ONTARIO PROFESSIONAL PLANNERS INSTITUTE

ONTARIO Planning JOURNAL

NOVEMBER/DECEMBER 2012, VOL. 27, NO. 6

ONTARIO PLANNERS: VISION · LEADERSHIP · GREAT COMMUNITIES

BUILDING OUT THE GROWTH PLAN

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The Journal is published six times a year by the Ontario Professional Planners Institute.
ISSN 0840-786X

Subscription and advertising rates can be found at www.ontarioplanners.on.ca. Click on publications, then Journal.

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Places to Grow

Implementation challenges

By Bryan Tuckey

Everyone in the planning and development profession knows that in 2006, the world changed. The Province of Ontario established two key directives—*Protecting the Greenbelt: The Greenbelt Plan* and *Places to Grow: Growth Plan for the Greater Golden Horseshoe*—a combination of both established the long-term urban structure for the Greater Toronto Area.

We began to look at the Greater Toronto Area as an interconnected region that needed room to grow for future generations. We also had to start thinking about planning integrated complete communities with intensified land uses that would boost the economic vitality of this increasingly urban region.

As we move toward the end of 2012, we have lived with the growth plan for the last six years and are awaiting updated assumptions and population and employment forecasts to 2031 and beyond. It is the industry's view that the updated forecasts should be to at least a 2041 timeframe.

I would argue that now is the time to take stock of our lessons learned and begin to make course corrections in this important public policy document to ensure that vibrant, resilient, connected and affordable communities are built where new and existing residents have choice in how they want to live and work.

Demographic reality

In 2001, the population in the Greater Toronto Area was 5.3-million and the region was also home to 2.7-million jobs. Ten years later, the recent census confirms that 1-million more people have decided to make the GTA their home and 700,000 more jobs have been created across the regions of Durham, York, Peel and Halton and the City of Toronto. Forecasts see this trend continuing past 2031 and the updated forecasts will tell us more.

Every year, a population the size of the City of St. John's, Newfoundland, moves to the GTA, mostly through immigration. In addition to these people, demographers tell us that people are living longer, that there's a mini baby boom occurring and that the traditional family formation is in decline. This raises the question: Where are they all going to live and work?

We want to be the urban region that attracts the best and the brightest to the numerous small, medium and large companies that want to grow here. Therefore, we need to strengthen economic development through growth planning to attract local and global investment to the GTA and Ontario. Now is the time to take stock in our region's employment lands and how choice, lot size and mixed-use development are being accommodated. The economic prosperity of the GTA depends on it.

What we've seen over the last six years is that these demographic and economic realities generate demand for housing—but as the industry and its municipal partners implement the growth plan, we are witnessing a dramatic shift in housing type that is increasingly expensive to purchase.

Where to grow

The growth plan provides population and employment forecasts for the years 2021 and 2031. At the time of publication, we were awaiting revised assumptions and forecasts, and were hearing that the numbers would show more people choosing to live and work in the GTA in that time period.

Above: Stark contrast in land use, west of Toronto (Photo courtesy Michael Manett, Michael S. Manett Planning Services Ltd.)

Expected to be the third fastest growing urban region in North America with greater than 3.7-million more people and 1.8-million more jobs by 2031, there is a pressing need to examine the growth plan and its updated population and employment forecasts beyond 2031.

We are aware in the industry that regional official plans were scheduled to be provincially approved and in conformity with the growth plan by June 2009 but today many have not been finalized. Hearings at the Ontario Municipal Board have started but it could be another year (or more) before the plans and required boundary expansions are settled.

The broader issue becomes the backlog and hold up of the lower-tier municipal official plans, the secondary and block plans and the eventual construction of new communities. The public interest is well-served by these plans being approved—between now and then the GTA will welcome 100,000 new residents every year and they will need places to call home.

Understanding intensification

Local political and community resistance to intensification continues to be a significant roadblock to the ultimate success of the growth plan.

There is a disconnect between municipal official plans and the by-laws, technical guidelines, standards and studies that set the growth plan objectives in motion. For example, outdated zoning by-laws that don't include intensification targets result in delayed development approvals because the application is forced through a re-zoning process even though it is in keeping with the intensification targets set out in the growth plan.

At a time when understanding the principles in the growth plan are of utmost importance, a lack of education and NIMBYism is slowing down approvals, and in some cases, resulting in reductions in density. Continuing the example, in the case of a re-zoning application that seeks additional density, the approval process adds statutory public meetings, which opens the application to political and neighbourhood influence. Community consultation is important but the industry has learned the hard way that the public needs a better understanding of the province's growth plan and why implementing it has affected their neighbourhoods.

Housing shift

In 2011, there were 45,926 new homes sold in the GTA. It was the second-best year ever for total sales of new homes. Of the homes sold, 62 per cent were high-rise units. This is in direct contrast to a decade ago, when high-rise homes held a mere 25 per cent of the market share. At the same time, the price of a low-rise home is increasing and the size of a high-rise home is shrinking as the industry attempts to maintain affordability.

The shift in housing choice—and affordability—is directly related to the public policy decisions that have encouraged intensification, but at the same time, created a shortage of land supply.

In addition, where intensification is appropriate and encouraged, in some cases, planning tools have become barriers to intensification. One example is how parkland standards have become a financial barrier to intensification. We need to think about our centres and corridors differently and find ways to identify and reduce barriers, as well as pre-designate and pre-zone, to make them happen.

Lessons learned

One objective of the growth plan exercise was for the province to provide a vision on significant planning direction, and then allow municipal governments to implement that vision. Conformity exercises have been carried out by the regional municipalities but in its approval authority, the province has become too interested in the details.

The province's role is to step in when the vision becomes blurry, especially in the case of the "whitebelt" lands. Just as certainty has been provided with the creation of the greenbelt, we need the same type of certainty around the whitebelt so that everyone knows it is intended for the long-term urban structure of the GTA.

The province needs to clearly state that the whitebelt will accommodate future growth and it should be reflected in regional official plans. In addition, it should not permit regional official plans to include policies allowing municipalities to sterilize whitebelt lands from future development by placing designations such as "foodbelt" or "protected countryside" on them, or by requesting greenbelt expansions.

I would go one step further to recommend that during the next five-year review of the regional official plans, municipalities prepare horizon-free urban structure plans defining the structure of uses for whitebelt lands. These should include employment reserves, arterial roads, nodes and corridors as well as assessing long-term servicing and transportation alternatives.

Municipalities should be encouraged to complete integrated long-term infrastructure plans, which provide certainty and predictability. For example, if regional municipalities were permitted to designate strategic employment lands beyond the 2031 planning horizon, and consideration could be given to expedited approvals on those lands, the province and its municipal partners could align sustainable, continued investment in infrastructure, services and economic development strategies.

To that end, we need a standard methodology for residential and employment land budget and supply guidelines, including land vacancy factors, for all of Ontario.

The building and land development industry remains supportive of the *Growth Plan for the Greater Golden Horseshoe,* however, positive change will enable all of us to strengthen economic development through integrated planning for the growth of the GTA. As well, changes to the approval process, demands of intensification and an alignment of funding for infrastructure, could go a long way in strengthening the partnership between the industry and government to build complete communities in the GTA for generations to come.

Members of the building and land development industry are experts at executing policy and the BILD has been transparent about it suggested recommendations for easing implementation of the growth plan. A detailed presentation is posted at www.bildgta.ca.

Bryan Tuckey, MCIP, RPP, is president and CEO of the Building Industry and Land Development Association (BILD), which has more than 1,375 members and is the voice of the land development, home building and professional renovation industry in the Greater Toronto Area. BILD is proudly affiliated with the Ontario and Canadian Home Builders' Associations.

Constrained Land Supply

A community builder's perspective

By Gary Gregoris and Andrew Sjogren

Mattamy Homes is actively developing or pursuing approvals throughout the Greater Golden Horseshoe. As such, we have encountered both the positive and challenging consequences of the provincial *Growth Plan for the Greater Golden Horseshoe* on the frontline.

From our perspective, there are a number of major and minor challenges associated with the implementation of the growth plan, most of which were likely unforeseen, but many of which affect our ability to bring new communities to market in a timely manner. From our experiences and observations, one of the more significant impacts is constrained land supply.

While this article focuses on one of the broader challenges of implementing the growth plan, it should be noted that there is general consensus within the industry that the goals and objectives of the growth plan are appropriate for good community building. The general intent of the plan is not at issue. However, its implementation at the municipal level can be challenging, and unfortunately, has led to several unintended consequences.

One of the unintended consequences of the growth plan has been its impact on the residential land supply in the GTA in greenfield settings.

The growth plan policies and its strict interpretation through official plan conformity exercises (in particular Schedule 3, population and employment forecasts) have essentially forced GTA municipalities to "plan by numbers." This approach has led to a finite amount of land being indentified to accommodate forecast growth with no flexibility (i.e., vacancy rates), restricting the ability of municipalities to plan on a comprehensive basis. In some instances this has resulted in urban boundaries drawn through the middle of concession blocks or farm fields, making it impossible to plan comprehensively for both land use and transportation corridors as well as preventing strategic lands from being designated for employment uses.

Furthermore, this approach to planning does not lend itself to the development of "complete communities," as certain land uses, such as mixed-use, office or main-street retail may not be attainable within the constraints of the forecast. It also makes financing large-scale infrastructure programs more difficult and complicated, as municipalities are not able to plan beyond the forecast horizon of 2031, requiring that such projects be initially financed only by those developing within the horizon.

The regional and local approval and implementation of the growth plan, specifically the length of time taken to date, has also impacted the GTA land supply. In essence, planning for future growth in the GTA has ground to a halt. The growth plan process began in 2006 and now six years later, several regional plans are being adjudicated at the OMB, with a few of these hearings not even scheduled to begin. It is very troubling that any planning process can take the better part of a decade to complete, knowing that it will take several years for changes to be realized on the ground. This is not healthy for the economy and investment.

Despite the growth plan's emphasis on intensification, and as municipalities strive to grow "up" as opposed to "out," what seems to be lost is the fact that even after 2015, six out of every 10 homes in the GTA will continue to be planned and built on greenfield lands. This apparent oversight is especially evident in some municipalities, which are currently considering directly tying intensification targets to greenfield development approvals or in the extreme rationalizing no urban boundary expansion and relying almost 100 per cent on built boundary development to meet future housing needs for the next 20 years.

Some of the unintended consequences include increased land costs, shortage of building lots and blocks which has led to rising home prices, putting home ownership beyond the means of many young Ontarians. It has also limited or prevented investment, job creation and economic growth and development. Furthermore, municipalities are unable to plan comprehensively and create complete communities.

Implementation of the growth plan from the perspective of a community builder has severely constrained the core commodity we require: land supply. The associated challenges, however, are by no means insurmountable and could be adequately addressed through the growth plan's 10-year review. Suggested revisions include extending the planning horizon to 50 years; mandating the protection/designation of "whitebelt" lands for future urban uses; expediting the review and approvals process for municipal official plan conformity amendments; providing greater flexibility in land budgeting as well as standardizing the methodology on how a proper land budget is to be prepared; modifying greenfield density targets to account for a broader range of take-outs; and separating employment lands from greenfield density calculations.

Gary Gregoris, MCIP, RPP, is senior vice president of land at Mattamy Homes. He is a member of BILD's board of directors and chairman of its growth plan advisory committee. Andrew Sjogren MCIP, RPP, is a Project Manager in Mattamy's Land Department, dealing primarily with longer-term lands.

