

## **Staff Report:**

### **Background:**

On September 10, 2018, the City's Planning Committee directed staff to review Section 19.4.2 (formerly section 20.4.2) of the City's Official Plan, which addresses situations whereby all conditions of draft plan of subdivision approvals have not been met within the initial three year period following Council's approval of a draft plan of subdivision. This direction was approved by the Planning Committee following their consideration of a request to extend the draft approval applicable to a rural estate subdivision referred to as the Whitson Lake Subdivision (File # 780-7/98002). Staff noted that the policy environment around rural estate subdivisions had changed since the Whitson Lake Subdivision was initially draft approved and that rural estate subdivisions are generally no longer permitted in the City's current and in-force Official Plan and further that the PPS does not encourage such rural estate development. Council ratified this direction on November 20, 2019.

Section 19.4.2 of the City's Official Plan outlines that it is the policy of Council to not extend or recommend the extension of a draft plan of subdivision approval beyond the initial three year period unless the landowner has demonstrated to the satisfaction of the City that they are making a reasonable effort to proceed in clearing those conditions associated with their draft approved plan of subdivision. Any time that a request for extension is made by a landowner, it is the policy of Council to consider the above and make modifications where necessary to any conditions related to a draft approved plan of subdivision. In the absence of reasonable effort having been demonstrated by the landowner, the policy would be supportive of Council deciding to not extend the draft approved plan of subdivision.

Staff has reviewed the request in detail and is now bringing forward this report for information purposes.

Attached to this report for reference purposes is an excerpt copy of Planning Committee Resolution PL2018-158, which directed staff to review and report back on Section 19.4.2 of the City's Official Plan. Staff has also prepared a map for reference purposes depicting all currently draft approved plans of subdivision throughout the City organized by approval date, both prior to and after the City's Official Plan that was adopted on June 14, 2006. There is one subdivision at present under appeal.

### **Policy and Regulatory Framework:**

The issue with respect to extending an existing draft plan of subdivision approval is the focus of this report and therefore consideration of the following policy and regulatory framework is appropriate:

- [Planning Act, R.S.O. 1990, c.P.13](#);
- [2020 Provincial Policy Statement \(PPS\)](#); and,
- [Official Plan for the City of Greater Sudbury](#).

The Planning Act together with the PPS and the City's Official Plan provide a policy framework for subdivision planning and development in the City of Greater Sudbury. This framework is implemented through the draft approval of plans of subdivision for an initial period of three years. Landowners may request extensions of typically one, two or three year periods after the initial period of three years. There is no limit to the number of extensions that can be approved at present.

## **Planning Act**

Section 51 of the Planning Act has established two land use planning principles with respect to the initial approval of a draft plan of subdivision and how extensions to an existing draft approved plan of subdivision can be addressed.

First, Section 51(32) allows for a municipality to provide a lapsing date on a draft approved plan of subdivision of not less than three years and the draft approval is considered to have lapsed at the end of the specified time period. In practice, where a draft plan of subdivision has lapsed there is nothing preventing a landowner from filing another draft plan of subdivision application for consideration. The re-application is treated as a new application and all requirements under Section 51 are applicable (e.g. a public hearing would be required). Section 51(33) allows for a municipality to extend draft approval beyond the initial period for a time specified by the municipality. Lapsing conditions are imposed by a municipality to ensure that development once approved will proceed in an expeditious manner. The municipality is most typically concerned that development takes place within the current policy and regulatory framework and especially where scarce services or capacity to service development have been committed to the draft approved plan of subdivision. Three years is generally considered to be sufficient time to clear conditions of draft approval and proceed to registering a plan of subdivision. Section 51(33) allows for some flexibility whereby some additional time can be afforded to a landowner where they are actively pursuing the clearing of draft approval conditions.

Second, Section 51(44) on the other hand allows for a municipality to withdraw draft approval of a plan of subdivision at its discretion or to change the conditions of a draft approval at any time before the registration of a plan of subdivision.

Appeal rights in both cases noted above are found in Section 51 should a landowner or interested party wish to appeal a refusal to extend a lapsing date, a change of conditions or the complete withdrawal entirely of a draft approval by a municipality.

