

Minute No. 6 as recorded in the Minutes of the meeting of the Council of The Regional Municipality of York held on January 25, 2018.

6 Report No. 1 of the Commissioner of Corporate Services and the Chief Planner

It was moved by Regional Councillor Li, seconded by Mayor Dawe that Council adopt the following recommendations in Report No. 1 of the Commissioner of Corporate Services and the Chief Planner regarding “Proposed Inclusionary Zoning Regulation Content EBR Posting 013-1977”:

1. The Province be advised that York Region has significant concerns with the utility of Inclusionary zoning as a tool to increase the supply of affordable housing if the Regulations are approved as currently described in EBR Posting No. 013-1977. Specifically:
 - a. The prescriptive nature of the proposed regulations brings the feasibility of inclusionary zoning into question,
 - b. Municipal resources required to administer the zoning, coupled with mandatory municipal financial offsets, is likely to result in unacceptable impacts to municipal budgets, and
 - c. Inclusionary zoning as proposed through the draft regulation content will not meet Provincial objectives as municipal uptake will likely be limited.
2. The Province be requested to revisit the draft regulations and revise in consultation with municipalities.
3. The Regional Clerk circulate this report to the Federal Minister of Families, Children and Social Development, the Provincial Ministers of Housing and Municipal Affairs, the Clerks of the Local Municipalities and the Association of Municipalities of Ontario.

Carried

Report dated January 11, 2018 from the Commissioner of Corporate Services and the Chief Planner now follows:

1. Recommendations

It is recommended that:

1. The Province be advised that York Region has significant concerns with the utility of Inclusionary zoning as a tool to increase the supply of affordable housing if the Regulations are approved as currently described in EBR Posting No. 013-1977. Specifically:
 - a. The prescriptive nature of the proposed regulations brings the feasibility of inclusionary zoning into question,
 - b. Municipal resources required to administer the zoning, coupled with mandatory municipal financial offsets, is likely to result in unacceptable impacts to municipal budgets, and
 - c. Inclusionary zoning as proposed through the draft regulation content will not meet Provincial objectives as municipal uptake will likely be limited.
2. The Province be requested to revisit the draft regulations and revise in consultation with municipalities.
3. The Regional Clerk circulate this report to the Federal Minister of Families, Children and Social Development, the Provincial Ministers of Housing and Municipal Affairs, the Clerks of the Local Municipalities and the Association of Municipalities of Ontario.

2. Purpose

This report provides an update on draft inclusionary zoning regulation content proposed through the Province's Environmental Registry (EBR) Posting No. 013-1977, and seeks endorsement of this report as comments to be submitted to the Province prior to the comment period deadline of February 1, 2018.

3. Background and Previous Council Direction

Municipalities have been requesting inclusionary zoning as a regulatory tool to require affordable units in new development

Affordable housing is a matter of Provincial interest under the *Planning Act*. The new Growth Plan, 2017, requires municipalities to establish targets for affordable housing. However, municipalities do not have sufficient planning tools to require the development of affordable housing that meets the Regional Official Plan affordability thresholds and targets.

Instead, in recent years, municipalities have been using supportive policy and some financial incentives to encourage the incorporation of affordable housing units in new developments. These tools have been insufficient in delivering an appropriate mix of unit types (i.e. family sized units) and tenure of affordable units to address the needs of residents. As the Region is facing acute housing affordability pressures, and with greater requirements for affordability targets, municipalities have been seeking inclusionary zoning as a strong tool to mandate affordable units, where appropriate.

York Region submitted comments on the use of inclusionary zoning in August 2016

On [September 22, 2016](#), Council endorsed staff comments submitted to the Province on a Provincial Discussion Guide on inclusionary zoning. Among other things, Council highlighted the need for the Province to:

- Provide flexibility for municipal implementation
- Address the complexities of a two tiered system
- Permit cash-in-lieu and the establishment of affordable units off-site
- Allow municipalities to determine measures and incentives, if any, and not require them through legislation

In December 2016 the *Promoting Affordable Housing Act* received Royal Assent

The *Promoting Affordable Housing Act*, when proclaimed would amend the *Planning Act* to give municipalities the option of requiring affordable housing units through inclusionary zoning. Proclamation of the Act is pending finalization of regulations.

