



Committee Report

To: Warden Janice Jackson
Members of the Planning and Development Committee

From: Mark Paoli
Director of Planning and Development

Date: May 20, 2021

Re: Bill 276, Supporting Economic Recovery and Competitiveness Act, 2021

Staff Recommendation:

That the Bill 276, Supporting Economic Recovery and Competitiveness Act, 2001 report be forwarded to the Ministry of Municipal Affairs as the County of Bruce's comments on the Environmental Registry of Ontario posting #019-3495.

Background:

Regulation of the division of land is one of the major functions of the [Planning Act](#). The public benefit of this function is to facilitate the creation of separate interests in land that enable development and transfer of ownership from one party to another while ensuring that lots and resulting development are functional and sized appropriately for their intended use, appropriately located (for example: with road access, and outside of floodplains), and do not cause adverse impacts to other lands, infrastructure, or public interests; these could include water quality/quantity impacts, traffic increases, ability to locate livestock facilities or industrial uses, or impacts to natural legacy features.

Land division is primarily addressed through sections of the Act that relate to subdivisions, part-lot control within subdivisions, consents, leases, and validations of title. The Planning Act sets out prohibitions on transferring lands or interests in land unless planning permission is given or other are certain conditions are met. Many lots in Bruce County were created before planning permissions were established.

There are some relatively common issues for owners of these lots, and other situations, that arise from the way the Planning Act rules and exemptions are structured. Planning Act changes proposed in Bill 276 primarily set out to address these issues. Changes to other legislation proposed through Bill 276 are not reviewed in this report.

In the [Regulatory Registry Posting](#) the province estimates that across the province Municipalities would incur one-time "compliance costs" related to learning and implementing the proposed Planning Act changes of \$595,000, offset by annual savings to Municipalities of \$153,500 (related to fewer applications to review) and broader savings (to landowners, leaseholders, applicants, purchasers, insurers, and lawyers) of \$6.8 million annually.

Analysis

Process improvements are a key focus area for the land use planning team at Bruce County. Staff regularly respond to inquiries or process applications to re-create lots that have merged on title without the knowledge or intention of the owners. The County recently advanced policy changes through an amendment to address many of these situations. The province has identified changes to the Planning Act which would address Sections of the Act that give rise to many of these unintended mergers.

The following provides an overview of the [ERO posting](#) comments and recommended comments, as well as some changes that were not highlighted but warrant consideration:

Amendments are made in relation to the exceptions to subdivision control under subsection 50 (3) of the Act as follows. Similar changes are made in relation to the exceptions to part-lot control under subsection 50 (5).

1. A new clause is added to provide an exception in respect of land that was previously owned by, or abutted land previously owned by, joint tenants and the ownership would have otherwise merged in the person as a result of the death of one of the joint tenants.

Comment: This would specifically prevent adjacent lots from merging on title when the death of one owner results in identical ownership of both parcels. This addresses the root of many of the merged-lot circumstances that led to Bruce County Official Plan Amendment 250, which dealt with re-creating developed lots that were merged but did not meet contemporary planning criteria. This change would be implemented by the legal profession through the title search process and would reduce consent applications to re-create lots and other planning applications where the lots would not meet planning policies or zoning provisions. Lots that have merged in common ownership unrelated to a death would still be merged.

While this change would in most cases be a benefit to landowners with minimal public impact, we encourage the province to consider some negative impacts that could occur, particularly with lots that may have merged long ago: historically merged lots may have been re-divided or subsequently developed as a single lot; incompatible development may have occurred on adjacent lots such as industrial activities or livestock facilities; or, vacant un-serviced lots may be significantly undersized and their development may present public health and environmental risks.

2. Currently a transfer of lands is permitted where the person undertaking the transaction does not retain a specified interest in any abutting land other than the whole of one or more lots within a registered plan of subdivision. The changes would expand the types of abutting land in which a specified interest can be retained.

Comment: This will reduce the occurrence of lots inadvertently merging on title.

3. Opportunity is expanded for disposal of lands that were acquired for the purpose of an electricity distribution line, electricity transmission line or hydrocarbon line from “the person from whom it was acquired” to include the “successor in title to the person from whom it was acquired” and require that the person to whom the land is being disposed of must hold a specified interest in land abutting the land being disposed of.

Comment: This is a practical change that cleans up some problems that can occur when ownership of lands has changed.

4. Subsection 50 (18) is re-enacted to prohibit any foreclosure or exercise of a power of sale from having any effect in law unless all the land subject to the mortgage or charge is included in the foreclosure or exercise of the power of sale or the land could otherwise be conveyed in compliance with section 50; includes other necessary amendments.

Comment: This simplifies the rules around land transfer associated with foreclosure and power of sale situations by making them subject to the same criteria as other land transfers.

5. Various amendments are made to section 51 of the Act to enhance requirements in relation to public notice, information and public meetings in relation to the process associated with applications for plans of subdivision. Subsections 51 (35) and (50) are amended to require, after a notice of appeal is received, the approval authority to forward to the Tribunal such information and material as the Tribunal may require.

Comment: These changes align the public meeting process with other application types, clarify expectations when a local municipality is holding the public meeting, and note a requirement to provide information about who is entitled to appeal plans of subdivision; staff note that subdivisions do have narrower appeal rights than some other types of planning applications.

Broader scope for information to be provided to the Tribunal, if required, does not appear to change the standard information package and should support good decision-making by the Tribunal.

6. Currently, subsection 53 (1) provides that an owner or chargee of land or such owner’s or chargee’s agent may apply for a consent as defined in subsection 50 (1). An amendment would also permit a purchaser of land or the purchaser’s agent to apply for a consent.

