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Phase 2 Administration Report

Town of Whitby Comprehensive Zoning By-law Study

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IN THE ZONE

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1 Introduction



This report forms part of the Whitby Zoning By-law Review Study, a comprehensive phased undertaking that sets out to update Whitby's existing zoning by-laws into a new single Comprehensive Zoning By-law for the Town. The overall intent of the Zoning By-law Review Study is to create a new zoning by-law that will implement the Official Plan, that is clear, concise and easy to read and that provides necessary land use and built form direction while being flexible in implementation where appropriate.

Phase 1 of the Study consisted of a thorough review and comparison of the Town's existing Zoning By-laws, Zoning By-Law #1784 ("1784"), Zoning By-Law #2585 ("2585") and Oak Ridges Moraine Zoning By-Law #5581-05 ("5581-05") and identification of issues within the By-laws.

Phase 2 focuses on analyzing the issues identified in the Phase 1 reports in order to develop recommendations and approaches for each of the topic elements.

The objective of this Phase 2 Administration Report is to provide strategic direction and a general blueprint for the administration section of the Town's new Comprehensive Zoning By-law.

This report is broken down as follows:

Section 2: Provides a brief overview of the Phase 1 Administration Report.

Section 3: Outlines the recommended approach for the administration section within the new Comprehensive Zoning By-law.

Section 4: Includes a summary of recommendations and outlines next steps.

2 Phase 1 Background



As part of the Phase 1 Administration Report, a review and analysis of Whitby's existing Zoning By-Laws was undertaken to critically compare the existing administration sections. The review consisted not only of the existing sections labeled as "Administration", but also any other sections that are related to administration of the zoning by-law, such as the "Violations and Penalties" section of Zoning By-law 1784.

The review of the like sections highlighted some similar provisions across the zoning by-laws, as well as some differences. There were a number of provisions that appeared in one of the zoning by-laws, but not the other two. In the detailed analysis, components from each zoning by-law were identified to be carried forward, sometimes with edits, into the new Comprehensive Zoning By-law. In addition, a best practice review of other municipal zoning by-laws was undertaken, identifying potential provisions to be considered for inclusion into Whitby's new Comprehensive Zoning By-law.

The analysis undertaken in the Phase 1 Administration Report formed the basis of this report.

3 Outline of Administration Section



3.1 Recommendations on Existing Provisions

Table 1 proposes recommendations for the Administration section of the new Whitby Comprehensive Zoning By-Law, based on the analysis undertaken in Phase 1.

Within the table, edits are recommended to simplify wording and make it easier for the reader to follow. Where suggested edits to the existing wording are recommended, these are shown in **bold** for additions and ~~strikethroughs~~ for deletions.

The recommendations contained in this report are initial recommendations. Many of the provisions contained in the Administration Section are of a legal nature and the final wording will depend on the format and content of the final By-law. Legal wording to give effect to the final Comprehensive Zoning By-law will be further reviewed and revised in consultation with the Town of Whitby Legal Services in future phases of this Study.

Table 1: Recommended Administration Provisions

Title of Subsection	Purpose	Recommendation
Title	Outlines what the Zoning By-law may be referred to as.	Carry forward wording from 1784/2585 Section 1, which is the same, but modify as noted below. "This By-law, #####-##**,** may be cited as the "Zoning By-Law **or "this By-law"**."
Administrator	That a designated employee administer the Zoning By-law.	Existing wording is outdated. Recommend using wording from Barrie, Innisfil and Oakville as follows: "**This By-law shall be administered by the person designated by the Council of the Town of Whitby as the Zoning Administrator."**
Building and Other Permits	That no building permits or municipal licenses be provided if in violation of the Zoning By-law.	Rewrite based on some examples reviewed to simplify wording. **No person shall use or alter any lands, buildings, or structures unless the use is specifically permitted and built in accordance with the provisions of this By-law. The requirements of this By-law must be met before a Building Permit or approval of an application for a municipal license is issued for the use of land or the use, erection, addition to or alteration of any building or structure.**

