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Mardi 8 août 2006

Standing committee on general government

Planning and Conservation Land Statute Law Amendment Act, 2006

Comité permanent des affaires gouvernementales

Loi de 2006 modifiant des lois en ce qui a trait à l'aménagement du territoire et aux terres protégées

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Tuesday 8 August 2006

Mardi 8 août 2006

The committee met at 1003 in room 151.

PLANNING AND CONSERVATION LAND STATUTE LAW AMENDMENT ACT, 2006

LOI DE 2006 MODIFIANT DES LOIS EN CE QUI A TRAIT À L'AMÉNAGEMENT DU TERRITOIRE ET AUX TERRES PROTÉGÉES

Consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts / Projet de loi 51, Loi modifiant la Loi sur l'aménagement du territoire et la Loi sur les terres protégées et apportant des modifications connexes à d'autres lois.

The Vice-Chair (Mr. Jim Brownell): Good morning, ladies and gentlemen and committee. I would like to welcome you to our second day of hearings. I hope that we have a free flow of presentations and questions and answers. For those who are here in the gallery and those who are presenting, understand that the presentations are 20 minutes. You have 20 minutes to use at your discretion. Should there be time at the end, that time is divided between the three parties. I don't think there is anything further in housekeeping orders.

TOWN OF THE BLUE MOUNTAINS MUNICIPALITY OF GREY HIGHLANDS

The Vice-Chair: We will be starting with the presentation by Jones Consulting. If you would please identify yourself for Hansard, and if those from your firm who will be speaking would also identify themselves for Hansard when they begin speaking, that would be appreciated. It's yours.

Mr. Michael Martin: Yes. My name is Michael Martin. I'm a councillor with the town of the Blue Mountains. The presentation was arranged by the Jones Consulting Group on behalf of the two municipalities, Blue Mountains and Grey Highlands. I'm presenting this brief on behalf of both municipalities. I have with me this morning our mayor from Blue Mountains, Ellen Anderson, and also our chief administrative officer, Paul Graham. I also have with me the mayor of Grey Highlands, Brian Mullin, and Ray Duhamel, a consultant with the Jones Group on energy matters.

Blue Mountains and Grey Highlands are pleased to respond to this legislation. Both municipalities are not satisfied that section 23 provides an appropriate regulatory scheme for alternative energy undertakings, particularly wind farms. Further, Blue Mountains takes exception to several of the Planning Act amendments, which if passed will impact adversely, in our opinion, procedures for official plans, subdivision and zoning approvals, as well as OMB processes.

Blue Mountains is an amalgamated municipality approximately two hours' drive from Toronto. It lies east of Owen Sound and west of Collingwood. We have the largest ski facility in Ontario—Blue Mountain resort and Interwest—and we have the largest Canadian private ski facilities. Our area is blessed with the Niagara Escarpment in the middle; we are on the shores of Georgian Bay; and we have an active agricultural industry with specialty fruit farms, cash crops and horses.

Grey Highlands, our associated municipality, is 350 square miles. It borders on our east side and south. It has portions of the Niagara Escarpment as well. It's also an agricultural community with cash crops, hunting activities and ski resorts.

We support the government's intentions to have a transparent public process for approval of energy projects and land use planning. We agree with Minister Gerretsen that "greater information, public participation and consultation ... take place earlier on in the planning process. This would give local residents and community leaders more opportunity to play a part in planning...." We support the requirement that the OMB have regard to municipal council decisions. However, we feel that the methodology in the Planning Act amendments fails to meet these objectives.

First, dealing with the exemption regarding energy projects, this relates to section 23 primarily. The Blue Mountains and Grey Highlands have been targets for large wind farm energy projects. These are projects consisting of multiple towers, sometimes in excess of 400 feet. The power is principally to augment Toronto and the GTA's insatiable power requirements. These exemptions under section 23 include wind farms and also nuclear or fossil fuel power plants. Exempting these from the Planning Act precludes municipal land use designations in either OPs or zoning matters, notwithstanding that the province's provincial policy statements require the inclusion of energy issues in OPs. Section 23 places

the applications under the Environmental Assessment Act, in which the minister or the Lieutenant Governor—actually the government of the day—has the final say regardless of the public hearing process of the Environmental Review Tribunal. This is set out in section 11.2 of the Environmental Assessment Act. The act divides undertakings into two classes—and we'll deal with wind farms—of greater than two megawatts and less than two megawatts.

By virtue of a regulation under the act, those with less than two megawatts may not be subject to public review at all. It is not clear from ministry and provincial policies whether these projects, the lesser ones—however, keep in mind that some of these lesser ones involve towers of 34 storeys in height, so they're not particularly small projects. Our question is, how do these fall within the local rules of official plans and zoning regulations? Concerning the larger projects—that is, those multiple wind towers; probably the towers are in the range of 400 feet—the application process is only subject to ministry and proponent review, unless the minister, in his sole discretion, requests that the application be considered either by himself or the Environmental Review Tribunal. However, ultimately the minister may overrule even the Environmental Review Tribunal. In this regime, how does a municipality establish rules, whether official plans or zoning, to protect agricultural, residential and recreational uses from such issues as vibration, flicker shadow, ice throw, landscape pollution and noise? Is the municipality, which has no say in their location, required to provide roads, fire assistance or emergency services? Can municipalities rate development charges against these projects? The municipalities need certainty in these matters. There is an inequity of having the rural landscape becoming the home for such undertakings.

Grey Highlands and, to a lesser extent, Blue Mountains, in anticipation of having some jurisdiction in these matters, have devised various policies and environmental statements on environmental issues relating to wind farms. The question is, how does the process of exempting such major undertakings meet the government's aim of open transparency and involvement of community leaders in the determination of land uses? Mr. McGuinty, in his press release on Bill 51, said, "The proposed reforms would provide clearer rules and more effective process for the public.... They would also give local residents and community leaders more opportunity to play an important role...."

My recommendation on behalf of the municipalities is that at least there be a provision—at a minimum—that such undertakings meet site plan approval requirements adjudicated through the Planning Act.

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The next items relate to the Planning Act amendments themselves. The town of the Blue Mountains is experiencing unprecedented growth. There are some 3,000 to 4,000 actual or potential housing units in process and contemplated in the next five years, all requiring various amendments to the official plan, and consequential zoning and subdivision applications. Our population of 12,000 ratepayers expands during ski season and special summer and winter events to in the range of 25,000 to 30,000 people. The definition of "employment lands" in the new amendments does not include recreational, resort and associated uses. We feel that these are of equal importance in our community, in which resort and residential facilities are the most significant contributors to our economic base.

Recommendation: that the definition of "employment lands" include resorts and recreational uses.

Our issues with amendments to the Planning Act relate to the change processes for the initiation and approval of official plan, zoning and subdivision applications. We agree that all matters relating to an application must be before council at the time council makes the decision. Council clearly has and bears the responsibility for planning matters. However, the changes to the act to support this objective, in our opinion, are flawed.

In the environment where nothing can be introduced on appeal which wasn't before council, council—not staff—must consider all such information in full detail. How do part-time councillors—which most small rural councils are composed of—meet such a requirement, and at what cost? This is a substantive burden for councils: to balance the applicant's legal rights as enshrined in section 61 of the Planning Act, which requires matters to be heard by the body which makes the decision, against the numerous other matters councils are responsible for. What is the legal effect of an absent councillor in making a decision on an application?

Section 24 of the amendments also exempts public bodies from making comments in a timely fashion before council. This exemption defeats the purpose of having all matters before council. This is particularly the case where these same public bodies may appeal council's decision without council's ability to question their views, because in the appeal, by section 44.2, which is on page 9, no new evidence may be admitted which wasn't before council. These kinds of exemptions for public bodies, i.e., some johnny-come-latelies, as we would call them, perpetuate the notion that there is one procedure for the citizen and yet quite another for the government. How does a municipality or any other party to a hearing challenge a public body's view, as cross-examination, which elicits new evidence on appeal, is prohibited as well? Such restrictions on fundamental rights do not support the objective of a fair and open process.

