Recommendation

That the report from the Planner regarding the proposed new regulations pertaining to the community benefits authority under the Planning Act and the Development Charges Act be received for information; and

That staff forward this report to the Ministry of Municipal Affairs and Housing as the Township’s response to the ERO postings related to the proposed new regulations pertaining to the community benefits authority under the Planning Act and the Development Charges Act; and


Information

On June 21, 2019, the Ministry of Municipal Affairs and Housing posted the “Proposed new regulation pertaining to the community benefits authority under the Planning Act” and “Proposed changes to O. Reg. 82/98 under the Development Charges Act related to Schedule 3 of Bill 108 – the More Homes, More Choice Act, 2019” on the Environmental Registry of Ontario (ERO). The consultation period ends on August 21, 2019.

This report is intended to specifically consider the proposed regulations related to the Community Benefits Authority (CBA) and includes a summary of the proposed regulations that would be considered most impactful to the Township. Attached to this report is a letter completed by Watson & Associates in response to the draft regulations. This letter provides additional detail for Council’s consideration. It has been recommended that Council advise the Province that it supports the letter prepared by Watson & Associates; and that this report be provided as the Township comment with regard to specific areas of concern that the Township has.
Bill 108 – the More Homes, More Choice Act, 2019

Bill 108 – the More Homes, More Choice Act, 2019 received Royal Assent on June 6, 2019. The Act makes significant changes to the planning appeals process and to development charges. It also introduces a new Community Benefit Charges (CBC) under the Planning Act and makes changes to the planning process, conservation authorities, endangered species legislation, environmental assessments and to the Ontario Heritage Act.

The Province has provided the following overview of CBCs:

- Will enable municipalities to fund a full range of capital infrastructure for community benefit services needed for new development (excluding long-term care homes, retirement homes, universities and colleges, memorial homes, clubhouses or athletic grounds, hospices and non-profit housing).
- Would apply to new developments or redevelopments only.
- Would not be able to exceed the amount determined by formula.
- The formula would involve applying a specific percentage (to be prescribed by Regulation) of the value of the land.
- Aim is that municipalities would not be disadvantaged in funding community benefits required because of the development of lower-valued land.
- Key objective in developing the formula is to enable municipalities to maintain historical revenues from density bonusing, parkland dedication and development charges.

As noted above, Bill 108 makes changes to the Development Charges Act (DCA). Changes have been made to the eligible services in the DCA by removing “soft services”, which include, but are not limited to, such services as libraries, park amenities, administration, social services, recreation facilities and daycare services. Development Charges will still be able to fund “hard services” related to growth, such as roads, bridges, EMS, transit, waste diversion, etc. The “soft services” noted above would be considered as part of a new Community Benefits Charge (CBC) imposed under the Planning Act (discussed in more detail below). It should be noted that any development charges by-laws that were in effect as of May 2, 2019, can remain in effect until the by-law is repealed or expires.

Bill 108 also amends the Planning Act by removing Section 37 (height and density bonusing) and replacing it with the Community Benefits Charge (CBC). Further, if a municipality opts to create a CBC, then the parkland dedication provisions in the Planning Act would be replaced with the CBC.

Before a municipality passes a CBC, local governments will be required to develop a strategy and identify the facilities, services, and matters that will be funded.
The CBC will be based on a formula, which has not yet been provided. However, the Province has indicated that the amount of the CBC collected by a municipality will depend on the value of the development site and is to be based on a prescribed percentage of the value of land to be developed. This differs from the current model, where DC’s are calculated based on the anticipated costs to provide new or expanded service levels related to growth. The DC is collected on the number of residential units being constructed or area of non-residential space being constructed. It is anticipated that feedback related to the ERO postings will assist the Province in the formulation of this formula. It is expected that the formula will be released for comment later in the fall.

Changes to the *Planning Act* also includes an appraisal mechanism and resolution scheme where there is a dispute as to the value of the lands between the municipality and the landowner. This mechanism is in place if the developer believes that the CBC exceeds what is permitted by legislation. In this case, the developer may provide the municipality with an up-to-date appraisal of the site. If the municipality believes the owner’s appraisal is inaccurate, it can provide its own appraisal. If the appraisals differ by more than 5% then a third appraisal is prepared. This process could potentially add cost to both the developer and the municipality. Timelines are proposed for this process as follows:

- The developer has 30 days to produce an appraisal to the municipality in the case where the owner disagrees with the amount of the CBC.
- The municipality then has 45 days to provide the owner with an independent appraisal if the municipality does not agree with the owner’s appraisal.
- If there is a difference of more than 5% between the two (2) appraisals, the developer may choose another appraiser from a pre-determined list of appraisers. The new appraisal must be provided within 60 days.