Intensification

Making it happen

By Mike Collins-Williams

Mark Twain once said, "buy land, they're not making it anymore." We don't think today's builders could say it any better. Land is the material that supports our industry. As builders of Ontario's communities every decision our members make leads back to this issue which is why the Ontario Home Builders' Association and its network of 29 local associations across the province focuses so much of its time and effort on government policies and regulations that impact land-use decisions.

The Greater Golden Horseshoe is one of the fastest growing metropolitan areas in North America and is home to 11 of OHBA's local home builders' associations. Over the past decade growth patterns across the region and especially in the GTA "inner ring" have undergone a fundamental shift from primarily single-family suburban dwellings to more intensified urban dwelling types. This paradigm shift in terms of the types of communities that we live, work and play in has accelerated over the past few years and will continue to morph into a more urban direction in the future. Therefore, it is critical that public policy and regulatory process continue to evolve to better reflect urban development realities and effectively implement the *Growth Plan for the Greater Golden Horseshoe*.

Today, builders, land developers, municipalities across the Greater Golden Horseshoe and the provincial government are engaged in the process of implementing the growth plan. This is a critical step in supporting long-term sustainable development by understanding and ultimately embracing intensification. But rather than simply waiting or assuming it will happen, the OHBA believes there are significant opportunities to improve the growth plan as we work through a number of current implementation issues.

OHBA examines public policy not only from a GTA or GGH perspective, but from a pan-Ontario perspective as many growth planning principles are spreading beyond the GGH for implementation in other Ontario communities. Ontario receives just over 40 per cent of Canadian immigration and the approximately 120,000 people that come to Ontario annually require an additional 55,000 - 60,000 units be added to Ontario's housing stock on an annual basis.

While we recognize that planning sometimes falls victim to politics and that not all stakeholders will always agree on the methods to achieve intensification objectives, our industry is at the table because we have a significant role to play in executing the provincial growth plan. There are real challenges on the ground and local political and community resistance to intensification continues to be a significant roadblock to successful implementation of the growth plan. Furthermore, seemingly endless regulatory processes and delays in approvals create housing supply shortages and outdated fiscal policies generate frustration among stakeholders. So how can we all better work together, understand intensification, support complete healthy communities and make it happen?

OHBA believes that informed stakeholders and decision makers make better decisions. Therefore, education concerning all aspects of the growth plan and especially the realities of what is happening on the ground is critical if we are going to be able to move forward successfully together. We have prepared presentations and have engaged in constructive dialogue with key partners such as the Regional Planning Commissioners of Ontario. As well, OHBA is communicating more frequently with the public through local media outlets to raise awareness with respect to long-term land-use planning challenges.

All stakeholders can be proud of how far we have come in six years. Some aspects of regional growth planning are performing as intended and are supporting higher levels of intensification. Land consumption is slowing significantly due to intensification and much higher greenfield densities. Suburbs are being planned and developed very differently than in the past, not only in terms of density and mix of uses, but also in terms of infrastructure, servicing and protecting natural heritage features.

We have learned valuable lessons through the current implementation process. We must apply these lessons through the implementation of additional policy and fiscal tools to create complete communities. Now is the time to evaluate our growth planning successes and failures by considering modifications to planning policies that support the implementation of the growth plan by collaborating on tangible actions for healthier and sustainable communities.

Mike Collins-Williams, MCIP, RPP, is Ontario Home Builders' Association policy director. OHBA is the voice of the residential construction industry in Ontario, representing over 4,000 member companies, organized through 29 local associations.

Understanding 2012 Condo Market

Gaining perspective

By George Carras

RealNet's recent release of the official GTA new home market results for June means we've reached the halfway point of 2012. What better time for some healthy perspective on the market. After all, a bit of perspective helps to provide better understanding, and the more perspectives you have, the better your understanding.

Let's consider a few facts from the new condominium market results:

Fact: During the first six months of 2012, there have been 11,492 new condominiums sold in the GTA. That's down 21 per cent from last year.

Fact: High rise remaining inventory at the end of June stood at 20,133 units, a new record high.

Fact: The RealNet Index Price of a new high rise condominium dropped to $432,256, down 0.5 per cent from the beginning of the year.

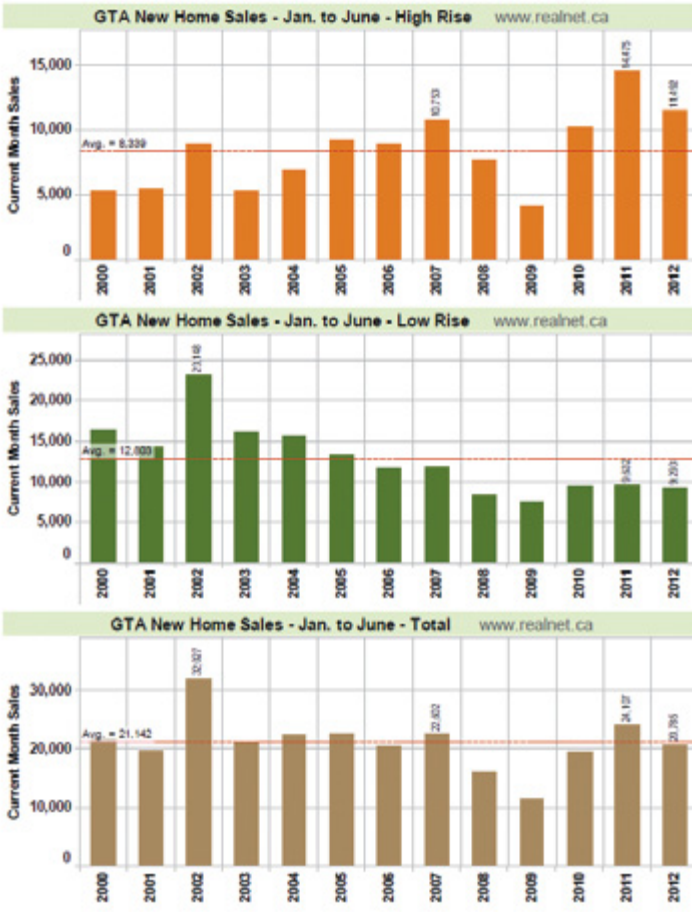

IMAGE COURTESY OF THE AUTHOR

GTA new home sales

Now if you stopped here in forming your opinion, it would be based on facts. Problem is, those facts have been presented with little perspective, and that could be dangerous.

Mark Twain once said, "Most people use statistics the way a drunk uses a lamp post, more for support than for illumination."

For those seeking to support a certain position or point of view about the real estate market, these might be all the facts you need. For those in search of further illumination, please read on.

If you understand that last year was a record year for new condominium sales, your perspective on this year's 21 per cent drop in first-half sales might change. It may also impact your opinion to know that 2012 year-to-date high-rise sales are at the second-highest level on record—38 per cent above the long-term average for the period (which is 8,339 sales).

For further perspective, step back and remember that new condominium development does not exist in a vacuum. Condos make up the high-rise component of the new home market. Low-rise new homes (detached, semi-detached, townhomes and links) comprise the other part of the market.

If you want to have proper perspective on the high-rise market, it is essential that you understand what has been happening in the GTA low-rise market. During the first half of 2012 there have been 9,293 new low-rise homes sold in the GTA—that's 4 per cent less than last year and it represents the fourth weakest year on record. One of the reasons for that is the record-low level of available low-rise inventory, which is a result of the province's intensification policies. At the end of June there were a near-record-low 5,797 new low-rise homes remaining in GTA builder inventories.

The index price for low-rise ended the period at $603,102, a near-record-high level. This resulted in the biggest price difference on record between a new low-rise home and a new high-rise home: $170,846. For perspective, consider that it took 48 months for the Low Rise Index Price to move from $400,000 to $500,000, but it has taken only 19 months to move from $500,000 to $600,000

How have total new home sales—low-rise plus high-rise—been so far in 2012?

During the first six months of the year a total of 20,875 new homes were sold. That's down 14 per cent from last year (which was the second best year on record for total sales). But when compared to the long term average of 21,141 for that same period, 2012 so far has just been average.

With the record-high high-rise inventory of 20,133 units, and a near-record-low low-rise inventory of 5,797 units, there are currently 25,930 new home options available to GTA consumers.

How does that compare with previous years? Over the long term, total inventories have ranged between 25,000 and 30,000 units, so the growth in high-rise inventories is just helping to bring the total inventories back to the low end of normal, albeit a new normal that has seen high-rise condos come to dominate the market as a result of the intensification policies in the growth plan.

Warning: Consuming limited facts may be hazardous to the health of your opinion.

George Carras is president of RealNet Canada Inc, the official source of new home information for both BILD and the Toronto Real Estate Board (TREB). He writes a Toronto Star column in the New in Homes and Condos section the last Saturday of every month. For more information visit http://www.realnet.ca or follow on Twitter at twitter.com/realnet_canada.

Wither Growth Plan Implementation?

A year later

By John Genest

It's been a year since *OPJ* published my "Sprawl, Green Sprawl and Viable Urban Systems – Wither Growth Plan Implementation?" article (*September/October 2011 edition*). This current issue seems a perfect opportunity to reflect on what has and hasn't changed since, for better or worse.

The original article asked and answered (to a point) three core questions:

1. To what extent can growth in the urban footprint of the Greater Toronto Area and Hamilton (GTAH), as planned to respond to growth plan requirements, be characterized as sprawl?
2. How much of the outcome is driven by shifts in the housing mix required to meet the growth plan's intensification and density targets?
3. To what extent is "green sprawl" contributing to larger urban footprints?

Without repeating the whole of the original, the answers were:

1. If sprawl is defined as occurring where growth in the planned urban footprint over the 2006 - 2031 period exceeds growth in population over the same period, upper tier official plans as adopted will not result in urban sprawl: where sprawl occurs at an index ratio of 1.0, the adopted plans yield an index of 0.6 for the GTAH.
2. This shift plays a fundamental role in reducing the urban footprint but achieving it will require overcoming significant barriers, take substantial effort and investment, and will shape our economic future for better or worse.
3. The impacts of "green sprawl" are real and have show-stopping potential as they may affect urban expansion and density.

The remainder of this article considers the extent to which more or less clarity has emerged around each question.

The original conclusions regarding sprawl appear likely to be borne out by settlement and/or OMB approvals. The specifics remain uncertain because resolutions in most upper-tier municipalities are still subject to ongoing appeals/mediation (Durham and York regions) or further study (Peel Region). Relief sought through the respective appeals/study processes will not bring sufficient new land into a 2031 boundary to push outcomes significantly closer to a "sprawl" ratio.

That said it is clear that even six years after its enactment there is still no consensus on an appropriate methodology for completing a land budget responsive to growth plan requirements. Neither is there consensus on the range of input assumptions considered valid for such key variables as net to developable gross land ratios or densities sufficient to fulfill those requirements. As outlined in Bryan Tuckey's article, a multi-stakeholder effort is required to bring consensus to both questions well before the five-year reviews of these GTAH official plans begin.

This shift to more medium- and high-density housing is at the heart of the growth plan's intensification and density targets. Notwithstanding the (perhaps moderating) demand for high-density condo product in Toronto, there are few positive signals that the required shift will be realized by 2015 across the 905 area. Development charges and parkland cash-in-lieu costs continue to mount for high-density housing outside Toronto. Low-density product is being consumed at a rate that appears likely to bring supply shortfalls to Vaughan and Markham by 2016.