## **2020 Provincial Policy Statement**

Municipalities in the Province of Ontario are required under Section 3 of the Planning Act to ensure that decisions affecting planning matters are consistent with the PPS. Settlement areas, employment areas, housing and housing supply, provision of public spaces, sewage and water capacities, transportation, natural heritage areas, natural hazards and human-made hazards are some examples of areas of provincial interest that a draft approved plan of subdivision may impact and should be considered when an initial approval is granted as well as when an extension to an existing draft approval is granted. The PPS is updated from time-to-time by the Province, and any draft approval extension should be considered within the context of the in-force PPS at the time an extension request is made.

## **Official Plan for the City of Greater Sudbury**

Section 19.4.2 of the City's Official Plan states, "All conditions of draft plan approvals must be met within three years after which the draft approval lapses. The City will not extend or recommend the extension of a draft plan approval, beyond the statutory limitation of three years, unless the sub-divider has demonstrated to the satisfaction of the City that they are making a reasonable effort to proceed in meeting the conditions of the draft approval. At the time of extension, the City will review draft plan conditions and may make appropriate modifications."

Section 19.4.3 is related to the above and notes that when approving plans of subdivision, the City will have regard for conformity of the proposed plan of subdivision with the Official Plan and matters listed in the Planning Act.

## **Planning Analysis:**

When considering to extend, not extend or withdraw a draft approved plan of subdivision, the generally accepted land use planning test is whether or not the landowner has demonstrated reasonable effort in advancing the draft approval to the registration of a plan of subdivision. Registration of subdivisions in the City has typically occurred in phases, mostly where there a large number of lots, and it becomes more cost effective for a landowner to develop in smaller phases as opposed to registering and building out all lots and infrastructure at the same time.

At present, Section 19.4.2 of the City's Official Plan does not define or set out any criteria around what "reasonable effort" means or how a landowner can demonstrate that they intend on proceeding with a draft approved plan of subdivision and that an extension is therefore appropriate. This is not unusual in Ontario, however there are some approaches and policy examples in other municipalities that go beyond a policy in their Official Plan referencing "reasonable effort."

### **"Landowner Onus" Approach**

Most municipalities throughout Ontario currently use a "landowner onus" approach to considering a draft plan of subdivision approval extension request. The general concept around this approach is that the landowner is required to identify and demonstrate which draft approval conditions have been cleared, which have not been cleared, and to provide an explanation as to why the draft approved plan of subdivision has not proceeded to registration.

Some municipalities are explicit in how this information is to be provided, but in general the expectation under this approach is that the landowner provides either a table chart listing all conditions and updates on progress, or a full report outlining progress and reasons why an extension should be approved. In general, where conditions have not been cleared, the landowner is expected to provide an update on their progress and/or an explanation as to why no progress has been made on a condition.

Many municipalities also set out an internal staff procedure or set of criteria under which requests to extend a draft approved plan of subdivision are considered. For example, the Municipality of Meaford assesses a draft approved plan of subdivision extension request based on whether municipal servicing capacities continue to be available and whether or not any new legislation or policy documents (e.g. Planning Act, PPS, Official Plan, etc.) and/or by-laws (e.g. Zoning By-law, Sewer Use By-law, Water Use By-law) have been introduced or changed that would now preclude the development from proceeding.

The Town of Cobourg on the other hand has included a policy in their Official Plan referencing that draft plans of subdivision are only to be approved (or extended) where there would be no negative impact on the financial stability of the municipality and only where adequate services and community facilities exist. Staff reports involving draft approved plan of subdivision extensions also examines if conditions remain relevant and in keeping with provincial (e.g. PPS) and municipal (e.g. Official Plan) policies.

### **Case Law**

There have also now been a number of cases heard by the Ontario Municipal Board (now the Local Planning Appeal Tribunal) which involved a municipality deciding to not extend a draft approved plan of subdivision.

On March 5, 1997, in *Battenleigh Common (Milton) Developments Inc. v. Town of Milton & Regional Municipality of Halton*, the Board found that in deciding to extend a lapsing date for a draft approved plan of subdivision, one must consider and balance both public and private interests and to have regard to what would be in the interest of good land use planning.

