



## **Comments from the Ontario Professional Planners Institute on An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts (Bill 51)**

### **Submission to the Standing Committee on General Government August 28, 2006**

The Ontario Professional Planners Institute (OPPI) is the recognized voice of the province's planning profession. Our 2,600 practising planners work for government, private industry, agencies, and academic institutions. Members work in a wide variety of fields including urban and rural community development, urban design, environment, transportation, health and social services, housing, and economic development. Our members are committed to improving the quality of Ontario's environments and communities.

OPPI's Policy Development Committee, in consultation with members, has reviewed Bill 51. OPPI held face-to-face and teleconference meetings with more than 200 members of the Institute, through discussions in London, Stoney Creek, Toronto, Barrie, Cobourg, Ottawa, and, by teleconference, our Northern District.

OPPI appreciates the extensive consultation process that the Ministry of Municipal Affairs and Housing undertook and the many opportunities the Institute had to comment on Bill 51 over the past few months. We applaud the government's open approach and accessibility to a broad range of stakeholders.

OPPI has identified four key themes for review, which form the basis of our submission:

1. Understanding the complete process through access to proposed regulations
2. Creating a transparent and accessible planning process
3. Supporting intensification and sustainable well-designed communities
4. Reforming the Ontario Municipal Board

As the voice of professional planners in Ontario, OPPI is taking this opportunity to share its perspective on these matters. In many instances professional planners are the people who will be charged with implementing these changes.

We would like to congratulate the government for attempting to strike a balance between community, development interests, and municipal objectives. The Bill provides additional tools for community building and should help municipalities gain greater control over their own processes.

## **1. The need for timely release of regulations**

OPPI believes it is important for the government to focus on the big picture and take the time necessary to get these changes right. This may mean a phased approach to implementing the proposed changes. At a minimum, the government needs to provide the necessary information to stakeholders so that they understand how the legislation will be implemented. In other words, stakeholders need to see the regulations in order to fully understand the changes.

The release of regulations as early as possible in the process will allow for a greater understanding of the government's objectives. It will also educate stakeholders on how the legislation will operate.

Residents of communities need to understand the important link between growth, demands for land, and intensification; the development industry needs to understand the importance of providing relevant information early in the planning approvals process; and decision makers need to understand the obligations placed upon them by changing tests applied to their decisions. These stakeholders can appreciate their roles fully only when they are able to review the proposed regulations that will accompany the legislation.

## **2. Creating a transparent and accessible planning process**

Professional planners agree that the objective of a planning process is to make decisions that guide necessary growth and change. The mechanism by which planners make decisions must be continually assessed to ensure that it engages people and provides for the fullest consideration of all interests.

### *Complete applications*

OPPI believe that clarity on what constitutes a complete application benefits everyone in the process. Establishing a clear definition should increase consistency in processing applications. However, the definition of a complete application should reflect the varying types and levels of proposals; it should not be a one-size-fits-all approach. Regulations, crucial to an understanding of this issue, need to provide for this flexibility.

The determination of whether or not an application is complete is a key element in the process. OPPI, in consultation with other stakeholders, would like to offer the following proposal:

- (A) The proponent gives the municipality notice that, in the proponent's opinion, the application is complete. At this point, the appeal clock starts ticking.
- (B) The municipality has a period of time (example: 30 days) to give the proponent notice that the application is complete or not. If the municipality says the application is not complete, the municipality must indicate why and if the municipality fails to give notice, the application is deemed complete.

If the notice from the municipality says 'incomplete', the proponent can:

- i. file the missing materials, in which case (A) and (B) are repeated and the clock starts again at (A) or
- ii. make a motion to the Board for a determination that the application is complete.

Other components of the proposal:

- (1) In making a motion to the Board, the proponent must be able to argue that not only is the application complete but that the municipality's requirements are unreasonable.
- (2) Where the municipality gives notice in (B), it must publish this as part of the notices of open house and statutory public meeting.

### *Obligations on decision makers*

Good planning decisions require good information, so that all relevant issues can be properly addressed. Decision makers need complete information in order to fulfill their roles. Professional planners play a crucial role in providing support and advice to decision makers. With the new emphasis on local decision making, it is crucial that the input and advice of professional planners be given proper consideration by Councils and other decision makers. OPPI suggests that the government recognize the need for professional planning advice through the development of appropriate regulations.

