

File: Z-8172
T. Grawey

TO	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE
FROM:	GEORGE KOTSIFAS, P. Eng. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	REVIEW OF HOLDING PROVISION REQUIREMENTS IN ZONING BY-LAW Z-1 PUBLIC PARTICIPATION MEETING ON TUESDAY OCTOBER 29, 2013

RECOMMENDATION

That on the recommendation of the Manager of Development Services and Planning Liaison, the following actions be taken with respect to a City-initiated application to amend the requirements relating to the implementation of holding provisions in Zoning By-law No. Z.-1:

- a) the proposed by-law attached hereto as Appendix “A” **BE INTRODUCED** at the Municipal Council meeting on November 5, 2013 to amend Zoning By-law No. Z.-1, in conformity with the Official Plan, to:
 - (i) amend Section 3.8.2) (Holding Zone Provisions), by revising the “Permitted Interim Uses” for the “h” provision to include conditional permits for development when security has been posted and a subdivision agreement or development agreement has been entered into;
 - (ii) amend Section 4 (General Provisions), by adding new subsections to recognize the requirement for subdivision agreements and development agreements with the City of London;
- b) when the amendment referred to in clause (a) comes into force and effect, the “h” provision no longer be recommended as a standard requirement with zoning for new subdivision applications; and
- c) the Civic Administration **BE DIRECTED** to undertake a comprehensive review of the current holding provisions in By-law No. Z.-1 and **REPORT BACK** on alternative planning and zoning tools that may be employed to reduce the use of redundant or unnecessary holding provisions.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Report to March 19, 2013 PEC - recommending possible amendments to By-law Z-1 on the use of the holding “h” provision for plans of subdivision and site plans.

PURPOSE

This report, prepared in response to Council direction, recommends changes to current zoning requirements and practices relating to the use of the “h” holding provision, which requires the execution of subdivision agreements and/or development agreements prior to the commencement of construction activity.

BACKGROUND

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File: Z-8172
T. Grawey

At the session held on March 26, 2013, the Municipal Council resolved:

That the following actions be taken with respect to the Civic Administration's review of site specific requirements for Holding Provisions in Zoning By-law in By-law No. Z.-1:

- a) *the Civic Administration BE DIRECTED to prepare an amendment to Zoning By-law No. Z.-1 to implement requirements for the "h" holding provision under the "General Provisions" section of Zoning By-law Z.-1; and*
- b) *the Civic Administration BE DIRECTED to make the necessary arrangements to hold a public participation meeting at a future meeting of the Planning and Environment Committee with respect to the amendment noted in part a) above.*

Section 36 of the Planning Act provides municipal councils with the authority to pass by-laws for the purpose of applying and removing holding ("h") symbols, in conjunction with any use permitted by Zoning, to identify specific requirements that need to be addressed before a development can take place. Under the requirements in Section 36, holding provisions can only be removed by an amendment adopted by municipal council and not administratively.

Section 19.4.3. of the City of London Official Plan describes the purpose of holding provisions:

Holding provisions may be used to ensure that necessary servicing features or municipal works are in place prior to development; to protect environmentally significant areas or specific natural features from adverse impacts; to ensure that floodproofing measures are being incorporated into a development; to ensure that bank stabilization and other erosion protection measures are in place prior to development; to allow mitigating measures to be applied to development which may experience negative impacts from transportation and utility corridors, landfill sites, methane gas sites, sewage treatment plants, or adjacent industrial uses or extractive areas; to allow mitigating measures to be applied to development which will have an impact on street level winds in the Downtown Area; to ensure that the values, attributes and integrity of protected heritage properties are retained; or to ensure that development takes a form compatible with adjacent land uses so that issues identified as a condition of approval can be implemented.

Matters that are commonly addressed through the application of holding provisions include: urban design; noise & vibration studies; traffic impact studies; municipal infrastructure requirements; servicing studies; land consolidations; site remediation; environmental impact studies; and minimum distance separation. Currently, there are at least 156 holding provisions identified in By-law Z.-1, many of which are similar in nature.

In addition to addressing requirements that are specific to a particular site or development, the general "h" provision has been applied in to zoning in new plans of subdivision and developments that require approval under the Site Plan Control Area By-law. This has been the practice in recent years because unlike subdivision agreements and development agreements, zoning has the status of "applicable law" under the Building Code. Section 3.8 of the Zoning By-law currently describes the "h" provision as follows:

Purpose: To ensure the orderly development of lands and the adequate provision of municipal services, the "h" symbol shall not be deleted until a subdivision agreement or development agreement is entered into for the lands in question with the City of London.

