

CITY OF KINGSTON

SITE PLAN CONTROL PROCESS

Introduction:

- Site Plan Control Approval is one of the final planning approvals necessary prior to an Owner/Developer applying for a building permit;
- By-law No. 2006-65 designates the whole of the City of Kingston as a Site Plan Control Area and requires City approval of site plans prior to development occurring;
- Site Plan Control approval is generally required for commercial, industrial and institutional developments containing more than 300 square metres of floor area, residential developments containing 4 or more units, above ground utilities or communication infrastructure, commercial parking lots, day care centers, new group homes please refer to By-Law No. 2006-65 for full list of developments subject to Site Plan Control).

Pre-Consultation Meeting:

- As per By-law No. 2007-43, a pre-consultation meeting is mandatory for all Site Plan Control Applications (<http://www.cityofkingston.ca/business/development/approval.asp>);
- Meetings are held every second Tuesday and the applicant is required to submit a preliminary site plan drawing together with a written description of the proposal at least seven working days prior to the meeting to the Planning and Development Department;
- Applications are scheduled at 30 minute intervals, with 10 minutes allocated for the proponent's presentation and 20 minutes for review/comments by the City's internal groups and any external agencies in attendance;
- The Assigned Planner will complete and provide a Pre-Consultation Form to the Applicant indicating the planning approvals required, application fees, necessary plans and supporting studies required for the project;
- A copy of the Pre-Consultation Form is to be submitted as part of the complete Site Plan Control Application.

Site Plan Control Application Submission

- The Assigned Planner will check the Site Plan Control Application when received to ensure that it is complete and includes the required drawings, associated reports and applicable fees as outlined on the Pre-Consultation Form (<http://www.cityofkingston.ca/business/development/app-forms.asp>);
- The applicable fees are set out in the City's Fees and Charges By-law No. 2005-10, as amended, as per the Planning Application fee schedule (<http://www.cityofkingston.ca/business/development/app-fees.asp>);
- Additional financial requirements may include cash-in-lieu of park land dedication, development charges and impost fees (part of building permit), payment of outstanding property taxes,

deferred local improvement charges, agreement registration, and cost of any peer reviews of submitted studies, if required.

- The Applicant may file an application for a building permit which can be processed concurrently with the Site Plan Control Application in order to expedite the process for permit issuance.

Public Notice

- Once the Site Plan Control application has been deemed complete, a public notice sign will be prepared by the Planning & Development Department in accordance with the City's signage specifications;
- The Applicant is responsible for the proper installation and removal of the sign(s);
- If the Site Plan Control Application is "bumped-up" to Planning Committee, a notice of the Committee meeting will be posted in the local newspaper.

Technical Circulation

- The Assigned Planner will prepare the first technical circulation for distribution with the appropriate plans and studies to the relevant internal departments/external agencies. Notice is also provided to the Mayor and members of Council, any one of whom may request that the application be "bumped-up" to Planning Committee for final approval;
- Responses are requested within 10 working days for the first technical circulation and within 5 working days for subsequent technical circulations;
- Comments received from the internal departments/external agencies will be forwarded to the Applicant who will be required to submit revised drawings and any additional supporting documentation to the Assigned Planner for a subsequent Technical Circulation;
- This process of technical circulation and resubmission by the applicant will be repeated until all departments/agencies have "signed off" on the proposed development;
- Where necessary, the Assigned Planner will work with the Applicant to address technical comments or public concerns or arrange a meeting with the departments and agencies to resolve identified issues or concerns.

Site Plan Control Agreement

- The Owner is required to enter into a Site Plan Control Agreement with the City of Kingston prior to the issuance of Site Plan Control approval;
- The Site Plan Control Agreement, or Site Plan Modification Agreement, contains the standard and special City conditions applicable to the development, a cost estimate for the project, and schedules regarding the required financial securities, any cash surcharges, required easements, and the list of approved drawings;
- The Owner will have the opportunity to review a draft of the Site Plan Control Agreement and provide comments from their legal representative;

- Once executed, the agreement is registered against the title of the subject lands and is binding to the current and subsequent Owners of the property;
- Where a significant amount of off-site works are required, a separate Construction Agreement may be required by the Engineering Department or Utilities Kingston.

Site Plan Control – Financial Securities

- Securities are required for the proposed development to ensure the satisfactory completion and maintenance of the required works (<http://www.cityofkingston.ca/business/development/app-forms.asp> *Site Plan Control Guidelines - Section 2.8*). The securities are based on an itemized estimate prepared, signed and stamped by a Professional Engineer and submitted to the City for review and approval;
- The amount of the securities is typically 50% of the cost of the on-site works, including grading, paving, hard and soft landscaping, walkways, retaining walls, fencing, lighting and above ground stormwater management facilities. Securities do not include the cost of any buildings. For any off-site works (e.g. within the municipal roadway), the required security is 100% of the total value of the works;
- Where the proposed building covers the entire property, securities will be calculated on the basis of 10% of the first \$500,000.00 of total building construction value plus 1% of the balance of the total construction value in excess of \$500,000.00;
- The required financial securities must be submitted prior to final Site Plan Control approval and are acceptable in the form of cash, certified cheque or a letter of credit from a Canadian Chartered Bank (<http://www.cityofkingston.ca/business/development/app-forms.asp> - *Site Plan Control Guidelines – Appendix C: Letter of Credit*). The name on the Letter of Credit and Site Plan Control Agreement must be the same, and the Letter of Credit must be irrevocable and contain an automatic annual renewal clause;
- Securities for off-site works must be submitted separately from the on-site securities.

Site Plan Control Approval

- As per By-law No. 2006-65, the Director of Planning and Development has delegated authority to approve all Site Plan Control applications, unless the application has been “bumped-up” to Planning Committee (see Technical Circulation above);
- For applications that are “bumped-up”, Planning Committee is the final approval authority. The Committee may approve the application in principle and then refer the matter back to staff to issue final approval;
- Prior to final approval, the Applicant will be required to submit three copies of the executed Site Plan Control Agreement, the required securities, seven copies of the final site plan drawings and an electronic version of the drawings;
- If construction has not commenced within one year from the date of the Site Plan Control Agreement, the City can withdraw the Site Plan Control approval and deem the approved plans and Agreement to be null and void;

- The Applicant is responsible for removal of the sign(s) *and all signage must be removed within seven (7) days after the application is approved, withdrawn or after a decision is rendered by the Ontario Municipal Board* where the application has been the subject of an appeal;

Appeal Process

- If the City does not approve the application or if the Applicant does not agree with the conditions of approval imposed by the City, the Owner can appeal the matter to the Ontario Municipal Board.

Reduction/Release of Financial Securities

- An interim reduction of up to 60% of the securities will be considered with the submission of a letter, an Engineer's certificate identifying the completed works and itemizing the outstanding items (including cost to complete remaining works) and the appropriate fee;
- Up to a further 30% reduction of the original security amount will be considered upon receipt of an Engineer's certificate certifying that all required works have been completed in accordance with the approved drawings and Agreement conditions and a site inspection by City Staff to confirm completion of the works. If staff identify deficiencies, the security will not be reduced by the full 30%;
- The remaining 10% of the securities (plus any additional amount for noted deficiencies) will be held as a warranty for a minimum of one year from the date of the 90% security reduction to ensure all works are complete and landscaping is maintained. The remaining securities will then be released upon the receipt of a written request and confirmation that there are no deficiencies in the required works;
- For off-site securities, the Engineering Department will consider a reduction of 90% of the securities with the submission of a written request and an Engineer's certificate, with the remaining 10% of the securities being held as a warranty for a minimum of one year or as specified in the Site Plan Control Agreement.

Site Plan Modification Application

- Any revisions to the plans following Site Plan Control Approval should be reviewed with the Assigned Planner as the changes may require a Site Plan Control Modification application and submission of the appropriate revised plans and applicable fees;
- Full reduction of the site plan securities may be withheld until outstanding items are brought into compliance with the approved plans or the modifications have been approved;
- An Amending Site Plan Control Agreement may be required if the modifications represent substantive changes, if there is a need to include additional conditions or if additional securities are required;
- If the approved site plans are being modified, it is suggested that the Building Department also be consulted to determine if a new or revised building permit will be required.

DEVELOPMENT REVIEW PROCESS

The June, 2000 Report of the Development Review Task Force noted that “*The development review process is not one single process but rather a series of interrelated processes that involve a number of internal and external stakeholders. Timelines for one development application can be impacted by a number of factors, as it travels through internal business units . . . as well as external agencies. Due to the complexity of the development application process, there is no simple structural or procedural solutions to the concerns raised . . .*” As discussed at the initial meeting of the Mayor’s Task Force on Development, the development review process is heavily regulated by municipal, provincial and federal Acts, By-laws, Regulations and Guidelines. The legislative framework is continually changing, sometimes adding to the requirements of approval authorities and development proponents. For example, there have been numerous changes to the Planning Act over the past few years and the 2005 Provincial Policy Statement is currently under review by the Province.

The Mandate of the Mayor’s Task Force on Development is to focus on the issues and challenges presented throughout the development review process in Kingston while recognizing the mandated requirements of the legislated framework. The Task Force is charged with identifying the main issues and concerns, reviewing the current policies and processes, identifying best practices in comparable Ontario municipalities and preparing a comprehensive report with recommendations to Council outlining the changes considered appropriate to the City’s current practices in order to adopt best practices.

