



The Corporation of the Town of Milton

Report To:	Council
From:	Barbara Koopmans, Commissioner, Development Services
Date:	June 22, 2020
Report No:	DS-015-20
Subject:	Virtual Statutory Public Meetings under the <i>Planning Act</i> .
Recommendation:	<p>THAT Council authorize virtual statutory public meetings under the <i>Planning Act</i> to be held in order to satisfy the public consultation requirements of the <i>Act</i>, to allow land use planning applications to be processed and decisions made;</p> <p>AND THAT the necessary amendments to the Procedure By-law, included on the June 22, 2020 Council Meeting Agenda, be approved.</p>

EXECUTIVE SUMMARY

In response to the current COVID-19 pandemic and the need to socially distance, in person Council meetings have been suspended for the health and safety of staff and the public. As the Town is committed to business continuity and with recent amendments made by the Province through the *Municipal Emergency Act, 2020*, staff is recommending that virtual statutory public meetings be held in order to allow decisions to be made with respect to land use planning applications.

REPORT

Background

In response to the COVID-19 pandemic, the Town of Milton has closed all Town facilities to protect the health and safety of our community and staff. The Town continues to provide many of its services and has transitioned to a largely remote workforce. As the Town continues to provide land use planning services, statutory public meetings pursuant to the *Planning Act* must occur in order to be able to move forward with decisions. The following is an overview of the key background events and facts:

- On March 19, 2020, the Province authorized *the Municipal Emergency Act, 2020*, that allowed municipal Councils, during a declared emergency, the ability to participate electronically in a meeting that is closed to the public, and for this participation to count toward quorum.

- On March 24, 2020, the Town of Milton declared an emergency under the *Emergency Management and Civil Protection Act*, due to the COVID-19 pandemic.
- On March 30, 2020, Council amended the Procedure By-law to allow for electronic Council participation during the declared emergency.
- On May 11, 2020, Council further amended the Procedure By-law to allow delegations to participate electronically at Council meetings pursuant to *Municipal Emergency Act, 2020*.
- The passing of Bill 189 and O.Reg. 149/20 suspended timelines under the *Planning Act* including decision making timelines by municipalities that if not met would otherwise give rights to appeal. This legislation provides the discretion to allow those municipalities who want to proceed with planning applications to do so while allowing those that are not in a position to proceed to redirect efforts to dealing with the COVID emergency without risking appeals for missing deadlines. The timelines would return to normal once the provincial emergency ends.
- The provincial regulation allows the implementation of planning decisions if no appeal is filed, however, if an LPAT appeal to an application is made, the matter will remain suspended for the duration of the provincial emergency.

In response to the COVID-19 pandemic, the Town of Milton is committed to business continuity by ensuring that it can be adaptable and flexible by providing alternative and innovative service delivery. Accordingly, Development Review staff is fully operational albeit remotely. This includes continuing to receive new applications and evaluate existing applications. Electronic submission guidelines have been developed and are posted on the Town's web site instructing applicants regarding new submissions including fee payments. Pre-consultation meetings are being conducted virtually.

On May 1, 2020, the Town announced that closure of facilities would extend to July 6, 2020. While the Town remains committed to responding to the emergency, it is also focusing on phased recovery efforts in line with Provincial and public health guidelines. Staff is uncertain at this point in time, when it would be able to resume Council meetings in our customary setting within Council Chambers of Town Hall. As such, it is recommended that public meetings as contemplated by the *Planning Act* be held virtually in order to proceed with planning applications for the foreseeable future.

Discussion

Statutory Public Meetings under the *Planning Act*

The *Planning Act* requires statutory public meetings to occur before Council decisions on land use planning applications can be approved. The main purposes of these meetings

are to engage the public in the planning process, to provide them with sufficient information to understand what is being proposed and how that proposal may impact them, to allow them to provide comments directly to Council and to crystalize rights related to appeals.

