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COVID-19 Update: The Impact of Draft Planning Documents and Some More Important Extensions to Deadlines Under the MGA

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IMPORTANT: Please note that this article was originally drafted on April 3, 2020 and some information contained therein may no longer be accurate given that Ministerial Order 022/20 has been rescinded and replaced by Ministerial Order 036/20. We recommend you do not rely on the April 3, 2020 version of this article. Should you have any questions, please do not hesitate to contact our office.

The COVID-19 situation is evolving rapidly, and changes to legislation are coming quickly. Please make sure to review any recent announcements from the Province.

A. Impact of Draft Planning Documents

During these challenging times, we anticipate that adoption of various planning documents will be delayed past time frames contemplated by municipalities. For example, if a municipality is considering repealing and replacing its municipal development plan, Council may wish to wait until after the pandemic subsides to finalize the required three readings and the public hearing. Even though it could avail itself of the electronic public participation, Council may wish to defer a public hearing until the ordinary “in person” process can be followed.

Similarly, a Council may have proceeded with consultation and first reading of an Intermunicipal Development Plan, but not completed all readings and the public hearing at the time the declaration of emergency occurred.

With these delays in mind, municipal planning and development personnel should be aware that draft planning documents are relevant planning considerations. Several court cases have recognized this, specifically in the case of draft statutory plans and non-statutory plans. Accordingly, if your municipality has a draft planning document, particularly if it has been given first reading by Council, it will be necessary for planning bodies to give consideration to that document in processing related approvals. Therefore, if personnel in the planning and development department are preparing a staff report for a planning body (Council, subdivision authority, development authority, subdivision and development appeal board or the Municipal Government Board) draft planning documents should be referenced and highlighted for consideration.

We provide the following additional comments for context:

- a. **Weight of draft planning documents** – Draft planning documents, because they have not been formally adopted, will not carry the same weight as planning documents that have been formally enacted.
- b. **Documents other than statutory plans and land use bylaws** – Where the planning document is something other than a draft statutory plan or a draft land use bylaw, such as a draft master transportation plan or draft engineering design standards, the same will hold true. They are relevant planning considerations, and must be considered subject to the following respecting publishing of planning policies. There is a requirement under section 638.2 of the *Municipal Government Act* (the “MGA”) for every municipality to compile, list, update and



publish planning policies either adopted by Council, delegated by Council (pursuant to s. 203) or delegated by the Chief Administrative Officer (pursuant to section 209). There is also a requirement that neither a planning body nor a court may rely on a planning policy unless it is properly published. Therefore, if your municipality wishes to rely on a planning policy, it will still need to be properly published as the Ministerial Orders issued do not vary this requirement or extend the legislated time frames.

B. Extensions on Planning and Development Time Frames

Ministerial Order 022/20 (“MO 022/20”) has been rescinded by Ministerial Order 036/20 issued April 17, 2020 (“MO 036/20”).

Pursuant to MO 036/20, the timelines concerning those sections of the *MGA* **that are listed in the Appendix** to MO 036/20 have reverted back to the original timelines as set out in the *MGA* subject to a transition provision covering the period from March 25, 2020 to April 17, 2020 (the “Transition Period”). The Transition Period provides that any timeline **that started or ended** within the Transition Period is to **start again** on April 17, 2020.

It is important to note that in order for the Transition Period to apply to a timeline set out in a section in the *MGA*, it **must** be listed in the Appendix to MO 036/20. If a section that had been previously amended pursuant to MO 022/20 is not listed in the Appendix to MO 036/20, the normal *MGA* time lines are reverted back without the benefit of the Transition Period. See the comments below relating to section 690(1.1) as an example.

Please be sure to check out our other articles posted on the Brownlee LLP website, in particular “COVID-19 Update: Streamlining Approval Processes and Meeting/Hearing Procedures” by Alifeyah Gulamhusein.

Municipal Plans and Frameworks

Section 631(1) – For municipalities that are required to have an Intermunicipal Development Plan (“IDP”) and have not come to an agreement with their neighboring municipality that an IDP is not required, the deadline for having an IDP in place has been extended from April 1, 2020 to April 1, 2021. This extension was provided for in MO 019/20 which has not been rescinded. Therefore, the extension to April 1, 2021 still applies.

