Land Development Application Forms and Agreements

Practical Guidance Lawyer Team

Go to: Application for Official Plan Amendment | Application for Zoning By-Law Amendment | Application for Minor Variance | Application for Site Plan Approval | Application for Subdivision Approval | Application for Consent | Application for Part Lot Control Exemption

Maintained

This practice note contains precedents for application forms used in the development process. While the information required to be included in a development application is, in most instances, prescribed in Ontario's *Planning Act*, R.S.O. 1990, c. P.13, as amended, the application form and content may vary amongst municipalities. A careful review of all applicable planning documents (*e.g.*, official plan or zoning by-law) prior to completing an application is necessary so that the correct information is provided. The *Planning Act* and its regulations should also be reviewed to understand why information is requested and what information can lawfully be requested. Application fees are set by the municipality through by-law.

This practice note also reviews the agreements that may be required as conditions for the approval of a development application. Many approval authorities have developed standard form agreements which they are reluctant to modify. Often, as in the case of a subdivision agreement, conditions of development approval unique to a particular development are set out in a schedule to the agreement.

Note: The term "Local Planning Appeal Tribunal" ("LPAT") will be used for the practice note. ,LPAT was formerly known as the Ontario Municipal Board ("OMB"), which was an independent adjudicative tribunal that conducted hearings and made decisions on land use planning issues and other matters. The *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28 ("OMB Act")was repealed on April 3, 2018 and replaced by the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2018, c. 23 ("LPAT Act"). This replaced the OMB with the "Local Planning Appeal Tribunal" in accordance with the Building Better Communities and Conserving Watersheds Act, 2017 (Bill 139). As stated in Bill 139's Explanatory Notes, many provisions in the new LPAT Act and the old OMB Act are substantively the same. Changes are made to the practices and procedures applicable to proceedings before the Tribunal. LPAT is an adjudicative tribunal that hears cases in relation to a range of land use matters, heritage conservation, and municipal governance.

Application for Official Plan Amendment

Pursuant to s. 22 of the *Planning Act*, any person or public body may request a municipal council or planning board to amend its official plan. Upon receipt of such request, municipal council must forward the request to the appropriate approval authority if the approval authority is not municipal council. Subsection 22(4) of the *Planning Act* requires a request for an official plan amendment to include the prescribed information and material which is set out in Sch. 1 to Official Plans and Plan Amendments, O. Reg. 543/06.

In addition to the requirements set out in Sch. 1 to O. Reg. 543/06, pursuant to s. 22(5) of the *Planning Act*, the municipal council or planning board may require an applicant to provide any other information or material that the approval authority considers it may need, provided that the applicable official plan contains provisions relating to such requirements. LPAT has held that for s. 22(5) of the *Planning Act* to apply, the municipality's official plan must set out specific, detailed descriptions of the additional information it requires (see *Top of the Tree Developments Inc. v. Toronto (City)*, [2007] O.M.B.D. No. 1116).

If a municipality's official plan properly sets out the additional requirements, those requirements must be satisfied prior to an application being considered complete.

If the application is complete as set out in s. 22(1)(b) of the *Planning Act*, the approval authority must hold a public

meeting. It is important to ensure that the application submitted is a “complete application”. This is because, pursuant to s. 22(6) of the *Planning Act*, municipal council may refuse to consider an official plan amendment request until a complete application is provided.

Subsection 22(3.1) of the *Planning Act* provides that the municipal council or planning board shall permit applicants to pre-consult with the municipality or planning board before submitting a request for an official plan amendment. Pre-consultation is required only if the municipal council has passed a by-law requiring applicants to consult with the municipality or planning board prior to submitting their applications.

Municipal council may only approve a request for an official plan amendment if it is permitted by the municipality’s official plan, any secondary plan(s) and any other applicable legislation and provincial policy. Therefore, prior to applying for an official plan amendment, the provisions of all applicable planning documents should be consulted and assessed.

A request for an official plan amendment may be appealed to the LPAT if the municipal council or planning board fails to adopt the requested amendment within 180 days after the day the complete application is received, a planning board recommends a requested amendment for adoption and the municipal council fails to adopt the requested amendment within 180 days after the day the complete application is received, a municipal council or a planning board refuses to adopt the requested amendment or a planning board refuses to approve a requested amendment under s. 18(1) of the *Planning Act*. Moreover, should a municipal council or planning board refuse a request for an official plan amendment, the municipal council or planning board must give notice to the applicant in accordance with s. 22(6.6) of the *Planning Act*. In this circumstance, an appeal to the LPAT must be filed no later than 20 days thereafter.