The abrogation of fundamental rights is further exacerbated as Bill 51, in section 44.6 and similar sections, exempts proceedings of the Planning Act from the requirements of the Statutory Powers Procedure Act. The current Planning Act does not even have such a section. The Statutory Powers Procedure Act was enacted to ensure procedural fairness for a citizen's right to have a public body which determines rights to act in a fair and legal manner. Is the message, one rule for the government and another for a citizen? Is there some emergency in land use planning which requires that these rights be abrogated?

Recommendation: that the Planning Act not be exempted from the Statutory Powers Procedure Act.

Further recommendation: that all public bodies meet regulated time frames for providing comments on planning applications and in appeals that the board on application may award costs for late filings, inclusive of costs to revise or amend and prepare supplemental information as a result of other information being provided.

As a municipality, we want a fair system for the determination of land use planning from initiation of the application to access to the judicial system on behalf of the ratepayers.

The Vice-Chair: Thank you very much. We have some time remaining—about three minutes for each party. We'll start off with Mr. Hardeman.

Mr. Ernie Hardeman (Oxford): Thank you very much for your presentation. There are a couple of areas I'd like to cover. One area is on the first page of your presentation, the issue of "shall be consistent with," which of course is in the act where it says that the municipality must be consistent with provincial policy. So in fact the planning is going to be done the way the province wants it done.

The second one is where they say that the OMB "must have regard to" the decisions of council, which of course in the former Planning Act was what council did with provincial policy statements. The province believed that that was not good enough because they would have regard for it and then do it differently.

Do you have concern that in fact having the OMB have that regard for doesn't change anything from what it presently is—they have regard for it and then they carry on and make the decisions as they see fit anyway?

Mr. Martin: Well, it's good that in the act it says that the OMB must have regard to council's decisions. I think that's important. But in my practice with the board over many, many years, I've never found a board member who hasn't had regard for council's decisions.

Mr. Hardeman: The other one is the employment lands. We've had other presentations that said the employment lands should include big box retail outlets. Your presentation points out that it should include the tourist industry and the recreational activity. If we include all those things, doesn't that take away the power to regulate or the power to zone in a community? Remember, you can't take away the employment lands, so you can't do anything. Where would you, then, allow the residential when someone made an application for residential in your community if recreational lands cannot be used for that purpose?

Mr. Martin: As is indicated, we're in a developing community, but the resort and recreational areas are very important to us. I did have some trouble with this section in the sense that I realize that if every municipality came here and said, "Well, what about us?" for this and that, you don't really have a definition in the end. So one of the things I would suggest is maybe that municipalities, on application to the minister, having regard to their particular circumstances, could include, for instance, recreational uses in an employment land as a special exception.

The Vice-Chair: Next we have Mr. Prue.

Mr. Michael Prue (Beaches–East York): Back on the same thing: the area of employment, as defined. Subsection 1(1) talks about the area of employment, but it says it's without limitation and can be prescribed by regulation. Are you merely asking that recreational uses be included in the regulations once the act is passed and the minister has the authority to do so?

Mr. Martin: Yes. Because of the importance of these lands in our community, these recreational and resort areas are very important to our economic base, just as in the larger communities your employment lands are important to your economic base. It's just that there's a difference in the land use, that's all.

Mr. Prue: But the minister can prescribe any lands at all as an employment area simply with the stroke of a pen.

Mr. Martin: That's right.

Mr. Prue: So all you're asking is, after the act is passed, that the minister do so?

Mr. Martin: Right. As I said, one way around this is to have the municipalities apply, with leave.

Mr. Prue: I think the big problem with this bill—and we've heard from a number of people. Almost everybody comments on section 23; it's a huge, gaping hole. We particularly heard about the experience that you're having in Blue Mountain and area. How do you think that's going to affect the tourism industry or the recreational use of the land?

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Mr. Martin: The only contemplated proposal we had was an area involved with the escarpment. It was adjacent to the actual escarpment boundary, and we had felt that certainly could potentially harm our tourist environment, but more important was the inability to provide any type of regulation of this facility. How do you meet the conflict between agricultural uses and a wind farm?

Mr. Prue: That's one issue. The second issue, though, that I think is far more important is how the municipality is to be involved. You've raised some good points: whether you have to service it, whether you have to provide roads, whether you have to provide sewers, whether you have to include it in official plan amendments—a whole bunch of things.

The reason I'm asking this question is because you recommended, at a minimum, that it meet site plan approval. Surely, though, your goal is that you should be included throughout, not just at site plan approval. It shouldn't be in there at all unless it's part of your official plan.

Mr. Martin: Yes, that's correct, but I was thinking that this would at least be a minimum requirement. Municipalities, because of the other issues involved with energy undertakings—as I say, they can be anything from a wind farm to a nuclear power plant. So if the municipality had some control and could ameliorate their

conflict with land uses through the site plan, at least that would be one goal that's achievable.

The Vice-Chair: Now we'll move over to the government side. Mr. Flynn.

Mr. Kevin Daniel Flynn (Oakville): Thank you for the presentation. I have a few questions. First, I was interested in your remarks on the Statutory Powers Procedure Act. I spent 18 years in a similar role to you, as a member of council in Oakville, a fairly sophisticated community. I can remember using the Statutory Powers Procedure Act on two occasions. It was to hear evidence from somebody who was going to lose their licence to drive a taxi. Other than that, I don't recall us ever using the Statutory Powers Procedure Act for any other matter, especially not a planning issue. I was wondering if you could provide an example or a practical circumstance where the two may come into some sort of conflict or where the municipality may not have some power that it has now or where in the past the Planning Act has fallen under the Statutory Powers Procedure Act.

Mr. Martin: Actually, I was previously involved with Oakville. I was the counsel for Halton region for a number of years.

There's a situation, particularly in the OMB processes, where a party may allege that they were not given a fair opportunity to present evidence. In that situation, a party can make an application to court to consider the fact, under the Statutory Powers Procedure Act, that they were denied an opportunity to present their evidence. In that case, the court then can terminate the decision of the lower board and ask for them to rehear it. It's really an appeal process where there have been mistakes in the process and there's no other way of dealing with that. The province enacted that act in order to ensure that there was procedural fairness and you didn't have this jurisdictional argument between various levels of courts. That's the real nature of that act. It wouldn't apply to most municipalities except where—our biggest problem with the new Planning Act situation is, if there's a large application before council and council gets its time limits and starts denying the applicant a full opportunity to present their case, then that person normally could go to the courts and say he wasn't given an opportunity to present his case fairly. However, under this regime, the citizen is denied that opportunity because he doesn't have recourse to this act. I hope that helps.

Mr. Flynn: Can you think of any high-profile case that I'd be familiar with within the last 20 years in Ontario where that has happened?

Mr. Martin: I think the Barrie annexation case is an example, because that went to the Divisional Court and they said that had to be sent back and reheard.

The Vice-Chair: Thank you for your presentation. I appreciate your presence here this morning.

ASSOCIATION OF POWER PRODUCERS OF ONTARIO

The Vice-Chair: Next we have the Association of Power Producers of Ontario. Welcome. Please make yourself comfortable. Should you need some water, there's water left and right. Once again, 20 minutes for the presentation. Should you not use all the time, we'll split it between the parties. Please state your name and anyone speaking here. In order to get them recorded in Hansard, we need the names.