Permitted Interim Uses: Existing uses and/or model homes in accordance with Section 4.5(2) of the By-law.

The "h" provision has been applied as a safeguard to ensure that no development proceeds until such time as a subdivision agreement or development agreement is entered into with the City. This measure is an effective tool since it has the status of "applicable law". However, it also increases the approval processing time and imposes additional costs on applicants. While the length of the process varies (depending on when an agreement is signed and the timing of

File: Z-8172
T. Grawey

Committee & Council meeting dates), the additional processing time can delay the commencement of construction from two to four weeks.

A review of current requirements and practices has been undertaken in an effort to address the concerns that have been expressed, and identify alternative planning and zoning tools that can be used to implement conditions of development.

PUBLIC LIAISON

A “Notice of Possible Amendments to Zoning By-law No. Z-1 was advertised in the “Londoner” on July 18th 2013 and posted on the City of London Website on July 16th, 2013, as follows:

Possible Zoning By-law Z.-1 amendment by modifying Section 3.8 (Holding Zones) to revise or remove the requirements relating to the “h” holding provision; and/or modifying Section 4 (General Provisions) by establishing requirements to enter into a subdivision agreement or development agreement, in accordance with relevant provisions under Sections 41 and 51 of the Planning Act.

No responses or written comments have been received from the public to date. A “Notice of Public Meeting” was advertised in the “Londoner” on October 10, 2013 and posted on the City of London Website on October 16, 2013.

EVALUATION

Unlike some measures such as subdivision agreements and development agreements, holding provisions have the effect of “applicable law” and, as such, can be an effective planning tool to ensure that conditions imposed on a development have been addressed to the satisfaction of Council prior to the commencement of construction. Subject to any permitted interim uses, holding provisions must be removed before permits can be issued.

In London, it has been the practice over the past several years to apply the “h” holding provision to the zoning on draft plans of subdivision, to ensure that a subdivision agreement has been entered into prior to the commencement of construction. While this measure has been effective, it adds time to the approval process and it may not be necessary if there are sufficient safeguards are in place to address the requirement for subdivision agreements.

The Zoning By-law currently includes a servicing requirement in Section 4.15 which precludes development until such time as agreements imposed under Sections 41, 45, 50 or 53 of the *Planning Act* and Section 50 of the *Condominium Act* are in place. Also, permits cannot be issued for the construction of dwellings on individual lots until such time as the lots have been created through the registration of a subdivision agreement.

The approval of plans and drawings under Section 41 of the Planning Act already has the status of “applicable law” and the addition of an “h” provision is not considered to be a necessary pre-requisite for Site Plan Development Agreements.

Other Jurisdictions:

The use of holding provisions as a planning tool varies widely in municipalities across the Province. In most mid to large size municipalities, holding provisions are used to address site specific matters such as urban design guidelines, noise studies, municipal servicing requirements, land consolidations, road access requirements and environmental impact studies.

An informal survey of municipalities was undertaken to determine the extent to which holding provisions are used for planning applications, particularly plans of subdivision and site plans. Municipalities that were contacted include Mississauga, Hamilton, Brampton, Milton,

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File: Z-8172
T. Grawey

Peterborough and Kitchener. While holding provisions are commonly used in other jurisdictions, they are not typically applied over large areas or entire subdivisions for the purpose of requiring the execution of standard agreements such as has been the practice in London over the past several years.

In Peterborough (as in London), it has been the practice to apply holding provisions over an entire subdivision area. Once the agreements are executed the lifting of the holding provision is considered to be a housekeeping matter and in some instances, permits have been issued prior to removal of the holding provision where the owner has provided the required securities and entered into a subdivision agreement. Most other jurisdictions apply holding provisions selectively, to address requirements on specific sites that have been identified as outstanding issues through the planning evaluation process. The municipalities typically rely on the policies in their Official Plans and requirements in their Zoning By-laws, to ensure that applicants enter into agreements and post required securities prior to the commencement of construction.

Overall, it can be stated that the use of holding provisions to require the execution of subdivision agreements or development agreements is not as prevalent, and the application of holding provisions is applied on a more site specific basis in most other municipalities.

Issues with the “h”:

The primary objective of applying the “h” provision is to ensure that construction does not commence until such time as the required securities have been posted and the subdivision or development agreement between the owner and the City has been executed. The issue with this approach is that removal of the “h” involves the completion of an application, public notice, preparation of a report to PEC and adoption of a by-law by Council. The “h” cannot be removed administratively and reporting through the Committee & Council meeting schedule can be several weeks for something that is essentially a “housekeeping” matter.