Title of Subsection	Purpose	Recommendation
	That no erection of building or structure or change of use can occur without a permit.	Carry forward wording from 1784 Section 15b) because of simple and clear wording, however, section related to the Building Permit Application is deleted as it is addressed in a later section. "No person shall erect and use any building or structure without first obtaining ~~from the Building Inspector~~ a Building Permit. ~~A written application for such Permit shall show the following particulars:~~ ~~a) Location and size of the land.~~ ~~b) Location and size of the building.~~ ~~c) Proposed location of all future buildings.~~ ~~d) All services to be used or installed.~~ ~~Statement by the owner of the intended use of the land and buildings.~~"
Conformity and Compliance	That no person shall change the use or erect a building or structure except in conformity with the By-law.	This provision is to be combined with the **Building and Other Permits** provision above.

Title of Subsection	Purpose	Recommendation
Certificate of Occupancy	No change to use, building or structure permitted until a certificate of occupancy is provided.	This section is recommended to be deleted as Certificates of Occupancy are no longer issued by the Town.
Application for Permits	Outlines the submission requirements for a building permit.	This provision is recommended to be deleted. Modern by-laws no longer outline the submission requirements.
Inspection	The permissions related to property inspections conducted by the Building Inspector. (i.e. Inspector or officer/employee acting under Council can enter during reasonable hours, carrying out duties under the By-law.)	Carry forward wording from 2585 Section 27.5) with edits for inclusivity. Recommended wording will be reviewed with Legal Services through the next phases. "~~The~~ **A** Building Inspector or any officer or employee of The Corporation acting under the direction of ~~the~~ Council is ~~hereby~~ authorized to enter, at all reasonable hours, upon any property or premises for the purpose of carrying out ~~his~~ **their** duties under this By-law."

Violations and Penalties/Enforcement	Penalties applicable if any provisions of the By-law are violated.	Update existing provisions to simplify and modernize, including reference to the Planning Act, as per examples reviewed. "**Any person or corporation who contravenes any provision of this By-law is guilty of an offense and upon conviction is liable to the fine(s) as provided for under the Planning Act, R.S.O. 1990, c.P. 13, as amended**."

Title of Subsection	Purpose	Recommendation
Remedies	Contravention may be restrained by actions of the Corporation pursuant to the Municipal Act	Carry forward wording from 2585 Section 27.7) with edits to improve clarity. Recommended wording will be reviewed with Legal Services through the next phases "In case any **lot,** building or structure**, or part thereof,** is to be **used,** erected, altered, reconstructed ~~-~~**or** extended ~~or part thereof is to be used, or any lot is to be used,~~ in **violation** ~~contravention~~ of any requirements of this By-law, such **violation** ~~contravention~~ may be **stopped** ~~restrained by action~~ at the **request** ~~instance~~ of ~~any ratepayer or of~~ The ~~Corporation~~ **Town** pursuant to the provisions of The Municipal Act ~~in that behalf~~."
Validity	If a section of the By-law is found to be invalid, the entire By-law is not invalidated	Carry forward wording from 2585 Section 27.8). "If any section, clause or provision of this By-law including anything contained in Schedule "A" attached hereto, is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the By-law as a whole or any part thereof other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention that all the remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed, notwithstanding that one or more provisions thereof shall have been declared to be invalid."

Title of Subsection	Purpose	Recommendation
Existing By-Laws	This By-law governs over any existing By-laws.	The need for and wording of this provision will have to be confirmed once the Zoning By-law is in its final draft. If this provision is deemed necessary, carry forward wording from 2585 Section 27.9) with edits to improve clarity. "All By-laws in force within **the Town** ~~The Corporation~~ regulating the use of lands and the character, location, bulk, height and use of buildings and structures shall ~~be~~ **continue to be in force** and ~~the same~~ are amended insofar only as it is necessary to give effect to the provisions of this By-law and the provisions of this By-law shall govern."
Repeal of Existing By-Laws	Repeals previous By-laws.	The exact wording of this provision will be determined once the Zoning By-law it in its final draft. The current recommendation is to carry forward wording from 1784 Section 15 c) with edits to update the zoning by-law numbers. "By-law~~s~~ Numbers 1784, 2585 and 5581-05 ~~1553, 1556, 1613, 1689, 1691, 1723 and 1738,~~ ~~be and the same~~ are hereby repealed."