OPPI members have expressed concern that the wording of the legislation on how information should be received and considered by Council may, if not clarified through regulation, significantly increase the time required to process applications and have them considered by Council. The form and scope of planning reports will change according to the regulations on the type and content of the evidence that can be used in planning appeals.

One of the unintended consequences of the proposed legislation may be unrealistic expectations for how much material decision makers can review within the required timeframes. Additional resources will be necessary to ensure that development applications can be reviewed, necessary meetings held, and Council decisions taken in the time allotted.

### *Public open houses*

It is clear that the government seeks to engage the public in the planning process. The more input that decisions makers receive, the more informed their decisions. In conjunction with requirements to have all relevant information available as early as possible in the process, holding a public open house where this information can be reviewed may afford the public greater access to information and more input into the process.

Nevertheless, the type and scope of applications should determine the necessity of requiring a public open house. Many large Ontario municipalities routinely hold open houses; but open houses cost money and use considerable resources. Many municipal planners are concerned that the requirement to hold a public open house for every application is unrealistic. They suggest allowing flexibility on the necessity for this additional meeting according to the scale or nature of the proposal or the option to use alternative forms of consultation.

Alternatives to the proposed mandatory Open House on all applications might include providing notice of applications at time of submission or the posting information on the web and receiving comments by e-mail, fax, or other means.

### *Official Plan and Zoning By-law review*

The quality and currency of municipal planning documents, particularly official plans and zoning by-laws, directly affect the quality of our communities. Strong policies provide clarity and certainty for all. Clear policies on what is and is not appropriate use of land and resources mean a consistent approach to decision making and similar treatment in similar circumstances.

A municipality's ability to maintain high-quality, up-to-date official plans and zoning by-laws depends on its resources. This legislation increases the obligations of municipalities to keep planning documents current. Resources are required to conduct reviews, and OPPI members recognize that in addition to regulation, there must be an acknowledgment by the government that more funding needs to be made available to allow for plan reviews and updates.

Additional resources will also be required for upper-tier or provincial approval authorities, so that they also have the resources to take on the additional review and approval processes resulting from Bill 51. Without this support, the whole intent of the requirement for up-to-date documents may be lost and planning resources could become overwhelmed.

Given the scope of information that Councils are required to consider, and standard practices in most municipalities, the result of the legislation will be longer and potentially more complex Council meetings. The need to balance the need for complete information with the need to make the process more

accessible will require clear regulations and a rethinking of how public meetings and local decision making occurs. Assistance at the provincial level, in terms of resources and technical support, will be important in the achieving this balance.

### *Conditional zoning*

The ability to apply conditions to zoning is an important tool for municipalities, particularly those that would like to link development opportunities to obligations to be fulfilled by an applicant, such as environmental protection requirements.

Despite its potential broad application, there is a need to set out clear limits to this power, through regulation, to avoid potential conflict of such conditions with those specified under other legislation, such as development charges, fill regulations, or flood control measures.

OPPI members have expressed an interest in pursuing performance-based criteria through conditional zoning. We hope that the regulations will provide more context for the types of performance-based opportunities that may be appropriate and that such opportunities are not limited to energy and sustainable development projects.

### *Transition provisions associated with new policy introduction*

Some aspects of the proposed legislation that require decisions to be consistent with relevant policy do not take into account the reality of application review.

Professional planners agree that application review and decision making should draw on the most current policies and most relevant considerations. However, it is essential that everyone agrees on which policies apply to which applications. This should be clear at the time a complete application is submitted.

If an onus is placed on the applicant to provide full and complete information in support of an application, the applicant must be assured that there will be no change in the policy environment that might render these efforts futile.

If decision makers are charged with applying certain policies at the time of decision making rather than the time of application, the importance of requiring complete applications will be undermined, and the consistency of the process, a key determinant in public confidence in the process, will be eliminated.

### *Freedom of information*

Freedom of information questions relate to requirement for a complete application. The rules on what information is publicly accessible and the terms of its release need to be very clear.

The interpretation of freedom of information provisions by municipalities arises from changing laws associated with protection of rights. However, because of the need to protect the rights of certain parties, the public and applicants themselves have sometimes felt excluded from access to important information.

It is hoped that the regulations will specify precisely what information must be made available for public review and in what form.