The risks attached to variances from the planned housing mix are coming to more starkly defined relief. Growth plan-responsive housing mixes are now being imbedded in development charges background studies on the assumption that they define what will happen over the years ahead. Failure of the market to absorb what the growth plan says we should is becoming the central risk/uncertainty in upper-tier municipal cash flow projections for infrastructure financing. A continued supply of affordable family housing still hangs in the balance.

Clear definition of appropriate exclusions ("take-outs") for the purpose of testing population and job density against growth plan criteria continues to confound both agreement on what land area is necessary to support population and employment growth, and final answers on the extent to which environmental preservation is contributing to increasing (or not) green sprawl. Common sense is softening the interpretation of the growth plan definition of allowable exclusions from the land area over which density targets are to be measured, but the ground continues to shift.

There is a significant prospect that new stormwater pond footprints will double in GTAH watersheds, to retain flows under regional vs. 100-year-storm conditions as well as manage the temperature of pond outflows. On the endangered species front, direct habitat for Red Side Dace and transition impacts are better understood, but definition of "contributing habitat" and land area impacts remain less certain. The list of endangered species continues to grow. Shorter term clarity is emerging on such elements as transition regulations for Bobolink habitat protection and the range of possible habitat compensation arrangements. But new species, with differing habitat requirements, continue to be added.

There is as yet no consensus on the most appropriate approach to recognizing these emerging realities. Alternatives include incorporation of a "contingency factor" in a land budget calculation, or setting the questions aside until they can be dealt with as part of the next five year official plan review.

On the whole, "better or worse" is not easy to call. New questions continue to emerge as old ones are answered. New information, such as release and approval of revised forecasts for the growth plan's Schedule 3, will be helpful in re-framing our understanding of what quantum of growth we will need to plan for to the horizons past 2031. Fundamental questions however, particularly those related to our ability to achieve the growth plan's intensification targets starting at 2015 without impacting other sustainability objectives, still have a distinctly uncomfortable uncertainty about them.

John P. Genest, MCIP, RPP, PLE, a principal at Malone Given Parsons Ltd., continues to be engaged in appeals of the Waterloo, York and Durham regions official plans.

CEAA 2012

New reality for federal EAs

By Dianne Damman and Laurie Bruce

The *Canadian Environmental Assessment Act* was originally proclaimed in 1995 (*CEAA 1995*). The general purpose of this legislation was to ensure the environmental effects of projects were assessed and that they would not result in significant adverse environmental effects before the federal government took action to enable a project to proceed to implementation.

Recently, federal environmental assessment legislation has undergone substantive changes. The *Canadian Environmental Assessment Act, 2012* (*CEAA 2012*) was proclaimed in force on July 6, 2012. *CEAA 1995* and associated regulations were repealed and replaced with a significantly different regime.

The following outlines some key considerations and requirements of *CEAA 2012*.

Projects subject to *CEAA 2012*

Under *CEAA 1995*, a federal environmental assessment was required if the federal government was the proponent for a project, provided financial assistance for the project, granted an interest in land (i.e., sale, lease or otherwise disposal of land), or exercised a regulatory duty in relation to a project such as the issuing of a permit. These were commonly referred to as "triggers." In order for *CEAA* to apply to a project, there had to be a project (as defined in the legislation), a federal authority and a trigger. There were multiple federal departments acting in the capacity of a Responsible Authority (i.e., the federal department that was responsible for ensuring that an environmental assessment of a project was conducted). Fisheries and Oceans Canada commonly acted as the authority since many projects required an authorization under *section 35(2)* of the *Fisheries Act*. Transport Canada was another common authority due to the requirement to obtain an approval under the *Navigable Waters Protection Act*.

Under *CEAA 2012*, projects that require a federal assessment are prescribed by regulation in *Regulations Designating Physical Activities*. If a project is not listed in this

regulation, it routinely will not be subject to *CEAA 2012*. In cases where proponents are uncertain regarding whether their specific project is included, they should contact the Canadian Environmental Assessment Agency.

The projects that are listed on this regulation, for all intents and purposes, are comparable to those listed on the former *Comprehensive Studies List Regulations*. These are major projects with greater potential for environmental effects and are primarily related to mining, resource development, power generation, oil and gas pipelines and facilities, large scale infrastructure (e.g., railways, all-season public highways), among other major projects types.

The Minister of the Environment also has the power to designate a project to be subject to an environmental assessment if there is the potential for adverse environmental effects or there are public concerns related to those effects.

Determination of federal EA requirement

As a first step, proponents must submit a description of their proposed project to the Agency. Upon receipt of a proponent's complete project description, the Agency has 45 days to determine if a federal environmental assessment will be required—this process is referred to as a "screening." (Note that "screening" under *CEAA 2012* has a different meaning than the same term under *CEAA 1995*.) There is an opportunity for the public to provide comment on the project during this screening process. The Agency must post a notice of its decision on the Canadian Environmental Assessment Registry Internet (CEARI) site.

Types of EAs

There are two types of environmental assessments under *CEAA 2012*—Standard EAs and Review Panels. Within 60 days of the start of an environmental assessment, the minister will determine if the project should be assessed by a Review Panel. If a Review Panel is held, there is a 24-month timeline within which the panel must conduct its review. If a project is subject to a Standard EA, the federal government has 365 days from the start of an environmental assessment by the Agency to the final environmental assessment decision.

Key features

Focus on potential environmental effects under federal jurisdiction—Under *CEAA 2012*, the environmental assessment must consider those matters that are within federal jurisdiction, including the potential adverse environmental effects on fish and fish habitat, aquatic species, migratory birds, federal lands, effects that cross provincial or international boundaries, effects that impact Aboriginal peoples, such as their use of lands and resources for traditional purposes, and changes to the environment that are directly linked, or necessarily incidental, to any federal decisions about a project (from Agency website).

Timelines—There are timelines for the completion of all environmental assessments under CEAA 2012, as previously noted. The minister has the authority to extend these timelines under certain circumstances. The timelines refer to

the activities of the federal government and Review Panels, not to the time required by a proponent to undertake the environmental assessment.

Enforceable EA decision statement—At the end of the environmental assessment process, the RA issues an enforceable decision statement which outlines the decision and any conditions that the proponent must comply with. The Responsible Authority must post this decision statement on the CEARI site. Non-compliance with the conditions in a decision statement is a violation of the legislation and may be subject to fines.

Public participation—While there are opportunities for public participation throughout the environmental assessment process, there are several key points of contact. The first opportunity for public participation is when the Agency is conducting a screening to determine whether an environmental assessment is required. In addition, there is an opportunity for the public to review and comment on draft environmental assessment reports. Review Panels are required to hold public hearings to provide an opportunity for the participation of interested parties.

Aboriginal peoples—The role of Aboriginal peoples is a vital element of *CEAA 2012*. The definition of "environmental effects" specifically addresses potential effects on Aboriginal peoples by requiring an examination of changes to their health and socio-economic conditions, physical and cultural heritage, current use of lands and resources for traditional purposes, and structures, sites or things that are of historical, archaeological, paleontological or architectural significance.

Mandatory follow-up—Follow-up programs to verify predicted environmental effects and the effectiveness of mitigation measures are mandatory for all environmental assessments.

Substitution and equivalency—*CEAA 2012* contains provisions for cooperation with provinces. In some cases, it may be possible to substitute the federal process with a provincial environmental assessment process. The minister would have to be satisfied that the provincial process is an appropriate substitute and would approve the substitution, upon request by the province. With substitution, the minister retains decision-making authority at the end of the environmental assessment process.

Cabinet can also exempt a project from the application of *CEAA 2012* if it is concluded that a province will undertake an assessment process that is equivalent to the federal process. In that instance, no environmental assessment decision is made by the minister.

Responsibilities

Under *CEAA 2012*, there are only three Responsible Authorities—Canadian Nuclear Safety Commission (for nuclear projects), the National Energy Board (for international and interprovincial pipelines and transmission lines) and the Agency (for all other designated projects). The key responsibilities of the Agency include the following actions: conducting a screening to determine whether an EA is required and posting this decision on the CEARI site; ensuring that an EA for a designated project is conducted and that a report is prepared, with a draft report posted on the internet for public review and comment; and finalizing the report, taking into account public comments, and submitting the final report to the minister.

Subsequent to receiving the final report, the minister makes a decision regarding whether the project is likely to cause significant adverse environmental effects, taking into account the implementation of mitigation measures.

Regulations

In addition to the *Regulations Designating Physical Activities*, two other regulations have been approved to date:

Proponents of designated projects are required to prepare a project description in accordance with the *Prescribed Information for the Description of a Designated Project Regulations*. This regulation outlines the specific information that must be included in this project description and should be used as a guide by proponents.

Cost Recovery Regulations apply to designated projects that are subject to a Review Panel. The regulations outline costs that the Agency can recover from project proponents during the course of the assessment process.

Projects on federal lands

A federal authority must not carry out a non-designated project that is on federal lands, or carry out any power, duty or function (e.g., provide funding or issue a permit) until it determines that the project is not likely to cause significant adverse effects. Federal authorities must undertake a project review to make this determination; however, this is not a formal environmental assessment.

Guidance regarding the scope and level of detail for this project review has not yet been issued by the federal government. An inter-departmental committee has been formed to develop a policy approach to address this matter.

CEAA and municipal projects

It is likely that few municipal projects will be subject to *CEAA 2012*. Under *CEAA 1995*, many municipal projects triggered the requirement for a federal environmental assessment. For example, where federal funding was provided, *CEAA* was "triggered." Some municipal projects (e.g., roads) may have "triggered" *CEAA* due to a requirement for a regulatory approval under the *Fisheries Act* or the *Navigable Waters Protection Act*. With these "triggers" no longer part of the federal regime, the only projects that would likely require an assessment under *CEAA 2012* are those included on the *Regulations Designating Physical Activities*, as noted above.

Dianne Damman, MA, MCIP, RPP, is principal of D.C. Damman and Associates. Her firm specializes in environmental assessments at the federal, provincial and municipal levels and the coordination of multi-jurisdictions environmental assessments, as well as public and stakeholder consultation and facilitation. Laurie Bruce, MA, MCIP, RPP, is principal of Planning Solutions. She has worked with federal departments on the development of practices and procedures to improve the effectiveness and efficiency of their EA activities. Dianne and Laurie often collaborate on project and policy initiatives and have approximately 60 years of combined experience in the environmental assessment field.

Alternative funding

Creating rare bird habitat

By Robert Orland

IMAGE COURTESY OF THE AUTHOR

At a time when the flow of provincial dollars to conserve land may have dried up, some alternative funding from developers is helping land conservation organizations protect species at risk. Among the successes so far is habitat creation for a rare grassland bird with a beautiful burbling song.

Currently listed as a threatened species in Ontario, Bobolinks are ground-nesting songbirds whose population decrease has been observed since the 1960s. Historically, Bobolinks lived in tallgrass prairies but with the clearing of native grasslands, they moved to hayfields. As Ontario's agricultural lands become suburbs and shopping malls, Ontario's Bobolink population suffers from continued habitat loss.