Comment: This simplifies the rules around filing planning applications and reflects a current practice in Bruce County whereby the “applicant” may be someone other than the current owner.

7. A new subsection 53 (4.2.1) provides that an application for a consent may be amended by an applicant at any time before the council or the Minister gives or refuses to give a consent. If the application is amended, a new subsection 53 (4.2.2) permits imposition of terms as the council or Minister considers appropriate.

Comment: This creates a process for addressing changes to the actual consent. While staff have tended to work with applicants to resolve minor changes to the consent, the changes providing a process clarifying information requirements and review of the change, including cost recovery. A review of resources required to address changes to consent applications would be warranted if this comes into effect.

8. Amendments are made to section 53 in relation to the process associated with consent applications. A new subsection 53 (5.1) provides that a regulation requiring a public meeting may also specify other requirements in relation to the meeting. Subsections 53 (15) and (28) are amended to require, after a notice of appeal is received, the clerk of a municipality or the Minister, as the case may be, to forward to the Tribunal such information and material as the Tribunal may require.

Comment: Currently the regulations for consent applications do not require a public meeting. Comments are submitted in writing, and staff has developed a process for a hearing by the land division committee of contested applications. These changes would support alignment of the public meeting process for consents (if required by future regulations) with public meetings for other application types.

Broader scope for information to be provided to the Tribunal, if required, does not appear to change the standard information package and should support good decision-making by the Tribunal.

9. Currently, subsection 53 (41) deems an application for consent to be refused if, after the applicable one-year period, the conditions imposed on the application have not been fulfilled. New subsections 53 (41.1) to (41.4) provide rules relating to a request to extend the one-year period that would otherwise apply by a period of up to one additional year.

Comment: Each year, some consent applications lapse due to clients not meeting conditions within the timeframe. Currently the only means of “extending” a consent is by changing one of the conditions, however this is not the intent of the Act. On occasion, staff has worked with applicants to delay conditional approve until the applicant has made some progress towards conditions. This change to the Act provides a straightforward method of providing additional time to meet outstanding conditions. A review of resources required to process extensions, and applicable cost recovery, may be warranted if this change comes into effect.

10. A new subsection 53 (42.1) sets out circumstances in which the clerk of a municipality or the Minister, as the case may be, is required to issue a certificate to an applicant for a consent for the retained land in an application for consent. A definition of “retained land” is also added to section 50.

Comment: Review of consent applications requires consideration of both the severed and the retained lands, however typically only the severed lands receive a certificate of consent. Staff's current understanding is that certifying the retained lands is not prohibited by the Planning Act, and this has been done on occasion to prevent retained lands from merging with adjacent lots in common ownership. A further opportunity could be for the "final" lots resulting from a lot addition to be certified, rather than having a parcel that consists of a receiving lot and a lot addition.

While other changes to the Act should reduce retained lands merging on title, the proposal provides a clear opportunity for certification of lots that have also been reviewed and determined appropriate.

11. New subsections 53 (45) to (48) set out rules governing the issuance of certificates of cancellation, where applied for by the owner of the land or the owner's agent. A new subsection 53 (49) sets out rules that apply after the registration of the certificate of cancellation. Consequential amendments are made to subsections 50 (1.1) to (1.5), 54 (2.1), (6.1) and (7) and 55 (1).

Comment: This change is of greatest value when lands are being assembled (for example for future subdivisions) or lot additions are proposed. Currently a title search is required to determine if and how the lot was created, and then a somewhat convoluted process involving transfers of small pieces of land back and forth or to a municipality are used to spoil legal descriptions. The proposed "cancellation" process is a much more straightforward method of enabling land assembly and lot additions.

12. The Planning Act would not apply to specified projects under the Electricity Act for transmitters or Ontario Power Generation Inc if they meet criteria under the Environmental Assessment Act

Comment: This change appears to be intended to reduce duplication of processes between the Planning Act and the Environmental Assessment Act.

Although not specifically noted in the ERO Highlights, Bruce County offers comments on the following change:

13. Changes would clarify that "retained" lands can be dealt with before "severed" lands provided the consent has not lapsed.

Comment: This change would resolve issues that can arise with the timing of transfers of severed or retained lots. There may be an opportunity for greater clarity, that neither the severed nor retained lots should be "dealt with" until the conditions of consent that may relate to that parcel have been met and, ideally, the consent has been certified.

Summary:

Bruce County is generally supportive of Planning Act changes proposed through Bill 276 which would avoid many unintended mergers of property, reduce lapses in intended approvals, and provide a clear and unambiguous way to enable lots to merge to support land assembly. The comments above note opportunities to support the implementation of these changes to align with Planning Act objectives around the division of land.

In considering these changes which are beneficial in most cases, Bruce County also encourages the province to consider opportunities to address the minority of cases, mostly expected to relate to older lots, where there may be a public interest for lots that have merged per the current Planning Act provisions, to remain merged.

Financial/Staffing/Legal/IT Considerations:

Many of these changes are similar to those proposed in Bill 88, a private members bill. The County's solicitor reviewed Bill 88 and provided comments to the County which were incorporated into this report.

Interdepartmental Consultation:

The report will be shared with the local municipalities for awareness.

Link to Strategic Goals and Elements:

Goal 5: Eliminate our own red tape:

Item E. focus on the internal and external customer / client needs first

Goal 7: Stimulate and reward innovation and economic development:

Item A. Streamline and simplify our Planning Processes (Official Plan, Zoning By-law)

Goal 9: Coordinated, Concerted effort to advance our agenda:

Item B. Politicians and staff lobby associations and government in support of local policy needs;

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