Title of Subsection	Purpose	Recommendation
Location	Specifies where the By-law applies.	Carry forward wording combination wording from the three by-laws to ensure clarity. "**The provisions of this By-law apply to those lands shown on Schedule X of this By-law**."
Authorization	Clerk is authorized to send the Ministry the documents required under the Oak Ridges Moraine Conservation Act.	Carry forward wording from 5581-05. Only applies to areas covered by the Oak Ridge Moraine Conservation Act. "The Clerk of the Corporation of the Town of Whitby is hereby authorized and directed to forward to the Minister of Municipal Affairs and Housing the documentation required by the Oak Ridges Moraine Conservation Act, 2001."

Title of Subsection	Purpose	Recommendation
Effective Date/Approval	Details when the By-law came into effect.	Carry forward wording from 1784/2585/5581-05 Sections 17, 28 and 7, respectively which have similar wording, but update to reflect current Local Planning Appeal Tribunal. "This By-law shall come into force on the date it is passed by the Council of the Town of Whitby subject to the approval of ~~The Ontario Municipal Board~~ **the Local Planning Appeal Tribunal, if applicable**. THIS BY-LAW given its first, second and third readings and finally passed on the XXst day of (month), (year)."
Classification	That the lands are divided into a number of zones.	Carry forward modified wording from 1784, but revise, as By-law does not cover entirety of the Town. (Brooklin Expansion Area excluded). "~~The provisions of this By-law shall apply to all lands within the limits of The Corporation of the Town of Whitby which lands for the purpose of this~~ **The lands covered by this** By-law have been divided into various use zones as follows…"

Title of Subsection	Purpose	Recommendation
Symbols	Zone may be referred to by name or by symbol.	Carry forward wording from 5581-05 Section 2.1 because of simple and clear wording. However, edit per below, as the provision will complement that of the classification provision above. "The ~~following~~ zones ~~are hereby established and they~~ may be referred to by name or by the symbol set opposite the name of the zone ~~below~~."
	The zone symbols may be used to refer to lots, buildings, and structures and to the use of lots, buildings and structures permitted by the By-law.	Recommend that this provision not be carried forward as its meaning is not clear and the intent of referring to a zone by symbol is addressed in the previous provision.
Schedule	That the schedules showing the boundaries of the zones are attached and forms part of the By-law.	Carry forward wording from 5581-05 Section 2.3. Clear and simple wording. "The zones and zone boundaries are shown on Schedule XX which is attached to and forms part of this By-law."

Title of Subsection	Purpose	Recommendation
Zone Provision	Details where the permissions related to the zones are found	Recommend that this provision is not carried forward as it is not necessary, and it is not commonly found in other zoning by-laws.

Title of Subsection	Purpose	Recommendation
Zone Boundaries	Describes what the zone boundaries typically follow or how to interpret if they don't follow some boundary/line.	Carry forward wording from 5581-05, 2.4, for its detailed clear direction, modified as follows. The subsection referring to the ORM-EP is not needed as it is captured by the last provision. "When determining the boundary of any zone as shown on Schedule ~~A-1~~ **XX** forming part of this By-law, the following ~~provisions~~ shall apply: (i) A boundary indicated as following a highway, street, lane, railway right-of-way, or utility corridor shall be the centre line of such highway, street, lane, railway right-of-way, or utility corridor. **(ii) A boundary indicated as following a shoreline shall follow any changes to that shoreline.** (iii) A boundary indicated as following lot lines or the municipal boundaries of the Town of Whitby shall follow such lot lines or boundary. (iv) Where a boundary is shown parallel to a street line and the distance from the street line is not indicated, the boundary shall be deemed to be parallel to such a street line and the distance from the street line shall be determined according to the bar scale shown on Schedule ~~A-1~~ **XX**.