Under Ontario's *Endangered Species Act (2007)*, it is illegal to damage or destroy the habitat of an endangered or threatened species listed on the Species at Risk in Ontario list. As stated in the Ministry of Natural Resources ESA submission standards (2012), development projects proposed for areas inhabited by species at risk, such as the Bobolink, must be approved for an Overall Benefit Permit, which requires applicants to undertake "actions that contribute to improving the circumstances for the species specified in the permit." Proposed actions could take the form of compensation funding provided by an applicant to a conservation body, such as a conservation authority or land trust, to protect and steward species at risk habitat at an alternate site of comparable or greater size and quality.

MNR assesses permit applications on a case-by-case basis to determine the best course of action to achieve a species at risk benefit. Requiring a developer to fund securement and/or stewardship of species at risk habitat at an alternate site, in lieu of the land proposed for development, is just one example of a range of beneficial actions that MNR may consider when reviewing a permit application. The Bobolink / Eastern Meadowlark Roundtable also works with MNR to develop solutions and create opportunities to support grassland birds under the act.

Through legislation to protect species at risk, more ecologically significant land is being secured and stewarded in Ontario. Two recent case studies involving Bobolink habitat demonstrate how this process can work.

Last fall in the Brampton area, a developer had plans to create a subdivision on a site where Bobolink habitat was identified. The developer applied to MNR for a habitat removal permit. Discussions with MNR identified potential equivalent Bobolink habitat sites in need of protection and restoration north of Georgetown, about 20km away from the proposed development site. Coincidentally, Credit Valley Conservation was working with land conservation consultant, Orland Conservation, to find a way to secure two areas of natural land in the same area of potential Bobolink habitat.

Orland Conservation walked the two sites with ecologists from CVC, MNR and those working on behalf of the developers. The first potential property was 134 acres, containing forest, streams, Niagara Escarpment, and most significantly, three separate farm fields identified as potential Bobolink habitat. However, MNR determined that the farm fields on the site were too small.

Although the second property was only 30 acres, it consisted entirely of farm field; and thus, the potential for

Above: As Ontario's agricultural lands become suburbs and shopping malls, Ontario's rare species suffer from continued habitat loss

Bobolink habitat was much greater. This property satisfied MNR's requirements and the Overall Benefit Permit was approved following additional considerations such as the land value associated with the existing land use and geographic location. The land was secured by Credit Valley Conservation with funding from the developer. The existing soybean field will be restored to suitable habitat for attracting Bobolinks. Part of the compensation funds from the developer will cover the restoration cost of tilling the land and seeding it with native grasses.

In another area of the province, near Ottawa, developers acquired land that was also identified as consisting of potential Bobolink habitat. Construction could not proceed until a permit was granted by MNR.

The Ottawa-based Rideau Waterway Land Trust recently received a donation of conservation land with potential Bobolink habitat. Working with the developer and MNR, the trust was provided with the stewardship dollars required to successfully create Bobolink habitat on the donated conservation land. It also entered into a five-year agreement with the developer that will be filed with MNR to ensure restoration and stewardship of the new Bobolink habitat over the coming years.

The land value exchange established by MNR in this case stipulated that the developer was to provide compensation stewardship funding for 10 per cent of the land (8 acres) proposed for development. This ratio is due to a three-year transition agreement MNR made with the development industry as part of a phasing-in process. After three years, the ratio for replacement habitat is expected to increase to 1:1. Although the current 1:0.1 transition period rate is low, it provided much-needed funding to the Rideau Waterway Land Trust, a charitable organization reliant on volunteer service and financial donations.

The concept of development compensation funding may not be an ideal solution to balancing urban expansion and species at risk protection needs; however requiring developers to support the creation of new species at risk habitat that development destroys is a step in the right direction. Before 2007, Ontario's ESA did not afford legal protection to threatened species and their habitat, only to endangered species; thus, developers would not have been required to compensate by funding habitat creation for the threatened Bobolink in the two case studies discussed.

By requiring developers to work with land conservation groups to provide benefits for species at risk and their habitats, the land development industry is beginning to contribute to the protection of Ontario's rich biodiversity.

Founder and president of Orland Conservation, Robert Orland began his career as an environmental planner with the Lake Simcoe Region Conservation Authority. Author of upcoming book, The Book on Land Securement, he can be reached at robert.orland@orlandconservation.ca. Since 2003, Orland Conservation has been dedicated to creating legacies of conservation and sustainability. Visit www.orlandconservation.ca and www.backyardbounty.ca for more information.

PHOTO: STEVEN ROWE

Changes to renewable energy approvals

Implications for wind power projects

By Julia Cushing and Marc Rose

In 2009, the Liberal government rolled out the *Green Energy and Green Economy Act*. The purpose of the act was to promote renewable energy generation, energy conservation and the creation of jobs in the renewable energy industry[1]. The act also allowed for the creation of the Feed-In Tariff Program and the Renewable Energy Approval process. The Feed-In Tariff Program provides standard contracts for selling electricity generated through certain renewable means to the Ontario Power Authority whereas the Renewable Energy Approval process defines the requirements for developing renewable energy projects in Ontario. The following article highlights recent amendments to the Feed-In Tariff Program and the Renewable Energy Approval process. While many of the changes described apply to all types of renewable energy projects, this article focuses on the requirements as they relate to wind energy projects.

Feed-In Tariff program

The Feed-In Tariff Program establishes consistent requirements, prices, and long-term contracts for larger-scale renewable energy generation project greater than 10 kilowatts (kW). Key highlights of the program include a guaranteed pricing structure for the 20-year period of the contract, a requirement for projects to contain a specified amount of domestic content and provisions to encourage Aboriginal and community-based projects[2]. These incentives encourage the development of renewable energy projects across the province in support of a green energy economy.

Renewable Energy Approvals Process

The Renewable Energy Approval Process, as outlined in *Ontario Regulation 359/09* (*O.Reg. 359/09*) under the *Environmental Protection Act*[3], came into force on September 24, 2009. This process provides consistent requirements for developers planning wind, solar or bio-energy facilities and for government reviewers issuing a decision on these projects. A key aspect of the regulation is the streamlined approvals process where the ultimate decision to approve a project falls with the Ministry of the Environment. Since its inception in 2009, the regulation has undergone two amendments, one in January 2011, and the second recently came into force on July 1, 2012. Changes to the Technical Guide to Renewable Energy Approvals[4] (Technical Guide), a document prepared by the ministry to provide guidance on interpreting the regulation, are currently being proposed and are also discussed below.

Key highlights of the regulation and technical guide include consistent guidelines for siting project infrastructure with regard to natural and socio-economic features, direction for conducting stakeholder consultation, and a standard six-month timeline for issuing a decision on the final application.

2012 FIT amendments

Amendments to the Feed-In Tariff Program, now called FIT 2.0, stem from the Government of Ontario's two-year review of the program. These amendments affect any project applying for a Feed-In Tariff contract going forward. The proposed amendments relate to the pricing structure for renewable energy contracts, incentives to encourage community and Aboriginal development of renewable energy projects and to encourage developers to consult early with Aboriginal and municipal stakeholders, among others.

Prices offered by the Ontario Power Authority under a Feed-In Tariff contract have been reduced for certain projects. For example, wind energy project were previously offered 13.5 cents per kW hour and the amendments reduce these prices to 11.5 cents per kW hour to better reflect current costs[5]. Additionally, between 0.5 and 1.5 cents per kW hour

Above: Wolfe Island wind farm

can be added to the amounts offered to any project based on levels of Aboriginal and community participation.

Next, public and Aboriginal participation in developing green energy projects is being encouraged by prioritizing projects where there is public investment (this could come from the community, a publicly funded school, public university, college, hospital or long-term care home) or Aboriginal investment in the project. Specifically, any project with greater than 50 per cent Aboriginal or community participation will be given priority above other applicants[6]. This encourages the proceeds from renewable development to remain local.

Finally, consultation is an essential component of developing renewable energy projects. It is vital to engage members of the community, municipal representatives and Aboriginal communities early and throughout the planning process to seek community knowledge and in order to address any concerns through project planning. An amendment to the Feed-In Tariff program gives priority to projects that have received support from Aboriginal communities identified by the ministry or from local municipalities. This support can be in the form of a resolution from Aboriginal communities and where a project is being proposed on First Nation land[7]. This amendment would benefit Aboriginal communities and local municipalities by encouraging developers to meet with them early in the planning process.

2012 REA amendments

Renewable Energy Approval Process amendments may apply to projects where the Notice of a Final Public Meeting was not issued prior to the amendments coming into force. A highlight of the amendments include a change in the definition of a noise receptor, the removal of a requirement to receive agency sign-off prior to the final public meeting and the implementation of a change process to follow for amending projects.

The amended *O.Reg. 359/09*[8] changes the definition of a participating noise receptor, where in order for a receptor to be considered participating, it must be situated on a property where project infrastructure is constructed. This amendment clarifies a previous contradiction between the regulation and Technical Guide as the pre-2012 amendment Technical Guide defined a participating receptor as such. It also results in a more stringent noise standard as fewer receptors would be considered participating.

One amendment to the consultation process is that a developer is no longer required to receive sign-off letters from the Ministry of Natural Resources and the Ministry of Tourism, Culture and Sport on the Natural Heritage Assessment Report and Stage 1/2 Archaeological Assessment Report, respectively, prior to releasing the draft Renewable Energy Approval report to the public. It should be noted that sign-off is required prior to submitting the final Renewable Energy Approval submission. By implementing this change, developers minimize potential risks to the project schedule resulting from delays in receiving the sign-off letters.

Finally, the amendments to the regulation and proposed amendments to the Technical Guide include a Project Change Process, guidance for making changes to a project after the final public meeting. The pre-2012 regulation and Technical Guide did not include a process for developers to follow in the event that a change was needed to be made to the project, whether resulting from agency or public consultation or due to construction limitations, following submission of the Renewable Energy Approval reports. The Project Change Process is further described below and in the following figure.

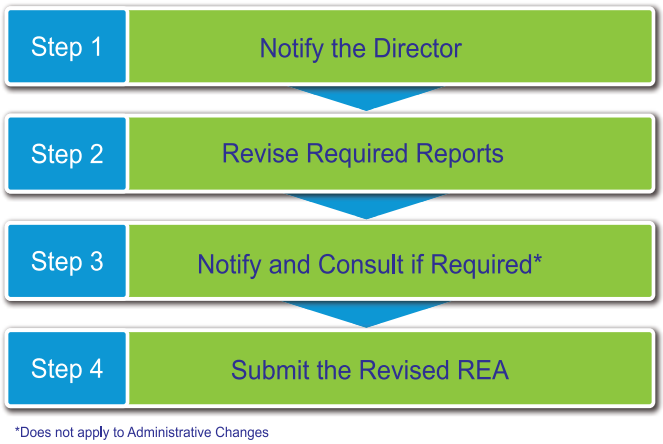

CHART COURTESY JULIA CUSHING

NextEra Flow Chart

Project change process

The Project Change Process provides clarity for project developers who alter a project after the final public meeting. This direction, outlined in the regulation and proposed amendments to the Technical Guide, identifies three categories of change—administrative, minor and significant—as explained below:

Administrative Changes—do not alter the effects assessment or mitigation measures proposed, and may include a change to the project owner or a change in the owner's address.

Minor Changes—do not result in any new negative effects, and may include changes to address comments from consultation such as decreasing the size of the construction footprint or a decrease in the number of turbines.