Since the submission of the June, 2000 Report of the Development Review Task Force, the City has undertaken a number of initiatives to improve the effectiveness and efficiency of the City’s development review process and to ensure that staff involved in the process are more customer focused and results oriented. As a result of these initiatives, a number of significant improvements have already been made to the municipal approval processes over the years (e.g. delegation of approval authority to staff, clarification of City standards, established process to change standards, streamlining of internal processes, standardized agreement formats, more user friendly application forms, introduction of pre-servicing and model home agreements, mandatory pre-consultation, etc.). Recent Reports to Council have identified a number of further staff initiatives respecting customer service that are intended to achieve a consistent, more coordinated and integrated approach to service delivery, more timely approvals and ongoing performance measurement. New customer service standards for all staff involved in the development review process have been endorsed by Council and external agencies are being formally requested to adhere to the response times set out in the customer service standards with respect to technical circulations (See Tabs #12 and #13 of the Background Information Binder).

One of the main functions of the City’s Planning & Development Department is to co-ordinate the municipal response to development applications. As noted above, the timely processing of applications requires co-operation from and co-ordination with numerous internal and external stakeholders, including development proponents.

The intent of this document is to assist the Task Force in their review of the current processes and policies by providing the following:

- a summary of the key legislation that impacts the development review process;
- a description of the various types of development applications;
- a summary of the existing Council approval authority that has been delegated to staff; and,
- an overview of the main steps involved in the development review process.

When reviewing the following information, it should be recognized that:

- many of the steps in the process are legislated by the Planning Act, other Provincial or Federal legislation and municipal By-laws or policies;
- many of the external agencies are subject to other legislative requirements that govern their activities and are beyond the City's control;
- not all of the identified steps are necessarily applicable to each application type;
- pre-consultation is mandatory;
- legislated timelines for a decision generally commence once an application is deemed complete;
- many applications require more than one technical circulation – rarely, if ever, does the City receive a “perfect” first submission;
- where multiple approvals are required, the City encourages applicants to file all applications concurrently in order to streamline processing;
- applicants are encouraged to file Site Plan Control applications and building permit applications concurrently in order to streamline processing;
- the City routinely issues conditional building permits (subject to conditions) to allow developments to proceed in advance of final Site Plan Control approval or approval of a full building permit;
- processing time will vary based on the nature and complexity of the proposal, the completeness of submissions, turnaround times when additional information is requested from the applicant, the need for peer reviews of submitted reports / studies, appeals of Council / Committee decisions, etc.

KEY LEGISLATION

The development review process is subject to a highly regulated and legislated policy framework. In addition to the key policies / By-Laws of the municipality, there are a number of Provincial and Federal Acts and Guidelines that directly impact on time lines, information requirements, procedures and approval authority for the various development applications which are submitted for review and processing.

The key **provincial legislation** includes the following:

Section 2 of the Planning Act indicates that the Minister of Municipal Affairs and Housing, municipal councils, local boards, planning boards, and the Ontario Municipal Board, in carrying out their responsibilities under the Act, shall have regard to matters of provincial interest. The matters of provincial interest are listed in Clauses (a) through (q) inclusive of Section 2 of the Act and are further detailed in the Provincial Policy Statement.

Section 3 of the Planning Act provides that the Minister of Municipal Affairs & Housing may issue statements that ensure that all land use planning decisions are consistent with provincial policy. With this in mind, the 2005 **Provincial Policy Statement (PPS)** sets the foundation for regulating land uses and development within a provincial context by recognizing that there are various environmental, economic and social factors involved in land use planning. This includes, for example, when the City develops its Official Plan and Zoning By-laws. In so doing, it provides a balanced framework for accommodating appropriate development while protecting resources, public health and safety and the natural environment. The requirement that municipal decisions “shall be consistent with” the PPS ensures that the policies in the PPS are an essential part of making decisions on land use planning matters. Given these inter-relationships, the 2005 PPS provides a long-term comprehensive approach to land use planning based on 3 areas:

- Building Strong Communities;
- Wise Use and Management of Resources; and
- Protecting Public Health and Safety.

The PPS includes policies on key issues that affect our communities, such as: the efficient use and management of land and infrastructure; protection of the environment and resources; and ensuring appropriate opportunities for employment and residential development, including support for a mix of uses.

The Government of Ontario is undertaking a review of its land use planning policies contained in the Provincial Policy Statement, as required by the Planning Act. The goal of the review is to make sure that the province's land use planning policies are effectively protecting Ontario's interests and to determine whether any changes need to be made to the policies.

Overall, the **Planning Act** is key piece of Provincial Legislation that impacts the City's development review functions. The main elements of the Planning Act are as follows:

- The promotion of development within a provincial policy framework that aims to protect the health, safety and welfare of residents;

- The provision of a land use planning system dealing mainly with Official Plans, Zoning By-laws, Site Plan Control, Subdivisions and Public Consultation / Participation;
- Empowering Municipal councils to make local planning decisions and engage in various planning forms and processes; and
- The integration of provincial interests such as protecting farmland, natural resources and the environment into local planning decisions through the Provincial Policy Statement.

The *Planning Act* establishes approval authority, provides for application fees, and regulates such matters as notice procedures, public open houses / meetings, required time lines for advertising public meetings and issuing notices of adoption, passing and / or decision, appeal processes, information requirements for applications, amendment processes, establishment of some Committees, delegation of authority, etc., and Council's actions with respect to submitted applications. Further information about the *Planning Act* is provided in Citizen's Guide #1 located under Tab 14 of the Background Information Binder.

The *Ontario Heritage Act* provides the legislative framework for preserving the City's built cultural heritage resources and outlines the respective roles of Council, the Municipal Heritage Committee (where established by Council), municipal staff, licensed archaeologists, the owners of designated properties, and the Conservation Review Board in the protection of the heritage resources and the implementation of the City's heritage program. The Act provides for the designation of individual buildings of architectural and or historical significance and the establishment of Heritage Conservation Districts, and establishes controls respecting alterations to or the demolition of designated buildings and the management of archaeological resources. With the passage of amendments to the *Ontario Heritage Act* in 2005, municipalities have greater power to manage and identify heritage resources and greater responsibility to ensure that heritage conservation broadly reflects community values and that it is considered in the overall planning of the community. Further information about the *Heritage Act* and conserving heritage resources is provided under Tab 15 of the Background Information Binder.

The provisions of the *Condominium Act* regulate the development, registration and the running of condominium corporations within the province. Section 9(2) of the Act provides that a draft plan of condominium is subject to the provisions of Sections 51, 51.1 and 51.2 of the *Planning Act* that apply to a plan of subdivision with necessary modifications to a condominium description or an amendment to a description. Sections 9(3), (6) and (7) provide for an exemption from draft plan approval (usually where there is a Site Plan Control or Development Agreement in force on the property) and Sections 9(4) and (5) set out provisions respecting the conversion of rental properties to condominium. Further information about the Subdivision / Condominium process is provided in Citizen's Guide #4 located under Tab 14 of the Background Information Binder.

The provisions of the *Municipal Act* provide the authority for certain special purpose By-laws that impact the development review process, such as the Civic Addressing and Road Naming By-law, Tree By-law and Site Alteration By-law. In addition, the *Municipal Act* is also the

authority for certain conditions imposed on development to ensure implementation of Site Plan Control or Subdivision Agreement conditions.

Under the provisions of the **Building Code Act**, municipalities are responsible for enforcement of the Act and the appointment of a Chief Building Official and inspectors. It includes provisions regarding enforcement authorities, fees, construction and demolition of buildings, building occupancy, municipal property standards, inspection of unsafe buildings, powers of entry, qualifications for various positions (e.g. chief building official, inspectors, designers, etc.), dispute resolution, reviews and appeals (e.g. Building Code Commission), and, authorizations and rulings (e.g. Building Materials Evaluation Commission).

The **Ontario Building Code** sets minimum standards for the design and construction of all new buildings and for additions, alterations and change of use of existing buildings. The Code is a mandatory document used by architects, engineers, designers, builders, suppliers and manufacturers respecting construction projects which are regulated by the Code. The purpose of the Code is to set minimum standards for construction to minimize the risk to health and safety of the building occupants and to provide barrier-free accessibility and energy efficiency, thereby allowing the building occupants to enter, occupy and leave buildings safely. The Code sets the standards for the various components of a building, including the structure, types of materials, plumbing, fire protection systems, occupant load, and the other systems installed in a building. Municipalities have the responsibility to enforce the **Building Code Act** and the Code. The City appoints a Chief Building Official and inspectors to issue building permits, perform inspections and otherwise implement the requirements of the Code.

The **Clean Water Act** helps protect drinking water from source to tap with a multi-barrier approach that stops contaminants from entering sources of drinking water - lakes, rivers and aquifers. The Act:

- requires that local communities - through local Source Protection Committees - assess existing and potential threats to their water, and that they set out and implement the actions needed to reduce or eliminate these threats;
- empowers communities to take action to prevent threats from becoming significant;
- requires public participation on every local source protection plan - the planning process for source protection is open to anyone in the community;
- requires that all plans and actions are based on sound science.

The Act also introduces the Ontario Drinking Water Stewardship Program which offers financial assistance to farmers, landowners, and small or medium businesses for activities that reduce threats to local drinking water sources.

The **Draft Source Protection Plan** (SPP) is currently being prepared by the Cataraqui Source Protection Committee. The main objectives of the SPP are to make sure that every significant drinking water threat ceases to be a significant risk and that no other drinking water threats ever become significant risks. The SPP will contain policies that relate to the Cana Wellhead Protection Area, the Point Pleasant and Kingston Central Intake Protection Zones and the Highly Vulnerable Aquifers and Significant Groundwater Recharge Areas. Once approved by the Minister of the Environment, amendments to the City's Official Plan and Zoning By-law will be required to delineate the vulnerable areas and to restrict / prohibit certain uses or activities

that pose significant risks to the sources of drinking water. The City will also be required to have regard for certain policies and require the submission of certain information when reviewing development applications within the vulnerable areas.