Title of Subsection	Purpose	Recommendation
		~~(iv) Where a zone boundary for an Oak Ridges Moraine Environmental Protection (ORM-EP) Zone is shown on Schedule A-1, the boundary of such zone shall be determined according to the scale shown on Schedule A-1.~~ (v) Where none of the above provisions apply, the zone boundary shall be scaled from Schedule ~~A-1~~ **XX**.

Title of Subsection	Purpose	Recommendation
Holding Symbols	Explains holding symbols restricting development until hold is lifted.	Carry forward definition from 5581-05 Section 2.5. Simple and clear wording. Additional wording added from 2585, to clarify permission for existing uses. “Where the zone symbol is preceded by the letter "H", the lands shall not be developed for the uses permitted in that Zone until **all applicable requirements have been met and** a By-law has been adopted by Council pursuant to Section 36 of the Planning Act to remove the Holding (H) Symbol, ~~thereby placing the lands in the zone indicated by the zone symbol when all of the applicable requirements have been met~~. **Prior to removal of the "H", only public services and existing uses are permitted.**” Note, the term public services may be updated, pending final definitions review provided under separate cover.
Interpretation	Definitions and interpretations within the By-law shall govern.	This section will be addressed in the definitions section and not the Administration section.
	Interpretation of present tense and words in singular and plural	Carry forward wording from 2585 Section 4.2) with edits as wording is confusing. “For the purposes of this By-law, words used in the present tense include the future; words in singular number

Title of Subsection	Purpose	Recommendation
		include the plural and words in the plural include the singular number; the word "shall" is mandatory; the words "used" and "occupied" shall **be interpreted to also capture** ~~include the words~~ "intended or arranged **to be used or occupied**" ~~and~~ **or** "designed to be used or occupied".
	Interpretation of the word “Alter”	Move the word “alter” to the Definitions Section as a defined term, with the edits below. “For the purposes of this By-law, the word "alter" when used in reference to a building or part thereof, means to change any one or more of the internal or external dimensions of such building or to change the type of construction of the exterior walls or roof thereof. When used in reference to a lot, the word "alter" means to decrease **or increase** the width, depth or area thereof or to decrease **or increase** the width, depth or area of any required yard, landscaped open space or parking area, or to change the location of any boundary of such lot with respect to a public highway or laneway, whether such alteration is made by conveyance or alienation of any portion of said lot, or otherwise. The word "altered" shall have a corresponding meaning.”

Title of Subsection	Purpose	Recommendation
Building, Structure and Use Classification	The use listed as permitted only applies to those uses specifically listed.	This provision is very unclear and is not recommended to be carried forward.
	Uses, building or structures listed as permitted and classified as Residential or Non-residential may be referred to as Residential or Non-Residential.	This provision is very unclear and is not recommended to be carried forward.
Other Laws and By-laws	Compliance with the By-law does not relieve obligation under other By-laws or laws in the Municipality, Region, Province or Country.	Revise wording of provision in existing General Provisions Section (2585 Section 6 (8)) as follows and include in Administration Section: **Compliance with** this By-law shall not ~~be effective to reduce or mitigate any restrictions lawfully~~ **relieve obligations** imposed by a governmental authority having jurisdiction to make such restrictions **or obligations under other By-laws or laws in the Town of Whitby, Region of Durham, Province of Ontario or Canada**.

Title of Subsection	Purpose	Recommendation
Legal Non-Conforming	Legal Non-Conformity and Legal Non-Compliance	Revise wording of provision in existing General Provisions Section (1784 Section 4b)) and Zoning By-law #5581-05 section 4.5 as follows: (i) Nothing in this By-law shall apply to prevent the use of any land, building or structure for any purpose **not permitted by,** prohibited by**,** the By-law if such land, building or structure was lawfully used for such purpose on the day of passing of the By-law, so long as it continues to be used for that purpose; and (ii) Notwithstanding any other provision in this By-law to the contrary, uses **within an ORM area, as identified in schedule X**, that existed legally as of November 15, 2001 may continue until the use ceases.
Legal Non-Compliance	Buildings and structures can be constructed on lots that are smaller than the requirements within this zoning by-law if the lot existed at the time the by-law comes into effect. And, this zoning by-law does not prevent repairs of non-conforming uses as long as they do not cause major changes which contravene	a) "A non-complying building or structure i. which existed legally prior to the passing of this By-law**; or** **ii. in the case a building or structure within the ORM areas as identified in schedule X, which legally existed prior to November 15, 2001,**