Significant Changes—may cause negative effects or are changes that would be of interest to stakeholders, such as increasing the height of a wind turbine or moving infrastructure closer to natural features[9].

The Project Change Process also describes the required steps once a change is determined to be required. These steps are generally the same for all three categories of change; however, the level of effort required under each step increases from an administrative change to a significant change, as do potential risks to the project schedule.

Conclusions

The proposed amendments to the Feed-In Tariff program reward projects with Aboriginal and public participation and also benefit Aboriginal communities and local municipalities by providing additional incentives for developers to initiate consultation early in the process. The amendments to the regulation and proposed amendments to the Technical Guide offer clarity on two items: one where a perceived contradiction previously existed (regarding how participating receptors are classified) and one where direction was not provided in the previous versions. Furthermore, the proposed amendments can help to reduce potential risks to a project schedule by eliminating implications of certain regulatory delays. Given the potential impact on project schedules, developers should plan and submit the project they believe will be built and only use the Project Change Process for unanticipated developments. Navigating a project through an evolving process requires early and continual planning to ensure flexibility to respond when amendments come into force.

Julia Cushing, BES, is a member of AECOM's Impact Assessment and Permitting Team with a focus on renewable energy approval projects. Marc Rose, MES, MCIP, RPP, is a Project Manager at AECOM and leads the Impact Assessment and Permitting Team in the Markham office. They can be reached at julia.cushing@aecom.com and marc.rose@aecom.com. AECOM has been working for a renewable energy developer since 2010 on three proposed wind energy projects in southwestern Ontario.

Endnotes

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PHOTO: STEVEN ROWE

Wind turbine at Ferndale on the Bruce Peninsula

New Renewable Energy Rules

Implications for planners

By Heather Sadler and Steven Rowe, contributing editor

The Renewable Energy Approval process was introduced to streamline approvals for a wide range of renewable energy projects. Now, the provincial government is proposing to place some projects under a different framework that would simplify approvals still further. Also, changes arising from a recent review of the Feed-In Tariff requirements are posing challenges for registered professional planners.

One of the June 2012 changes to the Renewable Energy Approval Regulation had the effect of allowing the government to prescribe projects under the Environmental Activity and Sector Registry. This registry is part of an initiative by the Ministry of the Environment to modernize environmental approvals. Already, heating systems, automotive refinishing and standby power that may formerly have required a Certificate of Approval under the *Environmental Protection Act* can, instead, be placed on the registry thereby eliminating the need for separate environmental approvals. To qualify for the registry, the activity or facility must meet certain standards and specifications.

In July 2012, a proposal was posted on the Environmental Bill of Rights Registry that specific small-scale ground-mounted solar projects would be prescribed under the Environmental Activity and Sector Registry (EBR Registry Number 011-656). The ministry is also planning to prescribe some on-farm anaerobic digestion facilities (for biogas generation) and landfill gas electricity generation projects at some point in the future. If a renewable energy project meets prescribed requirements and is placed on the registry it would not require a Renewable Energy Approval.

Solar facilities that would qualify for the registry, as proposed, would have a name plate capacity greater than 10 kilowatts (kW) and less than or equal to 500 kW. The maximum area of the facility would be four hectares on a property that is zoned for industrial, commercial or institutional use, and three hectares for land outside a settlement area that is used for a farm operation. A number of other provisions apply. A facility that does not fall within the requirements and is not otherwise exempted would continue to be subject to the Renewable Energy Approval process.

For a facility to be placed on the registry a proponent would be required to provide written notice, information about the project and contact information to adjacent landowners, upper- and lower-tier municipalities, and a number of others. The operator of the facility would have to retain a number of documents and records, including confirmation from the relevant municipality that the facility is not within an area identified on an archaeological management plan.

PHOTO: STEVEN ROWE

Solar panels and small wind turbine, Prince Edward County

Further to the broader changes to the Renewable Energy Approval and Feed-in Tariff processes described in the articles by Marc Rose and Julia Cushing and Ben Puzanov, there are some additional FIT changes that affect ground-mounted solar generation facilities and smaller scale wind projects. These changes anticipate greater involvement from professional planners than before.

April 2012, the Ministry of Energy issued a ministerial directive to continue with Feed-in Tariff and microFIT (i.e., less than 10 kW) projects, subject to a number of amendments. One of these amendments is a new priority points system. The points are awarded, in part, on the basis of the applicant providing the Ontario Power Authority with a municipal council resolution in support of the project.

Typically proponents seek blanket resolutions of support for these projects while providing only limited information on which municipalities can base their approval. As a result many municipalities are struggling with how best to respond, wanting to be supportive of green energy yet wanting to exercise caution in lending support without fully understanding the implications of their resolutions.

Another amendment is that the Ontario Power Authority now requires proponents of both Feed-in Tariff and microFIT non-rooftop solar projects and wind generation projects of

3kW or less to provide a Zoning Opinion form signed by a "Land Use Planner, Director of Planning or equivalent Municipal Officer," who is a member in good standing of the Canadian Institute of Planners and a registered professional planner in the Province of Ontario. Without a Zoning Opinion signed by an RPP the project cannot proceed.

OPA is relying heavily on the professional planner to provide a statement of site suitability, based on Ontario Power Authority's definition of suitability, not on the professional planner's assessment. By signing the prescribed form, the planner acknowledges that the Ontario Power Authority is relying on the planners professional opinion that "neither the site nor any property Abutting the Site (to the extent that it is located in the Municipality), in each case, is property on which a residential use is a Lawfully Permitted Use, provided that if the Lawfully Permitted Use of the site is agricultural, any residential use of the site, or property abutting the Site is ancillary to the agricultural use."

The implications of giving this 'opinion' are considerable. First, any property, where a residential use is permitted by the zoning by-law, is not eligible for a Feed-in Tariff or microFIT installation, regardless of whether the residential use currently exists. This is problematic for applications within many rural municipalities where zoning by-laws permit residential uses in non-residential zones, including the rural zone. There seems to be very little connection between the rules and potential land use compatibility between renewable energy facilities and residential uses.

Second, in those cases where a site is eligible for a Feed-in Tariff or microFIT project for ground-mounted solar or a <3kV wind facility, the planner would have to confirm that residential uses are not lawfully permitted on the abutting lands as well, regardless of whether the use currently exists. The definition of abutting is provided by Ontario Power Authority. If residential uses are permitted on any one abutting property, the site does not qualify under the Feed-in Tariff rules. Properties directly across a road allowance, whether opened or unopened do not abut, regardless of possible visual impact. The requirement set out by Ontario Power Authority for abutting properties has little to do with compatibility of rural land uses.

The RPP must be satisfied that the use of the subject lands is agricultural and that any dwelling located on the property is ancillary (accessory) to the agricultural use. If the property is not legally used for agricultural purposes and/or the dwelling is not secondary to the agricultural use, then the RPP will be unable to sign the Zoning Opinion form. The question of 'what is agricultural' is problematic for marginal agricultural areas beyond the GTA.

Further, the RPP must be satisfied that there is an existing, legal agricultural use on all abutting properties and that any residence located on these properties is ancillary to this use. If a single abutting property does not meet this stipulation, then the site is not eligible for the Feed-in Tariff or microFIT program. In many rural municipalities the zoning by-law recognizes a single-detached dwelling as a permitted use in the rural zone, rather than as an accessory use. Properties which are zoned rural or abut a property zoned rural are not eligible for the Feed-in Tariff or microFIT program because they do not meet this requirement. Yet many projects are proposed on large properties which are zoned rural and where such projects make good sense from a land use perspective and would contribute in a positive manner to the struggling rural economy.

In our experience, few, if any professional planners across the province are in a position to endorse the Zoning Opinion on the basis that it does not provide an opportunity for a professional opinion, but seeks only a scripted and insufficient blanket response. Indeed, we have heard that a number of municipalities are refusing to sign off on these Zoning Opinion forms.

Unfortunately, it is unlikely that many viable projects across rural Ontario will receive the requisite Zoning Opinion based on the current requirements. Further discussion is needed to ensure that the microFIT and Feed-in Tariff 2 programs better reflect the realities of rural land use in Ontario.

The new rules include other, very specific land use requirements regarding where ground-mounted solar projects are permitted. Further details can be found on the OPA website.

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OAK RIDGES DISTRICT

Peel Summer Solstice

By Bob Short

District planners from the public and private sector gathered in the Region of Peel on June 21 for the 2nd Annual Summer Solstice. The day provided an opportunity for exploring, learning and networking.

OPPI President Mary Lou Tanner's attendance and overview of Council initiatives was much appreciated.

The initial activity of the day was a guided tour through the Cheltenham Badlands; a unique landform found in the area. The hikers who braved the heat clearly enjoyed seeing and learning more about this natural land form and the geology of the area. The group then wound its way to the banks of the Credit River in the Village of Terra Cotta.

Jason Thorne (planningAlliance) and Drew Sinclair (regionalArchitects) brought the planner and the architect together in their presentation, The Intensification Paradigm. The panel presented examples in Europe where the intensification within city places and spaces has been very much a part of renewing communities throughout their long history. The development of healthy communities through viable intensification strategies was presented as being both necessary and achievable. It was also noted as a direction that requires vision and a comprehensive and collaborative approach in the development of public policy, design guidelines and standards.

Specific reference was made to the policy document Vinex, published by the Dutch Ministry of Housing, Spatial Planning. The community of IIjburg was referenced as a successful example of a planned and complete community; being of human scale, providing active transportation solutions and a built environment that offered places to live, work and play. Other projects and plans referenced were the Olympic Village in Vancouver and the Port Whitby Community Sustainability Study.

While the afternoon was punctuated by thunder, lightening, heavy rain, high wind gusts and falling trees it did not stop Liz Howson (Macauley Shiomi Howson Ltd.) and Anne McIlroy (Brook McIlroy) from making their presentation, Great Communities through Form-based Zoning. The many benefits of form-based zoning as a practical planning tool when considering a regulatory framework along the major avenues where intensification is being encouraged were highlighted. It was made clear that form-based zoning is intended to move beyond zoning by-laws that typically have been designed to separate uses and set standards that are rigid and inflexible. The speakers suggested form-based zoning by-laws were a means to provide both clarity and flexibility while assuring the community that the design guidelines and standards would be achieved.

Supporting design guidelines and standards was also identified as being necessary in achieving the vision and underpinning in the creation of a form-based zoning by-law. It was also noted that a high level of knowledge is required to develop form-based by-laws.

The District Executive acknowledges with thanks, all who helped to organize and sponsor the event—guests, student volunteers and participants. The 3rd Annual Summer Solstice will be held next year in York Region.

Bob Short, MCIP, RPP, is chair of the Oak Ridges District. He is also planning commissioner for the Town of Whitby.

PEOPLE

The following OPPI members were recognized with Member Service Awards at the 2012 Symposium: Rosalind (Roz) Minaji, MCIP, RPP, Maureen Zunti, MCIP, RPP, Mark Kluge, MCIP, RPP, Christian Huggett, MCIP, RPP and Peter Cheatley, MCIP, RPP (1951-2012).