On August 29, 2019, the Local Planning Appeal Tribunal in 1807086 Ontario Inc. v. Town of Asphodel-Norwood agreed with the Town's position to not extend a lapsing date for a draft approved plan of subdivision. The draft approval had been in place for 30 years and the municipality submitted that the landowner had not acted on clearing any draft approval conditions since 2007. The municipality had also recently completed a comprehensive review of all their draft approved plans of subdivisions that were 20 years or further from their initial draft approval date and for each one there was either a final two year extension granted or the draft approval was withdrawn entirely.

#### Existing Draft Approval Extension Process in the City of Greater Sudbury

At present, staff require a letter or email from a landowner requesting an extension to their draft approved plan of subdivision, which must include an indication as to the length of extension that is being sought along with a brief explanation as to why the extension request is being made. There is no onus on the landowner to provide an update with respect to their progress on clearing each condition that are attached to the draft approved plan of subdivision. The application fee to extend a draft approved plan of subdivision is based on both the length of the extension request and the number of lots and/or blocks that are unregistered at the time of the request. As a courtesy, staff will typically remind a landowner that a lapsing date is approaching, however, monitoring a draft approval lapsing date and requesting an extension in a timely manner is entirely the responsibility of the landowner.

Requests to extend a draft approved plan of subdivision are circulated to affected agencies and departments and a report along with a recommendation is then prepared for the Planning Committee to consider. It should be noted that staff reports for draft approval extensions do not typically examine the current policy and regulatory framework; however, staff does consider this when reviewing an extension request. Council then ratifies the decision that Planning Committee makes with respect to the request to extend a draft approved plan of subdivision beyond the lapsing date.

#### Existing Draft Approvals in the City of Greater Sudbury

Staff reviewed all existing draft approved plans of subdivision and found that 17 active draft approved plans of subdivision received their initial approval from Council between 1976 and 1999. There are an additional 22 active draft approved plans of subdivisions that have initial approval dates from Council between 2000 and 2010. At the time of writing this report, staff found that there are 39 active draft approved plans of subdivision throughout the City that are at 10 or more years beyond their initial approval date from Council. Staff can further advise the 39 above noted draft approved plans of subdivision there are 15 draft approved plans of subdivision that have not registered any lots.

Further to this, as of the publication date of the City's Growth and Settlement Policy Discussion Paper, it is noted that there are currently 58 draft approved plans of subdivision in the City and it is estimated that the current potential yield from said draft approvals would amount to 6,534 new residential dwelling units. There are also a number of active subdivision, rezoning and site plan applications that could yield a further 2,390 residential dwelling units. It is estimated using a high growth scenario that this would result in 531 new residential dwelling units per year being available over the next 17 years. It should be noted the PPS requires that municipalities maintain a minimum three year supply of lands that are suitably zoned to facilitate residential intensification and this includes lands that have draft approved plans of subdivision or have registered subdivision plans. Municipalities are also required to maintain a minimum ten year supply of lands that are designated and available for residential development. The City's current land supply in terms of available housing opportunities therefore meets and exceeds requirements set out in the PPS.

#### Next Steps:

Staff advises that Phase 2 of the City's Official Plan review is, in part, examining issues related to water and waste-water capacities and demands. Section 19.4.2 has been identified as being a policy requiring an update to address these capacities and demand issues.

**Title:** Review of Draft Approved Plan of Subdivision Extensions – Section 19.4.2 of the Official Plan  
**Date:** October 26, 2020

Staff through this process will consider the embedding of criteria into this section to strengthen the policy position and clarification around what constitutes reasonable effort on behalf of a landowner when they seek to extend a draft approved plan of subdivision.

Internal procedures and application requirements for extension requests are also under review and a stronger “landowner onus” approach will be applied to extension requests in the future once said procedures are established.

## **Conclusion:**

The majority of municipalities in Ontario are utilizing the “landowner onus” approach to varying degrees and require that the landowner demonstrate reasonable effort is being made on advancing a draft approved plan of subdivision to registration. Other municipalities have strengthened their Official Plan policies to make clear to a landowner what tests are applied to the review of an extension request. Staff intend on strengthening review of these extension requests and formulating procedures for obtaining better information from a landowner before bringing forth an extension request to the Planning Committee and Council. Staff expects that Section 19.4.2 can be modified through the in-progress Phase 2 review of the City's Official Plan. As a result, a better understanding from a policy perspective of what is meant by demonstrating reasonable effort can be established as a test when a landowner requests an extension to an existing draft plan of subdivision approval.