### **3. Supporting intensification and sustainable well-designed communities**

The new tools introduced in this legislation should be supported by clear and concise regulation that will ensure consistency and clarity in the development process.

#### *Definition of employment areas*

Additional thought and consideration needs to be given with regards to employment lands in order to ensure that the proper checks and balances are in place so that Ontario can continue to have livable communities and a thriving economic base.

The government seeks to ensure that communities can maintain long-term sustainability through the protection of employment areas. The legislation introduces a new element into the *Planning Act* that in effect defines a particular land use category at the provincial level.

OPPI's review of this approach raises several important questions that we believe require consideration before the legislation is implemented.

The definition of "area of employment" is imprecise. The lack of clarity will lead to debates between an applicant and a municipality as to whether or not a site is an area of employment. Municipalities have taken different approaches to defining areas of employment in order to respond to local circumstances. The ability of a municipality to respond to local circumstance could be undermined by a province-wide definition.

Employment takes many forms: commercial areas, mixed-use areas, tourism areas, aggregate resource areas, and regeneration areas may all generate employment and changes to such areas will be affected by the legislation. OPPI members from northern Ontario and smaller, rural communities expressed significant concern about this matter, suggesting that the

government may be implementing a GTA-focused solution across the province, without considering employment realities beyond the GTA.

Furthermore, there needs to be consistency in the definitions used in other provincial policies, notably the *Provincial Policy Statement* and the *Proposed Growth Plan for the Greater Golden Horseshoe*.

The legislation currently provides powers, notably those proposed in Sections 1(1) and 70.5(1) (b) of the *Planning Act*, that would allow greater regulation by municipalities. These provisions may provide a mechanism whereby municipalities can define “areas of employment” by regulation, or exclude areas by regulation. This may provide the necessary flexibility to respond to local circumstance.

The transition provisions will be very important with respect to employment areas. Any application involving employment lands made before December 12, 2005, should have its right of appeal maintained. Further, appeals made before Bill 51 comes into effect should be dealt with under the previous legislation. This approach ensures that the application of new rules is fairly and consistently addressed across the province.

OPPI believes that appeal rights with respect to employment land conversions should be preserved, however, if the government does proceed to limit these then these must be tied to:

- Firstly, the undertaking of a comprehensive industrial strategy where conversion policies are incorporated into a municipal Official Plan before any ability to limit rights of appeal is implemented; and
- Secondly, if a municipality does not undertake a five year review in a timely fashion, then its ability to limit employment land conversion appeals should be taken away.

#### *Consistency with other legislation*

Requirements for “pedestrian-oriented” areas do not take into account, nor reflect the terminology and intent of the *Ontarians with Disabilities Act*.

Moreover, in order to implement the government’s objectives with respect to intensification, consideration must be given to consistency with the *Ontario Building Code* and the *Fire Code*. The success of an intensification project in a large urban area may depend on its ability to meet well-established standards. It is not enough to promote intensification in official plan policy when, during design and building approval processes, established public safety standards cannot be met. The applicable standards should ensure good planning, good design, and public safety.

## *Community and urban design*

Professional planners recognize the importance of community and urban design in the creation of sustainable healthy communities. Good design ensures that important elements that allow communities to function well have been factored into development approvals.

However, it is important to distinguish between design principles and taste. Regulations need to ensure a clear distinction between architectural *control* and *design*. The wording of the legislation should link design and planning considerations.

There is also a need to ensure that whoever implements the legislation – that is, those charged with making urban design decisions – are properly trained and have the tools they need. Many local Councils do not have the training and resources to make urban design decisions. Although regulations may provide some help, tools and expertise will be the key to success. Support from the province could take the form of disseminating information on best practices or providing peer support for decision makers. If these tools are not available, many municipalities will find it difficult to take advantage of this aspect of the enabling legislation.

One of the underlying principles of good design is flexibility to respond to circumstances. Concern has been expressed that codifying design through an Official Plan that might require amendment to allow for specific elements of design in specific instances might remove the necessary flexibility and undermine the intent of the policy. Again, the absence of detailed regulations makes it difficult to assess the implications of this part of the legislation.

Attempting to achieve design objectives through policy alone will not accomplish good design. What is needed is a definition of sustainable design that is flexible enough to respond to local circumstances, and access to the resources necessary to implement that definition.

