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File: Z-8172  
T. Grawey

<b>TO</b>	<b>CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE</b>
<b>FROM:</b>	<b>GEORGE KOTSIFAS, P. Eng. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>REVIEW OF HOLDING PROVISION REQUIREMENTS IN ZONING BY-LAW Z-1 PUBLIC PARTICIPATION MEETING ON TUESDAY NOVEMBER 26, 2013</b>

<b>RECOMMENDATION</b>
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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 December 3, 2013 to amend Zoning By-law No. Z.-1, in conformity with the Official Plan, to amend Section 3.8.2) (Holding Zone Provisions) by revising the "Purpose" to state that the "h" symbol shall not be deleted until the required security has been provided for the development agreement or subdivision agreement, and Council is satisfied that the conditions of the approval of the plans and drawings for a site plan, or the conditions of the approval of a draft plan of subdivision, will ensure a development agreement or subdivision agreement is executed by the applicant and the City prior to development;
- b) the Civic Administration **BE DIRECTED** to take all necessary steps in connection with future applications to bring forward a by-law for the purpose of removing "h" holding provisions at the same time as special provisions are recommended for subdivision agreements, or special provisions are prepared for development agreements; and
- c) the Civic Administration **BE DIRECTED** to undertake a comprehensive review of the current practice of applying holding provisions in By-law No. Z.-1, and **REPORT BACK** on alternative planning and zoning tools that may be employed to redefine and reduce the use of redundant or unnecessary holding provisions in By-law Z-1.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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- 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.
- Report to October 29, 2013 PEC – (referred back to staff for further consideration)

<b>PURPOSE</b>
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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.

<b>BACKGROUND</b>
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At the session held on March 26, 2013, the Municipal Council resolved:

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*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.*

A report was presented to the October 29th meeting of Planning and Environment Committee meeting but was referred back for further consideration at the request of staff.

**Planning Framework:**

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 zoning has the status of “applicable law” under the Building Code Act. 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 in recent years 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 has the status of “applicable law”. However, it also constitutes an additional approval layer and increases application processing time. While the length of the process varies (depending on when an agreement is signed and the timing of

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Committee & Council meeting dates), the additional processing time can result in a delay in the issuance of building permits 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 with timing, and identify alternative planning and zoning tools that can be used to implement conditions of development.

**PUBLIC LIAISON**

Notice of Possible Amendment	Published in the “Londoner” on July 18 <sup>th</sup> 2013 and posted on the City of London Website on July 16 <sup>th</sup> , 2013, as follows:
Description of Possible Amendment	<i>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.</i>
Comments Received	<p>One written response received, from B. Card representing the London Development Institute, commenting:</p> <ul style="list-style-type: none"> <li>• the issue mentioned as the rationale for imposing the “h” does not have to be resolved in all respects prior to removal of the “h”. Rather, the City needs to be able to satisfy itself that it has the ability to resolve the issue by means of the arrangements (including security) imposed under the agreements.</li> <li>• Once the subdivision agreement is in place, the “h” is redundant and should be removed.</li> <li>• There is no need for additional wording in the Official Plan. The mechanism to deal with the removal of an “h” in an efficient manner has already been provided. The challenge is getting staff to see agreements as the clearing mechanism of choice; and avoiding the imposition of holding provisions where a subdivision agreement is already in place.</li> <li>• By way of example, a SWM facility may be required; however, the SWM doesn’t have to be in place if it is funded and appropriate interim arrangements have been approved.</li> </ul>
Notice of Public Meeting	advertised in the “Londoner” October 10, 2013 (for October 29 <sup>th</sup> meeting) and November 7, 2013 (for November 26 <sup>th</sup> meeting)

**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 Building 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 as a means of controlling development, it adds time to the approval process and it may not be necessary if adequate safeguards are in place to address the requirement for subdivision and development agreements.

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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 approved plans & drawings, which are accompanied by 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, Peterborough and Kitchener. While holding provisions are commonly used in other jurisdictions, they are not typically applied as a matter of course over large areas or entire subdivisions for the purpose of requiring the execution of standard agreements.

In Peterborough (as in London) it has been the practice to apply holding provisions over an entire subdivision area. Once the security is provided and the agreements are executed the lifting of the holding provision is largely considered to be a housekeeping matter. Most other jurisdictions apply holding provisions selectively, to address specific requirements in site specific locations. 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. In all jurisdictions, conditions of draft plan approval require applicants to enter into subdivision agreements prior to final approval and plan registration.

Overall, it can be stated that in most other municipalities the use of holding provisions to require the execution of subdivision agreements or development agreements is not as prevalent, and holding provisions are applied on a site specific basis rather than as a standard requirement over entire plans of subdivision.