Section 708.28(1) – For municipalities that are required to have an Inter-municipal Collaboration Framework (“ICF”) with each other (i.e. share common boundaries but are not members of the same growth board), the deadline for creating that ICF has been extended from April 1, 2020 to April 1, 2021. This extension was provided for in MO 019/20 which has not been rescinded. Therefore, the extension to April 1, 2021 still applies.

Section 619(3)(a) and (6) – Where a license, permit, approval or other authorization has been granted by the NRCB, ERCB, AER, AEUB or AUC and a municipality receives an application for a statutory plan amendment or a land use bylaw amendment that is consistent with such permit, approval or authorization, the statutory plan amendment or land use bylaw amendment must be granted within a certain time period. While MO 022/20 had extended the period for doing this to October 1, 2020 (instead of the 90 days after the application was made), that extension has been rescinded and these sections were not included in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period** (i.e. 90 days after an application is made).



Intermunicipal Disputes

Section 690(1.1) and (3) – A municipality may appeal a statutory plan or a land use bylaw (or an amendment to either) adopted by an adjacent municipality to the Municipal Government Board if it is of the opinion that such document “has or may have a detrimental effect” on it. Previously, this appeal had to be brought within 30 days after the passing of the bylaw to adopt or amend the statutory plan or land use bylaw. There was also a requirement for the municipality whose bylaw was being appealed to file information with the Municipal Government Board within 30 days of the appeal being filed. Under MO 022/20, both of these timelines had been extended to either October 1, 2020 or the timeframes noted in the section, whichever was later. However, these extensions were rescinded and the noted sections were not included in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.

For example, in the event a bylaw was passed to amend a land use bylaw on April 1, 2020 and a municipality wanted to bring an appeal pursuant to section 690(1.1), the 30 days in which the appeal must be brought started on April 1, 2020 and the normal timelines are followed. Similarly, if that appeal period ended on April 1, 2020 then that appeal period has ended and there is no longer the right to appeal.

Section 691(1) – Upon receiving a notice of appeal under section 690, the Municipal Government Board is required to commence a hearing within 60 days and is required to give a written decision within 30 days of concluding its hearing. Under MO 022/20, these timelines were extended to either October 1, 2020 or the timeframes noted in the section, whichever was later. However, these extensions were rescinded and the section was not included in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.

Deemed Expropriations

Section 644(1) – Where a municipality has passed a land use bylaw that designates certain lands, that are not owned by the municipality, for use or intended use as a municipal public building, school facility, park or recreation facility, the municipality is required to do one of the following within a set timeframe: (a) acquire the land or require the land to be provided as reserve land; (b) commence proceedings to acquire the land or to require the land to be provided as reserve land and then acquire that land within a reasonable time; or (c) amend the land use bylaw to designate the land for another use or intended use. Under section 644(1), the time frame is 6 months from the date that the land was designated. While MO 022/20 had extended that timeline to October 1, 2020, it has since been rescinded and the section is not included in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.

Reserves

Section 664.2(2) – While a subdivision authority may require an owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel to the municipality as conservation reserve, the municipality is required to compensate the owner for those lands. Under section 664.2(2), the municipality is required to pay that compensation within 30 days after the Registrar had issued a new title for the conservation reserve. While MO 022/20 had extended that timeline to either October 1, 2020 or the timeframe noted in the section (whichever was later), this extension has been rescinded and section 664.2(2) is not listed in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.



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Section 667(1)(a) – When a subdivision authority requires that an owner of a parcel of land that is the subject of a proposed subdivision provide money in place of municipal reserve, school reserves or municipal and school reserves, the applicant must provide a market value appraisal of the existing parcel of land within a set time frame. Under this section, that market value appraisal has to be provided within 35 days of the date on which the application for subdivision approval was made. While MO 022/20 had extended that timeframe to October 1, 2020 or the timeframe noted in the section (whichever was later), this extension has been rescinded and section 667(1)(a) is not listed in the Appendix to MO 036/20. Accordingly, the normal *MGA* timelines apply **with no Transition Period**.

Questions?

Should you have any questions with respect to this bulletin, or if you would like more detailed information, please contact the following members of the Brownlee LLP Municipal Team:



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