

Time to Start Again: Land Use Planning in the Pandemic

June 17, 2020

By Bruce Engell, Raj Kehar,

Effective June 22, 2020, the Province will restart the clock for many of the time periods applicable to land use planning under the *Planning Act* and the corresponding provisions of the *City of Toronto Act*.

On April 14, 2020, the Province enacted O. Reg 149/20 pursuant to the COVID-19 Emergency Order. This regulation was retroactive to March 17, 2020 and put in place an open-ended suspension of many time periods under the *Planning Act* and the corresponding provisions of the *City of Toronto Act*.

The general effect of O. Reg 149/20 was to authorize a municipality to pause the processing of a municipally-initiated planning instruments and/or *Planning Act* (or corresponding *City of Toronto Act*) application ("Application") where a municipality deemed it necessary during the COVID-19 emergency. It also required a municipality to (re)issue notices of decision in certain circumstances, and to do so no later than 15 days after the termination of the COVID-19 emergency. Some municipalities exercised their discretion to pause, others did not.

On June 15, 2020, the Province amended O. Reg 149/20 by O. Reg 278/20. It establishes June 22, 2020 as the "termination date", unless the COVID-19 Emergency Order is terminated or disallowed earlier – in which case, the termination date is the date the COVID-19 Emergency Order is terminated or disallowed. At this point, we assume the termination date is June 22, 2020.

In announcing this change to municipalities, the Minister of Municipal Affairs and Housing stated that "as we move forward with our gradual approach that will allow Ontario to emerge from the COVID-19 outbreak, we know that getting shovels in the ground is key to moving forward on the path to economic recovery together. Many municipalities may be well on their way to a more normalized planning review process, and we want to ensure that the land use planning system is in step with a municipality's expanding capacity during this time". Given the ongoing Provincial restrictions on public gatherings, the Minister further encouraged municipalities to "continue to use electronic and virtual channels, as appropriate, to engage and provide the public with an opportunity to make representations on planning matters, while following the advice of Ontario's Chief Medical Officer of Health".

Some of the significant implications of the new termination date in O. Reg 149/20 are as follows:

- If a decision was made on nearly any Application or municipally-initiated planning instrument and a notice of decision was given after February 26, 2020 and before April 15, 2020, the decision stands, but the municipality is now required to reissue the notice of decision by July 7, 2020.
- If a decision was made on nearly any Application or municipally-initiated planning instrument after March 2, 2020 and before April 15, 2020, and a notice of decision was not given, the decision stands, but the municipality is required to issue the notice of decision by July 7, 2020.

- Any non-decision appeals that were filed between March 17, 2020 and April 15, 2020 that were deemed invalid by O. Reg 149/20 (because the right to appeal arose during those dates) may now be filed on or after June 22, 2020.
- The 97 days between March 17, 2020 and June 22, 2020 are excluded from the time periods prescribed under many of the provisions of the *Planning Act* and corresponding provisions of the *City of Toronto Act*, including:

- the time period for non-decision appeals of official plan, official plan amendment, zoning by-law amendment, "H" removal application, site plan application and plan of subdivision application;
- the time period for the length of an interim control by-law if it was in effect on March 17, 2020; and
- the time period for municipalities to forward various appeal records to the Tribunal.

For example, an interim control by-law which on March 17, 2020 had 24 days left before its expiry, would now expire 24 days after June 22, 2020 unless repealed or extended by a further by-law.

- The maximum extension of any time period under any applicable provision of the *Planning Act* or corresponding provision of the *City of Toronto Act* is 97 days.

As always, should you have any questions regarding this article or the application of O. Reg 149/20, as amended to your specific situation, please do not hesitate to reach out to any member of the municipal team here at WeirFoulds to assist you with your land use planning and development needs.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Bruce Engell

Toronto
416.947.5081

Email:
bengell@weirfoulds.com

Bruce Engell is a Partner at WeirFoulds, and Co-Chair of the Municipal, Planning and Land Development Practice Group.



Raj Kehar

Toronto
416.947.5051

Email:
rkehar@weirfoulds.com

Raj Kehar is a Partner at WeirFoulds LLP and Co-Chair of the Municipal, Planning and Land Development Practice Group.

Toronto

Email:

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035