**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 largely considered to be a “housekeeping” matter. Several options have been identified to address the issue of timing and provide for a more streamlined process, as discussed below:

**Option 1 – No longer Apply the “h”**

*No longer apply the “h” provision 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.*

There are other safeguards in the Planning Act, Official Plan and Zoning By-law that would prohibit or restrict development until such time as the required subdivision or development agreements have been entered into with the City. In the case of development agreements, Section 41 of the Planning Act is “applicable law” and, as such, provides an effective safeguard to prevent the issuance of a Building Permit until such time as a site plan has been approved.

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For draft approved plans of subdivision, final approval cannot be issued until such time as the conditions of draft approval have been satisfied. All draft approved plans include a condition of draft approval requiring that a subdivision agreement between the Owner and the City of London be registered against the lands to which it applies. The plan is not approved or registered until such time as the agreement has been executed and the required security has been paid to the City. Until such time as the plan is registered, the subdivision is comprised of one parcel and Building Permits could not be issued for multiple dwellings.

Generally, the risk and potential for unauthorized construction proceeding without an “h” provision in place is minimal due to safeguards associated with other requirements under the Planning Act including subdivision agreements, final plan registration, site plan approvals, Official Plan policies and Zoning regulations. The standard “h” provision is a planning tool that may not be required unless there is a specific concern or issue with an application that requires an added regulatory layer.

**Option 2 – Amend the General Provisions**

*Amend the General Provisions section in the Zoning By-law to include the same requirements as the “h” by stating that development cannot proceed until such time as a subdivision agreement or development agreement has been entered into with the City.*

A possible amendment to By-law Z-1 that was liaised as part of this review was to revise the General Provisions in Section 4, by adding new subsections that establish a requirement for subdivision agreements and development agreements with the City of London. This would apply City-wide, thus eliminating the need for applying the “h” provision to individual plans of subdivision and development sites.

There are general provisions that apply City-wide, addressing certain requirements such as municipal services, individual private services, model homes, access regulations and special setback requirements. However, a review by the City Solicitor’s office has questioned whether there is the authority in the Planning Act for amending Section 4 of By-law Z-1 to include statutory requirements for plans of subdivision and site plan approvals since they are already regulated under separate sections of the Act. Amending the General Provisions to incorporate the requirements of the “h” provision is no longer being considered for this reason.

**Option 3 – Amend the “h” Provision**

*Amending the description of the “h” provision to recognize that the “Permitted Interim Uses” include a limited amount of development once the owner has provided the required securities and entered into a subdivision agreement or development agreement.*

The description of holding provisions can identify uses that are permitted on an interim basis prior to removal of an “h”. For example, the “h-100” provision, which is applied on a regular basis, permits a maximum of 80 residential units and must be removed in order to exceed this threshold (this can occur when a second public access and looped watermain are in place).

On lands Zoned R1, R2, R3, R4, R5 & R6, model homes are already permitted prior to removal of the “h” provision as an interim use (on lands that have received draft approval) up to the lesser of 10 dwelling units or 10% of the total number of lots in a subdivision. This provides builders with the ability to proceed with construction on a limited basis prior to the removal of the “h”. A similar provision could be enacted for ; however, increasing this amount substantially would detract from the purpose of applying the “h” and it is not applicable to multi-family or commercial forms of development.

An alternative amendment that could be made is to permit the lifting of the “h” provision after the City has received the required security and the special provision clauses have been confirmed for the subdivision agreement or development agreement (currently, the “h” can only be lifted after the subdivision agreement or development agreement is entered into). The amending by-law could be presented to Council at same time as the special provisions for plans of subdivision (assuming the security has been received), rather than having to come back at a subsequent meeting. To meet this objective, the description could be revised to state that “..the “h” symbol shall not be deleted until the required security has been received and Council is

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*satisfied that the conditions of the approval of the plans and drawings for a site plan, or the conditions of the approval of a draft plan of subdivision agreement is executed by the applicant and the City prior to development.” If Council has any doubt about the status of the agreement, adoption of the by-law could be deferred until such time as the executed agreement is received.*

This modification is consistent with the conditions of Draft Approval for all plans of subdivision, which require an agreement be entered into with the City. This condition must be satisfied prior to final approval by the Approval Authority and registration of the plan. The Site Plan Control Area By-law requires that agreements be entered into as a condition to the approval of plans and drawings, in accordance with the requirements in Section 41 of the Planning Act. Plans and drawings are not stamped by the Approval Authority unless any required agreement has been executed.