Title of Subsection	Purpose	Recommendation
	the provisions of the zoning by-law. And Use, lot and building must meet zoning by-law requirements, and where conveyance for a public road occurs the remaining lot/use/building can continue to be used.	may be enlarged, repaired, **including strengthening to safe condition,** renovated or reconstructed provided that the enlargement, repair, renovation or reconstruction **does not** further increase the extent of a non-compliance; **and it** complies with all other applicable provisions of this By-law. b) Where a lot, building, structure or required parking space is deemed to be deficient of any requirement of this By-law, and that deficiency is expressly the result of acquisition or expropriation of land by a public authority, the lot, building, structure or required parking space shall be deemed to comply with the requirements of this By-law.

3.2 Additional Administrative Provisions

Upon review of other municipal zoning by-laws including the Town of Ajax, City of Barrie, Town of East Gwillimbury, Town of Innisfil, Town of Milton, Town of Newmarket, Town of Oakville, City of St. Catharines, City of Vaughan (draft) and The City of Welland, the provisions in **Table 2** are recommended to be introduced into the new comprehensive by-law.

Table 2: Recommended administrative provisions from other municipalities' Zoning By-laws.

Administrative Provision	Topic	Example	Recommended Wording
Decimal Places	Calculations of the regulations of this By-law shall be to one decimal place.	• Welland - Section 1.5 Level of Accuracy	**"Accuracy** Any applicable minimum or maximum measurement required in this by-law shall be met to one decimal space."
Rounding	Provides direction with regards to rounding.	• Welland - Section 1.7 Measurements	"**Rounding** a) All measurements, including, length, area or height used to determine compliance with the regulations of this By-law shall be subject to the normal mathematical rules of rounding numbers to the level of accuracy expressed in the regulations of this By-law. b) For any regulations expressed as a whole number, including parking regulations, measurements less than 0.5 shall be rounded downward to the

Administrative Provision	Topic	Example	Recommended Wording
			nearest whole number, and measurements greater than or equal to 0.5 shall be rounded upward to the nearest whole number. However, where the application of a rate or ratio results in a fraction of an accessible parking space being required, the minimum number of accessible parking spaces required shall be increased to the next whole number.
Definitions	Unless defined, words have their normal meaning. Definitions are defined in the Definitions section.	• Vaughan - 1.9.1 Wording • St. Catharines - 1.1.4 Definitions • Milton - 1.12 Definitions	**"Definitions** Bolded terms in this by-law shall be interpreted as defined in Section X: Definitions. All other words have their normal meaning."
Illustrations	Examples and illustrations are for the purpose of clarification and convenience, and do not form part of this By-law"	• Innisfil - 1.8. Examples and Illustrations,	**"Illustrations** Illustrations or examples in this by-law are intended to provide additional clarity and convenience

Administrative Provision	Topic	Example	Recommended Wording
		• Milton - 1.3 Illustrations • Oakville - 1.9 Clarification and Convenience).	but these do not form part of this by-law."
Interpretation	A hyphenated suffix consisting of numbers on Schedule A shall be considered a site-specific zone exception. Note, pending future decisions on displaying site specific exceptions, the recommended provision may need to be revised.	• Vaughan - 1.9.3 Character Styles • Vaughan - Section 1.9.4 Site Specific Zoning Amendments	"**Site Specific Exceptions Symbols** Site specific exceptions that apply to a property in addition to the other provisions of the this by-law are identified on Schedule XX by the number following the hyphen "-" that follows the zone symbol."
Permitted Use	That if a use is defined but not listed as a permitted use by a zone or site specific provision, it is prohibited	• Ajax - 1.2 Conformity and Compliance with By-law	**"Permitted Use** If a use is defined but not specifically listed as a permitted use by a zone or site specific provision it is not permitted and shall not be interpreted as being captured by a broader use."
Successor Statutes	That where any Federal or Provincial Statutes are referenced in the By-law, any successor or amended Statutes apply	• Barrie - 2.7 Federal and Provincial Statutes	"**Successor Statutes** Refence to any Statute shall be interpreted to reference any subsequent amendments or successors to that statute.

