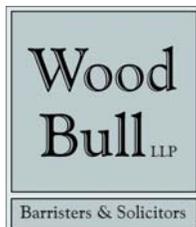


The Planning Act: What's New, What Remains, What You Should Know

Zoning By-laws After Bill 51

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1. Authority to Zone

Section 34 of the *Planning Act* enables municipalities to pass zoning by-laws permitting and (effectively) prohibiting uses of land, buildings and structures (see Appendix A) and regulating the construction of buildings and structures, including the requirement for parking and loading facilities (see Appendix B); but only insofar as the provisions of the *Planning Act* permit (sections 34(1)-34(8)). The predecessor of section 34 of the *Planning Act* was section 406 of the *Municipal Act*, which was enacted in 1937.

Bill 51 Amendment: Minimum and Maximum Densities and Heights

Planning Act (pre Bill 51)

Minimum area and density provisions

34(3) The authority to regulate provided in paragraph 4 of subsection (1) includes and, despite the decision of any court, shall be deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the density of development in the municipality or in the area or areas defined in the by-law.

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Area, density and height

34(3) The authority to regulate provided in paragraph 4 of subsection (1) includes and, despite the decision of any court, shall be deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the minimum and maximum density and the minimum and maximum height of development in the municipality or in the area or areas defined in the by-law. (1st Reading 12/12/2005)

Whereas previously municipalities were deemed to have the authority to regulate minimum areas and density (according to present section 34(3)) and were authorized to regulate height (according to section 34(1)4), this authority will be broadened under the *Planning and Conservation Land Statute Amendment Act* (“Bill 51”) to give municipalities the deemed authority to regulate minimum and maximum densities and minimum and maximum heights of development¹. Of note, Bill 51 specifies that these provisions do not apply to the City of Toronto². This same language is found in section 113(1) of Bill 53, “*An Act to revise the City of Toronto Acts*”, which will allow the City to govern maximum and minimum densities and heights.

¹ ss. 34 (3). Section references relate to the Bills provisions on 1st Reading.

² ss. 34 (3.1)

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2. Zoning with Conditions

Bill 51 introduces the notion of zoning with conditions into the *Planning Act* as set out in the table below.

Bill 51 Amendment: Zoning with Conditions

Planning Act (pre Bill 51)	Bill 51
No Comparable Provision	<p><u>Conditions</u></p> <p><u>(16) If the official plan in effect in a municipality contains policies relating to zoning with conditions, the council of the municipality may, in a by-law passed under this section, permit a use of land or the erection, location or use of buildings or structures and impose one or more prescribed conditions on the use, erection or location.</u> (1st Reading 12/12/2005)</p> <p><u>Same</u></p> <p><u>(16.1) When a prescribed condition is imposed under subsection (16),</u></p> <p><u>(a) the municipality may require an owner of land to which the by-law applies to enter into an agreement with the municipality relating to the condition;</u></p> <p><u>(b) the agreement may be registered against the land to which it applies; and</u></p> <p><u>(c) the municipality may enforce the agreement against the owner and, subject to the Registry Act and the Land Titles Act, any and all subsequent owners of the land.</u> (1st Reading 12/12/2005)</p> <p>(16.2) Subsections (16) and (16.1) do not apply with respect to the City of Toronto</p>

Bill 51 authorizes the Minister, pursuant to s. 70.1(1), to make regulations prescribing conditions for the purpose of subsection 34 (16). Therefore, the type of conditions that will be permitted will be constrained to those identified by the Minister. The regulations have not been released at the date of this paper.

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As an example of the potential in this new power, provided that the Minister authorized such action, a municipality could include provisions in its official plan requiring the promotion of environmental efficiency and could then require, as a condition of zoning, that a building or use include measures designed to promote energy efficiency.

In effect, this provision authorizes a municipality to require that an applicant enter into an agreement to secure certain matters, in much the same way as an agreement is required as a condition of site plan approval pursuant to section 41 of the *Planning Act*.

From an approvals perspective, an applicant will want to know with great certainty what are the conditions and what is required in an agreement to fulfill them. Since the condition(s) are imposed in the zoning by-law, the only remedy for an applicant to challenge the reasonableness of a condition will be an appeal of the zoning by-law to the Ontario Municipal Board. Therefore, a determination regarding the reasonableness of a condition should be made before the appeal period expires.

