



September 27, 2023

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Planning and Housing Committee  
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file #051989-00003

Attention: Nancy Martins, Administrator

Dear Chair and Committee:

**Re: Planning and Housing Committee Meeting 6 – September 28, 2023  
Agenda Item PH6.2 – Bill 109 Implementation, Phase 3 – Recommended Official  
Plan (OPA 688) and Municipal Code Amendments respecting Site Plan Control  
Request for Deferral**

We are counsel to the Building Industry and Land Development Association (BILD). On behalf of BILD, we thank the City for engaging the organization and its membership on the City's response to Bill 109, the *More Homes for Everyone Act, 2022*. For the reasons outlined below, we request that consideration of Item PH6.2 be deferred until all implementation concerns with the proposed instruments have been appropriately addressed.

Bill 109 represents part of the Province's implementation of the recommendations of the Ontario Housing Affordability Task Force Report, meant to reduce overall cost, delay and cut red tape to achieve the goal of delivering 1.5 million new homes over the next 10 years. Amongst other amendments, to encourage faster decisions to facilitate the delivery of housing, Bill 109 established application fee refunds if a municipality fails to make a decision within the applicable *Planning Act* timelines. Contrary to staff's view, BILD does not view the Bill 109 amendments as "punitive" but sees such provisions as supporting pre-existing statutory timelines to ensure timely review of development applications is prioritized.

BILD appreciates the concerns raised by staff in the implementation of Bill 109, but views the City's stated key principles guiding its response to Bill 109, being the mitigation of risk to cost recovery of development review services and prioritization of good city-building outcomes, as ultimately contrary to the intent of the legislation and the Province's housing affordability goals. The City's proposed new process, in its focus on reducing risk to the City, is designed to increase overall application time, increase costs, add red tape, and will lead to unnecessary and duplicative proceedings, contrary to the clear purpose of the provincial legislation and contrary to Council's commitment to deliver 285,000 new Toronto homes by 2031.

BILD is not supportive of proposed OPA 688 which would establish “in-effect zoning compliance” as a complete application requirement for site plan control approvals, eliminating concurrent application review, and the proposed amendments to Section 415-19.2 in Chapter 415 of the Municipal Code, which prohibit concurrent mandatory pre-application consultation and impose expiry periods on the Mandatory Pre-Application Consultation meeting. The effect of the amendments eliminates concurrent review, processing, and consideration of zoning by-law amendment and site plan control applications.

### **OPA 688 is premature and contrary to provincial direction**

BILD is concerned with the recommended two-step implementation approach, which provides for adoption of OPA 688 imposing the new complete application requirements prior to having in place the planned terms of reference which will specify when the new complete application requirement is required and how it can be met. BILD’s members are concerned the contemplated “Zoning Applicable Law Program” will result in an overly onerous and time-consuming process. The adoption of OPA 688, which staff acknowledge represents “a significant change in practice”, without establishing how the underlying requirement and process may be achieved without unreasonably expanding conditions of approval, will result in uncertainty and delays for applicants and will ultimately increase housing costs and timelines.

Further, BILD does not agree that in-effect zoning compliance is an appropriate complete application requirement. Applicants have a statutory right to submit development applications to the City and have these considered in accordance with the *Planning Act*, *City of Toronto Act, 2006*, as well as other applicable policy and legislation. The only statutory pre-condition that a municipality may impose is a requirement to consult with the municipality prior to the submission of an application. The only substantive pre-condition to a complete application permitted by the legislation is the submission of the “information and material” listed by regulation and such other “information or material” a municipality has listed in its official plan. It is BILD’s position that there is no authority for the City to impose an additional Zoning Applicable Law application process as a requirement for a complete application.

Finally, though staff state that OPA 688 will support scoped review of zoning by-law amendment and site plan control applications, the City’s current guidance documents and practice do not delineate all requirements as between zoning by-law amendment and site plan control applications. At this time, staff still as a matter of course require “site plan level” details at the zoning stage. Without clear scoped and separate application requirements determined and adopted and a change in approach to development review, including identifying what may be truly required to render each application type complete such that the merits of an application may be assessed by the City, OPA 688 will lead to duplication of applicant and staff efforts and costs. We also note that in some cases, applications which have proceeded sequentially have resulted in the need for subsequent amendments or variance applications, as necessary variances are often identified at the detailed design stage. The City’s current practice of finalizing a zoning by-law amendment concurrently with site plan or requiring site plan submission prior to variance applications best ensures accuracy and conformity, which, for

example, can be particularly important if there is potential heritage value at a site, as the alteration details are not typically fleshed out until site plan. As the proposed amendments will result in increased risk of errors, duplicative efforts and increased timelines, it is BILD's view that OPA 688 is contrary to the purpose and intent of Bill 109 and contrary to the express authority under the *Planning Act*.

## **Municipal Code amendments are *ultra vires***

It is a fundamental purpose of the *Planning Act* to "provide for planning processes that are fair by making them open, accessible, timely and efficient." The City's practice to date has been to provide comprehensive consultation meetings that address all City requirements for a proposed development, and which assist applicants with determining which applications will be required, and what information and material will be required in support of those applications. Rather than explore opportunities for greater efficiency, the City is now proposing the opposite: to expand process and increase timelines, disallowing concurrent site plan and zoning by-law amendment application consultation, resulting in multiple sequential consultation meetings to be held for the same project and preventing any formal progress on site plan applications.

In 2022 staff reported that 29 - 33% of applicants that requested a consultation meeting did not obtain a meeting *within the same year*. In our opinion, where Council has imposed a requirement to meet, a meeting and the consultation process must be made available to applicants within a reasonable time and a process which does not allow this to occur is beyond the scope of authority given to it. Given the increased resources required to deliver the proposed sequential mandatory pre-application consultation process with duplicative meetings, it is critical to ensure the new process can be implemented before amendments come into force.

Finally, BILD's members object to the broadly imposed expiration of application requirements, including the retroactive imposition of a 12-month expiry on application requirements established prior to April 3, 2023. Such an approach fails to consider the time it takes to prepare all of the requested information and material and will result in duplication of consultation efforts which in many cases will not result in amended requirements, leading to further application and development delays, further undermining the purpose and intent of Provincial goals, policies and legislation.

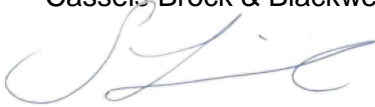
In closing, the proposed Municipal Code and Official Plan amendments will prevent comprehensive consideration of development applications, resulting in a process that is not fair, open, accessible, timely or efficient and will result in further development delays. While the City's proposal may mitigate risk of refunds, it will prevent good city-building outcomes, and ultimately, the achievement of the Province's goal of building more homes faster. For these reasons, we request the Committee defer a decision on the recommendation of Item 6.2 to allow for further consultation and consideration of the mechanisms for implementation. While BILD does not support the elimination of concurrent applications as currently proposed, as a partner in city-building, BILD is hopeful that through further consultation and consideration a

development review approach can be developed which meets the Province's goals and the intent of the legislative amendments while mitigating City risk.

We thank you for the opportunity to provide comments and ask that our office is provided with notice of any meetings and decisions related to these matters.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in blue ink, appearing to read "Signe Leisk", written over the printed name.

Signe Leisk

SL/AP/nv

c.c. BILD members