Where development / redevelopment sites abut major roadways, rail lines or airports, **Provincial Guidelines** require the preparation of Noise and Vibration Impact Studies in order to identify the required mitigation measures to be imposed. Old industrial or commercial sites may be subject to provincial guidelines with respect to the redevelopment of contaminated sites in order to determine the appropriate Site Clean-Up Procedures that would be required in order to permit the site to be redeveloped for the intended use. Where an intended development site abuts or includes a designated wetland area, provincial guidelines may require an Environmental Impact Study to identify significant features of the wetland and assess any impacts on those features by the proposed development. In rural areas, the Minimum Distance Separation (MDS) Formulae is a land use planning tool that determines a recommended separation distance between a livestock barn or manure storage and another land use in order to prevent land use conflicts and minimize nuisance complaints from odour.

In addition to approvals required from the Ministry of Natural Resources where fish habitat is impacted, proposals for in-water works may require approvals from the Federal Government pursuant to the **Fisheries Act** and the **Navigable Waters Protection Act**.

The foregoing list is not all inclusive, and demonstrates that there are many areas where approval authority and/or information requirements may supersede the *Planning Act* and fall outside of the jurisdiction of the Municipality. Other examples include the *Green Energy Act* which exempts renewable energy projects from municipal Official Plans, Zoning By-laws and Site Plan Control, the *Aggregates Act*, and the federal regulation of cell towers. Projects proposed on federal or provincial lands (e.g. CFB Kingston, Corrections Canada) may also be exempt from the City's development review process (for some projects, plans may be submitted to the City for comment or City staff may be requested to be a member of a Technical Steering Committee to provide input into the project).

The key **municipal legislation** that impacts the development review process includes:

Section 17 of the *Planning Act* requires a Municipality to have an **Official Plan**. An Official Plan outlines a municipality's vision for its future. It is a policy document that guides City Council in its decisions about how lands in the community should be used and how growth and change can or should occur over a 20-year horizon in accordance with the Provincial Policy Statement. An Official Plan is a legal document that is adopted by City Council by By-law and approved by the Provincial Ministry of Municipal Affairs & Housing. The City's new Official Plan was approved by the Ministry in January, 2010. The development and redevelopment of land has to comply with the Official Plan in a community. Given this important role, the Official Plan contains objectives, policies and development standards for:

- Various residential, commercial, industrial, institutional, agricultural, rural, recreational and environmental land use designations as well as future growth areas that are shown on a series of maps;
- The location of public services; and

- The protection of cultural heritage and natural resources.

Section 9 of the Official Plan, “Administration & Implementation”, contains a number of policies that directly relate to the development review process. These policies include:

- Section 9.3 regarding Official Plan Amendments;
- Section 9.4 regarding Delegated Authority & Advisory Committees (e.g. Planning Committee, Committee of Adjustment, Heritage Committee, Accessibility Committee);
- Section 9.5 regarding By-laws (includes Zoning By-law, non-conforming uses, minor variances, temporary use, Holding By-laws, Interim Control, height & density bonus, and site plan control);
- Section 9.6 regarding Land Division – includes subdivision control and consent authority;
- Section 9.7 regarding Studies and Guidelines – includes secondary plans, urban design guidelines; and,
- Section 9.12 regarding Public Consultation and Application Requirements, including required information and materials for development applications, additional studies and assessments that may be requested by the City, and public consultation and notice requirements.

Section 7 of the Official Plan, “Cultural Heritage Resources”, includes policies respecting the City’s protected heritage properties, cultural heritage landscapes, the UNESCO World Heritage Designation (Rideau Canal and Kingston Fortifications), heritage conservation districts, areas of heritage character, and archaeological resources.

The Planning Act requires that the City review its Official Plan every five years. The next review of the City’s Official Plan will be 2014. Further information about Official Plans is provided in Citizen’s Guide #2 located under Tab 14 of the Background Information Binder.

Section 34 of the Planning Act gives the City the authority to implement land use regulatory controls through **Zoning By-laws**. Zoning By-laws are adopted by City Council as a By-law but approval by the Ministry of Municipal Affairs and Housing is not required. Currently there are 5 main Zoning By-laws applicable to the City of Kingston (there are another 5 By-laws that apply to individual properties or small areas of the City). A Zoning By-law is used to implement the policies in the Official Plan. The Zoning By-laws are more specific, detailing provisions that must be met. It regulates the use of land, lot sizes and lot development standards (e.g. setbacks, lot coverage, amenity space, density, parking and loading spaces). If a development proposal does not conform to the requirements of the Zoning By-law, a building permit cannot be issued. The City has initiated the process to consolidate all of the existing Zoning By-laws. Further information about Zoning By-laws is provided in Citizen’s Guide #3 located under Tab 14 of the Background Information Binder.

There are also several types of special Zoning By-laws that can be used to control land use, including:

- Section 36 of the Planning Act gives the City the authority to pass **Holding By-laws** which allow future uses for land or buildings but delay development until, for example, local services, such as roads, are in place or required Agreements have been

executed. Section 9.5.21 of the Official Plan includes policies respecting the use of Holding Zones.

Section 38 of the *Planning Act* gives the City the authority to pass **Interim Control By-laws** which put a temporary freeze on some land uses while the municipality is studying or reviewing its policies. The freeze can be imposed for only a year, with a maximum extension of another year (unless the Interim Control By-law is appealed to the OMB). Sections 9.5.23 and 9.5.24 of the Official Plan includes policies respecting the use of Interim Control By-laws.

Sections 39 and 39.1 of the *Planning Act* give the City the authority to pass **Temporary Use By-laws** to zone land or buildings for specific uses for a maximum period of three years at a time, with further extensions of three years each possible. The use to be permitted must comply with the City's Official Plan. When the temporary use is a garden suite (i.e. a one-unit detached residential structure containing bathroom and kitchen facilities that is ancillary to an existing structure and that is designed to be portable) it is authorized for a period not exceeding 10 years, with further extensions of three years each possible. Section 9.5.20 of the Official Plan includes policies respecting the use of Temporary Use By-laws.

Section 37 of the *Planning Act* gives the City the authority to pass **Increased Height and Density By-laws** that allow buildings to exceed permitted standards, but only if the developer provides certain public benefits to the City in return, such as affordable housing, parkland or other community facilities. Section 9.5.25 of the Official Plan includes policies respecting the use of Increased Height and Density By-laws.

Other key pieces of municipal legislation include:

- By-Law No. 2006-75 – **delegates Council's approval authority** to staff for certain planning applications and administrative procedures;
- By-Law No. 2006-65 – designates the City as a **Site Plan Control Area** and establishes procedures for processing Site Plan Control applications;
- By-Law No. 2008-128 – **Site Alteration** By-Law (pursuant to *Municipal Act*);
- By-Law No. 2007-170 – **Tree By-Law** (pursuant to *Municipal Act*);
- By-Law No. 2005-10 – **Fees and Charges** By-Law;
- By-Law No. 2005-98 – **Civic Addressing** and Street Naming By-Law.

Other By-Laws and guidelines may also be adopted by the municipality which provides more detailed policies and regulations for identified issues or specific sites. These would include secondary neighbourhood plans (e.g. Rideau Community and the Catarauqui West Neighbourhood), Urban Design Guidelines, Subdivision Design Guidelines, Site Plan Control Guidelines, as well as transportation studies, commercial studies, studies of zoning standards (i.e. parking) and industrial land use studies.

DEVELOPMENT APPLICATIONS

Official Plan Amendment (OPA)

The City's Official Plan can be amended at any time. Section 22 of the *Planning Act* and Ontario Regulation 543/06 set out the procedures and requirements respecting Official Plan Amendments (OPA). An OPA is a formal document approved by Council By-law that changes a municipality's Official Plan. An OPA may be initiated by the municipality or by an individual land owner. While the Official Plan is intended to be a long-term document (planning horizon of 20 years), occasionally changes may be necessary to amend the policies or land use designations because of new circumstances in the community or to accommodate a new development or redevelopment proposal that was not anticipated when the Plan was prepared. City Council is the approval authority for an OPA unless Council's decision is appealed to the Ontario Municipal Board (OMB).

OPAs generally require a processing time of four (4) to six (6) months from submission of a complete application to a Council decision (the *Planning Act* provides that Council must make a decision within 180 days). The approval process may be longer for applications that propose major developments, deal with complex supporting information or extensive public input or require additional development approvals such as a Draft Plan of Subdivision. Appeals of Council's decision must be filed within 20 days from the date of the Notice of Adoption. An appeal to the OMB could add four (4) to six (6) months to the approval process. Further information about the Official Plan amendment process is provided in Citizen's Guides #2 and #9 located under Tab 14 of the Background Information Binder.

Zoning By-Law Amendment (ZBLA)

If a proposed use is not permitted in the zone for a property, or if the standards of that zone (e.g. density, parking, height) cannot be met by a proposed development, the Zoning By-law may need to be amended. Sections 34, 36, 39 and 39.1 of the *Planning Act* and Ontario Regulation 545/06 set out the procedures and requirements respecting Zoning By-law Amendments (ZBLA), including By-laws establishing Holding Zones or authorizing Temporary Uses. A ZBLA, or rezoning, is a By-law passed by City Council. Since the Zoning By-law implements the Official Plan, a proposed ZBLA must conform to the Official Plan, and if it does not, an Official Plan Amendment may also be required. City Council is the approval authority for a ZBLA unless Council's decision is appealed to the Ontario Municipal Board (OMB).