In order to qualify as a statutory public meeting under the Act, it is essential that the prescribed public meeting notice requirements are complied with and it is ensured that everyone who attends and wishes to make oral representation has a fair opportunity to be heard. This is outlined in the Town's Official Plan (Sections 5.3.3.14 and 5.3.3.16) as well as section 17 (19.2) and 34 (14.2) of the *Planning Act* noting that every person who attends a public meeting shall be given opportunity to make representations in respect of the proposed plan and/or By-law. At statutory public meetings, while members of the public can register as a delegate if they so choose, any member has the right to make an oral submission to Council without pre-registering. As such, the Chair will open the floor for any individual who wishes to speak to a proposed by-law. In addition to making oral submissions, members of the public can make their views known by means of written submissions which are provided to Council and become part of the public record. It is important to note that providing comments in writing and making oral representation at a meeting are both equally valid methods of participating in the process and protecting the right to appeal.

The *Planning Act* does not specifically speak to whether statutory public meetings can be held virtually. Historically the language has connoted physical meetings and physical attendance, however, modern statutory interpretation requires that the public meeting provisions be interpreted in a purposeful manner. Statements made during the legislative debates of Bill 187 and 189, as well as the Province's commentary in the Bulletin on Bill 189 make clear that the Province is of the view the *Planning Act* public meeting requirements can be satisfied electronically if the right mix of technologies and procedures are utilized. In addition, on April 17, 2020, the Ontario Ombudsman released a ruling on electronic meetings in relation to the Township of Russell. The Ombudsman urged all municipalities to do as much as possible to facilitate access by the public to any meetings held electronically during a declaration of emergency. This was the first time the Ombudsman conducted an investigation into a municipal meeting following the passage of the *Municipal Emergency Act, 2020*, which allows for additional flexibility in holding electronic meetings during an emergency, such as the COVID-19 pandemic. As a best practice, the Ombudsman recommends that municipalities should provide clear instructions in the agenda or meeting notice indicating how members of the public can access a meeting that is being conducted electronically.

That being said there is no indication on what the proper procedure is to hold a statutory public meeting, such as those required to be held under the *Planning Act*. Many municipalities are beginning to hold statutory public meetings electronically, as there is nothing in the *Planning Act* that stipulates a public meeting must provide for physical or in-person attendance.



In order to ensure that virtual public meetings could satisfy the requirements of the *Planning Act*, staff obtained a legal opinion from the Town's solicitor. In that opinion, our solicitor noted that absent an express provision in the *Planning Act*, or a court or LPAT decision on point, there can be no 100% certainty that a virtual public meeting will be found to meet the public meeting requirements pursuant to the *Planning Act*. However, it is likely that a court will find the statutory requirements have been met if the virtual public meeting satisfies all of the technical requirements of the Act; performs all the legal functions of an in person meeting as well or better than an in-person meeting and in particular provides an opportunity for anyone who wishes to speak to be heard and finally is broadly accessible.

Staff is of the opinion that the above noted technical requirements can be met and that the necessary protocol and procedures can be put in place that work as closely as possible to a customary in person public meeting.

Protocol and Procedures to allow for Virtual Statutory Public Meetings

The Town has already successfully broadened electronic Council meetings to allow for electronic participation of delegations. As a result of this report, the Legislative and Legal Services Division has developed further amendments to Procedure By-law 007-2019 in order to ensure public participation at statutory public meetings, as part of Council meetings held electronically during the current declared emergency. The proposed provisions have been included within a draft by-law on the June 22, 2020 Council meeting agenda.

Staff from Legislative and Legal Services, Information Technology (IT) and Planning have been working collaboratively to ensure that this can be built upon and further broadened to allow members of the public to actively participate in a live Council meeting and be able to provide comments on an item without the need for pre-registering. The following outlines the approach proposed to be taken in order to achieve the intent of the legislation.

Before the meeting:

- Provide notice in accordance with the *Planning Act*. Where feasible, we can provide greater advance notice than required by the Act.
- Any notice of the public meeting will advise members of the public of the restrictions in attending in person Council meetings and ensure all the details of the planned meeting, including technologies to be used, guidance materials (i.e. electronic delegate meeting guide), timelines, web pages are provided.
- The notice will provide clear and concise instructions and steps required in order to participate.
- Allow for advance submissions via email or through a recorded message/voicemail that can be counted as representations at the public meeting for the purposes of the Act.