**Option 4 – Streamlining the Current Process**

*Streamlining the approvals process by submitting reports to Planning and Environment Committee as soon as the subdivision or development agreements are substantially completed; and presenting the amending by-law to directly Council for adoption as soon as the agreements have been finalized.*

Under current practice, applications to remove holding provisions are usually received at about the same time as subdivision or development agreements are in the process of being prepared. Since there is no public meeting required, the notice of application can be prepared and published at any time prior to adoption of the by-law by Council. However, the report to PEC is not prepared until such time as the required security has been received and an agreement has been signed by the applicant. This step is at the end of the process and can take additional time to meet PEC meeting agenda deadlines.

One step in the process can be eliminated by presenting the report to PEC at the same time as the report on special provisions (for subdivision agreements) or after conditions have been prepared (for development agreements), with a recommendation that the City Clerk be directed to present the amending by-law to directly to Council upon confirmation that the “h” requirement has been satisfied. This would reduce processing times by eliminating the need to report back a second time through the Committee process. This process would involve the following steps:

1. Application for removal of the “h” is received;
2. Notice of application is prepared and published;
3. \*For Subdivisions, the report to PEC on “special provisions” for the subdivision agreement would include the by-law to remove the “h” provision;
4. the City Clerk is directed to present the “h” removal by-law to Council upon confirmation that the applicant has entered into the agreement;
5. Development Services advises Clerks when security & signed agreement are received;
6. “h” removal by-law is presented to the next available Council meeting for adoption.

*\*Note:* for site plan applications, the report to PEC would be prepared once the development agreement has been prepared by Development Services.

The City Clerk’s office has confirmed this process can be implemented, provided the required legal notice and documentation are in place prior to presenting the amending by-law to Council. This change in process that does not require any amendment to the Zoning By-law and can start to be implemented immediately.

**Recommended Actions:**

Several actions are recommended at this time to provide a more efficient and meaningful process in dealing with holding provisions. The stated purpose of the “h” provision is proposed to be revised to state that the “h” symbol shall not be deleted until the required security has been provided and Council is satisfied that a subdivision agreement or development agreement is being entered into for the lands un question with the City of London. This would reduce processing times where Council is satisfied with the status of the agreement, but maintain the option of waiting until the agreement has been fully executed if Council has any outstanding concerns with the application.

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To minimize processing time, reports recommending removal of the “h” provision can be presented to PEC at the same time as special provisions are prepared for subdivision agreements (or as soon as the site plan development agreement has been prepared). The City Clerk would be directed to present the amending by-law directly to Council for adoption as soon as it has been confirmed that the applicant has entered into the agreement, thus avoiding the need to report back through the Planning and Environment Committee.

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 the existing 156 holding provisions could be consolidated 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 on addressing issues prior to the acceptance of applications, there may not be as great a need to recommend holding provisions as part of the zoning. This review will be undertaken by staff in Community Planning & Design and Development Services, with input from the City Solicitors office.

Section 19.4.3. of the Official Plan states that holding provisions will be applied only where there is a need for additional conditions that cannot be applied on a pre-zoning basis or through the Site Plan Control By-law. No amendments are required to the policies in 19.4.3. Official Plan to implement the changes that are being recommended.

<b>CONCLUSION</b>
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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 being recommended to amend the description of the “h” provision and process applications at Planning and Environment Committee in concert with the approval of special provisions. Over the longer term, a review of the holding provisions in By-law Z.-1 is recommended to more clearly define the purpose and use of holding provisions, eliminate duplication and, where possible, address requirements through the implementation of alternative planning and zoning tools.

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

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**BIBLIOGRAPHY OF INFORMATION & MATERIALS**

Reference Documents

City 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

Correspondence from B. Card (for LDI) – October 7, 2013



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**Appendix "A"**

Bill No. (number to be inserted by Clerk's Office)  
2014

By-law No. Z.-1-\_\_\_\_\_

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

WHEREAS the City of London has applied to amend the text in Section 3 of Zoning By-law No. Z.-1, to revise requirements for the "h" holding provision in this 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 the required security has been provided for the development agreement or subdivision agreement, and Council is satisfied that the conditions of the approval of the plans and drawings for a site plan, or the conditions of the approval of a draft plan of subdivision, will ensure a development agreement or subdivision agreement is executed by the applicant and the City prior to development.

*Permitted Interim Uses:*

Model homes are permitted in accordance with Section 4.5(2) of the By-law;

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 December 3, 2013.

Joe Fontana  
Mayor

Catharine Saunders  
City Clerk

First Reading - December 3, 2013  
Second Reading - December 3, 2013  
Third Reading - December 3, 2013