OPPI is aware of several possible definitions. One is: “Sustainable Design involves the holistic design of communities and buildings for long-term economic prosperity, social harmony and stability, minimized environmental impact, and strengthened cultural identity.” Members of our Urban Design Working Group would appreciate the opportunity to continue working with the government to develop appropriate design regulations.



#### **4. Reforming the Ontario Municipal Board**

OPPI continues to support the Board as an important tool in ensuring good planning in the province.

##### *Local appeal bodies*

We understand that this legislation is intended, in part, to provide municipalities with a mechanism by which they can create their own local appeal body for certain planning approvals. The goal is to reflect local interests in the decision-making process.

A number of members have expressed a concern that the establishment of local appeal bodies represents a duplication of administration which could place an additional burden on municipal resources. Planners in smaller municipalities in particular expressed this concern. OPPI acknowledges the enabling intent of the legislation in this regard and we hope that the regulations will address concerns about duplication and resources.

The strength of any local appeal body will depend on the strength of the regulations used to establish it. The definition of its role, the rules that apply to it, the method of its operation, and the scope of its power and authority will determine its effectiveness.

Several questions remain, however. If local appeal bodies are to deal with minor variance and consent matters, will this mandate include matters that support and implement government objectives for intensification, which may also be part of the Committee of Adjustment process? Regulation may be required to clarify this point.

Also, will local appeal bodies function like the Ontario Municipal Board? If so, training, support, and strict rules associated with appointments to the appeal body will be needed.

Without regulations that provide detail on these matters, it is not possible to provide further comment.

##### *Limitations on evidence*

A desire to engage the public and improve the quality of discourse in the application review process underlies many aspects of this legislation. The goal is to minimize conflict and ultimately reduce the number and scope of decisions taken away from local decision makers.

OPPI, in consultation with other stakeholders, would like to offer the following comments regarding the admission of new evidence in the planning process:

- All information required by a municipal council to make a proper planning decision should be available to the municipality prior to the decision of Council.

- Planning decisions at all stages of the public process, including those of municipal councils and of the Ontario Municipal Board (OMB), should be based on the best available evidence.

These objectives can best be achieved through the 'complete application' provisions of Bill 51, in conjunction with the lengthened appeal periods already introduced into the *Planning Act* by Bill 26.

Placing evidentiary restrictions on the OMB process would potentially render the OMB process more cumbersome, costly and litigious for all parties involved and would do little to assist in reaching the above objectives.

If the Province believes that additional measures are necessary to ensure that there is a fulsome planning consideration at the municipal Council level, then it is preferable that the 'no new evidence' rule provisions be replaced with provisions that expressly recognize the OMB's ability to refer an application back to Council where an application has been revised or where new information or material is introduced that could materially affect the Council's decision. This refinement would allow for referrals back to Council where appropriate but would not act as cross-purposes with the principle that decisions be based on the best available evidence.

A key strength of the Ontario Municipal Board has been its ability to focus stakeholders on the relevant issues. One mechanism to accomplish this goal has been the pre-hearing conference to establish agreement upon facts and prepare witness statements. Both processes could be undermined, given the current wording of the legislation.

If the government is concerned about the length of Ontario Municipal Board hearings, and intends to change the timeframe within which information can be exchanged, regulations and legislation associated with complete applications affords a better opportunity to accomplish this objective. We believe that the complete application approach will help with the problems arising from limitations on evidence and a new framework within which local decisions may be reconsidered or revisited to respond to changing circumstances.

OPPI's comments on OMB reform since February 2002 identify changes that could support the government's objectives. One key to OMB reform that has been mentioned previously is the need to establish a clear process for appointments that will give certainty to stakeholders that OMB members are qualified and capable of meeting their obligations in a consistent manner, while ensuring that OMB members have the security of tenure necessary to allow them to focus on their work. This requirement can help ensure good decision making in the public interest.

## **Conclusions**

OPPI commends the Province for taking the initiative to address issues related to increasing transparency and accessibility that seeks to support

intensification and the development of sustainable, well-designed communities through modifications to the process designed to engage stakeholders in this important process.

We appreciate the opportunity to comment on Bill 51 and offer these comments in order to support our mutual goal of providing vision and leadership in the pursuit of great communities.