

February 6, 2009

Ms. Susan Howard
Senior Policy Analyst
Ministry of the Environment
Integrated Environmental Planning Division
Land and Water Policy Branch
6th Floor, 135 St. Clair Avenue West,
Toronto, ON.
M4V 1P5

RE: Ontario Professional Planners Institute Response to Proposal for Amending Ontario Regulation 153/04, Brownfields Record of Site Condition – EBR Registry Number 010-4642.

Dear Ms. Howard,

Established in 1986, the Ontario Professional Planners Institute (OPPI) is the recognized voice of the Province's planning profession and provides vision and leadership on key planning issues. The Institute's 2,700 practicing planners are employed by government, private industry, agencies, and academic institutions and they help create healthy communities in the Province of Ontario.

OPPI participated in the Brownfield Stakeholder Group and has provided written submissions in the past on related EBR postings, namely AF07E0001 (OPPI letter to Marcia Wallace, Brownfield Coordinator, dated February 15, 2007) and 010-0149 (letter dated May 22, 2007 to the Honourable Laurel Broten, Minister of the Environment).

OPPI supports the general thrust of the proposed amendments to the regulation, including the revised Record of Site Condition submission and filing process, proposed Environmental Site Assessment requirements, and the introduction of the modified generic risk assessment process. We also support implementation of the Growth Plan and the Provincial Policy Statement 2005 which requires brownfield redevelopment if Ontario is to meet its planned objectives. Please ensure the regulatory changes do not have the unintended consequence of reducing the amount of brownfield redevelopment taking place.

We are concerned about the planning duties required to implement the proposed regulation. Section 168.7.1 of the Environmental Protection Act requires the phase one environmental site assessment include an investigation of existing and permitted land uses in the vicinity of the

property. The undertaking of environmental site assessments, risk assessments, remedial action plans, and oversight of remediation are skills for which qualified persons have specialized education, training and experience. The Ministry of the Environment recognizes this through minimum standards for the Qualified Person.

Qualified Persons may not be land use planners trained to conduct the planning analyses required to provide an opinion on existing and permitted uses in the vicinity of the property. Therefore, we recommend the regulation or supporting documentation specify that the investigation of existing and permitted land uses within phase one environmental site assessments be conducted by a Registered Professional Planner (RPP) within the Province of Ontario.

This designation is regulated by OPPI and requires those holding it to meet minimum qualification, education, and experience requirements, as well as pass an examination administered by the Institute. Registered Professional Planners are qualified to undertake the planning analysis needed to meet the requirements of this regulation.

OPPI is prepared to work with Ministry staff to develop a check list of matters that need to be addressed by the Qualified Person in determining the status of legal uses and where an unusual situation exists, specify where the services of a Registered Professional Planner is required.

Section 33.7 of the proposed regulation identifies types of “sensitive property uses” while Section 33.8 (1) states that a lawful use is a permitted use. Section 33.8 (2) lists a number of lawful uses. Section 33.9 defines land in the vicinity as being within 60 m of the property.

The analysis required to determine permitted uses will include a review of local official plans, zoning by-laws, development permits, the Niagara Escarpment Plan, and possibly other sources of land use planning information and policy as well as a site inspection and interviews with property owners. The ability to determine “existing uses” is problematic. That determination may have to be qualified in the planning opinion.

Planners don’t have the right to enter property without permission to view the use and the land owner may be unwilling to provide permission or answer the questions needed to determine what the existing use is and it’s legal status, especially if there are disputes between the owner and the municipality as to whether the use is a legal non-conforming use. Municipal Building Departments do provide zoning certification on request and for a fee. But if the land owner doesn’t co-operate in providing the necessary information to make that certification it won’t be conclusive.

Furthermore Provincial and municipal information required to help determine whether a legal non-conforming use exists will also be unavailable because of confidentiality requirements. If there are legal proceedings underway or contemplated where there is a dispute as to the legal status of the use between the municipality and the landowner, the issue won’t be resolved until the Court decides the matter.

Additional guidance is recommended in the supporting technical documentation to qualify what can reasonably be expected of a planning opinion, under these circumstances. OPPI is concerned planners are being asked to provide an opinion where the required information to

reach that conclusion isn't available. We are concerned about the liability a planner may expose him/herself to under these circumstances. This deserves more investigation. One solution is to limit the investigation to permitted uses provided for by public Planning Act instruments and other Provincial Plans and their enabling legislation.

OPPI looks forward to working with your Ministry and other ministries in the provincial government to achieve the Ministry's brownfield redevelopment and Provincial intensification goals set out in the Growth Plan and Provincial Policy Statement. Loretta Ryan, MCIP, RPP, Manager of Policy and Communications, would be pleased to further discuss this letter with you and answer any questions or direct you to others who may provide additional information. She can be reached at 416-483-1873, ex. 226. Thank you for the opportunity to comment on this matter.

Yours truly,

A handwritten signature in black ink that reads "George McKibbon". The signature is written in a cursive, flowing style.

George McKibbon, MCIP, RPP
Chair, Policy Development Committee
Ontario Professional Planners Institute