Mr. Dave Butters: Thank you very much, Mr. Chair. My name is Dave Butters. I'm the president of APPrO. With me today is Sam Mantenuto, APPrO's chair. In his everyday job, Sam is the chief operating officer for Northland Power. Northland is an independent power producer involved in the development, financing, construction, operation and maintenance of power projects, including both thermal and wind-powered facilities.

We're a non-profit organization representing more than 100 companies involved in the generation of electricity in Ontario, including generators, suppliers of services, equipment, consulting services and so forth. Our members produce power from nuclear, hydro, fossil, wind, waste wood and other energy sources and currently produce over 95% of the electricity generated in Ontario.

Our mission is the "achievement of an economically and environmentally sustainable electricity sector in Ontario that supports the business interests of electricity generators in the context of the public good." Our objectives include a sustainable electricity sector that results in a reliable, affordable and secure electricity supply in Ontario; supports investment and appropriate allocation of risk; and supports all forms of generation technologies, among others.

As you are all only too aware, the province of Ontario is facing a critical shortage of electricity supply. The latest assessment of Ontario's electricity demand and supply by the Independent Electricity System Operator notes that "aging generation facilities and the continued increase in demand for electricity add to the urgency of proceeding with new generating and transmission facilities over the next 10 years."

This urgency has prompted a flood of announcements, procurement processes and programs aimed at either increasing supply or reducing demand. The Ontario Power Authority has been formed and charged with the mandate of formulating a long-term integrated power supply plan incorporating new supply from a diverse mix of resources and conservation programs aimed at reducing demand.

The electricity industry has responded to the government's procurement processes with proposals for power generation facilities using natural gas or renewable energy sources such as wind and hydro, and Hydro One has put forth proposals for new transmission lines in the province. However, we aren't making as much progress as we'd all like to see. In part, this is because there exist significant issues with respect to regulatory permitting and approvals for new generation developments that militate against the timely development of such projects.

In this context, APPrO is generally supportive of the amendments to Bill 51. The proposed amendments, along with the ensuing regulations, we believe can assist in

addressing barriers that are currently limiting the development of critical energy infrastructure. On the other hand, while the bill recognizes some of the limitations of the approvals processes related to the Planning Act, it is our view that the following issues still need to be addressed.

Uncertainty of time, cost and process: Our members are faced with decisions on projects costing hundreds of millions of dollars. Any investment decision by power producers and supporting financial institutions requires certainty in the estimation of potential costs related to approvals, certainty in the estimation of the time required to obtain those approvals and certainty in the determination of the scope of those approvals. That certainty is missing from the approvals process, and while Bill 51 acknowledges the shortcomings of the approvals process for energy projects, the provisions in the bill do not fully rectify the lack of certainty.

Prioritization of projects before the Ontario Municipal Board: In the existing approvals process, there is no prioritization of the projects that are appealed to the OMB. A variation in the size of a $5,000 backyard deck, for example, could be waiting for an OMB hearing or appeal in the same queue as a $500-million power plant. The bill should address this issue or certainly regulations might.

Defining and limiting the scope of public consultation: Bill 51 does provide for enhanced public consultations but without defining the scope, extent or limits of those proposed consultations. Not defining the scope of consultations could serve to exacerbate the uncertainty associated with the approvals process.

Flexibility in addressing minor variances: A power plant is far more complex than a building or structure that is typically under the purview of the Planning Act. This necessarily implies that there will be variations associated with a power plant; some of them will tend to be minor. An example would be a proposed building height of a power plant building or structure that is, say, 11 metres tall instead of a zoning limitation of, say, 10 metres to accommodate critical power generation equipment whose size can't be reduced.

Bill 51 doesn't provide a mechanism for such minor variations to be addressed and managed in a quicker, parallel process, with the result that the overall project schedule could be weighed down and delayed because of these minor variance issues.

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The applicability of the Environmental Assessment Act and environmental screening processes: We are generally in support of sections 23 and 24 of the bill, which enable cabinet to issue regulations prescribing certain energy-related undertakings or classes of undertakings which would be exempt from the Planning Act if such undertaking or class of undertakings has been approved under or has been exempted from the Environmental Assessment Act, but this section refers to category A projects. Most projects that are proposed under the current Ontario Power Authority RFPs process belong to category B of regulation 116/01. With respect to the scope of undertakings or classes of undertakings that will be prescribed, it's our view that the regulations should be broad enough to capture the types of undertakings that are expected to contribute most significantly to the province's efforts to increase its electricity supply capacity in the coming years, as well as to capture the types of undertakings for which the most significant delays in municipal approvals processes have been experienced. These will be category B projects, and these would include gas-fired projects.

Conservation easements and covenants: There is a concern that certain amendments in part II of the bill, amendments to other acts which have the effect of facilitating, broadening and strengthening conservation easements and covenants, could give rise to potentially significant impediments to hydroelectric development and redevelopment projects. In particular, the concern is that if upstream or downstream landowners grant conservation easements or enter into covenants with conservation bodies, as defined in the Conservation Land Act, particularly for purposes of protecting water quantity and/or for watershed protection and management, no hydroelectric development or redevelopment that would require use of that land—for example, for flooding—could take place, because the easement or covenant cannot be modified and may reach a point where it does not expire. Moreover, there do not appear to be sufficient powers in the Conservation Land Act for the minister to exempt, override or otherwise render an existing conservation easement or covenant to be of no force or effect against the use of the land or the expropriation of the land for purposes of power generation. There is a further concern that such easements and covenants might be used strategically to block such developments by adverse stakeholders. The potential to impede development or redevelopment of power generation facilities would be inconsistent with the intentions of the provincial policy statement and other statements of provincial government policy that recognize the importance of maintaining and adding new generation capacity to meet the projected needs of the province of Ontario. In addition, such a result would be at odds with the intent behind section 23 of the bill, i.e., to facilitate energy-related undertakings.

The requirement to "have regard" to municipal council decisions: Section 3 of the bill provides that section 2 of the Planning Act would be amended such that governments and the OMB would be required to have regard to any decisions made by the municipal council or approval authority about the applications and any material considered by those bodies. It is suggested this obligation not arise where the decision made by the municipal council conflicts with provincial policy, whether that be the provincial policy statement or other express statements of provincial government policy.

The requirement for planning decisions to be "consistent with" provincial policy statements: Section 4 of the bill provides that planning decisions and comments by public authorities on planning applications must now be consistent with provincial policy statements. Given

the clear demonstration of the important role in good planning that is played by electricity generation in the current provincial policy statement, this proposed amendment is welcome. The PPS includes electricity generation within its definition of infrastructure, and goes on to recognize the need for necessary infrastructure to be available to meet current and expected needs and that it be provided on a timely basis to meet those needs. The PPS also states that increased energy supply should be promoted by providing opportunities for energy generation facilities to accommodate current and projected needs and the use of renewable energy systems and alternative energy systems where feasible.

Decision-making based on plans at time of decision: We do not support the various proposed amendments that call for decision-makers in the planning process to make their decisions with reference to provincial plans, including the PPS and provincial plans under the Greenbelt Act, the Places to Grow Act, the Niagara Escarpment plan or the Oak Ridges moraine conservation plan, as enforced at the date of their decision rather than the long-standing practice of making decisions with reference to such plans and policies as at the time the respective application was made. It is unreasonable and unfair to hold an applicant to a standard that did not exist at the time of their application. An applicant that is in the process of developing a project, particularly a large project with long lead times, should at least be entitled to progress in their project development with certainty concerning the planning parameters within which they will be required to design their project. Moreover, the proposed amendment would unreasonably break from the approach that is traditionally taken by the courts in applying legislation, whereby legislation is considered as at the time of the matter in dispute rather than at the time the court hears the matter. There does not seem to be any sound rationale presented to justify breaking from this tradition in the context of planning approvals.