Application for Zoning By-Law Amendment

To develop land in a manner prohibited by a zoning by-law, a zoning by-law amendment may be required. Applications for a zoning by-law amendment (or a rezoning) must be approved by municipal council. A rezoning may only be approved if it is permitted by the official plan, any secondary plan(s), any other applicable legislation and provincial policy. As such, prior to applying for a zoning by-law amendment, the provisions of all applicable planning documents should be consulted and assessed.

An application for a zoning by-law amendment must provide the prescribed information along with any other information municipal council may require as set out in the municipality’s official plan. The prescribed information is set out in Sch. 1 to Zoning By-Laws, Holding By-Laws and Interim Control By-Laws, O. Reg. 545/06. Municipal council may refuse to accept or consider a rezoning application, and the 120-day time period does not begin to run until all of the prescribed information is received. Pursuant to s. 34 of the *Planning Act*, the municipal council may also require an applicant to pre-consult with the municipality prior to submitting an application for a zoning by-law amendment.

If a zoning by-law amendment application is refused or municipal council refuses or neglects to make a decision upon the application within 120 days after the receipt by the clerk of the application, the applicant may appeal the zoning by-law amendment application to the LPAT.

Pursuant to ss. 34(16) and (16.2), if the municipality’s official plan contains policies relating to zoning with conditions, an agreement may be required where a rezoning is approved on the condition that the applicant performs certain matters related to the subsequent development of the land. If required, the agreement may be registered on title against the land to which it applies and may be enforced against the owner and any and all subsequent owners of the land.

Application for Minor Variance

Section 45(1) of the *Planning Act* permits applications to the committee of adjustment for minor variances from the provisions of a zoning by-law or interim control by-law. A minor variance may be authorized in respect of the land, building, structure or use thereof if, in the opinion of the committee of adjustment, the variance is minor and

desirable for the appropriate development or use of the land, building or structure and the general intent and purpose of the by-law and official plan are maintained.

An application for a minor variance from the provisions of a by-law where the use of the land, building or structure is legal non-conforming may also be submitted in accordance with s. 45(2) of the *Planning Act*. In this case, a committee of adjustment may permit minor variances for the enlargement or extension of a building or structure or to the use of the land, building or structure.

An application for a minor variance is submitted to the committee of adjustment (or the municipal council, as the case may be). The specific information and material to be provided is set out in the Sch. to Minor Variance Applications, O. Reg. 200/96. The method of processing minor variance applications varies. Unlike other development applications, there is nothing in the *Planning Act* that expressly requires a municipality to permit an applicant to consult with the municipality before an application is submitted, nor is there any authority for a municipality to pass a by-law to require pre-consultation for minor variance applications. From a practical perspective, however, where possible, an application should be reviewed with the appropriate municipal officials or departments prior to submission. This will assist in identifying any potential problems with the application. Some municipalities, however, may have a formal pre-submission applicable review process which may be completed before the application is considered. A broad range of matters may be raised at this stage. Examples may include the applicable provisions of the official plan and zoning by-law, whether any other regulations apply (conservation authority, heritage designation, *etc*.), any other approvals that may be required and any other relevant municipal matters.

In accordance with O. Reg. 200/96, following receipt of a minor variance application, the committee of adjustment is to hold a public hearing within 30 days and notice of the hearing must be provided to such persons as prescribed by s. 45(5) of the *Planning Act*. Following the public hearing, the committee of adjustment must send notice of its decision on the application within 10 days of the decision being rendered to the Minister, the applicant and each person who appeared in person or by counsel at the hearing and who filed a written request for notice of the decision. Pursuant to s. 45(12) of the *Planning Act*, within 20 days after the decision, the applicant, the Minister or any other interested person may appeal the decision of the committee of adjustment to the LPAT.

Similar to zoning by-law amendment applications, in some circumstances, pursuant to s. 45(9) of the *Planning Act*, an application for a minor variance may be approved subject to certain conditions that the committee of adjustment (or other applicable approval authority) considers advisable. To enforce the conditions, the owner of the land may also be required to enter into one or more agreements with the municipality. Any such agreement may be registered against title to the land to which it applies and may be enforced against the owner and any and all subsequent owners of the land. It is important to note, however, that pursuant to s. 45(1.1), a committee of adjustment is prohibited from authorizing a minor variance from conditions imposed by a municipal council under a zoning by-law amendment application.

Application for Site Plan Approval

Where municipal council has enacted a by-law designating the whole or any part of a municipality covered by an official plan as a site plan control area, any proposed development or redevelopment in that area requires approval from municipal council or the LPAT.