Administrative Provision	Topic	Example	Recommended Wording
Technical Changes	A provision permitting technical changes without amendments to the Zoning By- law	• East Gwillimbury - 1.12 Technical Revisions to the Zoning By-law • Innisfil - 1.15 Technical Revisions to the Zoning By-law • Vaughan - 1.10 Technical and Editorial Revisions	**"Technical Changes** Provided the intent of the Zoning By- law is maintained, the following technical changes are permitted without an amendment to the zoning by-law: a) renumbering of sections or cross references to sections, b) correcting errors, c) minor editorial changes, d) formatting changes and d) minor map changes."
Transition	Providing transition provisions for in progress projects.	• Barrie - 1.7 Committee of Adjustment Variance Approvals • East Gwillimbury - 1.9 Site Plan Agreements and Site Plan Approvals • East - Gwillimbury 1.10 Minor Variances	The transition provisions reviewed in other municipal by-laws, in Phase One, varied by by-law and ranged from 2 to 5 years of transition after approval, where they expired. The recommendation is for one transition period for all types of applications, but this may be revised in future phases to provide different time limits for different types of applications. **"Transition**

Administrative Provision	Topic	Example	Recommended Wording
		• Innisfil - 1.16 Transition Provisions • Vaughan - 1.5 Transition	The provisions in this by-law shall be deemed to be modified to the extent necessary to give effect to such Building Permits, Minor variance decisions, consents and site plan agreements entered into prior to approval of the zoning by-law, for a time period no longer than 2 years after approval.
Overlay Zones	A provision explaining the use of overlay zones, if applicable.	• Grimsby 2.2.4 Location of Zones	**"2.5.6 Overlay Zones** a) Overlay Zones include…. [Hazards etc.] b) Where a lot is subject to an overlay zone, the provisions of the overlay zone supersede similar provisions of the underlying zone. Where the overlay zone is reduced in extent through the process set out for each overlay zone, the provisions of the underlying zone shall apply. c) Where a Hazard Overlay Zone covers a portion of a lot, that portion may be used in the

Administrative Provision	Topic	Example	Recommended Wording
			calculation of any lot coverage or frontage provision."
Divided Lot	Describes conditions where more than one zones applies to a single lot.	Ajax 2.4	Where more than one zone applies to a single lot, the boundary shall be determined in accordance with the boundary on the Zone Schedules. The zone boundary dividing the lot shall be deemed to be a lot line for the purposes of calculating required setbacks and coverage, and each portion of the lot shall be in accordance with the provisions of this By-law for the applicable zone.

4 Section Organization



In the existing zoning by-laws, many of the provisions discussed in **Table 1** are found within separate sections, as opposed to one comprehensive Administration section. It is recommended that the new Comprehensive Zoning By-law contain all of the provisions discussed in this report in one comprehensive section titled Administration.

The provisions can be organized into subsections and/or with related provisions grouped for ease of locating them. For example, the section may contain an Interpretation sub-section, containing all provisions that relate to interpretation of the zoning by-law. The order of the provisions will be determined in phase 3 of this study, when the draft by-law is prepared.

5 Conclusion and Next Steps



This report identifies the recommended provisions that should be carried forward, as well as new provisions that should be introduced, into the Administration section of Whitby's new Comprehensive Zoning By-law. In Phase 3, the recommendations of this report will be used to draft this new Administration section of the comprehensive Zoning By-law.