Approvals streamlining: We considered other related issues that need attention, and while they're, frankly, not directly part of Bill 51, they do point to the fundamental tension around the fact that electricity supply and transmission are planned on a provincial basis, and it is not in the public interest to have local need become the measure for proceeding to site a facility approved for provincial public interest.

APPrO's view on this is that there should be one review at the provincial level, where municipalities and citizens participate. The decisions then hold and are not revisited under the provisions of the Planning Act. A related issue has to do with proactive planning for electricity supply like water, waste and roads when municipalities are proponents for additional supply if they wish to expand and in fact do not get approvals or grant approvals at primary and secondary planning stages without sufficient electricity supply. The problem is that municipal planning and growth decision-making is disconnected from electricity power planning. For example, the onus for ensuring sufficient water and waste water versus electricity capacity differs. This gulf in municipal and electric power planning is a legacy of the demise of Ontario Hydro as a central planning agency.

The onus to ensure sufficient electricity supply capacity before municipal approval of development should be placed on municipalities. Municipal growth plans should have the same obligations for ensuring electric capacity that is required for water and waste water capacity.

Another issue is brownfield redevelopment. Here the issue is municipal and community pressure to convert use of existing electric industry properties to other uses at the end of life of such facilities, and this impedes site redevelopment. Simply put, brownfield sites can have significant advantages over greenfield sites, and the logic of the smart growth concept, which seeks to maximize the use of existing infrastructure, should apply equally to electricity projects.

There are many other planning issues, again largely outside the ambit of the current bill and this committee—but which must be dealt with nonetheless if we're going to successfully make new power projects really happen. We'd be pleased to discuss these with members at any other time.

Finally, there's the issue of multiple and overlapping approval processes. In BC, the province has enacted the Significant Projects Streamlining Act to reduce red tape and regulation and streamline processes for both government and businesses. When the act was introduced in the BC Legislature, the sponsoring minister noted that the act would allow cabinet, by a designation, to assign special status to projects deemed to be significant and that would positively benefit the economic, environmental and social well-being of British Columbia. I would draw that legislation to your attention. It doesn't change provincial or federal environmental health or safety standards, it doesn't affect aboriginal rights and title, but it does focus attention on actually getting projects moving forward. Our understanding is that it has been quite successful. In our view, Ontario could take a lesson from BC and consider adopting a similar statute.

We would respectfully request that the above points be considered as Bill 51 moves through the legislative process. That concludes our remarks. Thank you very much. I'm happy to answer questions.

The Vice-Chair: Thank you very much. We have about two and a half minutes. We'll start with the third party.

Mr. Prue: There have been many deputations; yours is the first in support of section 23, you'd be surprised to know. Section 23 freezes out the municipalities from having any say on whether or not a development would take place in their municipality or in the area. You have suggested another alternative, or at least it seems to me you have suggested another alternative, and that is to have the processes fast-tracked, where the municipality would be involved but would be under a time obligation to do it more quickly. In terms of the section 23 argument, you said you were in support. Would you think fast-tracking it and leaving things as they are would be

preferable to having the municipalities frozen out altogether?

Mr. Butters: Well, I'll ask Sam to jump in here. On section 23, I think the issue there is the category A and category B issue; probably not so much the fast-tracking but the inclusion of those category B projects, which would include gas-fired projects. If you could layer the fast-tracking on top of that, I think that would be of significant assistance.

If we're looking at new power projects today, you could say it would take 36 months to build a gas-fired project, but then you have to add on top of that all of the approvals, planning, ESP and EA issues, so now you're looking at probably anywhere from, for example, three to six years for those projects to come forward. But the critical issue on section 23 is that we are supportive, but we do believe that it should be broader in its scope, and include that category of the gas-fired projects.

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The Vice-Chair: If you could just state your name, please.

Mr. Sam Mantenuto: Sam Mantenuto. I think you have to look at it from two perspectives, from the longer-term perspective where, if things were changed such that the municipalities, as David said, had to include electricity infrastructure in their planning—that involves the municipality, and that requires them to look at it on a proactive basis. In the interim period, that has never really been their mandate, and it has typically been the Ontario Hydros of the world that used to do the planning. The problem is that the municipalities, while we believe they obviously should have the right to comment on and advise where those projects should exist and reside, oftentimes get overwhelmed with other views and other issues. It's very emotional, and it sidetracks the discussion.

As an example, there are areas within some of these municipalities that are zoned for power; however, it's for public power. It was written under the definition of the old Ontario Hydro regime. So now, when a private developer comes in, they're precluded from building on a site that was considered for power generation simply because they're not a public company. The definition, if it were changed to say "provide for public good," would allow them to build a project there. If it falls into the municipalities' hands, they react to local concerns, it gets overwhelmed with a whole bunch of different issues and just falls off the table. So you really need a fair, transparent, open process that deals with the facts. If a project can meet its environmental regulations, then there's no reason it shouldn't be able to proceed, in our mind.

The Vice-Chair: Thank you very much. We'll move to Mr. Sergio.

Mr. Mario Sergio (York West): We have heard similar presentations, and we'll probably have the same questions for you and for others later on. You mentioned at the beginning the shortage of power, the high demand for power, and aging facilities as well. At the same time, we have to contend with local municipalities that have a right to deal with those issues. How do you marry the two? What would you like to see, not only in this bill but from the local municipalities, to facilitate that projects could indeed go ahead within a reasonable time, at the same time respecting the municipal process of the local municipalities?

Mr. Butters: In answer to your question—I think Sam addressed part of it, but the other part, the longer-term part, is the integrated power system plan. Our view is that there is this tension between municipal planning and electricity planning. The IPSP should accommodate those kinds of considerations at the provincial level, and then those other issues can be addressed within the context of municipal processes. There is definitely a tension. We're on the way to resolving some of this with amendments to Bill 51, but we still need to do further work.

Mr. Sergio: I hope so. How do you get the public involved in this particular issue?

Mr. Mantenuto: In order to get a power project permitted, you have to go through the MOE process; in the case of a category B, through the screening process. That requires public consultation. That requires open community input. It requires you to have public open houses and involve the public as part of that process. That, by definition, gets taken into account and is factored into when you design and get your permits for air and emissions. Then you have to go through the local planning process in order to get your local planning permits. What happens is that when they get derailed because of other issues—I can give you all sorts of them—it protracts the process, and what should take you six months could become two or three years, with no defined process or time frame within the OMB.

If you follow the MOE process, you by definition involve the public and all levels of government. If there are disputes, then they should be able to be taken to the OMB on an expedited basis. I believe that would help significantly.

The Vice-Chair: Thank you very much. Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. I wanted to go, as Mr. Prue did, to section 23 and the fact that utilities are exempt from the planning process. We've heard from a lot of municipal people who say that there's something wrong with that because it's part of land use planning. If you're going to build generation capacity somewhere, it's important in the community where that's built, how it's built and so forth.

You mentioned that it will streamline the process to get more electricity on stream, and we all know that's what we need to supply our market. Could you tell me how much time it would save to not have to take—a project that's 10 years in the making, what percentage of time would be saved by avoiding the planning process? Secondly, I'd like to know, in your opinion, why it's more important to exempt electricity generation, while other very important projects are being applied for but have to go through the planning process because they're not exempt. What's the importance or what's the priority

that we should put on electricity that we should have no say, municipally, on where those facilities are being sited?

Mr. Mantenuto: Well, I have to push back, because I don't know who's telling you that the municipality has no say in where those projects are being sited. We've built projects in Cochrane, Kirkland Lake, Iroquois Falls; we're proposing a project down in Thorold-St. Catharines. Every single municipality has been heavily involved. You have to get your local planning permits—

Mr. Hardeman: If I could just correct you, this act says, "You are no longer subject to the Planning Act," so this act takes away the municipality's involvement in your projects, period. I'm not objecting to it. My question is, why is electricity different than other planning issues?