It will generally require two (2) to three (3) months to process a ZBLA to the stage where a decision can be made by City Council (the *Planning Act* provides that Council must make a decision within 120 days). The approval process may be longer for applications that propose major developments, deal with complex supporting information or extensive public input or require additional development approvals such as a Draft Plan of Subdivision or an OPA. Appeals of Council's decision must be filed within 20 days from the date of the Notice of Passing. An appeal to the OMB could add four (4) to six (6) months to the approval process. Further information about the Zoning By-law amendment process is provided in Citizen's Guide #3 located under Tab 14 of the Background Information Binder.

Removal of Holding Symbol

Section 36 of the Planning Act and Ontario Regulation 545/06 set out the procedures and requirements respecting Council's approval of By-laws using Holding "H" Symbols, which specify the use of lands, buildings and structures at such time in the future as the Holding Symbol is removed by further amendment to the Zoning By-law. Holding symbols are commonly used where the ultimate land use and zoning regulations for a particular property are resolved, but where certain requirements must be undertaken before the ultimate zoning may be implemented. Typically, the holding symbol has been used in Kingston to ensure that all applicable municipal conditions are satisfied prior to development, including final subdivision approval and final site plan control approval and confirmation that adequate servicing capacity exists for the proposed development. Each of the City's Zoning By-laws contains General Provisions which govern the use and removal of Holding Symbols.

Most Holding Symbol approvals are of a routine or housekeeping nature. The process to remove a Holding Symbol typically takes between four (4) to six (6) weeks from the date of submission of a complete application to approval of the amending By-law by Council (the Planning Act provides that Council must make a decision within 120 days). Council has delegated its approval authority for uncontested applications to staff, however the Planning Act requires that the amending By-law be presented to Council for enactment. Appeals to the OMB are limited to the Owner of the land only.

Draft Plan of Subdivision

Approval of a plan of subdivision is a two-stage process consisting of: (1) draft plan approval; and, (2) final approval. A plan of subdivision divides a large parcel of land into several components including lots, blocks, easements and roadways. Sections 50, 51, 51.1 and 51.2 of the Planning Act and Ontario Regulation 544/06 set out the procedures and requirements respecting plans of subdivision. The Draft Plan of Subdivision generally establishes the intended uses for the various blocks and lots comprising the subdivision and the physical form of the development (boundaries, road layout, public lands, sizes of the blocks and lots, stormwater management facilities, etc.). Draft Plan Approval is essentially a commitment on the part of the Municipality to permit the proposed subdivision, once all the conditions of Draft Plan Approval have been fulfilled by the Owner. The Conditions of Draft Plan Approval set out the municipality's requirements with respect to such matters as naming of roads, civic addressing, lands to be dedicated for park purposes, required easements, servicing (water, sewer, gas, electric, communication), lot grading, required studies / reports, and clearances from other agencies (e.g. Hydro One, Conservation Authority, gas utilities). The Draft Plan Conditions must be satisfied prior to Final Subdivision Approval. Draft Plan Approval lapses three (3) years from the date of issuance of Draft Plan Approval if final approval has not been given, unless an extension has been granted by the approval authority.

The Draft Plan of Subdivision process typically takes between four (4) to nine (9) months from the submission of a complete application to approval by City Council (the Planning Act provides that Council must make a decision within 180 days). However, complex applications, for example those involving considerable public input, substantial and perhaps complicated supporting information, or consideration of related applications (such as Official Plan and Zoning By-law Amendments) may take longer. The City of Kingston (City Council) has been delegated approval authority for Plans of Subdivision by the Minister of Municipal Affairs and

Housing. Appeals of Council's decision must be filed within 20 days from the date of the Notice of Decision. An appeal to the OMB could add four (4) to six (6) months to the approval process. Further information about the Subdivision process is provided in Citizen's Guide #4 located under Tab 14 of the Background Information Binder.

Final Subdivision Approval

Once Draft Approval of a Plan of Subdivision has been granted by City Council and has come into effect pursuant to the Planning Act, the proposal then proceeds to the Final Approval stage (aside from the lapsing provision noted above, there is no mandated timeline for submission of an application for Final Subdivision approval). Final Approval includes, among other matters, final engineering design approval, implementing the recommendations of supporting reports, execution of a subdivision agreement, submission of financial securities, the deeding of lands for Municipal purposes (parklands and easements) and Final Plan registration. The clearance of all of the conditions to Draft Plan Approval is the responsibility of the Owner and is a requirement leading to approval of the engineering design for the development and registration of the Final Plan of Subdivision. Prior to Final Approval being granted, the proponent has the option to apply for a Pre-Servicing Agreement and Model Home Agreement to allow the installation of site services and construction of model homes to begin, subject to the engineering drawings being approved and the required financial securities being submitted.

The City of Kingston has been delegated approval authority for Plans of Subdivision by the Minister of Municipal Affairs and Housing. Council has delegated the approval authority for Final Subdivision Approval to staff. Prior to issuing Final Approval, staff prepare a memo to file outlining how each condition of Draft Approval has been fulfilled and confirming the receipt of all required plans and information (executed Subdivision Agreement, transfer documents for public lands / easements, copies of M-Plan, tax certificate, etc.). Once Final Subdivision Approval has been issued, the Subdivision Plan, Subdivision Agreement and associated land transfer documents are registered on title and the owner may begin selling lots / blocks within the subdivision. Further information about the Subdivision process is provided in Citizen's Guide #4 located under Tab 14 of the Background Information Binder.

Lifting Part Lot Control

Section 50(5) of the Planning Act prohibits the conveyance of any part of a parcel of land within a registered plan of subdivision, with limited exceptions. Section 50(7) empowers a municipality to pass a By-law for the purpose of removing Part-Lot Control from all or part of a registered plan of subdivision. Lifting part lot control is used as an alternative to land severance and is commonly used to facilitate the division of semi-detached dwellings and street townhouses into individual lots that follow common party walls and can also be used to adjust lot lines between lots and blocks in plans of subdivision.

The process to Lift Part Lot Control typically takes between six (6) to eight (8) weeks from the date of submission of a complete application to approval of the required By-law by Council. The By-law must be registered on the title of the lands to which it applies. Council has delegated its approval authority for uncontested applications to staff, however the Planning Act requires that the By-law to Lift Part Lot Control must still be presented to Council for enactment.

Draft Plan of Condominium

A condominium plan is similar to a plan of subdivision, in that it is a way of dividing property in which title to a “unit”, such as an individual apartment in a high-rise building, is held by an individual (exclusive use area) together with a share of the rest of the property, which is common to all of the owners (“common elements”). Condominiums can involve a brand new development, or an existing rental project which is converted to condominium ownership. They can apply to any type of residential building (usually apartments or townhouses) as well as commercial and industrial buildings. Condominium conversions in Kingston are governed by Official Plan policies (Section 9.6.25) which require the submission of certain engineering reports, notification to the existing tenants and consideration of the existing vacancy rate, as well as other matters.

There are five types of condominium provided for under the *Condominium Act*:

- Leasehold Condominiums – where the “owner” possesses only a leasehold interest in the property for a period of between 40 and 99 years;
- Standard Condominium – where the building is divided into “units” available for freehold ownership and the balance of the building and surrounding lands are designated as “common elements”;
- Phased Condominium – a Standard Condominium that is developed in stages over a period not to exceed 10 years;
- Common Elements Condominium – comprised only of common elements (e.g. rear laneways) shared by surrounding parcels of land; and,
- Vacant Land Condominium – divided into “units” and “common elements” but must include parcels of vacant land as a “unit”. It can be described as equivalent to a plan of subdivision without the requirement for public roads (e.g. Stephentown Creek).

The Draft Plan of Condominium generally establishes the exclusive use areas and common elements for the proposed buildings. The Conditions of Draft Plan Approval set out the municipality’s requirements with respect to such matters as required easements, servicing (water, sewer, gas, electric, communication), lot grading, required studies / reports, and clearances from other agencies (e.g. Hydro One, Conservation Authority, gas utilities). The Draft Plan Conditions must be satisfied prior to Final Condominium Approval.

The Draft Plan of Condominium process typically takes between three (3) to six (6) months from the submission of a complete application to approval by City Council. Section 9(2) of the *Condominium Act* provides that a draft plan of condominium is subject to the provisions of Sections 51, 51.1 and 51.2 of the *Planning Act* that apply to a plan of subdivision with necessary modifications to a condominium description or an amendment to a description (the *Planning Act* provides that Council must make a decision within 180 days). However, complex applications, for example those involving considerable public input, substantial and perhaps complicated supporting information, or consideration of related applications (such as Official Plan and Zoning By-law Amendments) may take longer. The City of Kingston (City Council) has been delegated approval authority for Plans of Condominium by the Minister of Municipal Affairs and Housing. Appeals of Council’s decision must be filed within 20 days from the date of the Notice of Decision. An appeal to the OMB could add four (4) to six (6) months to the approval process. Further information about the Subdivision / Condominium

process is provided in Citizen's Guide #4 located under Tab 14 of the Background Information Binder.

In those situations where the Official Plan designation and Zoning are already in place and there is an existing Site Plan Control or Development Agreement in place on the property, the proposed condominium may be "exempted" from the draft plan of condominium stage and proceed directly to an application for Final Condominium approval.

Final Plan of Condominium

Once Draft Approval of a Plan of Condominium has been granted by City Council and has come into effect pursuant to the Condominium Act, the proposal then proceeds to the Final Approval stage (aside from any lapsing provision, there is no mandated timeline for submission of an application for Final Condominium approval). An application for final condominium approval includes two documents, to be approved by the municipality, which will be registered on title following approval. The "Declaration" sets out various matters pertaining to the governance of the condominium, including a legal description, a written definition of the components that make up the units, the proportionate shares of the common expenses to be paid by each owner and other rules and provisions as deemed appropriate to address such matters as permitted uses of the units and common elements, any restrictions on occupancy, sales or leasing of the units and the conditions under which an owner must indemnify or pay additional expenses to the condominium corporation. The "Description" is a survey that illustrates the overall property boundaries, each of the units and the common elements and may include architectural and structural plans of the building(s).