On December 18, 2017, the Province released a summary of its proposed inclusionary zoning regulations

The proposed regulations include the following:

- Official Plan policy requirements
- Administrative requirements, including the need for an initial Municipal Assessment Report and bi-annual monitoring reports
- Provisions of inclusionary zoning bylaws including caps on the number of affordable units to be required, the affordability period and incentives (unless in an area subject to a Community Planning Permit system)
- Provisions of inclusionary zoning agreements including the equitable sharing of proceeds of affordable housing units over time
- Restrictions on off-site units and inability to use Section 37 of the *Planning Act* for affordable units in areas subject to inclusionary zoning
- Purpose built rental and non-profit housing exempted from application of an inclusionary zoning by-law

The draft regulation content does not address Council's comments of September 2016.

4. Analysis and Implications

Changes to the inclusionary zoning regulation are required to make the legislation a useful tool to increase the supply of affordable housing

The minimum required changes to the proposed inclusionary zoning regulation, described in the following sections, are as follows:

1. The elimination or drastic reduction of mandatory municipal incentives
2. The ability to apply and to satisfy the requirements of the inclusionary zoning legislation to purpose built rental and non-profit housing
3. An increase to or elimination of the maximum unit set aside requirements of 5 to 10 per cent

Proposed Inclusionary Zoning Regulation content includes the requirement for substantial mandatory municipal incentives

Included in the proposal is the requirement for municipalities to provide a financial incentive to the development or redevelopment equal to 40 per cent of the difference between average market price for the affordable units and the affordable price. Within York Region this quantum could be quite substantial, especially for family sized, ground related units. Staff estimate between \$50,000 and \$200,000 would be required to off-set an affordable ground related unit (townhouse, semi-detached, single-detached). With the regulations as proposed, it appears that the obligation for the provision of municipal financial incentives is at the local municipal level.

The proposed regulations indicate that financial incentives would not be required for development or redevelopment within an area subject to a community planning permit system (formerly development permit system). Community planning permit systems are implemented at the lower tier municipal level and, while the system may be efficient once established, they involve significant work to put in place. To date, none of York Region's local municipalities have chosen to pursue community planning permit systems.

The proposed regulations also prevent the use of density bonusing under Section 37 of the *Planning Act* as an offset. This is a low cost off-set popular in other jurisdictions including the United States. Staff had expected that inclusionary zoning would be a meaningful tool to require affordable units as part of new developments, with incentives provided at the discretion of the municipality.

Pro forma work undertaken in consultation with the York Region Local Municipal Housing Working Group suggests that incentives are not necessary for affordable ownership units

In 2016 York Region established the York Region Local Municipal Housing Working Group comprised of planning staff from the local municipalities, and planning and Community and Health Services (housing) staff from the Region. Research and pro forma analysis has been undertaken by York Region staff, in consultation with the York Region Local Municipal Housing Working Group, for the purposes of assessing the need for a housing incentives framework. This work indicates that ownership housing developments are currently providing strong, viable returns, even with affordability requirements incorporated. An ownership development was deemed viable if the return on investment (ROI) was 10% or greater, and for rental developments an internal rate of return (IRR) of 10% or greater was deemed viable. Table 1 identifies average returns of ownership and rental developments modelled in the pro forma work which incorporate affordable units consistent with Regional Official Plan targets (35 per cent of units in Regional Centres and Key Development Areas and 25 per cent elsewhere).

Table 1
Average Returns by Location Type and Tenure

Tenure	Regional Centres	Key Development Areas/ Local Centres	Periphery	Total	Viable Return
Ownership (ROI)	26.0%	33.0%	43.4%	35.6%	≥10%
Rental (IRR)	-3.0%	-0.6%	-4.8%	-2.4%	≥10%

Source: York Region Planning and Economic Development

More detail on the pro forma work will be provided in reports to Committee of the Whole over the next few months, providing updates on the work of the York Region Local Municipal Housing Working Group. Based on results of the pro forma analysis, it appears that purpose built rental units may benefit from financial incentives, but incentives may not be needed for viability of ownership developments. Staff feels that any warranted municipal incentives should be a partnership between local and upper-tier municipalities.

The regulations should allow for rental units to meet inclusionary zoning requirements

The proposed regulation content indicates that purpose built rental projects are exempt from inclusionary zoning requirements. York Region has an extremely limited supply of rental housing in general, and affordable rental housing in particular. To promote a mix and range of built form and tenure, purpose built rental developments and redevelopments should be permitted to meet inclusionary zoning requirements. Staff recommends that the Province not exempt purpose built rental through the regulations, but rather allow for municipal discretion in application.