Mr. Butters: Let me answer part of that question. There are two aspects. One is a short-term critical issue, which is that we desperately need these new projects. The second part is that there is a parallel planning process taking place, and that is the integrated power system plan. It would seem to be common sense to me to not want to have overlapping or duplicating planning processes. The IPSP will be a rigorous process that'll go to the Ontario Energy Board and be approved by the board. There will be many opportunities for public input into that. So I guess that's the issue: that there is another process that's taking place. I think perhaps the government contemplated that with this section.

The Vice-Chair: Thank you for your presentation.

DIAMANTE URBAN CORP.

The Vice-Chair: On our agenda we have "10:40 to be confirmed." There is nothing to confirm, but we do have Diamante development corporation here, if Julie Di Lorenzo, president, could step up.

Welcome. Make yourself comfortable. Should you need a glass of water, feel free. Once again, 20 minutes for the presentation. As you can see, we take the time remaining and split it between the three parties.

Ms. Julie Di Lorenzo: Thank you. I have with me also Dr. James McKellar, who will take a small portion of the remainder of my presentation. I will begin.

Good afternoon, distinguished ladies and gentlemen. My name is Julie Di Lorenzo, president of Diamante Urban Corp. I am also past president of the Greater Toronto Home Builders' Association. I'm honoured to serve on many cultural and community advisory boards on behalf of Ontarians, such as Harbourfront, St. Michael's Hospital, Schulich's real property advisory board, and Tarion, formerly known as the Ontario new home warranty.

My company and our team have constructed some of the best-designed residential buildings in Toronto.

I wish to reiterate that from the start I have been and am now a strong supporter of growth management and the excellent planning work this government has done through the Ministry of Public Infrastructure Renewal and the Ministry of Municipal Affairs and co-operating visionary municipalities in reawakening the public mind towards the numerous social and economic goals and benefits of efficient land use. In simple terms, it means that this government has designed the map for better quality of life through planned and well-serviced communities where people can live and work and realize their dreams and goals. I also congratulate the government on the legacy of the greenbelt.

Although I appreciate that the original goal of 0MB reform had merits, I am now here opposed to two main parts of Bill 51 that, in my mind and heart, are draconian, unhealthy to the creative mind and soul of cities, offensive to the professional community and business community, blatantly usurp the Statutory Powers Procedure Act and endorse unfair process. I am certain that the government of Ontario does not intend to create this context or precedent. I am sorry that this bill has made it this far.

1050

First, who will want to work in an environment where there is political control over design? Bill 51 gives the power to municipalities. The provisions in this bill that give municipalities the right to choose brick colour, material palette and maybe even styles of projects would create the inappropriate situation of municipal planners—most with no real architectural or urban design qualifications—municipal councillors and OMB members making architectural decisions. It would be one thing if the bill allowed a municipality to impose the recommendations of a design review panel consisting of qualified individuals; and our industry has from the start volunteered to assist with this. Instead, the bill will give unqualified individuals the power to essentially change architectural details and drawings and set the design tone and direction. That is completely inappropriate.

If the goal is to improve the quality of buildings, this should be done in consultation with the design and development community, not in spite of it. These powers will suffocate the enormous pool of talent we have and will frustrate the creative city. A friend so kindly reminded me that we live in a city in which citizens demonstrated against the display of Henry Moore's work. At the same time, we have a tower designed by Mies van der Rohe and residents opposed the first sidewalk cafés. My team and clients want classic details, for example, when the critics of the day want modern design. We need to be very, very careful about letting the bureaucracy control design. My friend also remarked that it was interesting that the people most offended were the people who did some of the best work.

I had the pleasure of reading the document produced by the city and the province called Strategies for a Creative City and read that of the creative industries in Toronto the largest employers were architectural firms and design firms. Does the province not see the irony when this bill shuts out that talent yet commissions a report referring to the creative city?

Poet Laureate Pier Giorgio Di Cicco calls creativity our "limitless resource" and speaks about "nurturing and

promotion of creativity." Ironically, he says, "You cannot legislate the human heart but you can inspire it." This bill's provisions regarding design control completely fly in the face of those truths. We have 25,000 architects and designers in Toronto, but this bill puts design in the hands of government. We as an industry will assist in a co-operative way to achieve higher and higher quality of housing, and will participate in voluntary design review and consultation with the building code, but I, for example, will not work in an environment where the responsibility and authority over design is in the hands of politicians and bureaucrats instead of the gorgeous pool of talented private sector professionals. This bill does not promote working together in that area.

The second main issue in the bill that I vehemently oppose is the one-sided restriction on new evidence that is in the interest of neither the applicant nor the residents and citizens of this province. To send files back to council delays projects for months and months, enough in the cumulative effect to seize up the industry and forestall the creation of necessary housing and place a serious imbalance in the system once the current approved projects are absorbed. Most businesses are judged in quarterly cycles, and there is already a serious problem when the development approval process alone, before any jobs are created, takes years and years. Imagine the unnecessary losses for the economy. These provisions regarding new evidence where only a public body has powers to introduce new evidence are also contrary to the Statutory Powers Procedure Act and would be a dangerous precedent to override fundamental rights in the future.

Supporters of this bill are not only hurting the industry that houses its population and is almost the largest contributor to the GDP, but also make the concerns of citizens insignificant by presuming that those concerns are aligned always with those of the public body. I have had files appealed by residents and welcome that process, since both sides have equal rights and contribute to the outcome. Most of the opponents of my projects are pleased with the final results, and this occurs because there is a fair exchange of evidence during the present process. This bill removes those rights from the citizens, the ratepayers and the applicants.

The bill presumes that councillors read third-party evidence, which they do not for the most part. I was advised by a high-level expert legal mind, and he said that there is a serious responsibility on the part of decision-makers to turn their mind to evidence. In simpler terms, that means to read it, understand it and respect it; and if not, the decision is arbitrary.

At council, the decisions are usually made based on staff reports, not on an analysis of third-party evidence supplied by the applicant. And the decisions are made at the direction of the lead of the local councillor, who depends on his local constituents to vote him back into office. I don't fathom how the province sees the process as a fair hearing. The OMB is the only place where third-party professional evidence is qualified and is properly heard and vetted.

In order to accomplish what this bill presumes from council, timelines will be lengthened, doubled and tripled. Council will be able to do half of the work they do now or less. Many new staff members will need to be hired. Whole processes will need to be changed, including creating a venue for deputations, oaths and cross-examination, and millions and millions of dollars of business will be delayed and unnecessary costs added to the process, funds that could have gone into the economic prosperity of this province. Wasted money, a loss of jobs, a stifled economic force and a politicized creative community are what we see now in parts of this bill. Council, as presently structured, cannot assume these responsibilities. Council cannot decide the future of this province in an arbitrary fashion.

I wish to drop quickly in context some details of two OMB decisions and one incident at city council in Toronto. The first is the case of Dr. Marisa Zorzitto versus the city of Toronto. The appellant wanted to add a second storey to her one-storey bungalow and a wheelchair ramp. The appellant is confined to a wheelchair and the second storey was to serve as a residence for her caretaker. The neighbourhood opposed the application on the basis that the garage and the construction were out of character. However, the neighbourhood consisted of mostly three-storey houses. The neighbours' opposition was an example of NIMBYism and discrimination against a handicapped individual. The case was heard at the OMB and the minor variance was granted. Here, the rights of a handicapped person were upheld by the OMB, not the C of A and not the elected official, who was pressured by a local ratepayer group.