Several options have been identified to address the issue of timing and provide for a more streamlined process. These include:

- Eliminating the “h” provision entirely and rely on other safeguards under the Planning Act, Official Plan and Zoning By-law to ensure that development does not proceed in advance of an executed subdivision agreement or development agreement.
- Adding new General Provisions in the Zoning By-law, which include the same requirements as the “h”, stating that development cannot proceed until such time as a subdivision agreement or development agreement has been entered into with the City.
- Amending the description of the “h” provision, to recognize that the “Permitted Interim Uses” include development that is permitted in the associated Zone, provided the owner has provided the required securities and entered into a subdivision agreement or development agreement with the City.

While each of the above options has merits, a combination of measures is seen as the most appropriate way of addressing the issue with the “h” provision.

For future applications, staff are comfortable recommending zoning that does not typically include the “h” provision, provided the Zoning By-law is amended to clearly recognize the requirement for a subdivision agreement and development agreement as a pre-requisite to construction activity. This can be addressed by adding explicit statements to the General Provisions in Section 4 of the Zoning By-law. The General Provisions already include similar statements pertaining to municipal servicing requirements and other matters that are common to various applications.

It is not recommended that the “h” provision be eliminated entirely. This tool may be appropriate to use in specific circumstances – in particular, where a site is zoned for development but the municipality requires a future roadway dedication within or through the site. If development proceeds without a subdivision agreement, the City would have no opportunity to secure the

File: Z-8172
T. Grawey

dedication. In these situations, it would be appropriate to apply the “h” provision so that the City has an opportunity to secure the required dedication through a plan of subdivision.

For lands that are currently zoned with an “h” provision, it would be reasonable to allow development to proceed as long as the required securities have been posted and the owner has entered into a subdivision or development agreement with the City. Rather than processing multiple amendments to remove the “h” provision from a large number of sites, which would require additional notices under the Planning Act, it is recommended that the description of the “h” provision be amended so that conditional permits can be issued for interim development (i.e. prior to removal of the “h”) as long as the owner has posted securities and entered into the required agreement with the City. This will eliminate any delays that might otherwise be encountered due to the timing of the application in relation to Committee & Council meetings.

Some of the holding provisions in By-law Z.-1 already permit interim uses and development (i.e. without the removal of the holding provision). For example, the “h” provision was amended in 2012 to permit conditional permits to be issued for model homes and the “h-100” provision was amended to permit the construction of up to 80 residential units on an interim basis, prior to the installation of a looped watermain system and second public access.

In locations where holding provisions other than the “h” apply, owners will be required to satisfy the holding requirement prior to development. However, if the General Provisions are amended as proposed, the “h” can be removed at the same time as the other holding provision(s) and it will not be necessary to wait until such time as the agreements are in place. It is recommended that the “h” provision not be routinely applied to the zoning for future applications if the requirement for subdivision or development agreements has been adequately addressed under the General Provisions section of the By-law.

The above-proposed amendments are consistent with the purpose and intent of both the Official Plan and the Provincial Policy Statement (PPS) because subdivision agreements and development agreements will continue to be required in accordance with relevant provisions under the Planning Act, R.S.O. 1990, and development will not be permitted to proceed until such time as the required agreements have been executed.

Other Holding Provisions:

The status of the “h” holding provision can be clarified through the amendments discussed above. Over the longer term it would also be appropriate to consider a review of the other holding provisions that have been established in Section 3.8 of By-law Z.-1. While some of the holding provisions are site specific in nature, there is also duplication and it may be possible to consolidate some of the existing 156 holding provisions into fewer, more standardized categories in the future.

There may also be an opportunity to address some of the current holding provision requirements through other planning tools, such as conditions of draft approval and subdivision agreement special provisions. At the time holding provisions were first introduced, there were no requirements for “Complete Applications” and with a greater emphasis placed on addressing issues prior to the submission and acceptance of applications, there may not be as great a need to recommend holding provisions as part of the zoning.

In addition to the amendments that are proposed to address the “h” provision, it is recommended that a more comprehensive review be undertaken, to consider alternative planning and zoning tools that may be employed to reduce the use of redundant or unnecessary holding provisions. This review should be undertaken by staff in Community Planning & Design and Development Services, with input from the City Solicitors office.