3. Legal Non-Conforming Uses

In order to address the potential unfairness of the imposition of the provisions of a later zoning by-law on an already lawfully existing use of land or building or structure, section 34(9) is included in the *Planning Act*, resulting in the creation of what have come to be known as “legal non-conforming uses”. This arcane area of the law is addressed in a separate paper entitled “Legal Non-Conforming Uses Under the Planning Act”). Section 34(10) authorizes the enactment of a zoning by-law to permit the extension or enlargement of a “legal non-conforming use”. This is an alternative approach to that of seeking the approval of a Committee of Adjustment for such an extension or enlargement under s. 45(2)(a) which is discussed in the paper authored by Jane Pepino entitled, “Minor Variances, Committees of Adjustment and Other Appellate Bodies”.

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4. Municipal Processing Zoning By-laws (and Amendments)

The remaining provisions of section 34 address the process related to the enactment of a zoning by-law (or an amendment to a zoning by-law). Appendix C contains a flow chart which sets out the usual steps in such process adjusted to take into consideration the changes proposed by Bill 51, where appropriate.

Consultation

Bill 51 introduces into the *Planning Act* the notion of pre-submission consultation in regard to zoning amendment applications, in the same manner as it was introduced for official plan amendment applications.

Bill 51 Amendment: Consultation

Planning Act (pre Bill 51)	<u>Bill 51</u>
No Comparable Provision	<u>Consultation</u> <u>(10.0.1) The council,</u> <u>(a) shall permit applicants to consult with the municipality before submitting applications to amend by-laws passed under this section; and</u> <u>(b) may, by by-law, require applicants to consult with the municipality as described in clause (a).</u> (1 st Reading 12/12/2005)

Some municipalities in Ontario already have informal (in the sense of being not statute-authorized) pre-consultation processes in place, such as the City of Toronto and the City of Burlington, to name just two. This amendment will permit municipalities to formalize these processes, if they choose. It will also ensure that an applicant is entitled to speak to staff prior to making an application.

Engaging the pre-consultation process should mean there is less room for surprise in the approvals process after an application for rezoning has been filed. Consultation between applicants and municipal staff will allow both sides to better understand each other. It will enable an applicant to better understand the issues and requirements of the municipality and to address such issues and requirements in the application. Pre-consultation could potentially lead to greater levels of co-operation, more focused reports

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and more effective decision-making on the part of both the applicant and the municipality.

Complete Application

At the present time the *Planning Act*, s. 34(10.1), requires an applicant for an amendment to a zoning by-law to provide the prescribed information. Until the prescribed information is provided the application is not “complete” and the municipality is not required to process the application. This is very important as the appeal period for a private appeal does not begin until the application is complete (section 34(10.3)). A municipality may also require additional information from the applicant that the council may need (section 34(10.2)). However, the failure to provide such additional information does not affect the commencement of the appeal period for a private appeal.

Section 10.1 was problematic for those municipalities who had more extensive requirements for supporting materials to applications for rezoning than provided for the in the *Regulations*, but who had no way of legally requiring them to be fulfilled. Of concern to many municipalities was the fact that the *Planning Act* permitted an applicant to short-circuit the municipal process. Under the present legislation, an applicant could refuse to provide the additional materials, wait out the “processing/appeal” period and then appeal directly to the Ontario Municipal Board and, if necessary, provide the additional materials at the hearing of the appeal. Bill 51 attempts to address this concern as follows, with the existing requirements on the left and the Bill 51 amendments on the right:

Bill 51 Amendment: Complete Application

Planning Act (pre Bill 51)

Bill 51

Prescribed Information

No Comparable Provision

(10.1) A person or public body that applies for an amendment to a by-law passed under this section or a predecessor of this section shall provide the prescribed information and material to the council. 1996, c. 4, s. 20(5) (Enactment commenced 22/05/1996)
[See Chapter 5, O. Reg. 199/96, amended to O. Reg. 261/00, “Zoning By-laws, Holding By-laws and Interim Control By-laws”, for regulations prescribing information and material required under s.10.1]

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Bill 51 Amendment: Complete Application

Planning Act (pre Bill 51)

Other information

(10.2) A council may require that a person or public body that applies for an amendment to a by-law passed under this section or a predecessor of this section provide such other information or material that the council may need. 1996, c. 4, s. 20(5) (Enactment commenced 22/05/1996)

Refusal and timing

(10.3) Until the council has received the information and material required under subsection (10.1) and any fee under section 69,

(a) the council may refuse to accept or further consider the application for an amendment to the by-law; and

(b) the time period referred to in subsection (11) does not begin. 1996 c. 4, s. 20(5) (Enactment commenced 22/05/1996)

No Comparable Provision

No Comparable Provision

Bill 51

Other information

(10.2) A council may require that a person or public body that applies for an amendment to a by-law passed under this section or a predecessor of this section provide any other information or material that the council considers it may need, but only if the official plan contains provisions relating to requirements under this subsection.