The second is a case of a project of mine, 2 Roxborough East, a seven-storey residential project that replaced an obsolete six-storey building. This file needed to go to the OMB twice, as the neighbours opposed the project, as did the city of Toronto, pressured by the residents. The residents had said the project was unresponsive to their design concerns and would diminish their high-quality environment. Ironically, seven years later the city and the mayor applaud as a great city building that same building they opposed. Were it not for the OMB, the building would not have been constructed.

There is also a rather shameful incident where a prominent councillor wanted to change the address of a site from 888 Municipal Street to 44 Municipal Street so that it would not attract developers or certain clients.

All these cases have undertones of extreme discrimination, and council was not able to protect the process from the influences of that discrimination. Instead, the OMB formed its decisions based on a fair hearing of all the evidence.

These are not isolated examples. The OMB is an integral part of the planning process. It is there to properly sieve through evidence and align its decisions with planning intelligence of the day for the benefit of the future. It is there to implement the goals of growth management and it is there to provide Ontarians with a place to have a fair hearing regarding planning matters.

Bill 51 presumes the future design of our communities should be in the hands of elected officials and bureaucrats and not the expert professionals, and presumes that the public body is more relevant and important than the expert evidence and the incredible brain trust of professionals in this province. The provincial government I have grown to respect in the last few years would not pass this bill as we have it before us today. Thank you.

The Vice-Chair: Thank you very much. We have about two minutes for each party. We'll have the government side, Mr. Flynn.

Mr. Flynn: Thank you for the presentation. I enjoyed that. Could you expand a little bit on the idea you have about a design review panel? That intrigues me.

Ms. Di Lorenzo: We were inspired by the idea from the ministry and we actually sent delegates to Vancouver to see how it's working. In Vancouver, it's a voluntary process made up of experts. The government chooses some representatives and the private sector chooses representatives. For the most part, the process is accelerated and you get a better product at the end. We have been citing Vancouver as a great example of modern city-building. So clearly it's working there.

Mr. Flynn: The idea would be that it would be an option for the municipality?

Ms. Di Lorenzo: We would actually assist the municipality in setting a system up, but we'd like to participate practically in it, because right now we feel isolated from that process.

Mr. Flynn: Do I have more time?

The Vice-Chair: About half a minute.

Mr. Flynn: Just very quickly, why do you think that it's a good idea to allow the introduction of new evidence at an OMB hearing?

Ms. Di Lorenzo: I do believe some excellent things are part of this bill, where material must be brought forward for the planners in a full fashion. There should be no game-playing. By the same token, if a public body is able to introduce new evidence, it's not unusual to introduce new evidence in response to that evidence. The way it's worded or the way it's being discussed, it would have to go back to council again. In order to bring all the lawyers back together again, we're talking about three-, four-, five-, six-month delays in the process.

So I think the member has in the past very successfully decided whether that evidence is relevant and all the parties—I've been to many hearings—have decided at the hearing if there's been any unfair presentation of materials, and often it's been dismissed. So there is a process in place now that deals with new evidence.

The Vice-Chair: Thank you. Ms. MacLeod.

Ms. Lisa MacLeod (Nepean–Carleton): I thoroughly enjoyed your presentation, particularly on the design review panel. I'm very intrigued by that and I'd be interested in learning a little bit more. But first and foremost, I want to know: What financial impact on this industry are we going to see, based on the one-size-fits-all or the design process that's going to be put in place with the planning and conservation act?

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Ms. Di Lorenzo: What I see now is a council that is not prepared to hear evidence, so if it goes to the OMB and then new evidence has to come back—incredible delays. As I said, the development industry already has an average of a two-year approval process. Add more time to that.

Ms. MacLeod: And legal costs?

Ms. Di Lorenzo: And legal costs. It's not just a professional cost; it's the cost of not producing those units for the market. We've had enough supply now to keep markets affordable. We don't want the supply to dwindle. We have been very co-operative, in the understanding of growth management, understanding that certain areas should be restricted for development in terms of sprawl. But this would also impede the production of housing in efficient areas.

Ms. MacLeod: I just want to pick up on something that my colleague Mr. Flynn brought up, which was new evidence. Recently in my community new evidence was introduced by a developer which went against our official plan in the city of Ottawa, and was blatantly unfair. The community doesn't want it. It's not a case of NIMBYism. I'm wondering if there's a better way. Is there a way that things go back to council at another point? Because right now, the system is not working. You're telling us that your not being allowed to introduce new evidence later on would be a problem. Is there a better way?

Ms. Di Lorenzo: I think the pre-hearing also vets out evidence. There's a pre-hearing at the OMB process. So maybe if we expand it at the pre-hearing process. I don't think council is the place, unless you reform council completely. You only have to attend a council meeting; they do not have the time to read a stack of reports like this. There's no cross-examination; there's no check and balance. It's simply a report from staff. So it's very, very important to remove it from that process and bring it up to the OMB and possibly have an extended pre-hearing process.

The Vice-Chair: Thank you. Mr. Prue.

Mr. Prue: I don't want to be too sympathetic to the government, because that only gets me in trouble.

Interjections.

Mr. Prue: No, no. You are presenting the developer's side of the argument, but I have, as a former mayor, been there and have seen applications made before council, council has refused them, and they go to the OMB and the developer basically presents a brand new development that nobody has even seen before. Surely, this happens as well.

Ms. Di Lorenzo: We don't endorse that as appropriate.

Mr. Prue: But it does happen, does it not?

Ms. Di Lorenzo: I think the members should be clearly informed to not allow that to happen.

Mr. Prue: But this is pretty standard in a lot of cases.

Ms. Di Lorenzo: We've had seven projects, and they've all been at the OMB either because residents

have opposed them or we've had to oppose them, and that has never been part of the process.

Mr. Prue: Okay, so in your particular case this hasn't happened, but you must be aware of other developers who do this routinely.

Ms. Di Lorenzo: Sir, I'm also aware of OMB members who have said, "That's not admissible evidence." If there is to be reform, the process and the procedures have to be more formal and understood. A member should send that back.

Mr. Prue: I do agree with you somewhat that many councillors do not read the copious amounts of materials related to applications. In fact, I've seen them read none of it at all, sadly. Your response is that it should be taken out of the hands of the municipal council.

Ms. Di Lorenzo: No, I believe that the present process is fine for reviewing staff reports, but as you've admitted, the councillors don't even have the time—it's not even realistic to conceive of them having the ability to review all this evidence. It even needs interpretation; it needs questioning. We are more than happy for the evidence to be questioned in the legal process. I don't think anything should change at that place. I think the OMB could have clearer rules of process. The pre-hearing could be more elaborate to vet out new evidence that has been unfairly introduced. But it should happen at the OMB. There are so many councillors who say, "Please, get it out of my ward and bring it up to the OMB," because it's too sensitive an issue on a local neighbourhood basis. That's not in the interests of the community at large. Vancouver has council at large. It's a completely different political venue.

The Vice-Chair: Thank you very much. That brings us to the end of your presentation. I wish you a good day.

Next we have Blue Highlands Citizens Coalition. Would that group be here? They're not here.

CITY OF KITCHENER

The Vice-Chair: Is the city of Kitchener here? We'll move your presentation. Please make yourself comfortable. Should you need some water, there's water over at the side. Once again, 20 minutes for the presentation. For time remaining, as you can see, we split it between the three parties. Welcome.

Mr. Terry Boutilier: Mr. Chairman and members of the committee, my name is Terry Boutilier and I work with the city of Kitchener economic development department. I'm very pleased to be here today. The clerk is just distributing a three-page brief. My apologies for not getting it in earlier, but I've been out of the office for the last three weeks.

The city of Kitchener welcomes this opportunity to appear before the committee and to voice our support for the committee's work on Bill 51. In particular, Kitchener is grateful for the inclusion of section 13 of the bill, which revises the community improvement provisions of section 28 of the Ontario Planning Act.