Roz Minaji

Maureen Zunti

Mark Kluge

Christian Huggett

Peter Cheatley (1951-2012)

Landmark Year

Strengthening the profession

By Mary Lou Tanner

There have been many moments in the past year, my first year as OPPI President, where I have paused to reflect on the tremendous honour I have to serve in this role. One of these moments came with the completion of the Planning for the Future project. After many years of hard work, I am pleased that new national standards for the profession came into effect in Ontario. On our behalf, I signed two landmark agreements to implement Planning for the Future: one with the Professional Standards Board that will administer the new standards and the other with CIP and the other affiliates to establish the Professional Standards Committee that will set the new standards. Both reflect a tremendous amount of work undertaken by many dedicated volunteers. I thank you.

Mary Lou Tanner

We have come a long way over the past few years and indeed over OPPI's 26-year history. As the profession continues to evolve OPPI must position itself to better support its members through an exchange of knowledge, a dynamic program of Continuous Professional Learning and the pursuit of self-regulation. Together these initiatives strengthen the profession's commitment to acting in the public interest. Moving forward requires a positive consensus among members to amend the OPPI By-law. To that end, an electronic ballot will be in your email this November. Watch for it, complete it and transmit it back to OPPI within the allotted timeframe.

The amendments reflect Council's endorsement of two significant changes—restructuring OPPI Council and adoption of mandatory Continuous Professional Learning for the planning profession in Ontario. They also bring OPPI into compliance with new provincial legislation, the Ontario Not for Profit Corporations Act.

OPPI's structure is 12 years old. Our needs as an organization and profession have changed. Our Council structure must evolve as well. Council's recommended structure reflects OPPI's commitment to excellence in governance, public accountability and advancement of practitioner competence. It is designed to be flexible and nimble, focusing council on governance and policy matters. It is intended to engage OPPI's diverse membership in a collaboration with staff to implement programs and the strategic plan.

Continued Professional Learning is essential to any profession. The value of making it a mandatory component of professional planner's accreditation is twofold. It will assist members to remain current with contemporary practice and will enhance public confidence in the profession. The OPPI website contains a great deal of information on this initiative. Please take the time to read this for the details.

When OPPI embarked on this path, members said that additional learning opportunities need to be available, and they need to be accessible and useful to members across the province, including in smaller and northern communities where other options are more limited. Council agreed and is committed to offering a broad array of stimulating programs through OPPI and other organizations.

Following on last year's conference and more recent District events, Council will advance the conversations about self-regulation of the planning profession throughout the fall and into 2013. This is imperative if OPPI is to continue to be relevant and to thrive. I think President-Elect Paul Stagl summed it up best:

"We must now move to self-regulation and hold ourselves to that standard. It is not just our interest; it is the protection of the public interest and the public good. Standing still as a profession on this issue means we are actually taking steps backwards. Other professions, related to the work of planners, are moving forward on re-defining their scope of practice to include planning related initiatives. Quite simply, if OPPI does not move forward to define our scope of practice in a self-regulated profession, others will fill that void."

The OPPI Annual Report is posted to the website.

Join the conversation. Bring your ideas and suggestions. Monitor the OPPI website for information and updates.

It is indeed my honour to be OPPI President, particularly at this point in the history of our profession. It is also an honour to work with such a dedicated team of volunteers—Council members, committee members, colleagues in Districts—and the tremendous OPPI staff. Our profession is in very good hands. It is an exciting time to be a planner in Ontario.

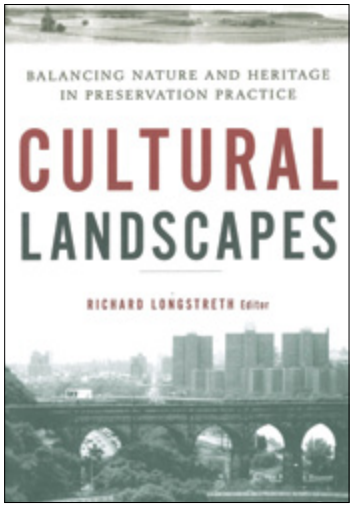
Mary Lou Tanner, MCIP, RPP, is President of OPPI. She is also associate director, regional policy planning with Niagara Region's Integrated Community Planning Department.

LETTERS TO THE EDITOR Members are encouraged to send letters about content in the *Ontario Planning Journal* to the editor (editor@ontarioplanners.on.ca). Please direct comments or questions about Institute activities to the OPPI president at the OPPI office or by email to executivedirector@ontarioplanners.on.ca.

Cultural Landscapes

Review by David Aston, contributing editor

Cultural Landscapes—Balancing Nature and Heritage in Preservation Practice
Richard Longstreth (Editor)
University of Minnesota Press (2008)
211 pages



Cultural Landscapes—Balancing Nature and Heritage in Preservation Practice is a consolidation of papers and presentations from the fourth National Forum on Historic Preservation Practice (held in 2004). The book is organized into two basic themes: interpretation and management. It addresses approaches to considering the significance of landscape features, discusses an array of practices for stewardship, and examines ways in which ongoing change can be effectively managed to be compatible with and enhance historical resources. The consolidation of papers, expertise and points of view provides guidance for people working in numerous specialties and encourages a broadening of perspectives about cultural landscapes.

The book contains a number of approaches to considering cultural landscapes and examples of cultural landscapes in urban and rural settings. The majority of the case studies represent American experiences, which make it difficult to draw direct comparison of legislation, guidelines and policy as it relates to cultural landscapes in Canada and Ontario.

While the most current *Provincial Policy Statement* first included the term cultural heritage landscapes, the concept of cultural landscape and preservation has been evolving over several decades. The book suggests the idea of a cultural landscape is at once simple and complex. Its significance may be routed in a single event or in a slow gradual process. Its components and their relationships are analyzed on a physical, functional and associative dimension.

The book suggests that at the most basic level, familiarity with cultural landscape can benefit in broadening preservation considerations, improving knowledge of places, aiding in the treatment of architectural components and guiding restoration.

A paper of particular interest relates to natural and cultural resources and vernacular landscapes, those that evolve through use by people. The author suggests that most Western cultural landscapes can be classified as vernacular, with characteristics of both natural and cultural resources.

The authors recognize that it is not possible to "freeze" or restore some of these landscapes as they were during their period of significance or to keep them from changing in unique and unpredictable ways. This is particularly true in the context of major landscape characteristics that exist in relation to transportation corridors.

The book concludes that there is a "great need for an integrative planning process to address cultural landscapes instead of just focusing on traditional historic preservation tools." The authors argue that vernacular landscapes are being threatened and there is a need to consider protection of these significant landscapes based on practical and scientific data reflecting what has been learned during the past several decades.

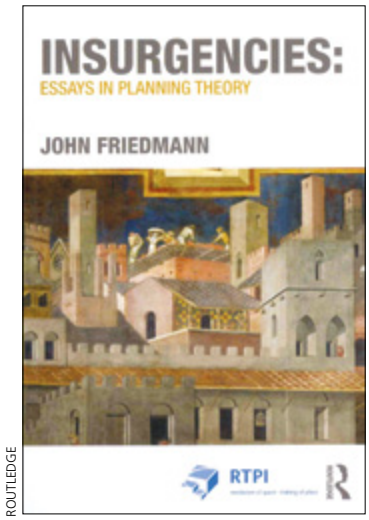
David Aston

David Aston, MSc, MCIP, RPP, is a partner at MHBC Planning in the Kitchener office, whose work includes provide planning services to municipal and private sector clients. He can be reached at daston@mhbcplan.com.

Insurgencies

Reviewed by Imelda Nurwisah

Insurgencies:
Essays in planning theory
By John Friedmann
London: Routledge.
2011, 255 pages



John Friedmann's *Insurgencies* is a collection of essays that takes the reader through a lifetime of concerted thought and careful declaration of "positionality." Each essay is bracketed with an introductory chapter to give context and a set of study questions to draw out further thought.

In the more than four decades of essays comprising *Insurgencies*, Friedmann shows how he grapples with issues and contributes to novel ways of thinking about society, power dynamics and politicization of space. In the articulation of his ideas, the reader can see how he positions himself among the many schools of thought in planning and geography.

In the 1970s Friedmann called for a more interactive relationship between the planner and the client, so the planner's "processed knowledge" would be fused with the client's "personal knowledge" of the local cultural, political and societal context (p. 21). At the time a relatively radical perspective, it has become the commonly accepted norm in today's planning practice.

Friedmann stresses the importance of relativism in planning practice and underlines the transformative power of planning by constantly applying theory and best practices to real world situations. Through this iterative technique, planners refine their practices to suit their personalities and strengths, and to reflect local conditions.

However, Friedmann explains, planning theory itself must have an underlying moral compass in which to direct its momentum. While a great deal of his writings is devoted to the concept of a common good, he explicitly declines to define what it is and instead encourages readers "to continu[e] to search for a 'common good' of a city . . ." (p. 150).

This reviewer thought the chapter on The Many Cultures of Planning (p. 167-204) was somewhat limited, particularly in light of Friedmann's commitment to locally-derived approaches. The chapter looks at planning regimes in Japan, China, India, Russia and others. All too briefly, Friedmann describes the ineffectualness of Japanese zoning and plans, and the weakness of Japanese civil society. But he fails to acknowledge the cultural norms in Japan where duty is binding, indirectness is a form of respect, and hierarchy is ingrained in every aspect of society. As Friedmann himself states, these are the dangers of brevity and case study selection.

Insurgencies is a useful and inspiring collection of essays, notes and reading lists. The way in which Friedmann concisely and cogently frames his arguments is a delight to read. More importantly, he discusses public issues that remain unresolved since the first of these essays was published more than 40 years ago.

Imelda Nurwisah, HBSc, MES Candidate (Planning), is a student member of OPPI and is currently studying at York University. She is interested in urban design, public involvement, and sustainable communities.

Food for thought

By Robert Brown

I was recently reviewing the *Planning Act* application requirements of a—to remain unnamed—municipality, and it got me to thinking. As planners how many trees do we kill each year with the stacks and stacks of paper that many applications can require.

We talk a good game, sustainability, environmental protection, clean water, protection of natural heritage features, wetlands, etc., etc. But have we stopped to think of the damage the application process, from a cumulative standpoint, has on the environment.

For example, many municipalities require multiple copies of applications. Why? Can't one application be scanned and circulated to all of the various agencies and departments that are required to provide input? Then there are the studies that may be required. So let's think worst case for a moment.

An application for development is submitted and requires the following:

- Multiple copies of the application—8-12 pages = 80-120+ pages
- Environmental Impact Statement—20-30 pages, multiple copies = 100+ pages
- Archaeological Assessment—15-20 pages, multiple copies = 80-100 pages
- Record of Site Condition—Phases One and Two, multiple copies = 100-150 pages
- Planning Justification Report—multiple copies = 100 pages+
- Drawings and Elevations—20-30 large drawings + revisions + circulation copies
- Agreements, deeds, survey sketches, etc., etc.—30+ pages
- Reports to council and agencies, notice of public meeting—50-100 pages

So for this one application about 730 pages of paper were generated. According to some quick research your average paper tree yields about 8,500 sheets of standard paper. That means that about 12 applications of this type kill one tree. Now perhaps the studies that were required saved several hundred trees or protected a wetland or unearthed a significant archaeological find so it boils down to a balance. Sacrifice one to save hundreds. Maybe, but is that one sacrifice really necessary?

Granted a lot of paper that we use today is partially or completely recycled but it still takes a lot of energy to recycle. I recall when I started as a planner that the idea was to move toward a paperless or less paper process. I think some effort has been made on that front but I don't see everyone moving in that direction.