(1st Reading 12/12/2005)

Refusal and timing

(10.3) Until the council has received the information and material required under subsections (10.1) and (10.2), if any, and any fee under section 69,

(a) the council may refuse to accept or further consider the application for an amendment to the by-law; and

(b) the time period referred to in subsection (11) does not begin. (1st Reading 12/12/2005)

Dispute

(10.4) The person or public body or the council may make a motion for directions to have the Municipal Board determine whether the information and material required under subsections (10.1) and (10.2), if any, have been provided. (1st Reading 12/12/2005)

Final determination

(10.5) The Municipal Board's determination under subsection (10.4) is not subject to appeal or review. (1st Reading 12/12/2005)

By limiting the right of an applicant to appeal to an obligation on the applicant to make an application which meets the municipal requirements for information and materials, Bill 51 puts a clear burden of compliance on applicants. This means that applicants will have to be very careful to ensure that they clarify with the municipality as to when this burden has been satisfied, preferably in writing; otherwise, there may be serious

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disagreements down the line as to whether the relevant processing/appeal period has passed.

Of interest is the provision empowering the Ontario Municipal Board to settle disputes regarding the sufficiency of materials filed in regard to an application. An applicant would have to be very troubled by a municipal requirement to take this route, given the delay which would be the result of a request for such adjudication.

Public Consultation Process

Bill 51 makes several important changes to the steps in the public consultation process in regard to an application for zoning by-law amendment as noted in the comparison table set out below.

Bill 51 Amendment: Public Consultation Process

Planning Act (pre Bill 51)

Information and public meeting

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (26), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons and public bodies prescribed. 1994, c. 23, s. 21(4) (Amendment commenced 28/03/1995)

[Editorial Note: See Chapter 5, O. Reg. 199/96, amended to O. Reg. 261/00, "Zoning By-laws, Holding By-laws and Interim Control By-laws", for regulations prescribing notice requirements.]

See (12) above.

Bill 51

Information, open house and public meeting

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (26), the council shall ensure that,

(a) sufficient information and material is made available to enable the public to understand generally the zoning proposal that is being considered by the council;

(b) at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the information and material made available under clause (a); and

(c) at least one public meeting is held for the purpose of giving the public an opportunity to make representations in respect of the proposed by-law. (1st Reading 12/12/2005)

Notice

(13) Notice of the open house and public meeting required under clauses (12) (b) and (c) shall,

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Bill 51 Amendment: Public Consultation Process

Planning Act (pre Bill 51)

Bill 51

(a) be given to the prescribed persons and public bodies, in the prescribed manner; and

(b) be accompanied by the prescribed information.

Timing of open house

(13.1) The open house required under clause (12) (b) shall be held no later than seven days before the public meeting required under clause (12) (c) is held. (1st Reading 12/12/2005)

Time for meeting, etc.

(13) The meeting mentioned in subsection (12) shall be held not sooner than twenty days after the requirements for the giving of notice have been complied with and shall be open to the public, and any person who attends the meeting shall be afforded an opportunity to make representations in respect of the zoning proposal.

Timing of public meeting

(13.2) The public meeting required under clause (12) (c) shall be held no earlier than 20 days after the requirements for giving notice have been complied with. (1st Reading 12/12/2005)

No Comparable Provision

Participation in public meeting

(13.3) Every person who attends a public meeting required under clause (12) (c) shall be given an opportunity to make representations in respect of the proposed by-law. (1st Reading 12/12/2005)

Alternative procedure

(14) Where there is an official plan in effect in the municipality that contains provisions describing the measures for informing and securing the views of the public in respect of proposed zoning by-laws subsections (12) and (13) do not apply to such proposed by-laws if the measures are complied with.

Alternative procedure

(14) Where there is an official plan in effect in the municipality that contains provisions describing the measures for informing and securing the views of the public in respect of proposed zoning by-laws subsections (12) and (13.3) do not apply to such proposed by-laws if the measures are complied with. (1st Reading 12/12/2005)

Notice of dismissal power

(14.1) At a meeting under subsection (12), the council shall ensure that information is made available to the public regarding the power of the Municipal Board to dismiss an appeal

Information

(14.1) At a public meeting under clause (12) (c), the council shall ensure that information is made available to the public regarding the restrictions on appeals under subsections

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Bill 51 Amendment: Public Consultation Process

Planning Act (pre Bill 51)

under subsection (25) if an appellant has not provided the council with oral submissions at a public meeting or written submissions before a by-law is passed under this section. 1996, c. 4, s. 20(5) (Enactment commenced 22/05/1996)

Further notice

(17) Where a change is made in a proposed by-law after the holding of the meeting mentioned in subsection (12), the council shall determine whether any further notice is to be given in respect of the proposed by-law and the determination of the council as to the giving of further notice is final and not subject to review in any court irrespective of the extent of the change made in the proposed by-law.