Subsection 7.2 on page 15 of the bill provides the needed flexibility for both levels of municipal government under a two-tier structure to share the costs of brownfield renewal. I'll diverge just a little bit. Kitchener is in the region of Waterloo, and there are many other, similar two-tier municipalities, such as Niagara, Durham, Halton, Peel, and many others. At the present time, however, for brownfield renewal, all of the costs are borne by the lower-tier municipality; that is, the city. Right now, the regions of the province are prevented from getting involved in providing any funds for brownfield renewal by the legislation.

In 30 years of practice, I have found that the most effective planning tools are those where we have several levels of government working in true partnership. The most effective partnership in Ontario in my lifetime was ONIP, the Ontario neighbourhood improvement program. Funded equally and co-operatively by three levels of government—at that time it was the city, the province and the federal government; the feds backed out in the early 1980s—and co-administered by the municipality and the province, ONIP changed the face of almost every city in this province. During the 1970s and 1980s, we rebuilt the inner cities of Ontario municipalities. We made them livable and attractive for residential investment for families. This partnership worked exceptionally well because we had a clear common objective amongst all those levels of government and a meaningful and equal financial commitment amongst all the partners.

We believe that ONIP should be the model for the implementation of Places to Grow as it relates to the renewal of our brownfield lands. Kitchener, like many Ontario cities, uses tax incremental financing to assist the private sector to clean up and redevelop our contaminated lands. We believe that TIF is best for our city for the following reasons:

First, it's risk-free to the governments involved. All the risk is shouldered by the private sector, where risk should logically fall. If they succeed, they are rewarded.

Secondly, TIF is a welcomed form of assistance by the private sector, since they can take the agreement to the bank.

Thirdly, TIF allows all public officials plenty of time to plan and budget for the expenditure, usually several years into the future.

Finally, the TIF method eliminates guessing as to how many applications will be received annually and how much money needs to be budgeted for in the next financial period.

Very briefly, a TIF works this way: Currently, you have a contaminated piece of land. The assessment is negligible because it's not valuable, so let's say they are paying $10,000 in taxes a year, total. When they clean it up and they redevelop it for a potentially big project, of course the assessment goes way up and the tax generation for all levels of government goes up; let's say it's $110,000. Now, in the future you have $100,000, called a tax increment, that you can use. As I like to say, a municipality can put some money on the table when it really doesn't have any money to put on the table presently, but in the future it will. That's how a TIF

works. You give back to the developer a portion of that future tax increase so he can recoup his costs to clean up the land and redevelop it. It works well. It's an American model that the city of Hamilton introduced to the province, and many of us use it now.

On the third sheet, I have included a Kitchener example that we have just recently approved through our council. This is 52 and 90 Woodside Avenue: about 3.4 hectares in size, used for an industrial use for over 100 years in our municipality, thoroughly contaminated with every unspeakable kind of chemical that you can look at. The cost to remediate it was $1.7 million. Under the current regime, prior to remediation it was worthless. Now it is valuable. In 2005—again, before remediation—here's the split on the tax generation: The city took $11,000, the region took $16,000, and the province got $27,000 for education purposes, for a total of $55,000. But now that the project is going to be cleaned up and now that they are going to make an almost $30-million investment in the project, the projected taxes—again, only using the 2005 rates—are substantially more. Finally, you can see the increase at the very bottom.

1110

I'm going to go back to the letter on page 2. Note the current and future projected increased levels of revenue for the city, the region, and the province for education after the project has been successfully completed. Most importantly, note the increase—that is, the increment in taxes—for each level of government. However, also note that in this case, only the city of Kitchener is providing any financial support. In example one, over 10 years following project completion, the city of Kitchener will give up 100% of its tax increment, a total of $1.215 million. In other words, we will not get any increase in tax revenue for 10 years following project completion. However, the region will gain $1.8 million in increased taxes and the province will gain $584,000. That's an increase in taxes that you're getting. That's money you can use for brownfield renewal.

The proposed revision to section 28 in Bill 51 will allow the city of Kitchener to approach the region of Waterloo so that we can both shoulder the financial burden on a more equitable basis. In the spirit of ONIP—here's a wild proposal. I want to go back to the 1970s. That's where I worked. If all three levels of government participated and were willing to become equal partners, and each contributed not 100% but just 50% of our tax increment as a financial incentive, we could see the following: The city would contribute $140,000 over 10 years and still gain $184,000. The region would contribute $910,000 and they would gain $910,000. The province would contribute $292,000 but still gain $292,000 in tax revenue over the 10 years.

Right now, the lower-tier municipalities are bearing the brunt of financial burdens because of the encumbrances in the legislation. The power of a three-level partnership becomes clear through this exercise. No one level of government shoulders the burden, and we all work with common purpose and equal commitment. However, only with the approval and enactment of Bill 51 will they be able to do so.

We congratulate the committee for its work and we endorse the committee's proposed changes to section 28 in the Planning Act. Thank you for putting these provisions in Bill 51.

There are two people in the ministry I want to thank personally. One is Thelma Gee in the community and renewal branch—she's been terrific to work with over the last 10 years—as well as Bruce Curtis, who manages the London office for the ministry.

Thank you, Mr. Chairman. I'd be very pleased to answer any questions the members may have.

The Vice-Chair: Thank you. We have about three and a half minutes for each party, starting with Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. I suppose it always works that way: If the municipalities and the province come up with the money, we will all eventually benefit, if you consider the positive aspects of the project. We have a lot of brownfields around that are lying there idle because no one can build on them because the greenfield development is a much more profitable development.

I was interested in your analysis between the upper and the lower tier. Since they both have exactly the same taxpayer, the exact same tax assessment, what is the advantage to having both levels of government taxing the same property owner for the same benefit, rather than just having the upper tier do it all or the lower tier do it all?

Mr. Boutilier: There are two advantages. The first is that regions have a higher and broader level of tax base than the local municipality does. In the region of Waterloo's case, it encompasses seven municipalities, three of which are major cities—Waterloo, Kitchener and Cambridge—as well as four townships. The townships have similar problems because they have old industrial sites, waste sites, agricultural and manufacturing sites. So the first is that it's not exactly true that we have the same level of resources. The region has far more financial resources than the lower tier.

The second point is, the region is responsible for all of those matters which brownfields affect. The region is responsible for water supply and water quality—and we're on groundwater—yet they don't put a nickel into any brownfield renewals. The city is not responsible for water quality; they are. The region is responsible for public health, not the local municipality. These are public health issues in that they're toxic and the chemicals can be carcinogenic.

So there are my two answers.

Mr. Hardeman: Going on with that, then, since it is to protect our groundwater, the resources that the region is responsible for, and accepting that all municipalities have a certain level of contaminated areas, doesn't it make more sense to have the region become responsible for it in total, as opposed to the local municipality being involved?

Mr. Boutilier: I think that's an argument that could be successfully argued. I'd like to think that each and every level of government is responsible, because they all benefit from the renewal of the site. If the province puts in a little money, they get money back. If the region puts in money, we put it all back. If the three of us work together in making some contribution, we're all beneficiaries.

Mr. Hardeman: I guess that pretty much is the section of the bill that you spoke to.

We've been hearing a lot about section 23; I don't know if you've looked at that. It's the exemption for energy from the Planning Act. You're quite involved with municipal government and the responsibilities and so forth. I wonder if you have an opinion on whether it's appropriate to totally exempt energy projects from the Planning Act.