As the application requirements for site plan approval are not prescribed in the *Planning Act*, application forms and the required supporting materials may vary from one municipality to another. Under s. 41(4) of the *Planning Act*, municipal council may require detailed design plans and drawings known as site plans. Site plans are drawings which show such features as the location of a proposed building on a site, its entrances, the location of parking and loading facilities, landscaping, drainage, vehicle areas and pedestrian walkways and the location of all works to be provided on the site. However, s. 41(4.1) of the *Planning Act* excludes interior design, the layout of interior areas, and the manner of construction and standards for construction from site plan control.

Many municipalities have site plan control guidelines that provide a detailed description of the approval process, the

form of application, the information to be submitted with an application and the required site plan content. Any municipal guidelines or requirements, however, must comply with the provisions of s. 41 of the *Planning Act*. Notably, s. 41(3.1) of the *Planning Act* requires municipal council to permit applicants to pre-consult with the municipality before submitting plans and drawings for site plan approval. Pre-consultation is mandatory if municipal council has passed a by-law requiring applicants to consult with the municipality prior to submitting an application.

As set out in s. 41(7) of the *Planning Act*, when approving an application for site plan approval, municipal council may impose conditions of approval which may include, but are not limited to, the requirement for walkways, parking facilities, storage areas and the protection of adjoining lands through the installation of walls, fences, trees, shrubs, *etc*. Pursuant to s. 41(9) of the *Planning Act*, municipalities require that lands be conveyed for highway widening as a condition of site plan approval so long as the official plan designates the highway as one to be widened and describes the details of the proposed widening. Additionally, pursuant to s. 41(8)(c) of the *Planning Act*, where the municipality is an upper-tier municipality, it may also require the owner to convey part of the land to the upper-tier municipality for a public transit right of way so long as the public transit right of way is shown on or described in an official plan.

While municipal council is generally limited to imposing conditions regarding on-site works, municipal council is, however, permitted to impose conditions respecting off-site works that are directly related to the development. Moreover, in accordance with s. 41(7) of the *Planning Act*, municipal council may also impose conditions that ensure the protection of adjacent properties. However, when conditions of site plan approval have been challenged, the LPAT and the courts have taken a restrictive view of the off-site development conditions that municipalities may legally impose under s. 41(7) of the *Planning Act*. Specifically, in *Gloucester (City) v. Gloucester (City) Committee of Adjustment*, [1990] O.M.B.D. No. 2035, affd (1991), the OMB held that the *Planning Act*:

> […] only authorizes conditions to be imposed that relate to the internal arrangements of buildings and facilities and provisions of services and access to the specific development. The board cannot find in the words or intent any broader interpretation […] [Section 41 of the *Planning Act*] limits consideration to the site and its development [… and] is limited to the on-site requirements and only the off-site requirements directly related to the access to the site from the existing road.

Moreover, in *Polla v. Toronto (City) Chief Building Official*, [2000] O.J. No. 4399, the Ontario Superior Court of Justice has held:

> Any authority of [a municipality] to impose conditions on site plan approval can only flow from the express provisions of s. 41 of the Act. That provision has been held by this Court and by the OMB to be restrictive, rather than discretionary, and to be concerned with conditions relating to the internal arrangements of buildings and facilities and provision of services and access to the specific development under consideration.

Generally, in accordance with ss. 41(7)(c) to (c.1) and 41(8)(b) of the *Planning Act*, conditions of site plan approval are enforced by a development or site plan agreement. These agreements ensure that the applicant carries out the site plan works in accordance with the approved site plan. A site plan agreement may be registered against title to the land to which it applies. Once registered, subject to the provisions of the *Registry Act*, R.S.O. 1990, c. R.20, and the *Land Titles Act*, R.S.O. 1990, c. L.5, the municipality may enforce the site plan agreement against the present and all subsequent owners of the land in accordance with s. 41(1) of the *Planning Act*. Moreover, to ensure compliance with the terms and conditions of the site plan agreement, a municipality may require an owner to post security in the form of cash or a letter of credit which is released only upon completion of the facilities and works.

In addition to the elements set out in the Municipal Agreement Provisions Checklist (General) (see the Municipal Agreements subtopic), site plan agreements should also include the following key elements outlined in the Site Plan Agreement Provisions Checklist.

Application for Subdivision Approval

Under s. 51(16) of the *Planning Act*, an owner of land or the owner's agent may apply to the approval authority for approval of a plan of subdivision. Pursuant to s. 51(16.1) of the *Planning Act*, prior to submitting an application, applicants may be required to pre-consult with the municipality if the municipal council has passed a by-law requiring pre-consultation.