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(11.0.2) and (19.1). (1st Reading 12/12/2005)

Further notice

(17) Where a change is made in a proposed by-law after the holding of the public meeting mentioned in clause (12) (c), the council shall determine whether any further notice is to be given in respect of the proposed by-law and the determination of the council as to the giving of further notice is final and not subject to review in any court irrespective of the extent of the change made in the proposed by-law. (1st Reading 12/12/2005)

The following new public notification requirements are of note:

- an open house, held at least 7 days before the statutory public meeting, will become mandatory as a part of the statutory public process (s.34 (13.1));
- the Minister may prescribe, by regulation, the information which is required to be provided to the public prior to the public meeting (s. 34 (13));
- there is a new requirement that anyone who attends a public meeting is to be given an opportunity to make a representation (s. 34 (13.3));

5. Appeals to OMB: Enacted Zoning By-laws

The provisions of Bill 51 do not change the basic approach in the *Planning Act* regarding the giving of notice of the enactment of a zoning by-law and the requirement that a notice of appeal be filed within 20 days of the date of the notice of passing. These provisions are all reviewed in the flowchart attached to this paper (Appendix C).

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Prohibition on Appeals

Bill 51 introduces two new restrictions on who can appeal the enactment of a zoning by-law. The relevant provisions of Bill 51 are set out below.

Bill 51 Amendment: Restrictions on Appeal to OMB Enacted Zoning By-law

Planning Act (pre Bill 51)

Bill 51

Appeal to O.M.B.

No Change

(19) Any person or public body may, not later than 20 days after the day that the giving of written notice as required by subsection (18) is completed, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee prescribed under the *Ontario Municipal Board Act*. 1994, c. 23, s. 21 (8).

No Comparable Provision

Restriction, who may appeal

(19.1) Despite subsection (19), a person who is not a public body and did not, before the by-law was passed, make oral submissions at a public hearing or written submissions to the council is not entitled to appeal. (1st Reading 12/12/2005)

No appeal re second unit policies

(19.2) Despite subsection (19), there is no appeal in respect of a by-law that is passed to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or rowhouse situated in an area where residential use, other than ancillary residential use, is permitted. (1st Reading 12/12/2005)

No Representations made to Municipality

Bill 51, section 19.1 (above), prohibits an appeal where the persons did not make an oral or written submission prior to a council decision on the application. This provision reinforces and replaces the existing provisions in the *Planning Act*, section 34(25)(a.1),

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that permits the Ontario Municipal Board to the dismiss an appeal if the appellant did not make submissions before the zoning by-law was enacted.

Accessory Apartments

Bill 51, section 19.2, (above) prohibits an appeal of a zoning by-laws passed to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or rowhouse situated in residential areas. This provision is clearly included to satisfy the concerns of municipalities, particularly the City of Toronto, which seeks additional tools to increase, through zoning permissions, the supply of rental and affordable rental housing. Second suites are frequently a target for neighbourhood appeals³.

6. Appeals to OMB; Application Refused or Council Refuses Neglects to Make a Decision

The procedures in regard to private appeals of a municipality's refusal of an application or its refusal or neglect to make a decision regarding an application is summarized in the flowchart attached to this paper (Appendix C). Bill 51 introduces several changes in regard to private appeals, which are discussed below.

Timing of Private Appeal

As a result of amendments made to s. 34 (11) which came into force on March 28, 2005, where an application is refused or a municipal council refuses or neglects to make a decision within 120 days, the applicant may appeal to the Ontario Municipal Board.

As noted below, Bill 51 adds provisions to the *Planning Act* which will require a municipality that refuses an application to give notice of such refusal 15 days after the date of the refusal and then requires that an appeal from such refusal shall be filed within 20 days after the giving of the notice of such refusal (see section 34 (10.6) and section 34(10.7)).