So the next time you require a study, stop and think maybe a PDF version is good enough. As planners we should be at the forefront of change not stuck in the old school paper ways.

Robert Brown, MCIP, RPP, is senior planner and president at Storey Samways Planning Ltd.

New Toolkits for Municipalities

By Chuan Li

The Ontario government has developed two step-by-step guides for the review and approval of land division applications: Understanding the Consent Application Process: Your Step-By-Step Guide for Consent-Granting Authorities and Understanding the Subdivision & Condominium Application Process: Your Step-By-Step Guide for Approval Authorities.

The toolkits guide municipalities and planning boards through the requirements of *sections 51* and *53* of the *Planning Act* in an easy-to-read format. They are also a helpful resource to landowners and developers planning to submit an application.

Each toolkit consists of three parts: Part One establishes the basis for administering the land division process in Ontario, including delegation options for planning approval authorities. Part Two provides step-by-step explanations for the review and approval of consent applications or plans of subdivision and condominium applications. Part Three contains an appendix of ready-to-use templates and checklists.

Chuan Li is a community planner at the Municipal Programs and Education Branch of the Ministry of Municipal Affairs and Housing.

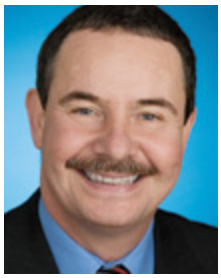
Environment and Land Tribunals Ontario

Qualification of expert witnesses

By Eric K. Gillespie, contributing editor

Almost every hearing before an ELTO board or tribunal involves one or more expert witnesses. In terms of planners, they frequently appear as experts. They also interact with and at times rely upon the opinions of other experts. If the planner is leading the case, they may also call experts or cross examine them.

As anyone who participates in the hearing process is aware before a witness can give expert (i.e. "opinion") evidence he or she must be qualified to do so by the decision maker. This is frequently a routine practice that is accomplished by calling the witness and taking them briefly through their background and credentials.



Eric Gillespie

At the outset of this process, however, the decision maker will want a clear statement of exactly what the witness should be qualified to speak to. Simply calling a witness as a "professional land use planner" for example, may result in concerns that the qualification is too broad to be useful. Typically it is better to suggest that the qualification be more scoped by introducing a focus such as "professional land use planner with knowledge of the land use development process in Ontario" or whatever area is specific to the individual's experience and the evidence he or she wishes to give.

Often the decision maker will ask at the outset if the other parties will be objecting to the expert being qualified. Frequently, the decision maker will also indicate if the witness has appeared before him or her in the past. This is a clear indication to the party calling the witness that they will not need to go through the witness' particulars in detail. It also signals to the other parties that objections to qualification may not be particularly appropriate or well received. Even where the expert is not well known to the board or tribunal, if there is no reasonable basis to object to the witness, hearing time can be saved and most decision makers appreciate opposite parties not objecting to the witness being qualified.

However, this does not mean that all witnesses should automatically be qualified as experts. In some hearings, it is quite clear that the witness does not possess the necessary background to be permitted to testify. This can occur, for example where a member of the public comes forward and wishes to give opinions on matters that are more properly within the scope of an expert. As well, even experts who have been properly qualified can attempt to go beyond the scope of their qualifications in giving their evidence. These situations should lead to objections on which the decision maker will then be asked to rule.

A structured approach to assessing expert evidence was developed by the Supreme Court of Canada in *R. v. Mohan*, [1994] 2 S.C.R. 9. The tests established there are equally applicable to all ELTO hearings. They should be considered by any planner, whether appearing as an expert witness, interacting with other experts or calling and cross examining them as part of a case.

Relevance—In order to be admissible all evidence (expert or otherwise) must be relevant. The probative value must also outweigh its prejudicial effect. For example, if the fact that a site has contamination will bear little on the decision to grant a severance that evidence will be excluded. The evidence must also be proportional. If significant time will be needed to present information that will have little effect on the decision then this evidence should be excluded. The evidence must also be credible. If not, it should be viewed as irrelevant.

Necessity—All expert evidence must also be necessary to assist the decision maker. This is generally regarded as information that is "likely outside the experience and knowledge" of the decision maker. The specialized knowledge that professional planners bring to hearings is clearly the type of evidence that comes within this category.

Absence of an Exclusionary Rule—There must also be no legal reason to object to the evidence. For example, if confidential settlement discussions or solicitor-client privileged communications are referred to this type of evidence should be excluded.

Properly Qualified Witness—The witness must also be appropriately qualified to give the evidence. This can be demonstrated in many ways including academic qualifications, practical work experience or personal study, attending courses or publishing in the area. The witness must also be independent and unbiased. These considerations are now largely addressed through Acknowledgment of Expert's Duty forms that most ELTO tribunals and boards require a witness to submit as part of his or her evidence.

Additionally, there is a large body of case law that can be researched if specific issues arise.

Finally, if an expert's qualifications are going to be challenged, it is appropriate to advise the other parties in

advance, and at the outset of the hearing ensure the decision maker is aware so that a proper process can be established to address the issue.

Whether appearing as a witness, calling or cross-examining them the qualification of experts forms an integral part of the process and is worth considering at every hearing.

Eric Gillespie and the other lawyers at his Toronto-based firm practice primarily in the environmental and land use planning area. Readers with suggestions for future ELTO related articles or who wish to contribute their comments are encouraged to contact him at any time. Eric can be reached at egillespie@gillespielaw.ca.

Professional Practice

The heart of the matter

Dear Dilemma,

I am a planning student and on the advice of a mentor I have sat in on a few Ontario Municipal Board hearings. At the hearings I have enjoyed seeing first hand how planning appeals are resolved and how planning evidence is presented and challenged by planning professionals and lawyers. While I find this an enriching experience, there is one thing I can't seem to get a solid grasp on: How can the planners who are appearing at the board to support or oppose the same application have such divergent definitions of how the application in question is or is not in the public interest?

—Interested in the Public Interest

Dear Interested,

First, glad to hear that you are taking steps to enrich your planning education outside of the classroom. Attending OMB hearings is a great way to see how planning policy is tested and enforced. As for your question, understanding and defining the public interest is at the very heart of what it means to be an RPP. In fact, the first item of OPPI's professional code of practice outlines the "Planner's Responsibility to the Public Interest."

There is no dispute that serving the public interest is a primary role of the planner. Balancing and understanding the many voices of the public is a central task of a professional planner and a unique responsibility that planners have over other professions. What is far more variable is how that public interest can be defined.

Because each planning exercise has its own unique circumstances and context, one's definition of the public interest can be equally nuanced. In any given instance the public interest may be broadly defined and elements of it weighed and considered in various ways by different planners, all based on the same facts. What one planner may see as an efficient use of resources and public infrastructure another may see as overdevelopment and disrespectful of neighborhood context.

One of the most exciting parts of our profession is the dynamic nature of the public interest and the planner's role in defining it. Next time you are hearing opposing evidence at the OMB consider the evidence for yourself and determine where you think the public interest lies. It will be good practice.

Best of luck in your studies and your future opportunities to define and serve the public interest.

—Yours in the Public Interest,
Dilemma

Through this regular feature—Dear Dilemma—the Professional Practice and Development Committee explores professional dilemmas with answers based on OPPI's Professional Code of Practice and Standards of Practice. In each feature a new professional quandary is explored—while letters to Dilemma are composed by the committee, the scenarios they describe are true to life. If you have any comments regarding the article or questions you would like answered in this manner in the future please send them to Info@ontarioplanners.on.ca.

Condominium Act

Province launches review

By Jason Thorne, contributing editor

Earlier this summer, the Minister of Consumer Services announced a comprehensive review of the *Condominium Act*. The intent of the review is to develop proposals to modernize the act to better reflect the needs and issues in a condominium sector that has changed dramatically since the act first came into force in 2001.

Today, over one million people live in more than half a million condominium units in Ontario, and more than half of all residential units being built are in condos. While the most dramatic changes, and many of the most high profile issues, have been with respect to the booming high-rise condominium market in the Greater Toronto Area, the review will address condominiums of all types, from high-rise towers in major cities to small townhouse complexes in smaller cities and towns.

While the review is intended to be comprehensive, it will focus on the issues that can be addressed by the *Condominium Act*. That means a focus on topics related to condominium board governance, dispute resolution, finances and reserve fund management, consumer protection and property management.

The ministry has already begun to identify key issues through previous consultations, including a 2010 online questionnaire of condominium owners. Planners will also be familiar with some of the issues and concerns that frequently arise with respect to the condominium sector. Among the issues that are likely to be raised by stakeholders and condo residents during the review are:

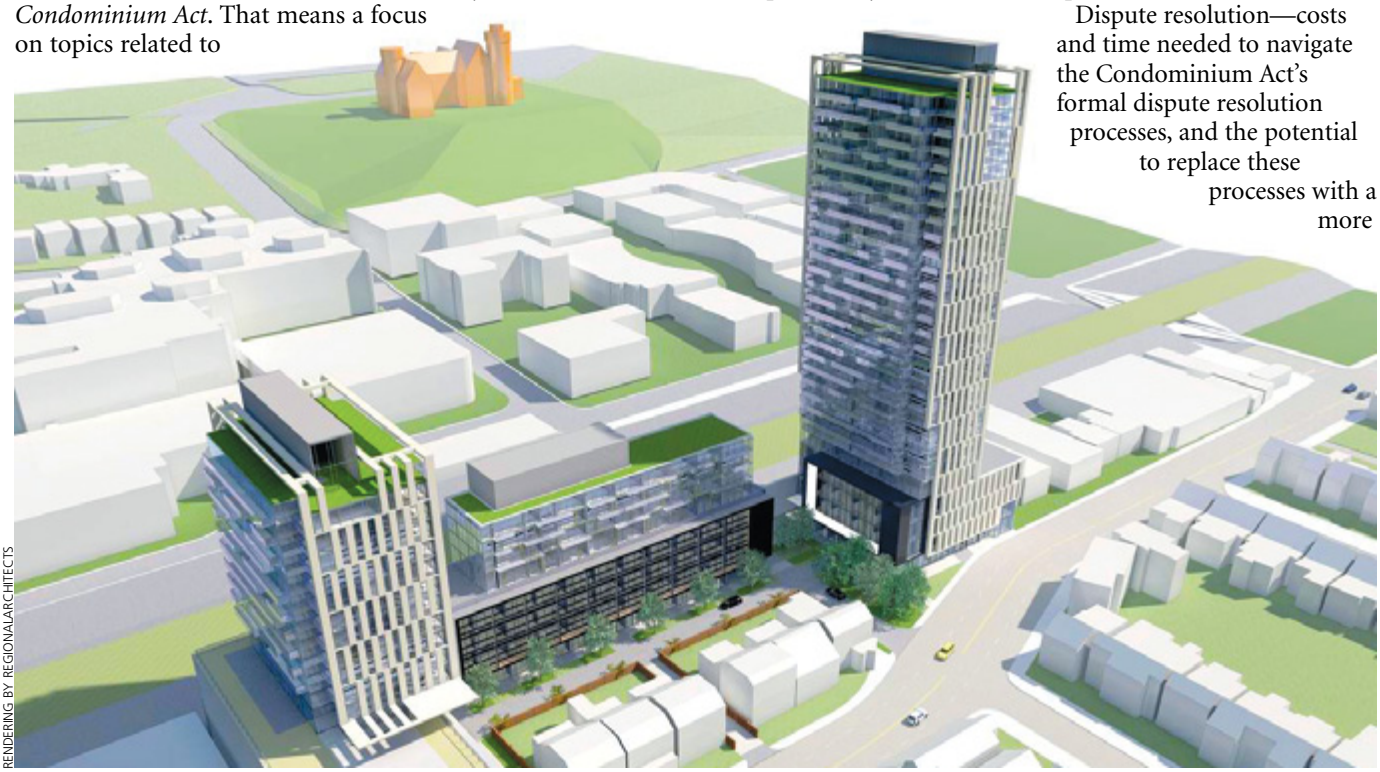
Jason Thorne

Knowledge gap—lack of knowledge among some of the board members of the nearly 9,000 condominium corporations in the province with respect to their duties and obligations under the act, despite being in charge of multi-million dollar budgets and critical decision-making.