CONCLUSION

The holding provision requirements in By-law Z.-1 are being reviewed in an effort to eliminate redundant planning requirements and reduce process times. In the short term, changes are

File: Z-8172
T. Grawey

being recommended to implement the “h” provision requirements under the General Provisions section of the By-law and permit interim development to proceed where applicants have posted the required securities and entered into an agreement with the City. Over the longer term, a review of the holding provisions in By-law Z.-1 is recommended in an effort to eliminate duplication and address requirements through the implementation of alternative planning and zoning tools.

PREPARED & RECOMMENDED BY:	CONCURRED BY:
TERRY GRAWEY, MCIP, RPP MANAGER, DEVELOPMENT SERVICES & PLANNING LIAISON	JIM YANCHULA, MCIP, RPP MANAGER, COMMUNITY PLANNING & DESIGN
SUBMITTED BY:	CONCURRED BY:
GEORGE KOTSIFAS, P.Eng. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL	JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER

Agenda Item #	Page #

File: Z-8172
T. Grawey

FILE Z-8172

BIBLIOGRAPHY OF INFORMATION & MATERIALS

Reference Documents

Cify of London Official Plan, June 19, 1989, as amended

City of London Zoning By-law No. Z.-1, May 21, 1991, as amended

Ontario Ministry of Municipal Affairs & Housing, Provincial Policy Statement , March1, 2005

Ontario Planning Act, R.S.O. 1990, c. P.13

File Materials:

Report to Planning & Environment Committee - March 19, 2013

Municipal Council Resolution – March 27, 2013

City of London Notice of Application - “Londoner”, July 18, 2013

City of London Notice of Public Meeting – “Londoner”, S

Materials located in City of London File No. Z-8172

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File: Z-8172
T. Grawey

Appendix "A"

Bill No. (number to be inserted by Clerk's Office)
2013

By-law No. Z.-1-_____

A by-law to amend certain portions of text
in Sections 3 and 4 of By-law No. Z.-1.

WHEREAS the City of London has applied to amend the text in Sections 3 and 4 of Zoning By-law No. Z.-1, to address requirements for the "h" holding provision under the General Provisions section of the By-law.

AND WHEREAS this rezoning conforms to the Official Plan;

THEREFORE The Municipal Council of The Corporation of the City of London enacts as follows:

- 1) Section Number 3.8 2) of By-law No. Z.-1 (HOLDING ZONE PROVISIONS) is amended by deleting paragraph a) and replacing it with the following:

h *Purpose:* To ensure the orderly development of lands and the adequate provision of municipal services, the "h" symbol shall not be deleted until a subdivision agreement or development agreement is entered into for the lands in question with the City of London.

Permitted Interim Uses:

In registered plans of subdivision, Conditional permits may be issued for development permitted in the associated Zone provided the required security has been posted, a subdivision agreement is entered into with the City of London and a Certificate of Conditional Approval has been issued;

On lands subject to the Site Plan Control Area By-law, Conditional permits may be issued for development permitted in the associated Zone provided the required security has been posted, a Site Plan has been approved and a development agreement is entered into with the City of London; and

Existing uses and/or model homes are permitted in accordance with Section 4.5(2) of the By-law;

- 2) Section Number 4 of By-law No. Z.-1 (GENERAL PROVISIONS) is amended by adding the following new subsections:

4.____ SUBDIVISION APPROVAL

Subject to the provisions in Section 4.5 of the By-law, no building shall be constructed within a plan of subdivision draft approved under Section 51(31) of the Planning Act RSO 1990, until such time as the required security has been posted and a subdivision agreement between the owner and the Corporation of the City of London has been executed pursuant to Section 51(26) of the *Planning Act R.S.O. 1990*.

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File: Z-8172
T. Grawey

4.____ SITE PLAN CONTROL

No development shall be undertaken unless it is in compliance with the applicable requirements of the Site Plan Control Area By-law for the City of London, as amended from time to time. Where a development agreement is required to be entered into under the provisions of the Site Plan Control Area By-law, no development shall be undertaken until such time as the required security has been posted and a development agreement between the Corporation of the City of London and the owner has been executed pursuant to Section 41(7)(c) of the *Planning Act, R.S.O. 1990*.

This By-law shall come into force and be deemed to come into force in accordance with subsection 34(21) of the Planning Act, R.S.O. 1990, c. P.13, either upon the date of the passage of this by-law or as otherwise provided by the said subsection.

PASSED in Open Council on November 5, 2013.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading - November 5, 2013
Second Reading – November 5, 2013
Third Reading - November 5, 2013