³ See *Toronto (City) Official Plan Amendment No. 4 (Re)*, [2000] O.M.B.D. No. 345 (PL990850)

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Bill 51 Amendment: Restrictions on Private Appeal to OMB

Planning Act (pre Bill 51)

No Comparable Provision

Bill 51

Notice of refusal

(10.6) When a council refuses an application to amend its by-law, it shall, not later than 15 days after the day of the refusal, ensure that written notice of the refusal, containing the prescribed information, is given to,

(a) the person or public body that made the application;

(b) each person and public body that filed a written request to be notified of a refusal; and

(c) any prescribed person or public body.
(1st Reading 12/12/2005)

No Comparable Provision

Time for filing certain appeals

(11.0.1) A notice of appeal under subsection (11) with respect to the refusal of an application shall be filed no later than 20 days after the giving of notice under subsection (10.6) is completed. (1st Reading 12/12/2005)

Prohibition on Appeals

Bill 51 proposes to add provisions which would apply restrictions on the right to the filing of a private appeal.

No Representations made to Municipality

Similar to the provision of Bill 51 regarding appeals of enacted zoning by-laws, section 34(11.0.2), prohibits an appeal where the persons did not make an oral or written submission prior to a council decision on the application. Presumably, s. 34 (11.0.2) is intended to ensure that an applicant does not simply file the required materials and then ignore the municipal process and awaits an opportunity to appeal to the Ontario Municipal Board.

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Bill 51 Amendment: Prohibition on Private Appeal – No Representations

Planning Act (pre Bill 51)

No Comparable Provision

Bill 51

Restriction, who may appeal

(11.0.2) Despite subsection (11), a person who is not a public body and did not, before the application was refused, make oral submissions at a public hearing or written submissions to the council is not entitled to appeal. (1st Reading 12/12/2005)

Preserving Employment Areas

Among the more important parts of Bill 51 is the prohibition of a right of appeal where an application relates to the removal of any land from an “area of employment”, defined under Bill 51 to mean “an area of land designated in an official plan for clusters of business and economic uses”⁴ which is further defined as including “manufacturing uses, warehousing uses, office uses and retail use that are associated with the foregoing uses and facilities that are ancillary to the foregoing uses.”⁵

As noted in the table below, this new restriction has been added to the restrictions on appeals regarding settlement areas introduced into the *Planning Act* in 2005.

Bill 51 Amendment: Prohibition on Appeals – Employment Areas

Planning Act (pre Bill 51)

Restriction

(11.0.1) Despite subsection (11), a person or public body may not appeal to the Municipal Board in respect of all or any part of a requested amendment to a by-law if the amendment or part of the amendment proposes to implement an alteration to all or any part of the boundary of an area of settlement in a municipality or to implement a new area of settlement in a municipality. 2004, c. 18, s. 6(2) (Deemed date enactment commenced 15/12/2003)

Bill 51

Appeals restricted re certain amendments

(11.0.3) Despite subsection (11), there is no appeal in respect of all or any part of a requested amendment to a by-law if the amendment or part of the amendment proposes to implement,
(a) an alteration to all or any part of the boundary of an area of settlement[^];
(b) a new area of settlement[^]; or
(c) the removal of any land from an area of employment, even if other land is proposed to be added. (1st Reading 12/12/2005)

⁴ ss. 1(1)

⁵ ss. 1(5)

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This prohibition in regard to private appeals of a refusal decision or a neglect or refusal to make a decision complements and mirrors other government legislative initiatives, including the changes to the Provincial Policy Statement (2005)⁶, and the release of the proposed Places to Grow Plan arising from the enactment of the *Places to Grow Act 2005*⁷.

This is of particular importance to developers of retail facilities and residential subdivisions, who, unless they have council on their side, will not be able to obtain zoning by-laws to redevelop lands designated “employment” for other uses, including employment-generating uses that are not included in the list of “employment area” uses in the definitions to the *Planning Act*.

It should be noted that there is no corollary restriction on appeals from a council decision to approve an application to convert lands from employment area to some other non-employment area zone.

Accessory Apartments

In contrast to the employment area appeal restrictions, there is no restriction on a private appeal from a refusal decision or a neglect or refusal to decide in regard to an application to permit two residential units.

7. Appeals to OMB: Restriction re Evidence at Hearing

Bill 51 introduces significant restrictions on the introduction of “information and material” at an Ontario Municipal Board hearing which was not “provided to the municipality before a council made a decision” and a relatively elaborate process for the introduction of such evidence (sections 34 (24.2) to 34 (24.6)).

⁶ Section 1.3.1 of the PPS 2005 requires that planning authorities shall promote economic development and competitiveness by providing for an appropriate mix and range of employment, maintaining a range and choice of suitable sites for employment uses, and protecting and preserving employment areas for current and future uses. Section 1.3.2 holds that planning authorities may permit conversion of lands within employment areas to non-employment uses through a comprehensive review, only where it has been demonstrated that the land is not required for employment purposes over the long term and that there is a need for the conversion.