The City of Kingston has been delegated approval authority for Plans of Condominium by the Minister of Municipal Affairs and Housing. Prior to Final Approval, staff prepare a report to Planning Committee / Council outlining how each condition of Draft Approval has been fulfilled and confirming the receipt of all required plans and information (executed Condominium Agreement, any transfer documents for public lands / easements, copies of the final condominium plans, the condominium declaration and description, etc.). In the case of an application under the Exemption Process, the staff report will summarize the proposal, the rationale for proceeding under the Exemption provisions and outline any conditions to be included in a Condominium Agreement. Once Final Condominium Approval has been issued, the plans, Declaration, Description, Condominium Agreement and associated land transfer documents are registered on title and the owner may begin selling units within the condominium. Once the Declaration and Description are registered on title, the condominium corporation, the units and the common elements are legally created.

Site Plan Control (SPC)

Site plan control is a form of development control provided to municipalities by Section 41 of the Planning Act. No one can undertake any development which is subject to site plan control unless the City has reviewed and approved certain plans. All of the City of Kingston is designated as a Site Plan Control Area and By-law No. 2010-217 sets out the types of development that are subject to Site Plan Control. Once the plans are approved, a Site Plan Control Agreement is generally executed. This Agreement contractually binds the owner to develop and maintain the site in accordance with the approved plans and the terms of the

Agreement. Typically, Site Plan Control is one of the final approvals required prior to building permit issuance.

The SPC process examines the design and technical aspects of a proposed development to ensure it is safe, functional, attractive and compatible with the surrounding area and contributes to the economic, social and environmental vitality of the City. The review process also ensures that development is in compliance with the City's zoning and development standards. Typically features such as building design, site access (vehicle and pedestrian), site servicing, drainage, stormwater management, traffic impacts, parking, garbage storage, snow storage, and landscaping are reviewed during the Site Plan Control process.

The SPC process typically takes between eight (8) to ten (10) weeks from the date of submission of a complete application (the *Planning Act* provides that Council must make a decision within 30 days). The approval process may be longer for applications that propose major developments or deal with complex supporting information. Council has delegated its approval authority for SPC applications to staff. Pursuant to the Delegation of Authority By-law, any member of Council, the applicant or staff can request that an application be "bumped-up" to Planning Committee for final approval. A "bump-up" request could add a minimum of two (2) to four (4) weeks to the approval process. Appeals to the OMB are limited to the applicant only. An appeal to the OMB could add two (2) to six (6) months to the approval process depending on the nature of the appeal and the complexity of the application.

Committee of Adjustment – Consent

A land severance, also referred to as a consent, is the authorized separation of a piece of land to form a new lot or a new parcel of land. Section 53 of the *Planning Act* and Ontario Regulation 197/96 set out the procedures and requirements respecting consent applications. Consent to sever is required if a portion of land is to be sold, mortgaged, charged or is to form part of a lease agreement lasting more than 21 years. In addition to the division of land, consents include the registration of right-of-ways, easements and any changes to existing property boundaries. If several severances for new lots are intended for the same property or area, a plan of subdivision may be more appropriate.

The consent process typically takes about two (2) months from the submission of a complete application (the *Planning Act* provides that the approval authority must make a decision within 90 days). The approval authority for consent applications proposing the creation of a new lot is the Committee of Adjustment. Approval authority for technical consents (severance along a common party wall, to create or extend a right-of-way or easement, lot boundary adjustment, lot addition, consent to power of sale or mortgage, consent to a lease in excess of 21 years, and validation of title) has been delegated to staff. There is a 20 day appeal period during which the approval authority's decision may be appealed to the Ontario Municipal Board (OMB). An appeal to the OMB could add two (2) to four (4) months to the approval process.

Committee of Adjustment – Minor Variance

A minor variance is a change to the Zoning By-law that 'varies' the regulations for a zone, but does not change the zone itself. Section 45 of the *Planning Act* and Ontario Regulation 200/96 set out the procedures and requirements respecting minor variance applications. Minor variances cannot be used to re-zone a property to a different zone or allow a land use that is

not currently permitted in that zone. Typical minor variances might involve changes to the minimum building setbacks from a property line, minimum lot area or minimum lot width. Other types of minor variance include permission to change or extend a legal non-conforming use and to permit a specific use in situations where the use of land, buildings or structures is defined in general terms. In considering a variance, the *Planning Act* sets out four tests: that the general intent and purpose of the Official Plan and the Zoning By-law are maintained; that the variance is desirable for the appropriate development or use of the land; and, that the variance is minor. Changes to the Zoning By-law which are beyond the limited scope of the Committee of Adjustment must be considered via the process for Zoning By-law Amendments.

The minor variance process typically takes about two (2) months from the submission of a complete application (the *Planning Act* requires that the approval authority must hold the public hearing within 30 days of the receipt of the application and that the Committee's decision be issued within 10 days after the decision is made). The approval authority for minor variance applications is the Committee of Adjustment. There is a 20 day appeal period during which the Committee's decision may be appealed to the Ontario Municipal Board (OMB). An appeal to the OMB could add two (2) to four (4) months to the approval process.

Heritage Permit Application

A heritage permit is required where changes are proposed to properties that are designated under either Part IV or Part V of the *Ontario Heritage Act*. Listed properties do not require a heritage permit where changes are proposed. As set out in Section 33(1) of the *Ontario Heritage Act*, a heritage permit is required prior to any alteration to a designated property that is "likely to affect the property's heritage attributes as set out in the description of the property's heritage attributes" contained within the applicable designation By-law. Heritage permits are also required for any proposals to demolish all or part of a designated building or to repeal or amend a Designation By-law.

Under the City's current process, heritage permit approvals typically require six (6) to eight (8) weeks from the receipt of a complete application. Under the Act, Council has 90 days to respond to a complete application; failure to do so results in deemed approval. The Kingston Municipal Heritage Committee discusses the application and then formulates a recommendation to Council. City Council is the approval authority for heritage permit applications. City Council has delegated its approval authority for some routine applications to staff. Once Council has approved the application, the Building Department may be in a position to issue any required building permits. If the applicant disagrees with Council's decision, an appeal can be filed with the Conservation Review Board within 30 days from the receipt of Council's decision.

APPROVAL AUTHORITY DELEGATED TO STAFF

Dating back to 1998, the City of Kingston has progressively streamlined the development review process by delegating to staff Council's authority to approve various municipal processes (e.g. Site Plan Control, Final Subdivision Approval, technical consents), by providing for direct referral to Council of other planning applications (e.g. Part Lot Lift, Removal of 'H' Holding Symbols) and certain administrative matters (e.g. release of agreements, amendments to condominium descriptions / declarations). As indicated in the Report of the Development Review Task Force, dated June 21, 2000, delegating authority to staff to make as many decisions as possible at the administrative level is a best management practice that can help municipalities to improve their planning approvals process. Finding additional internal efficiencies to streamline approval processes is also consistent with the objectives outlined in Kingston's Strategic Plan 2011-2014 which include: to meet the needs of our internal and external customers promptly and courteously; to enhance service by streamlining the development process; and, to improve the flow of information, customer service and turnaround time.

The following is a summary of Council's approval authority that has been delegated to staff:

To the Director of Planning & Development or Designate

By-law No. 2006-75, as amended, sets out the **planning approvals** that have been delegated to staff and the procedures for the processing of planning applications that are subject to the delegated authority. The approvals delegated to staff include:

- Approval of Site Plan Control applications (application can be "bumped-up" to Planning Committee for final approval at request of a member of Council, the applicant or staff);
- Requests to reduce or release Site Plan Control securities;
- Draft Plans of Subdivision – to sign the Draft Plan once approved by Council and to approve minor changes to the Draft Plan or the Conditions of Draft Plan Approval;
- Approval of applications for Final Subdivision Approval (application can be "bumped-up" to Planning Committee and Council for final approval at request of a member of Council, the applicant, or staff);
- Approval of Technical Consents (applications to sever along a common party wall, to create or extend a right-of-way or easement, to adjust a lot boundary or facilitate a simple lot addition, for consent to a power of sale or mortgage, consent to a lease in excess of 21 years, and, for validation of title);
- Approval of applications to Lift Part Lot Control (By-law must be presented to Council for enactment);
- Approval of applications to Remove Holding Symbol (By-law must be presented to Council for enactment);
- Requests to Release Agreements (e.g. Development Agreements, Site Plan Control Agreements, Subdivision Agreements);
- To sign amendments to a Condominium Description and/or Declaration;
- Approval of applications for Cash-in-Lieu of Parking.

By-law No. 2005-227, as amended, sets out the **heritage permit approvals** delegated to staff pursuant to the Ontario Heritage Act and the procedures for the processing of heritage permit

applications that are subject to the delegated authority. The approvals delegated to staff include:

For properties designated under Parts IV and V of the Ontario Heritage Act:

- Repainting in the same or similar colour;
- Replacement of asphalt roofing where there is little or no change in colour or design;
- Repaving of driveways;
- Landscaping which does not require heavy machinery and which will not significantly change the appearance of the designated property; and
- Replacement of siding where the material and colour is not being changed.

For newer properties, defined as being constructed after 1960:

- Re-pointing of masonry based on the *Masonry Guidelines* developed by the Kingston Municipal Heritage Committee;
- Replacement/repair of windows and doors unless these were part of the reasons for designation;
- Replacement of any roofing material where there is little or no change in colour or design; and
- Replacement of any deteriorated material provided it is done in kind and replicates the original.