- Submit your comments in writing by filling out the Delegation Request Form or by e-mailing townclerk@milton.ca
- Register as a delegate to make an oral submission or electronic presentation: Requests to delegate to an Electronic Meeting in the course of an emergency shall be made by way of electronic submission of the Delegate Request form on the website, submitted by noon two days before the Electronic Meeting. If the Electronic Meeting is on a Monday, requests to delegate shall be submitted by noon on the Thursday before the meeting. Alternatively, in cases of connectivity issues, delegates may leave a voicemail at the following number 905-878-7252 ext. 0 requesting assistance with submitting their delegation request.
- The Town will encourage the practice of registering to delegate in advance of the meeting.

During the Meeting:

- During the course of the meeting, those members of the public who want to make a request to make an oral submission can call a dedicated phone number or can email townclerk@milton.ca and they will be given step by step instructions on how to enter the meeting. It should be noted that those who register during the course of a live meeting will not have the ability to provide written submissions on screen or electronic presentations due to security screening concerns. Delegates who wish to provide an electronic presentation or written submission must first register as a delegate as noted above. Any written submissions received would be forwarded to Council following the meeting.
- The dedicated phone number and email to make an oral submission will be provided on the Town's website, social media, and the Mayor/Chair will advise the public at the beginning of the meeting and before the close of the public meeting that any members of the public can call the number and will be instructed how they can provide their comments to Council via phone audio and added to the delegate list. Registration information can also be made available on the live webcast of the meeting.
- When waiting to be called upon the Mayor/Chair all delegates will have their audio on mute.
- The Chair/Mayor will allow for a short recess in order to ensure any member of the public can call in to make up for any delay in the live feed prior to the last call for delegations.
- Staff will maintain a log of anyone who contacts the Town wishing to speak and follow up with anyone who is "dropped" while trying to make contact with the Town or while seeking to speak.

After the meeting:



- Staff will conduct a review to determine if process adjustments need to be made and in particular whether there was anyone who for any reason wished to speak was unable to do so.
- Council could also always defer its decision if it is of the opinion that all public comments have not been heard on a particular development application and require a second public meeting be held prior to any recommendation being made.

Staff is working with our Town Communications staff to ensure that a fulsome approach is taken in order for the public to clearly understand how they can actively participate in electronic meetings. Also, for those with accessibility concerns, staff will work with the person in order to make the necessary accommodations so that they are able to effectively participate.

Committee of Adjustment and Consent (COA) Meetings

Should Council authorize virtual statutory meetings, the next step for staff would be to extend this to the Town's Committee of Adjustment and Consent (COA) meetings. COA meetings have been postponed since the state of emergency has been declared. Notwithstanding, staff has been in a position to accept, process and review applications and place them in a queue (with the owners authorization and understanding) until such time as the COA meetings could resume. Currently, the Town has 15 minor variance applications that have been processed and are held in queue and awaiting to be heard. Staff would use the same technology and similar protocol and procedures so that we would be able to proceed with COA meetings. Should the Town require any procedural changes to the COA By-law for this to occur, this will be brought forward for Council's consideration at a future date.

Conclusion

Staff is confident that following the protocols and procedures as outlined in this report will meet the legislation under the *Planning Act* for statutory public meetings. It will allow for public meetings under the Act to commence virtually and in turn allow for the complete processing of land use planning applications to continue. Should Council approve of this recommendation, it is anticipated that the earliest statutory public meeting could occur at the July 20, 2020 Council meeting.

Financial Impact

None arising from this Report

Respectfully submitted,

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Commissioner, Development Services



The Corporation of the Town of Milton

Report #:
DS-015-20
Page 7 of 7

For questions, please contact: Christian Lupis, MCIP, RPP Phone: Ext. 2305
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Attachments
None

CAO Approval
Andrew M. Siltala
Chief Administrative Officer