⁷ See for example ss. 6(d)(ii) of that Act as well as Section 1.1 and Chapter 2 of the *Proposed Growth Plan of the Greater Golden Horseshoe*, November 2005.

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Bill 51 Amendment: Restriction of Evidence at Hearing

Planning Act (pre Bill 51)

Bill 51

Restriction re evidence at hearing

24.2) Information and material that was not provided to the municipality before the council made a decision under this section shall not be admitted into evidence at the hearing of an appeal under subsection (11) or (19), unless,

(a) the Municipal Board is of the opinion that it was not reasonably possible to provide the information and material to the municipality before the council made its decision; or

(b) the information and material is introduced into evidence by a public body. (1st Reading 12/12/2005)

Same

(24.3) If clause (24.2) (a) applies and the Municipal Board determines that the information and material could have materially affected the council's decision, it shall not be admitted into evidence until subsection (24.4) has been complied with and the prescribed time period has elapsed. (1st Reading 12/12/2005)

Notice to council

(24.4) The Municipal Board shall notify the council that it is being given an opportunity to,

(a) reconsider its decision in light of the information and material; and

(b) make a written recommendation to the Board. (1st Reading 12/12/2005)

Council's recommendation

(24.5) The Municipal Board shall consider the council's recommendation if it is received within the prescribed time period, and may but is not required to do so if it is received afterwards. (1st Reading 12/12/2005)

Conflict with Statutory Powers Procedure Act

(24.6) Subsections (24.1) to (24.5) apply despite the Statutory Powers Procedure Act. (1st Reading 12/12/2005)

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This amendment is intended to address the present circumstance that once an appeal goes to the Ontario Municipal Board for a hearing it is treated as an appeal *de novo*. This means that the Ontario Municipal Board is not limited to a consideration of the information provided to the municipality with respect to the application and can entertain new information and material brought forward at the hearing. This process allowed proponents considerable leeway for proponents to bring revised schemes and evidence before the Ontario Municipal Board for approval.

Bill 51 provides two exceptions to the introduction on “new evidence” at an Ontario Municipal Board hearing. First, the “new evidence” restriction does not apply to a public body. Second, it was not reasonably possible to provide the “new evidence” to the municipality. In the case of the second exception, as noted above, Bill 51 provides procedures for the municipality to consider the “new evidence” and provide its recommendation to the Ontario Municipal Board.

Another, perhaps unexpected, effect of this amendment would be to restrict the evidence of opponents of an application for rezoning in the same manner and, therefore, require of them that full and complete materials be filed in opposition at the municipal level.

8. Appeals to OMB: Party Status

Bill 51 introduces new provision which provide that the Ontario Municipal Board may not accord anyone party status who did not make either oral or written submissions prior to a council decision on the application and a test for party status is established, being whether “in the Municipal Board's opinion, there are reasonable grounds to add the person as a party” (section 34 (24.1))

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Bill 51 Amendment: Adding Parties

Planning Act (pre Bill 51)

Bill 51

No Comparable Provision

Restriction re adding parties

(24.1) No person, other than a public body, shall be added as a party to the hearing of an appeal under subsection (19), unless,

(a) the person, before the by-law was passed, made oral submissions at a public meeting or written submissions to the council; or

(b) in the Municipal Board's opinion, there are reasonable grounds to add the person as a party.
(1st Reading 12/12/2005)

