

O.M.B. Imposes Strict limits on Parkland Dedication

A January 15, 2015 decision of the Ontario Municipal Board is the OMB's first ever foray into a contested hearing on Official Plan policies dealing with the amount of park dedication that a municipality may require as a condition of development approval under the Planning Act.

Following a lengthy hearing between the Town and several developer appellants who received funding assistance from BILD, the Board determined that Richmond Hill's use of the alternate rate of 1 ha per 300 units authorized by the Planning Act must be capped at a maximum of 25 percent of the developable area of the site or the cash-in-lieu equivalent - regardless of the site area, the density, or the number of units proposed in a development.

Impacts of the Decision for Richmond Hill

- Richmond Hill's Official Plan must stipulate that park dedication will be capped at 25 percent, even where the alternative rate of 1 hectare per 300 units authorized by the Planning Act would lead to a substantially higher rate. This will severely constrain Council's decision-making ability with respect to the Town's park dedication by-law, even though the Planning Act provides that the specific rate is to be determined by council by-law.
- Despite the Board not taking issue with the amount of parkland the Town has determined it needs through its detailed *Parks Plan*, Richmond Hill will not meet its parkland needs through Planning Act dedications and may need to utilize other sources such as the tax base to meet its needs. Development charges cannot be used for parkland acquisition, and other potential revenue tools for municipal parkland and recreational needs are extremely limited.
- The Town-wide per capita provision rate of parkland will fall more precipitously over time than anticipated.
- The provision of parkland in growing high density areas will be more limited and in less supply compared to older low density areas.

Potential Impacts for Other Ontario Municipalities

- This decision will set a precedent for OMB adjudication of all new Official Plans that are under appeal at present and in the future.

- The Development Industry may apply for Official Plan amendments in other municipalities and seek to have the OMB compel a lower park dedication rate as a matter of OP policy. As in Richmond Hill’s case, it could be substantially lower than what the Planning Act authorizes.
- The Development Industry may use this decision to influence the Provincial Legislature’s current review of Planning Act park dedication, thus lowering the park dedication rate for all Ontario municipalities.

What Richmond Hill is Doing

- The Town has requested that the OMB conduct an internal review of its decision as provided under Section 43 of the Ontario Municipal Board Act.
- The Town has recently brought an application for Leave to Appeal to the Ontario Divisional Court on a question of law under Section 96 of the Ontario Municipal Board Act. The Town intends to ask the Court to determine that the Board has erroneously interpreted the Planning Act regarding the use of the alternate park dedication rate.
- As for timing of the Town’s application for Leave to Appeal, the next step is for the Town’s Factum material in support of our motion to be filed with the Court by March 23, 2015.

What Your Municipality Can Do

- One of the tests to be met in order to be granted leave to appeal to the Divisional Court is the determination that the OMB decision involves a matter of broad public importance. The Court must understand that this OMB decision may impact all Ontario municipalities that acquire parkland or cash-in-lieu through the development process, and not just Richmond Hill.
- Having your municipality seek to become a “friend of the court” during the leave to appeal hearing will not only underscore the gravity of the OMB decision, but also identify the broader municipal impact and matters of public importance for your municipality.

Appendix "A"

- A request by your municipality to be a friend of the Court should be filed as soon as possible and by no later than March 23, 2015.
- If this OMB decision is allowed to stand, the residents of your municipality may be faced with less parkland than the previous generation or have no choice but to accept higher taxes just to sustain existing parkland service levels!

Richmond Hill appreciatively seeks your help on this matter of importance to the future of our municipalities and municipal governance.