Decision-making—growing number of absentee investor owners and landlords, and the challenges this creates for condominium boards to reach quorum to make decisions on critical issues; role of tenants in condo management, given the emergence of condos as the GTA's fastest growing form of rental accommodation.

Powers and responsibilities—broad scope of condo board powers that allows boards to regulate numerous aspects of condo living, from front door colours to the keeping of pets; confusion about which repair and maintenance costs are the responsibility of the unit owner and which are the responsibility of the condo corporation.

Dispute resolution—costs and time needed to navigate the Condominium Act's formal dispute resolution processes, and the potential to replace these processes with a more



RENDERING BY REGIONALARCHITECTS

Proposed condominium development, 330+374 Dupont Street, Toronto

user-friendly mechanism that allows some disputes to be handled outside of court.

Reserve funds—the management of reserve funds, including common standards under the act concerning how to calculate and use reserve funds; the ability to use reserve funds for a broader scope of building improvements, most notably investment in "green" technologies.

Consumer protection—the lack of Tarion warranty protection for condominium conversions.

Information available to prospective buyers—residents' allegations that maintenance fees advertised at the time of purchase are misleading or artificially deflated, leading to sudden increases in maintenance fees after the first year of ownership; the level of information made available to condo purchasers by developers in their agreements of purchase and sale, such as the status of planning approvals.

Property management—the skill base of property managers and the potential certification or accreditation of property managers.

While the focus of this review will be exclusively on changes that can be delivered through amendments to the *Condominium Act*, it is likely that other matters related to the condominium sector will also be raised during the review. For example, planners will be well aware of the concerns of developers about how the *Planning Act*'s parkland dedication requirements apply to high density development. In addition, issues related to the design and development of condominium buildings under the *Planning Act* and *Ontario Building Code* are likely to be raised, for example shadow impacts, viewshed impacts, green building standards and accessibility issues. While the ministry has acknowledged that such issues are important and that comments received with respect to them will be accepted, any actions to address them would be the responsibility of the ministries that have carriage over these other acts.

The ministry has launched a comprehensive engagement program for the review. It will take place in three stages. Through the fall, the ministry will be hosting Minister's Public Information Sessions across the province. The ministry has also written to 10,000 randomly selected condo residents to invite them to sit on a Residents' Panel. Simultaneously, a number of stakeholder panels will take place. This first stage will culminate in a Findings Report. In the second stage of consultations, specific proposals for reforms to the act will be compiled by an expert panel and released for public comment at the end of the summer 2013. In the final stage, the Residents' Panel will be reconvened to review the action plan, and the plan will also be given broad distribution for comment before recommendations are made to government late in 2013.

You can stay informed on the status of the *Condominium Act* review by visiting the ministry's website at www.ontario.ca/consumerservices or follow it on Twitter. You can also provide comments to oncondo@ontario.ca.

Jason Thorne, MCIP, RPP, is a principal with planningAlliance, an urban planning and design consulting firm based in Toronto, as well as its affiliated practices regionalArchitects and rePlan.

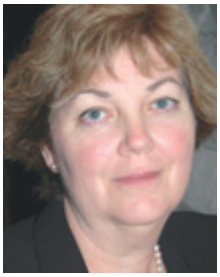
Revisions to the Standards of Practice

By Marilyn Radman

OPPI members have long been governed by the OPPI Professional Code of Practice and the CIP Statement of Values. Since 2002, OPPI's Professional Practice and Development Committee has elaborated on these principles in a series of four Standards of Practice. These standards are guides only, to assist the membership, and particular complaints and questions of interpretation are the jurisdiction of the Discipline Committee.

Recently two standards were revised: Independent Professional Judgment and Conflicts of Interest. These both concern how and when conflicts of interest affect an OPPI member's independent professional judgment.

The Professional Code of Conduct and the standards require members to "zealously guard" against the reality or the appearance of a conflict of interest. However, some members are less zealous than others, and disagreements may arise in any particular situation as to whether an RPP's conduct was proper. The new standards, therefore, are an attempt to make more explicit what is and isn't considered a conflict of interest. A few examples follow.



Marilyn Radman

An RPP employed by a private developer can provide an independent professional judgment in support of his or her employer's proposal. This is explicitly excluded from the definition of "conflict of interest," since it falls under a "reasonable and related contract for service amounts with the employer to whom the services are rendered."

If an employee/RPP were to be offered a bonus, discount or commission based on the success of the development application however, that would not fall within the exclusion, and would in fact become a "conflict of interest." Other examples would include stock in a development company or an interest in the company.

It would be impractical to suggest that RPPs could not write planning justification reports for their employers. If the intention of such an interpretation was to prevent biased planning opinions, it is not clear that this would affect that

outcome any differently than if developers had to hire independent consultants for every planning opinion. The consultants might "shape" their opinions to suit the developer, in order to obtain future assignments—just as an employed planner might shape his or her opinions to ensure continued employment.

Another clear example of a conflict of interest would be where a planner sat on a board, such as a Committee of Adjustment or Conservation Board, making a decision on an application the planner worked on, without the planner declaring the conflict of interest. The Conflicts of Interest Standard notes that any conflict should be disclosed, and suggests that the conflict might be "cured" to a certain extent by such disclosure. If the RPP asserts that he or she has offered an independent professional judgment, and also discloses information regarding possible conflicts or biases, then the decision-maker is in a position to take that into account in considering the planner's opinion. Whatever the final decision, the decision-maker and other parties can still respect the professionalism of the planner. (In the case of a planner employed by a developer, the nature of the potential conflict is completely obvious and disclosed to all parties.)

The question is whether there is ever a conflict of interest that is so absolute that it is not even reasonable for an RPP involved to purport to provide an independent professional judgment.

Consider for instance a piece of property that is owned by the RPP (or family member, for example.). The RPP certainly has every legal right to request re-zoning of the property, etc., and can personally write in support of such a request. However, it would strike most observers (including most other planners) as ridiculous for the planner to assert that he or she could provide an objective "independent professional judgment" regarding his or her own application and property. The involved RPP should therefore not do so. S/he should not use the RPP designation on correspondence in the matter or do anything that might suggest that his or her submission was an objective or professional judgment.

The new standards are meant to make it clear that OPPI members cannot even advance such a claim. Indeed, this prohibition may already flow directly from section 3.5 of the Professional Code of Conduct, since such a ludicrous claim would probably "reflect adversely on the integrity of the profession."

Registered Professional Planners enjoy an excellent reputation with the public and with municipalities and other government agencies. It is important that we constantly consider the quality of our practice and our ethical position, and thereby protect and enhance that reputation.

Marilyn Radman, MCIP, RPP, was the Director of Professional Practice and Development for OPPI for four years, and represented OPPI on the National CPL Committee. Marilyn has been in planning practice for over 25 years and is currently the development planning manager for Niagara Region.

Theory vs. Practice

The new Standard clarifies that some theoretical conflicts of interest do not count as actual conflicts, using language similar to section 4(k) of the Municipal Conflict of Interest Act. Conflicts that are "remote or insignificant" are not prohibited. For instance, if an RPP owns one share of Ford Motor Company, it would not be reasonable to say that the RPP will receive dividends if Ford profits, and Ford's profits might be affected by the transit/auto mix in a certain community, and that therefore this "conflict of interest" precludes the RPP from giving an independent professional judgment in that community.

Green Energy, Revisited

New planning process

By Ben Puzanov, contributing editor

While it has been more than three years since the *Green Energy and Green Economy Act, 2009* (GEA) received Royal Assent, the public and professional discourse on its effects and implications has become more prevalent in recent months and the topic continues to receive significant media coverage. While the act incorporates a host of renewable energy sources into its text, including water, biomass, geothermal, solar and wind, to name a few, it is the latter that has garnered the most attention in Ontario. Wind energy development continues to dominate the headlines in rural areas of the province and the topic was widely debated during the 2011 provincial election campaigns in southwestern Ontario.

Ben Puzanov

Schedule K of the act, which details various amendments to the *Planning Act*, has significant implications for municipalities and elected officials and their constituents have had to adapt to a new planning process for the review of renewable energy projects. In an effort to standardize and streamline the review of renewable energy proposals and eliminate Ontario's dependence on coal the province has formulated the Renewable Energy Approval process, which replaces the traditional municipal planning approval mechanisms that are available through the *Planning Act*. The Renewable Energy Approval process is discussed further by Julia Cushing and Marc Rose in this issue of the *Journal*. In addition, see Steven Rowe and Heather Sadler's article regarding the Environmental Activity and Sector Registry and the recently-proposed changes to the approval process.

In its efforts to ease the transition to a new planning process for renewable energy development, the province has established the Renewable Energy Facilitation Office. In addition to providing information to the public, the office is an invaluable resource for proponents of renewable energy projects of all sizes as it serves as a one-window destination for those seeking information regarding the approval process and the Ontario Power Authority's Feed-In Tariff Program that has been established to encourage green energy development across the province by offering guaranteed rates to green energy producers for specific periods of time.

While the transition to a new review process for renewable energy development has had its challenges, the province has reiterated its commitment to a thorough consultation process that ensures all stakeholders have an opportunity to participate and provide feedback to decision makers. In October of 2011, the province began a two-year review of its FIT Program and the resulting recommendations were adopted. The full government report may be accessed at www.energy.gov.on.ca/docs/en/FIT-Review-Report-en.pdf.

Despite the recent FIT review and a renewed focus on community involvement, opposition continues to mount against wind turbine projects in rural Ontario and residents in areas populated by wind turbines continue to report health problems associated with industrial wind turbine development. While individuals whose health may be negatively affected by a specific development may appeal such renewable energy projects to the Environmental Review Tribunal, many have also launched formal complaints with Health Canada. As a result, Health Canada has begun a study in collaboration with Statistics Canada to ascertain the effects on human health from noise emitted by wind turbines. Health Canada notes the investigation will focus on 2,000 dwellings that are located in proximity to one of eight-to-12 industrial wind projects across the country, with findings expected to be available in 2014. The study was initiated this past summer with the research design and methodology being posted on Health Canada's website for public comment.

It is important to note that while the approvals of green energy development in general and wind turbine projects specifically are within the provincial sphere of jurisdiction, Health Canada indicates that it has the knowledge, technical skills and responsibility to measure health effects from noise as it is charged with overseeing the *Radiation Emitting Devices Act*, which stipulates that noise is a type of radiation. Health Canada's study will undoubtedly be closely monitored by a host of stakeholders and will shape the future of green energy development in Ontario and beyond.

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