9. Appeals to OMB: Dismissals of Appeals Without a Full Hearing

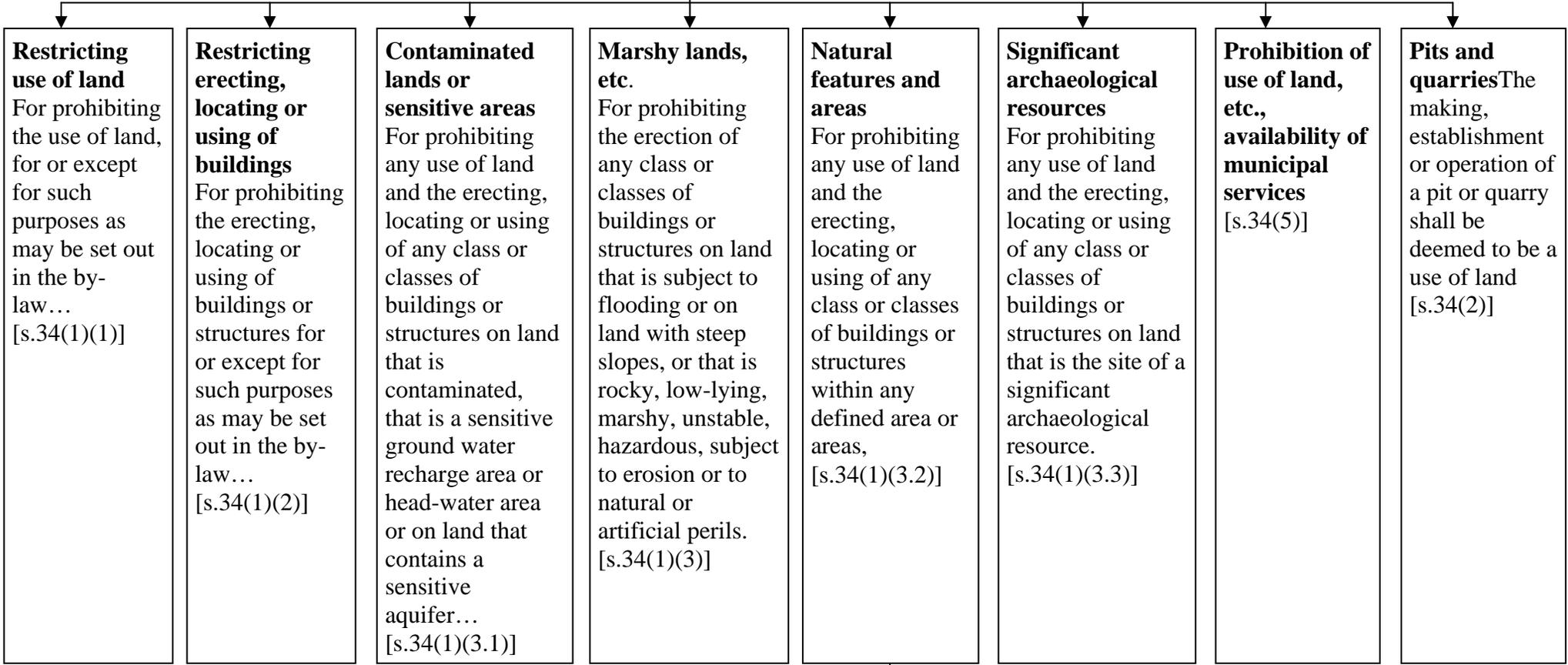
Bill 51 amends the provisions of the *Planning Act* dealing with dismissals of appeals without a full hearing. This topic is discussed in the paper entitled “Dismissal Without a Hearing” by Dennis Wood and Sharmini Mahadevan.

APPENDIX A

Zoning By-laws - Uses

Zoning By-laws

Uses
Zoning By-laws may be passed by the councils of local municipalities:



- i) that is a significant wildlife habitat, wetland, woodland, ravine, valley or area of natural and scientific interest,
- ii) that is a significant corridor or shoreline of a lake, river or stream, or
- iii) that is a significant natural corridor, feature or area.

APPENDIX B

Zoning By-laws - Regulations

Zoning By-laws

Regulations

Zoning By-laws may be passed by the councils of local municipalities:

Construction of buildings or structures [s.34(1)(4)]

- type of construction
- height
- bulk
- location
- size
- floor area
- spacing
- character
- use of buildings or structures
- minimum frontage
- depth of the parcel, and
- the proportion of the area thereof that any building or structure may occupy...

Minimum area and density provisions [s.34(3)]

The authority to regulate provided in paragraph 4 of subsection (1) includes and, despite the decision of any court, shall be deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the minimum and maximum density and the minimum and maximum height of development in the municipality or in the area or areas defined in the by-law...

(Proposed amendments by Bill 51)

Minimum elevation of doors, etc. [s.34(1)(5)]

For regulating the minimum elevation of doors, windows or other openings in buildings or structures or in any class or classes of buildings or structures to be erected or located within the municipality or within any defined area or areas of the municipality...

Loading or parking facilities [s.34(1)(6)]

For requiring the owners or occupants of buildings or structures to be erected or used for a purpose named in the by-law to provide and maintain loading or parking facilities on land that is not part of a highway...