Section 51(17) of the *Planning Act* prescribes the mandatory information and material that must be submitted to the

approval authority. This includes a draft plan of subdivision which must show, at minimum, the following 12 mandatory features:

- the boundaries of the land proposed to be subdivided as certified by an Ontario land surveyor;
- the locations, widths and names of the proposed highways within the proposed subdivision and of existing highways on which the proposed subdivision abuts;
- all of the land adjacent to the proposed subdivision that is owned by the applicant or in which the applicant has an interest and every subdivision adjacent to the proposed to be subdivided;
- the purpose for which the proposed lots are to be used;
- the existing uses of all adjoining lands;
- the approximate dimensions and layout of the proposed lots;
- natural and artificial features within or adjacent to the land proposed to be subdivided;
- the availability and nature of domestic water supplies;
- the nature and porosity of the soil;
- existing contours or elevations as may be required to determine the grade of the highways and the drainage of the land proposed to be subdivided;
- the municipal services available or to be available to the land proposed to be subdivided; and
- the nature and extent of any restrictions affecting the land proposed to be subdivided, including restrictive covenants or easements.

Schedule 1 to Plans of Subdivision, O. Reg. 544/06, also provides a more extensive list of the materials required to be provided by an applicant for approval of a plan of subdivision. In addition to these requirements, pursuant to s. 51(18) of the *Planning Act*, the approval authority may request any information or material that it may need but only if the applicable official plan contains provisions regarding subdivision approval.

The approval authority may refuse to consider an application for subdivision approval until it receives the prescribed information as well as any applicable application fee. In addition, pursuant to s. 51(19) of the *Planning Act*, the time period within which a decision must be made or an appeal to the LPAT may be launched does not begin until such information is received by the approval authority.

If a decision on an application for approval of a draft plan of subdivision is not rendered within 120 days from the date the application is received, the applicant may appeal to LPAT by filing a notice with the approval authority, accompanied by the fee charged under the LPAT Act.

Section 51(24) of the *Planning Act* sets out the criteria that must be considered by the approval authority when assessing an application for subdivision approval.

When approving a plan of subdivision, pursuant to s. 51(25) of the *Planning Act*, the approval authority may impose conditions. In the opinion of the approval authority, these conditions must be reasonable, having regard to the nature of the development proposed for the subdivision. LPAT has interpreted this section to mean that a link must be established between any proposed condition and the actual development proposed, and the condition must be reasonable, relevant, necessary and equal (see *Jock River Farms Ltd. v. Ottawa-Carleton (Regional Municipality)*, [1999] O.M.B.D. No. 864).

Some examples of conditions that may be imposed include the requirement that land be dedicated or other requirements be met for park or other public recreational purposes; that highways be dedicated; that land be dedicated for commuter parking lots, transit stations and related infrastructure for the use of the general public

using highways; and that land be dedicated to provide for the widening of a highway when the proposed subdivision abuts a highway.

While the approval authority may impose a condition for the dedication of land for park or other public recreation purposes (as noted above), this authority is limited by s. 51.1 of the *Planning Act*. Under this section, in the case of a subdivision proposed for commercial or industrial purposes, the approval authority may not require more than 2% of the land, and not more than 5% of the land in all other cases. Under s. 51.1(2), however, if an official plan contains policies relating to the provision of land for park or other public recreation purposes, for subdivisions proposed for residential purposes, the approval authority may instead require that land included in the plan of subdivision be conveyed to the municipality at a rate of 1 hectare for each 300 dwelling units proposed. The *Planning Act* also permits applicants, in accordance with s. 51.1(3), to provide a payment to the municipality in lieu of providing parkland. This payment is known as “cash-in-lieu” or “payment in lieu”, and the sum to be provided is the value of the land otherwise required to be conveyed. In accordance with s. 51.1(4), the valuation date for determining the value of the land is the day before the draft plan of subdivision is approved. In accordance with s. 42(12), if there is a dispute between a municipality and the owner of the land, the owner of the land may pay the amount required by the municipality under protest and make an application to the LPAT within 30 days of the payment of the amount, and the LPAT will determine the appropriate value of the lands. Generally, however, the LPAT will accept the municipality’s valuation of the lands where that valuation appears reasonable. For example, see *Kidd v. Frontenac (County) Land Division Committee*, [1997] O.M.B.D. No. 950; *Mavis Valley Developments Inc. v. Mississauga (City)*, [2003] O.M.B.D. No. 26; and *K. P. Isberg Construction Inc. v. Toronto (City)*, [2007] O.M.B.D. No. 812.

