities and engaging Indigenous communities.⁹ In practice, the definition requires more detailed and a different analysis than that which is undertaken presently in land use planning decisions.
2. Two standards of review cannot in the long term co-exist within the Planning Act. Compliance requirements with the Provincial Policy Statement and conformity requirements with Provincial Plans (with the exception of the Niagara Escarpment Plan), and the Regional and Port Colborne Official Plan will require re-thinking because Amendment 109 nullifies their application by usage of "due diligence" as an alternative standard of review.
3. Regional and County administrations will do business differently because their municipalities will be able to circumvent Regional and County Official Plans and Master Plans for water, sewers and transportation through usage of Bill 109 provisions.
4. Technological innovations associated with electrification and transportation will be able to be addressed better because they can be integrated into the "due diligence" analysis better than in municipal planning.

⁷ Niagara Region Development Council, People without Beaches, 27 Livingston Avenue, Grimsby, circa 1966.

⁸ Ibid, Office of the Auditor General of Ontario, December 2021, page 36.

⁹ Ibid, Office of the Auditor General of Ontario, December 2021, page 46.