To the Director of Engineering or Designate

By-law No. 2006-116 sets out the delegated approvals to staff for the processing of the assumption of public works and the dedication of highways, lanes and walkways, including the release of easements, blocks and lots and the procedures to be followed in the exercising of such delegated authority. The approvals delegated to staff include:

- Approval of the dedication of City-owned lands for public highway, lane or walkway purposes;
- Approval of the issuance of the Preliminary Certificate of Approval of the Works (PCAW) to accept the public works in a plan of subdivision;
- Release of easements, blocks or lots that were transferred to the City for temporary turning circles, access roads or stormwater management facilities within plans of subdivision.

Any required By-laws associated with the foregoing delegated authority must be presented to Council for enactment.

To the President and CEO of Utilities Kingston or Designate

By-law No. 2003-170 authorizes the President and CEO of Utilities Kingston or designate to approve and sign applications to the Ministry of the Environment under Sections 52 and 53 of the Ontario Water Resources Act (works for the collection, transmission, treatment and disposal of sewage or any part of such works).

DEVELOPMENT REVIEW PROCESS

PRE-CONSULTATION

Pre-Consultation meetings are a mandatory part of the development review process (*Planning Act* and City By-law) for most planning applications. Pre-consultation meetings are held every second Tuesday morning for applications for Official Plan Amendment (OPA), Zoning By-law Amendment (ZBLA), Site Plan Control (SPC), Draft Plan of Subdivision (DPS) and Draft Plan of Condominium (DPC). Pre-consultation for Committee of Adjustment applications is typically arranged with the Planner assigned to deal with these applications.

The purpose of the pre-consultation meetings is to facilitate timely processing and approval by identifying the required planning approvals, supporting studies (e.g. traffic impact, tree preservation, stormwater management, parking, noise), plans and other information to be submitted and any key technical issues that will need to be addressed. The proponent is required to submit a preliminary site design and written overview of the proposal to the Planning and Development Department one week in advance of the meeting. The proponent's submission is distributed to the technical staff (e.g. Planning, Building, Engineering, Utilities and Parks) and external agencies (e.g. Conservation Authority and Health Unit) that attend the pre-consultation meeting for their review and preparation of preliminary comments on the development proposal. Details of proposals discussed at pre-consultation are considered to be confidential until such time as a formal application is submitted.

Following the pre-consultation meeting, the proponent receives a Development Application Pre-Consultation Form that has been completed by the Planner assigned to the file. That Form identifies the required approvals, application fees, the necessary plans and supporting studies for each approval, as well as any key technical requirements, concerns or comments that were identified during the meeting based on the proponent's initial submission. While the intent of the pre-consultation meeting is to identify all requirements related to the proposal, on occasion additional information / studies may be required based on staff's review of the formal application submission and further project details. There are no mandated timelines between pre-consultation and formal application submission.

APPLICATION SUBMISSION

Applications are submitted to the Planning & Development Department which is responsible for coordinating the municipality's response to development applications. As a minimum, the following information must be provided in order to accept an application:

- Development Application Pre-consultation Form with proponent's portion filled out;
- One (1) copy of the completed Application Form(s);
- Required application fee(s) paid in full;
- The required number of drawings and reports as identified on the Pre-consultation Form.

For some application types (e.g. Draft Plan of Subdivision) the *Planning Act* Regulations prescribe the information and material that is required to be submitted. The assigned Planner will review the proposal and completed Pre-Consultation Form with the proponent to ensure

that all required applications and supporting materials have been submitted with the application. Processing of an application may be delayed until such time as all required information has been submitted. The quality of the plans and supporting information may also result in delays in the processing of an application.

Following the submission of the application, a number of administrative matters are required, including: opening the files; entering the files into the City's electronic database; processing the fees; creating the file tracking checklists; etc.

NOTICE OF COMPLETE APPLICATION

For an OPA, ZBLA, DPS and DPC, once it has been determined that the application submission includes all the required information, a Letter of Complete Application must be provided to the proponent. While the municipality has 30 days under the Planning Act to make this determination, this is typically done as soon as possible.

Where the submitted application is not deemed complete, a Letter of Incomplete Application is provided as soon as possible to the applicant outlining the additional information, reports or studies that are required. This information is relayed initially by telephone call, with a written letter following immediately thereafter. (Should the applicant disagree with the City's assessment of the completeness of the application, the Planning Act provides the applicant with 30 days to make a motion to the Ontario Municipal Board for a determination on the matter and the Board's decision is final.) When all information has been submitted to the satisfaction of the Department, the Planner can then issue a Letter of Complete Application, as noted above. As this is a requirement of the Planning Act, it is an important step in the process to avoid procedural irregularities.

In addition, the legislation now requires that for an OPA, ZBLA, DPS and DPC, the City shall provide a Notice of Complete Application to the prescribed persons or public bodies within 15 days after the City issues the Letter of Complete Application to the proponent. Said Notice is generally to be provided in the same form as a Notice of Public Meeting. Whenever possible, the City combines the Public Notice of Complete Application and the Public Meeting Notice, provided that the notice requirements for both can be met (i.e. 20 days in advance of the public meeting and within 15 days after the Letter of Complete Application is issued). If there is a period of time between the initial application submission and the scheduling of a public meeting, then the Notice of Complete Application will be given separately in order to meet the legislative requirements, and the Notice of the Public Meeting will be given later.

Any **mandated timelines** for a decision by the approval authority generally commence once an application has been deemed complete. For some applications (SPC and COA) the timeline commences upon receipt of the application and required information, but there is no requirement to issue a notice of complete application. The mandated timelines as set out in the Planning Act and Heritage Act are:

- Official Plan Amendment – 180 days;
- Zoning By-Law Amendment – 120 days;
- Draft Plan of Subdivision / Condominium – 180 days;
- Site Plan Control – 30 days;

- Committee of Adjustment Consent – 90 days;
- Committee of Adjustment Minor Variance – public hearing must be held within 30 days of receipt of application and notice of decision issued within 10 days;
- Heritage Permit Applications – 90 days.

TECHNICAL CIRCULATION

The Planner assigned to the project will circulate the details of an application together with the appropriate plans and studies to various internal departments of the City and external agencies, as part of the technical circulation (typically within 5 working days from complete application receipt). For most applications, the *Planning Act* Regulations prescribe the persons and bodies to be notified. The circulation list varies depending on the application type. For Committee of Adjustment and heritage permit applications the circulation list is relatively short. For Draft Plans of Subdivision, the circulation list is much more extensive. Depending on the application type and location of the property, the circulation list may include municipal departments (e.g. Planning & Development, Building & Licensing, Engineering, Utilities Kingston, Parks, Fire & Rescue, Transit, etc.), external agencies (KEDCO, Conservation Authority, Health Unit), school boards, abutting municipalities (e.g. Loyalist Township, South Frontenac Township), utility companies (e.g. Hydro One, Bell, Cogeco, Union Gas, Trans-Canada Pipelines), railway companies, provincial ministries (e.g. Municipal Affairs and Housing, Environment, Natural Resources) and federal departments (e.g. Parks Canada, Fisheries and Oceans, Canada Post).

Responses to the initial technical circulation are required within 10 working days from the date of circulation (30 days for plans of subdivision) and within five working days for subsequent circulations (15 days for plans of subdivision). Responses received are consolidated by the assigned Planner and forwarded to the applicant and/or agent. Where there are a significant number of responses, a meeting may be arranged to review the comments with the applicant / agent to ensure there is an understanding of the issues and any additional information to be provided.

The applicant / agent submits the required additional information and revised drawings to address the initial technical circulation comments to the assigned Planner, who then re-circulates the material to the appropriate departments / external agencies (there is no mandated timeline for the applicant / agent to resubmit revised plans or updated information). The assigned Planner will also work with the applicant and arrange meetings with departments or external agencies, if required, to address technical comments or concerns. Complete re-submissions that address all of the technical responses are key to enabling the various departments / agencies to fully review the revised drawings and updated information in the context of their previous comments and provide a response within the requested time frame. This process of applicant submission, City review / comment and applicant re-submission continues until such time as all departments / agencies have signed-off on the proposal.

BUMP-UP PROVISIONS

By-law No. 2006-75 (Delegated Authority) establishes the procedures to be followed by staff in exercising Council's delegated authority. For Site Plan Control applications, applications for

Final Subdivision Approval and technical consents, the By-law provides for a “bump-up” process. In the case of a Site Plan Control application, the “bump-up” is to Planning Committee for final approval. For Final Subdivision Approval the “bump-up” is to Planning Committee and Council for final approval. Where a technical consent is “disputed”, the application is referred to the Committee of Adjustment. Council is circulated applications for Site Plan Control (at the same time as the initial technical circulation) and Final Subdivision Approval (following receipt of the application) and provided with a response date for any “bump-up” requests to be submitted in writing together with the reasons for requesting the “bump-up”. If the reasons for requesting the “bump-up” can be satisfactorily addressed during the processing of the application, the “bump-up” request may be rescinded. The procedures also provide that staff or the applicant can also request a “bump-up”. This would typically occur if the applicant disagreed with one or more of the municipal conditions of approval or where there was disagreement between staff and the applicant respecting required works.

Most “bump-up” requests relate to Site Plan Control applications. In the majority of those situations, the application is considered by the Committee, “approved in principle” and then referred back to staff to issue final approval once any remaining issues are addressed and the Site Plan Control Agreement has been executed.

If there is a “bump-up” request, the timelines for processing the application will be impacted given the need for preparation of a staff report to Committee / Council and consideration of the application at a Committee and / or Council meeting.

PUBLIC MEETING

The *Planning Act* requires that at least one public meeting be held respecting applications for Official Plan and Zoning By-law amendments, Draft Plans of Subdivision / Condominium and Committee of Adjustment applications (consents and minor variances). For technical consents, if there are no objections raised during the technical circulation process, there is no requirement for a public hearing.