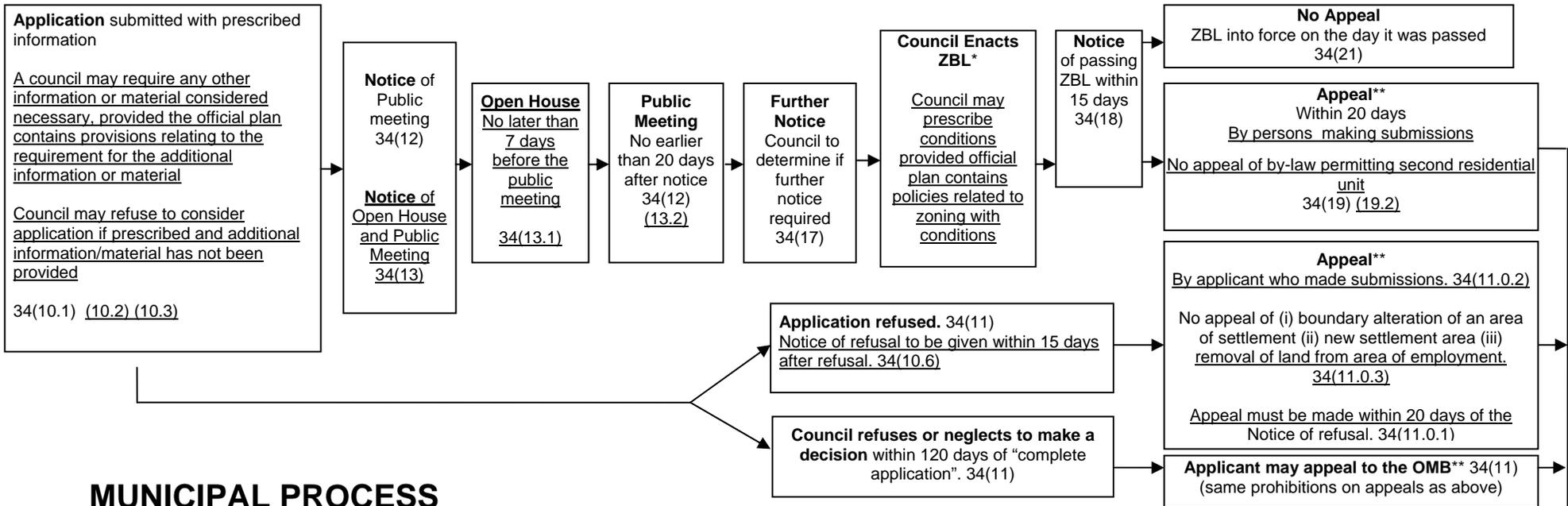
Certificates of occupancy [s.34(6)]

A by-law passed under this section may provide for the issue of certificates of occupancy without which no change may be made in the type of use of any land covered by the by-law or of any building or structure on any such land, but no such certificate shall be refused if the proposed use is not prohibited by the by-law...

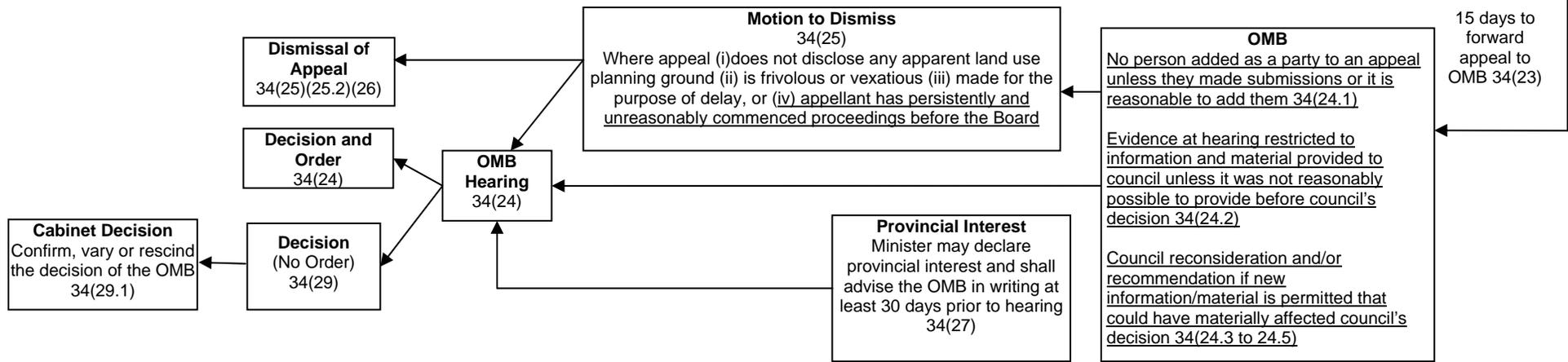
APPENDIX C

Zoning By-laws - Procedures

Zoning By-law (If Bill 51 is enacted)



MUNICIPAL PROCESS



OMB PROCESS

Legend

* Public bodies must be provided with information in regard to the ZBL. 34(15)

** A public body does not have to make submissions

(Proposed amendments by Bill 51)