The proposed regulations will also prescribe a time period for when a “DC freeze” would be in effect for a particular development. The proposed regulation would actually set the DC rate much earlier in the process. Instead of collecting DC’s at the time a building permit has been applied for, the DC rate can be set much earlier in the process (i.e. two (2) years from the date that the zoning by-law amendment or site plan was approved) – however it would not be payable until the permit building permit is issued. Interest may be applied during the “freeze” period and will be determined by the municipality. No limits have been placed on the rate of interest. Further, a separate payment schedule has been established for rental housing, institutional, industrial, commercial and non-profit housing development. For these developments, charges will be payable in six instalments beginning at occupancy or the date of issuance of a permit authorizing occupancy.

The proposed Regulation has a Transition provision which would prescribe that municipalities must pass a By-law by January 1, 2021 in order to collect community
benefits and to exclude ineligible “soft services” from its DC By-law. Completion of a CBC Strategy is a pre-requisite of passing the CBC By-law.

Township Comment/Recommendation

Draft Regulation – Development Charges Act - Transition of Discounted Soft Services

The proposed regulation indicates that date for municipalities to transition to the CBC is January 1, 2021. From that date, municipalities would generally no longer be able to collect development charges for the discounted soft services.

Township staff seeks clarification, if this would apply if the Township’s DC by-law is still in effect beyond January 1, 2021.

Draft Regulation – Development Charges Act – Deferral of DC Collection for Certain Development Types

The proposed regulation provides for the deferral of DCs for rental housing development, non-profit housing development, institutional / industrial / commercial development until occupancy.

Township staff is concerned with the administrative burden this will create on staff resources. Further, Township staff is concerned with its ability to collect DCs if there is a change in ownership of the property and / or if the developer defaults.

Draft Regulation – Development Charges Act – DC Freeze for Site Plan And Zoning By-law Amendments

As noted above, the regulation proposes to freeze the amount DC collected “until 2 years from the date the site plan application is approved, or in the absence of the site plan application, two years from the date the zoning was approved”.

Developments that have received Planning Act approvals should be nearing the end of the planning stage and should be ready to be developed out. The Township typically places a sunset clause on site plan approval that is typically a year in length. A 2-year freeze would be counter-productive. Further, a 2-year freeze could create a situation where the DCs would be that much more removed from actual costs of providing community services and create a shortfall for municipalities.

Regarding the DC’s “freeze”, it is Staff’s opinion that there should not be a “freeze” – however, if the Province should allow a “freeze”, it should be of a period no longer than one (1) year.
Draft Regulation – Planning Act – Transition

It is not mandatory that a municipality develop and apply a CBC. If it does not institute such an authority, it still has the power to ask for parkland dedications or payment in lieu. However, without a CBC in place, the Township may lose out on collecting monies to fund “soft services”. It was noted above that in order to create a CBC, the municipality must first have a CBC strategy place. With the proposed Transition requirement imposing that DC By-laws be amended by January 1, 2021, and that a CBC By-law be passed for those municipalities that want such a power, this timeframe will be challenging.

Staff is recommending that the Province consider providing a date of January 1, 2022 in the Transition Regulation, in order to allow adequate time to complete all the work necessary amend the existing DC By-law and to have a CBC By-law in place if they wish to go that route.

Draft Regulation – Planning Act – Community Benefits Formula

The CBC is a significant change from the current structure for funding growth. As this is a new approach, it is difficult to provide comment regarding how the CBC formula should be determined.

However, it is believed that the approach of applying the formula to the value of land will create challenges for municipalities. It is believed that the amount of revenue a municipality can expect for soft service costs will become less predictable given that land values will differ from site to site and fluctuate with market conditions. The Province should provide consideration to these fluctuations in land values and market conditions when creating the prescribed formula. This will ensure that the formula can vary to accommodate differences in land values within individual municipalities throughout the Province. Areas of the Province with higher land values will be able to receive relatively larger amounts of revenue than other areas of the Province. This could result in an inequity of soft service facilities on a geographic basis. It is recommended that the Province take this potentially imbalanced situation into account when developing the formula.

Draft Regulation – Planning Act – Appraisals for Community Benefits

A CBC can be challenged by a developer if it is believed that the CBC is excessive. The system of appraisal submission, review and comparison lends towards being adversarial and can prolong the process. In addition, it creates an element of revenue / cost uncertainty.
Staff suggest that having a set time frame for the exchange and review of appraisals will add some certainty to the process.

Financial Impact

The recommendation in this report has no financial impact.

Strategic Plan Reference

Goal 3: Support a sustainable, balanced, and investment-ready community.

Environmental Impact

None.

Attachment

- Proposed new regulation pertaining to the community benefits authority under the Planning Act.

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