The Act prescribes the notice procedures (form, content and timing) and the persons and bodies to be notified. Where applications are being processed concurrently, one consolidated public meeting will be held for all the applications. Staff prepares a report to the approval Committee that typically includes a description of the subject lands, a summary of the proposed development and an outline of the applicable regulations and policies in the Official Plan, Zoning By-law and the Provincial Policy Statement. Reports to the Committee of Adjustment also include a planning analysis and staff recommendation. For some Zoning By-law amendments, a combined Public Hearing / Comprehensive report will be presented to Planning Committee, which report also contains a planning analysis and staff recommendation.

Notice of the Public Meeting must be given in accordance with the requirements of the *Planning Act*. The formal notice required by the Act is provided by: (1) first class mail to all property owners within 120 metres (60 metres for consents and minor variances) of the subject lands and to other interested parties requesting to receive notification; and (2) the installation of signage on the subject lands by the applicant in accordance with the City’s signage

specifications. Informal notice is also posted on the City's website and is included in the "courtesy notice" published on the City page of the Kingston Whig Standard. Where the matter affects large areas or the entire municipality, Notice may be provided by publishing it in a newspaper of sufficiently general circulation in the area. Notice of the public meeting must be given:

- At least 20 days in advance of the meeting for applications for OPA and ZBLA;
- At least 14 days in advance of the meeting for applications for draft plan of subdivision / condominium;
- At least 14 days in advance of the meeting for applications for consent;
- At least 10 days in advance of the meeting for applications for minor variance.

There is no requirement to hold a public meeting or provide formal public notice for Site Plan Control (SPC) applications, applications for Final Subdivision / Condominium approval, or applications to Lift Part Lot Control and Remove a Holding Symbol (notice is provided to the owner of the lands and any person requesting to receive notice). The City's procedures require the applicant to post signage on the property for a SPC application. Where a SPC application is "bumped-up" to Planning Committee, the courtesy notice published in the Whig-Standard will list the SPC application as a matter to be discussed by the Planning Committee. If an application for technical consent is "disputed" and referred to the Committee of Adjustment, then the notice requirements for a consent application would apply.

The Planning Committee typically meets on the 1st and 3rd Thursdays of each month and the Committee of Adjustment meets the 4th Monday of each month. At the public meeting, the applicant / agent is afforded the opportunity to make a presentation describing the proposed development, summarizing any key studies / reports and providing the rationale for the submitted applications. Staff may then supply any supplementary information as well as a brief summary of the staff report and any public input received. Committee members may then ask questions of the applicant / agent or staff for clarification. Interested members of the public may make written submissions to the Committee or appear before the Committee to comment on the application or ask questions. Once all public input has been received, the applicant / agent is afforded an opportunity to respond to the comments and summarize the application. After this, the public meeting is closed.

In some cases an **application may be amended** following the public meeting in response to technical comments or issues identified by the public or the Committee at the public meeting. The nature and extent of the changes may necessitate the holding of a second public meeting. If there were any procedural irregularities in terms of the giving of notice for the public meeting (e.g. signage not posted 20 days before the meeting), a second public meeting would also be required. Where there are changes to the application following the public meeting, the Planning Act indicates that it is the responsibility of Council to determine whether or not further public notice is required and said determination of Council is final.

Following the public meeting, Planning Committee, in the case of a combined Public Hearing / Comprehensive Report, will discuss the application and make a recommendation to Council as part of its regular meeting. Where it is a Public Hearing Report only, the Committee will consider a comprehensive report and make its recommendation at a future Committee meeting. Following the public portion of a Committee of Adjustment meeting, the Committee discusses and makes a recommendation on the application.

PREPARATION OF COMPREHENSIVE STAFF REPORT

Following the public meeting, the assigned Planner prepares a comprehensive staff report to Planning Committee. This report will include an analysis of the proposed development and the applicable policies and by-laws, a summary of submitted reports / studies, a discussion of the issues raised in any of the technical responses and at the public meeting (including any specific matters identified by Committee members), and a recommendation on whether the application(s) should be approved or rejected. If the comprehensive report recommends approval of the application(s), any conditions to the approval will be included (e.g. conditions of draft plan approval) together with a draft of the proposed Amending By-laws (Official Plan and / or Zoning By-law). The draft conditions and amending by-laws are circulated to the applicant / agent for their review and comment prior to finalizing the report.

The time required to prepare the Comprehensive Report will depend on the complexity of the project, the type of application(s), the amount and nature of public input, any identified technical matters to be addressed, and the need for any additional information from the applicant. In some cases, particularly for significant developments or ones that have become controversial, the applicant may be requested to have some of the **supporting studies peer reviewed**. The applicant is responsible for the cost of the peer review. Studies that are typically the subject of a peer review include Market Impact Studies, Traffic Impact Studies, Employment Lands Review and Noise Impact Studies.

Once the report is drafted by the assigned Planner, it is reviewed / approved by management staff in the Planning & Development Department and then forwarded to the Commissioner of Sustainability & Growth for review. The report is then submitted to the Clerks Department for inclusion on the Planning Committee agenda. All reports are also reviewed / signed by the Chief Administrative Officer. Some reports may also require sign-off by other Commissioners.

COMMITTEE DECISION

The comprehensive report and recommendations will be considered during a regular meeting of the Planning Committee. During the Committee's discussion of the application, questions may be directed to staff respecting the report or recommendations, however no further public comment or input by the applicant is permitted (written correspondence may be submitted at any time up to Council's approval of the application). The Committee may recommend to City Council that the application(s) be approved with or without changes to the staff recommendation and draft By-laws or that the application(s) be denied. In some cases, based on the Committee's discussion, the application may be deferred or referred back to staff until additional information is received, either from the applicant or staff.

COUNCIL DECISION

Planning Committee's recommendations are forwarded to City Council for final approval. The Planning Committee Report is considered by Council in open session and Council may adopt the Committee's recommendation, amend it, reject it or refer it back to the Planning Committee or staff for further consideration / information. If an application is approved by City Council, the amending By-law(s) respecting Official Plan and Zoning By-law amendments will be given all three readings and passed at that City Council meeting.

NOTICE OF DECISION

After the Committee of Adjustment or City Council makes a decision on an application, the *Planning Act* requires that Notice of that decision be issued. The Act prescribes the form of the Notice, the timing for issuing the Notice, and the persons and bodies to whom the Notice must be given.

For Committee of Adjustment applications, Notice respecting a minor variance application must be given not later than ten days after the decision is made and for consent applications, within 15 days after the decision is made. For technical consents approved by staff, Notice must be given within 15 days after the decision is made. The Notice includes information on the approved variances and land severance together with any conditions imposed by the Committee. The Notice also sets out the final day for any appeals to be submitted. For all Committee of Adjustment decisions, the City typically provides Notice within 2-3 days following the decision.

For applications for Official Plan and Zoning By-law amendments and Draft Plans of Subdivision / Condominium, Council must give Notice within 15 days from the date of the decision / passing of the amending By-law(s). The Notice of Adoption (Official Plan amendment), Notice of Passing (Zoning By-law amendment) and Notice of Decision (Draft Plan) include information on the By-law amendments (location, purpose and effect) as well as the conditions of draft plan approval. The Notice also sets out the final day for any appeals to be submitted. In most cases, the City provides the required Notice within 7 – 10 days following the decision.

If no appeals to the Committee / Council decisions are received, the decisions are final and come into effect.

APPEAL OF DECISION

The *Planning Act* provides for an appeal process for decisions on planning applications. Any person with an interest in the matter may appeal a decision of the Committee of Adjustment or Council to the Ontario Municipal Board (OMB) provided that they made a presentation at the public meeting or provided a written submission prior to the decision being made. The appeal must be filed within 20 days of the making of the decision. An appeal must be submitted to the City Clerk prior to expiration of the appeal period and must set out the portion of the decision being appealed and the reasons in support of the appeal and be accompanied by the fee prescribed by the OMB (\$125.00). In most cases the appeal must be forwarded by the City to the OMB within 15 days after the appeal period expires together with the required Record (all

reports, minutes, comments, studies, plans, affidavits of service and other relevant information pertaining to the matter).

If an application is appealed to the Ontario Municipal Board (OMB), the final decision will be made by the Board following a Municipal Board Hearing. The OMB is an independent administrative tribunal that is responsible for hearing appeals. It operates similar to a court of law, but with less formality. Members of the OMB are appointed by the Ontario Cabinet and the Board operates under the Ontario Municipal Board Act as well as its own rules of practice and procedure. The Board takes the place of the approval authority and can make any decision that the approval authority could have made. A Hearing may last only a few hours if the matter is quite simple, but for more complicated matters, the Hearing may last for several days or even weeks. Depending on the complexity of the matter, it may take 2 – 6 months for the OMB to schedule the Hearing. Typically, Notice of a Hearing is required to be provided at least 35 days in advance of the Hearing to all parties and participants. For appeals respecting Official Plan and Zoning By-law amendments, a 60 day notice may be required.