In most cases, the approval authority will also require the owner of the land proposed to be subdivided to enter into one or more agreements, known as subdivision agreements. Pursuant to s. 51(25)(d) of the *Planning Act*, subdivision agreements may deal with such matters as the approval authority may consider necessary, including the provision of municipal or other services. Although the form of agreement may vary from one municipality to another, most municipalities use a standard form of agreement which they are usually reluctant to modify or amend. It is common, however, to negotiate terms and conditions particular to the proposed development. In many instances, the terms and conditions are included as special conditions in a schedule to the standard form of agreement.

In addition to the elements set out in the Municipal Agreement Provisions Checklist (General) (see the Municipal Agreements subtopic), subdivision agreements should also include the following key elements outlined in the Subdivision Agreement Provisions Checklist.

Generally, subdivision agreements will contain warning clauses. Warning clauses frequently arise out of conditions of planning approval and could related to concerns about noise, traffic, industrial expansion or adequacy of schools.

Application for Consent

In some cases, land may be divided by way of consent. Section 53(1) of the *Planning Act* permits applications to the approval authority for a consent as defined in s. 50(1) of the *Planning Act*. A consent may be given where the approval authority is satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality.

Consent applications are submitted to the approval authority as defined in Consent Applications, O. Reg. 197/96. More specifically, consent can be obtained from the municipal council, from the Minister under s. 53 of the *Planning Act* or from a committee of adjustment or land division committee if the authority has been delegated in accordance with s. 54 of the *Planning Act*.

The specific information and material to be provided with a consent application is prescribed in Sch. 1 to O. Reg. 197/96. An applicant must also provide all prescribed information and material, as well as any other information that may be required by the approval authority, as long as the applicable official plan contains policies and provisions

relating to such requirements. Until all of the required information is provided and the application fee paid, the approval authority may refuse to accept or review an incomplete application.

Prior to making a decision on the application for consent, the approval authority must provide at least 14 days notice of the application to the persons and public bodies prescribed in O. Reg. 197/96. Notice must be in the manner prescribed and must contain the information prescribed in the regulation. If a public meeting is held, notice must also be provided as prescribed in O. Reg. 197/96. Pursuant to s. 53(8), any person or public body may make written submissions to the approval authority before the approval authority grants or refuses the application.

The approval authority may grant or refuse to grant a consent. In determining whether a consent should be granted, the approval authority must have regard to the matters to be considered under a subdivision approval, as described in s. 51(24) of the *Planning Act*. If the approval authority does not make a decision on a consent application within 90 days of its filing or if the approval authority refuses to grant the consent, the applicant may appeal to LPAT.

Upon the granting of a consent, s. 53(12) of the *Planning Act* permits the approval authority to impose conditions. The conditions that may be imposed include those set out under the plan of subdivision provisions at s. 51(25) of the *Planning Act*. This includes the requirement to enter into one or more agreements with the municipality. Such an agreement may include a condition that requires the dedication of parkland, or cash in lieu of parkland, in accordance with s. 53(13) of the *Planning Act*. Section 51(26) of the *Planning Act* permits the registration of such agreements against title to the land. Once registered, any such agreement may be enforced against the owner and, subject to the provisions of the *Registry Act* and the *Land Titles Act*, all subsequent owners of the lands.

It is important to note that, pursuant to s. 53(41) of the *Planning Act*, all conditions related to a consent must be fulfilled by the applicant within 1 year. If the conditions are not fulfilled by the 1-year time limit, unless there is an appeal, the application for consent will be deemed to be refused.

Application for Part Lot Control Exemption

A Part Lot Control Exemption application is an alternative form of land division to a plan of subdivision or consent. Pursuant to s. 50(7) of the *Planning Act*, municipal council may pass a by-law exempting land on a registered plan of subdivision from part lot control. This permits parcels of land to be created for sale. Generally, any such part lot control exemption by-law will be in place for a fixed period of time, following which the by-law will expire and the part lot control provisions of the *Planning Act* will apply. Municipal council may, however, also repeal or amend the by-law.

It should be kept in mind that a municipality will usually require a site plan application and/or draft reference plan to be submitted before it will consider an application for part lot control exemption. If unsatisfied with the proposed site plan and/or draft reference plan, the municipality will require these details to be modified to its liking. The municipality will not grant the requested exemption until the municipality is satisfied with all of the details of the proposed development.

The content of the application form and the material to be provided on an application for part lot control is not prescribed in the *Planning Act*. Consequently, the requirements may vary from one municipality to another.

Current as of: ***04/13/2022***

End of Document