The proposed cap on affordable units required is too low as both tenures should be addressed

The Growth Plan requires that municipalities have a Housing Strategy which establishes targets for affordable ownership housing and rental housing. Within York Region, the Official Plan requires that 35 per cent of new housing units within Regional Centres and Key Development Areas, and 25 per cent of new housing units in all other areas, be affordable. The tenure of affordable units to meet Regional targets is at the discretion of proponents of development in consultation with municipalities.

The draft inclusionary zoning regulations are proposed to cap the requirement for affordable units within a development at 10 per cent within high density transit areas and 5 per cent in other areas, and only apply to ownership units. This makes achieving the Regional targets a challenge. Staff recommends that the cap be increased and include both rental and ownership units. While an increased percentage may not be required everywhere, it would provide

municipalities with flexibility to meet broader municipal targets not afforded by the substantially lower proposed caps.

The prescriptive nature of the proposed regulations brings the feasibility of inclusionary zoning into question

In addition to the mandatory financial offsets discussed earlier in this report, significant municipal resources will be required to administer delivery and monitoring of inclusionary zoning. The proposed regulations appear to require municipalities to undertake the following:

- An initial Municipal Assessment Report
- Establish market and affordable prices by location annually
- Enter into agreements for each inclusionary zoning development
- Assess purchaser eligibility (presumed, not explicit in the draft regulation content)
- Monitor and ensure affordability over the term of the agreements (20-30 years)

Implementation of inclusionary zoning as proposed would require significant resources. Additional municipal resources required to administer the zoning, coupled with mandatory municipal financial offsets are likely to result in unacceptable impacts on municipal budgets. It is important to note that staff foresees a significant role for the Region as noted in this report but the draft regulations fail to address the two-tiered system.

5. Financial Considerations

Resources required to administer the zoning, coupled with mandatory municipal financial offsets is likely to result in unacceptable impacts on municipal budgets

There are significant unknowns regarding potential Regional costs to administer delivery of inclusionary zoning. While implemented at the local level (if desired), staff resources, knowledge and expertise reside at the Regional level to determine need, establish thresholds and assess eligibility. The extent to which local municipalities would request Regional assistance in this regard is unknown.

6. Local Municipal Impact

While use of inclusionary zoning is optional, it requires implementation at the local municipal level, likely in partnership with the Region. Draft regulation content has only been available since late December and the comment period ends on February 1, 2018. Notwithstanding that, on January 19th staff met with the Local Municipal Housing Working Group (which includes Regional and Local Municipal staff) to discuss the draft regulation content. Local municipal staff has expressed comparable concerns with the draft regulation content as outlined in this report. Staff is recommending that the Province revise the proposed regulation in consultation with local and upper-tier municipalities prior to finalizing the regulations.

7. Conclusion

Inclusionary Zoning, with the implementation restrictions and requirements set out in the draft regulations, is not the tool municipalities were seeking

Staff foresees implementation challenges with inclusionary zoning as described in the draft regulation. Local municipalities are the enabling municipality but the Region has a mandated affordable housing obligations prescribed through the Growth Plan and through its role as Service Manager, as well as knowledge, resources and housing system data.

Upper-tier municipalities have significant obligations to plan for adequate housing for all residents as required by the Growth Plan, and other Provincial housing legislation. Having well-developed planning tools to achieve our mandated requirements/objectives without imposing significant costs or burden on local municipalities is of paramount importance to achieve an appropriate mix and range of housing options.

Draft regulations propose significant municipal administration, mandatory municipal incentives or a community planning permit process, and limit the number of affordable units that can be achieved. As a result, staff has significant concerns about the utility of inclusionary zoning as proposed to be implemented through the draft regulations.

With these restrictions and requirements in place, inclusionary zoning as proposed through the draft regulation content will not meet Provincial objectives as municipal uptake will likely be limited. Staff is recommending that the Province revisit the draft regulations and revise in consultation with municipalities.

Proposed Inclusionary Zoning Regulation Content EBR Posting 013-1977

For more information on this report, please contact Paul Freeman at 1-877-464-9675 Ext. 71534 or Sandra Malcic at ext. 75274.

The Senior Management Group has reviewed this report.

January 11, 2018

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Accessible formats or communication supports are available upon request