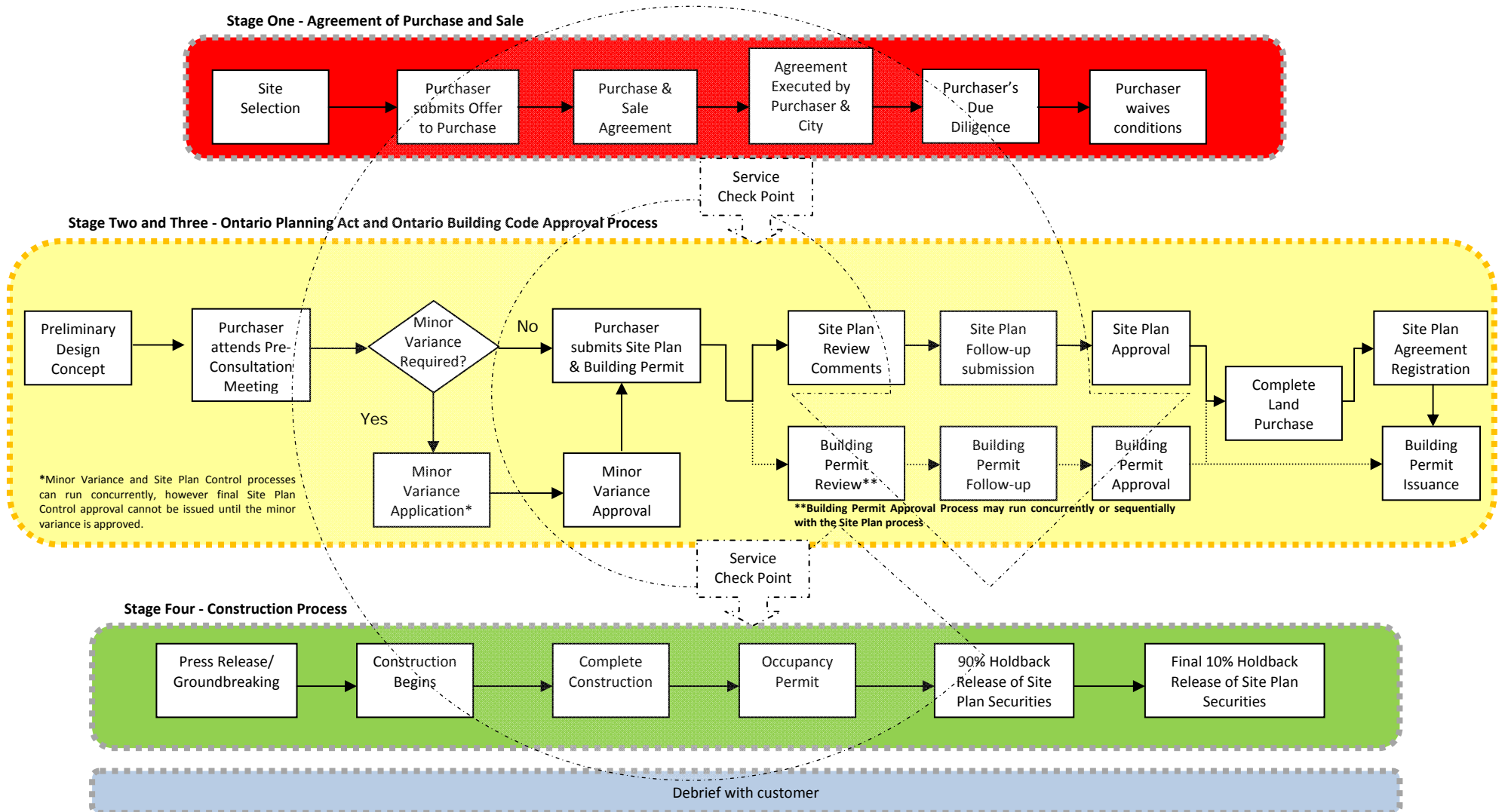
In advance of the full Board Hearing, the following practices may be utilized by the OMB:

- Telephone conferencing – where appropriate, for example, to deal with procedural matters;
- Mediation – to bring the various parties together to see if the matter can be settled with the guidance of a mediator;
- Pre-Hearing conference – to better organize a complicated hearing and potentially shorten the hearing by identifying the parties/participants, narrowing the issues, establishing rules for pre-filing documents, and setting out the order and presentation of evidence.

The OMB has expanded powers to dismiss an appeal without a hearing based on a number of grounds, which include: appeal not based on land use planning grounds; the appeal is frivolous or vexatious; appellant did not make submissions before the decision was made; written reasons for the appeal were not provided; the Board fee was not paid; and, the appellant did not respond to requests by the Board for further information.

Once the Hearing has been held, the Board will issue its Decision and / or Order. If the matter is relatively straight forward, the Board may issue an Oral Decision at the conclusion of the Hearing and then follow up with its written Decision / Order. For more complex matters, the Board typically reserves its Decision. Receipt of the written Decision / Order may take a few weeks or months depending on the issues that were before the Board and the amount of evidence submitted to the Board.

8 APPENDIX ONE – LAND DEVELOPMENT APPROVALS SYSTEM AND PROCESS



CITY OF KINGSTON COMMITTEE OF ADJUSTMENT MINOR VARIANCE PROCESS

Introduction

- A Minor Variance (a minor zoning variation) application to the Committee of Adjustment is subject to Provincial legislation and Regulations under the Ontario Planning Act.
- The Committee of Adjustment is a quasi-judicial body appointed by the Council of the City of Kingston. It makes a final decision on an application. No further local review of the decision is or can be made.
- This is not a political process.

Pre-consultation

- Pre-consultation with Planning Staff (at no cost to you) is mandatory under the provisions of the Ontario Planning Act prior to submitting an application.
- An appointment may be made with City of Kingston Planning Staff by calling 613-546-4291 ext. 3180
- You must provide all of your application details and plans for a review by the Planner.
- Provide a simple, clear, written description and justification for your request and file it with your application.
- A separate application form and fee is required for each transaction being requested.
- No staff member has the authority to pre-determine a decision of the Committee of Adjustment.

City of Kingston Minor Variance Application Form

- http://www.cityofkingston.ca/pdf/planning/COA_MinorVariance.pdf

Submission

- The applicant shall provide the Committee of Adjustment with such information or material as the Committee of Adjustment may require – see Plans Requirements in the application form.
- One copy of the completed, signed and Commissioned application and plans with all of the requirements detailed in the application and measurements must be in metric. If the plans you are submitting are on paper are larger than 8½" x 14", please submit 1 (one) copy of the plan on 8½" x 14" paper and **fold** your larger plans;
- If you are submitting as an example, a variance for a garage (attached or detached), an addition, a new dwelling, additional dwelling units or application for variance for an increase in height, you must include elevation drawings and detailed floor plans;
- For a commercial, industrial, all multi-residential and other applications please include on your plans the following additional information, (where applicable):
 - ▶ Parking layout
 - ▶ Parking space sizes
 - ▶ Amenity Area
 - ▶ Landscaping

Changes to the Application

- If changes are made to the application following the final submission that are considered to be substantive, the application may have to be re-circulated which could result in additional fees to the applicant.
- Be certain the application is complete and accurate at the time of filing.

City of Kingston Fees

- The fees for an application to the Committee of Adjustment are established by the Council and are adjusted on a yearly basis. The fees are payable and non-refundable regardless of the decision of the Committee.
- Fees may be discussed during pre-consultation.
- The Minor Variance fees are set out in the City of Kingston Fees and Charges By-Law 2005-10 which is updated annually
<http://www.cityofkingston.ca/pdf/planning/PlanningApplicationFees.pdf>

Other Fees

- The Health Unit which is circulated for every application that is on private services. <http://www.kflapublichealth.ca/Directions.aspx>
- The Cataraqui Region Conservation Authority which is circulated if required where wetlands, watercourses and environmentally sensitive lands are involved also has review fees. <http://www.cataraqueiregion.on.ca/>

Length of Process

- The Committee meets once per month were there are applications to be considered.
- In the best circumstance the total process for an application takes about three (3) months from the cut-off date prior to the meeting date. It can take longer if the application is found to be incomplete, changes are made to the application, a deferral is encountered, or an appeal is received after the decision.

Public Notice

- This is a public process whereby the owners within 60 metres (200 feet) of the subject property are notified.
- The applicant must also post signage (provided by the Committee of Adjustment Office) on the property frontage(s) according to the City of Kingston signage policy.

Technical Circulation

- Your application is circulated to the required internal and external Departments and Agencies.

Site Inspections

- Site inspections are carried out by Committee members and planners.
- If there are features present that have not been identified by you in the application, your application could be negatively affected.
- If the sign(s) that is/are provided to you has/have not been posted for the appropriate time and in the appropriate location(s), the Committee may postpone the application until the notice requirements have been met.

Meeting

- Each application is conducted as a separate public hearing.
- Where there are more than one related applications the Committee may hold a joint hearing.
- The applicant will be afforded the opportunity to provide additional information and will be permitted to respond to comments following the public portion of the hearing.
- Anyone may support or object to the application verbally or in writing to the Committee of Adjustment before or at the hearing.
- All submissions received by the Committee are considered in reaching a decision.

Decision

- The Committee will make a decision publicly the night of the hearing and a written decision will be provided following the hearing.

Precedent

- The Committee of Adjustment does not set precedent. Each application is unique and each application is considered on its own merit.

Appeal Period

- There is a 20 day appeal period commencing the day following the date of the decision.

Appeal Process and the Ontario Municipal Board

- Anyone including the applicant may appeal the decision to the Ontario Municipal Board with the appropriate fee.
- If the decision is appealed to the Ontario Municipal Board with the appropriate fee, the Ontario Municipal Board is then seized with the application and will decide whether a new hearing on the application will be held.
- The Ontario Municipal Board hearing and procedural rules will apply and the application and decision are no longer in the hands of the City of Kingston.
- Traditionally hearings have been held in the City of Kingston Council Chambers.

Meeting Conditions Imposed in a Decision

- If a favourable decision is made and the appeal period has passed it is all in the hands of the applicant to complete any conditions that may have been imposed within the required time limit.
- If conditions are not completed on time by the applicant the application may be deemed to be refused.
- If a refusal occurs where conditions have not been met, the applicant will have to file a fresh application with the current fee and go through the process again.