Mr. Boutilier: It's a question I'm not prepared for. I've practised now for 34 years in this province with many municipalities and I can see both sides of the fence, so to speak. Municipalities do and should have the ability in their official plans to designate major industrial facilities. This would be one, in my mind. They're worried about traffic movement, they're worried about noise and vibration, they're worried about threat to human life, and they're also worried about appearances: Is it going to be landscaped, is there going to be enough parking, that kind of stuff. So I think they do have some—

The Vice-Chair: Thank you. We'll move on to Mr. Prue.

Mr. Prue: This is an intriguing proposal. You ended your discussion by thanking people from the province and others who've worked for you, but—it's not in the bill and I haven't heard from any of them—are there any other proponents in the province of what you're suggesting?

Mr. Boutilier: I haven't taken a survey, but I would suggest yes. I would suggest that if you went to OPPI or to a number of the associations to put this proposal on the table, I think you would get some support. I also know, just from my discussions with colleagues at the Canadian Brownfields Network and others, as well as private investors, that they've often thought we need to work together more and get more financial resources. These properties really need help. If the city of Kitchener didn't put the financing on the table in this form, these sites simply would not be renewed. So I don't have a clear answer for you; I'm sorry.

Mr. Prue: We have Rob Horne coming from the regional municipality of Waterloo. I guess you probably know him.

Mr. Boutilier: I know Rob very well.

Mr. Prue: He's going to be coming this afternoon. Do you think it would be fair if I put the question to him?

Mr. Boutilier: I think it would be a fabulous opportunity. Rob used to be the planning director for the city of Cambridge, so he knows both sides of the stick, you might say.

Mr. Prue: All right, but have you discussed it with him? This is your counterpart within the region.

Mr. Boutilier: No, I haven't. The region is quite aware of what we would like to see happen and the region is quite aware that they can't at this point in time get involved with community improvement. It has been expressed to me several times by members of staff at the region that they are in support of getting involved, but unfortunately right now the legal aspects of the legislation prohibit them.

Mr. Prue: So you see this as a simple change to the legislation before it's passed that would make it easier for the province, the regional municipalities and the municipalities to work in conjunction and all see a financial benefit?

Mr. Boutilier: Yes, sir. I see a great deal of new flexibility. It allows us to discuss it with the region, where we can't do it now.

The Vice-Chair: Thank you. Mr. Sergio.

Mr. Sergio: Thank you very much for your presentation. In your capacity of not only improving but also bringing in some much needed new dollars for the local municipality—that is your responsibility there—how do you juggle your responsibility of promoting the city and promoting development in some ways, and at the same time reconcile that with the interests of local groups, individual citizens, ratepayers' organizations? What do you do? The bill contains some more powers to local people, where local authority is given to these new local appeal bodies. Do you, as a development officer, think it is a good thing to have local appeal bodies deal with some minor issues or not?

1120

Mr. Boutilier: On the first comment, one of the fundamental things we do within the structure of the city of Kitchener is trade economic developers and planners; we move them around so the economic development person understands the planning implications. I'm trained as a city planner, but I'm an economic developer.

This project, 90 Woodside, is a very good example. We had a very hostile neighbourhood, the Victoria Park Neighbourhood Association, because they had problems for many, many years with this site. When we went out to a number of conferences and started attracting developers from the GTA, we showed them this site and they liked this site. The very first thing we did was have a major design charette with all of the community in January 2005. We had 60 residents come and meet the proponents, and the proponents designed the project along with the wishes of the residents, right down to architectural control. The residents said, "This is a stone-and-brick community. We want it to be a stone-and-brick addition to it." The developers said, "Sounds like a great idea to us."

When this project went forward to our city council, the entire community, with the exception of one adjacent owner, was in full support of the project. The adjacent owner was a business operator, not a resident, I'd point out as well. So I would say there are plenty of methods

by which, through incentives and encouragement and working both with the private sector as well as existing communities, the design issues can be resolved.

With regard to your second point about local appeal bodies, we've had a discussion locally. We see some problems with it. We don't know who we would appoint, first off. Could these people be members of council? Are these people going to get paid? There are some issues like that which we just didn't have answers for. We are always in support of more local control for decisions because it reflects the democratic way we run our cities, but on the other hand, there needs to be some determination as to exactly who would be eligible for that cherished position.

Mr. Sergio: Is there more time?

The Vice-Chair: About half a minute.

Mr. Sergio: Oh, good.

We have heard from some municipalities, especially growing municipalities like yours—yours is a very fast-growing community—on bringing new evidence on rezoning applications at the last minute. What does this do to the local municipality, and do you think it's fair that brand new evidence should be brought at the last minute?

Mr. Boutilier: Again, Mr. Chair, I wasn't prepared for these kinds of questions—

The Vice-Chair: A quick answer—

Mr. Boutilier: —but I'll give you my personal opinion: Is it fairness and the appearance of fairness?

Mr. Sergio: Thank you for coming down.

The Vice-Chair: Thank you for your attendance here today. I appreciate your coming to the hearings. Have a good day.

BLUE HIGHLANDS CITIZENS COALITION

The Vice-Chair: Next we have the Blue Highlands Citizens Coalition, Peter MacGowan. Please make yourself comfortable. There is water at the side. For Hansard purposes, please state your name at the outset of your presentation. You will have 20 minutes. The time remaining will be split between the three parties.

Mr. Peter MacGowan: Good morning and thank you for the opportunity to speak this morning regarding Bill 51. As noted, I am Peter MacGowan, founding volunteer president of the Blue Highlands Citizens Coalition.

Some brief comment regarding the Blue Highlands Citizens Coalition may be helpful. We are a group of residents of Grey county who are keen to play a positive, responsible and productive role in assisting with the development of appropriate policy relating to the environmental land use planning challenges associated with any proposed installation of large-scale wind turbines on lands within or in close proximity to the Niagara Escarpment plan area. While we are supportive of the concept of wind power development, we also support and passionately believe in Ontario's long-standing policy of long-term protection for the visual attractiveness and natural features of the Niagara Escarpment landscape. I note that we strongly support the Niagara Escarpment Commission's restrictive wind power development policy. Our policy position is perhaps best and succinctly summarized by our catchphrase, which is "Wind is a renewable resource; our Niagara Escarpment landscape is not."

I expect that the committee has already heard from a number of speakers regarding section 23 of Bill 51. Our comments this morning are limited to that section 23. As you know, that section proposes that prescribed energy undertakings be exempt from Planning Act control and instead be subject only to approval or exemption under the Environmental Assessment Act.

There are a number of bases on which section 23 is appropriately criticized. It strikes us as being undemocratic. It strikes us as being unfair. It strikes us as being unnecessary, particularly in light of the recent 2005 revision to the provincial policy statement, whereby planning decisions taken by municipal authorities are required to be consistent with the provincial policy statement as compared to the former standard enunciated in the provincial policy statement requiring that local decisions have regard to the provincial policy statement.

However, there is really only time this morning for us to deal with our principal concern regarding section 23; i.e., that section 23 inappropriately proposes to place far too great an emphasis on a process—the environmental assessment process—which is recognized to be in significant need of reform. In particular, prescribed energy undertakings should only be removed from the purview of the Planning Act approval process if both the environment and the public interest can be adequately protected through the approval mechanism which is proposed to be relied upon; i.e., the environmental assessment process.

We believe that it is particularly important to focus on the recommendations by the Minister of the Environment's advisory panel on reform to the environmental assessment process, recommendations which were included in that panel's 2005 report entitled Improving Environmental Assessment in Ontario. A review of that panel's recommendations makes it very clear that the public interest will not be adequately protected if section 23 of Bill 51 is implemented. In particular, the panel's recommendations make it clear that the proponent-driven environmental assessment process, as currently operated and administered, presents little opportunity for the little guy—the passionate and responsible individual citizen—to be meaningfully engaged in the process through true and credible public consultation. Consider, for example, the advisory panel's observation that "there appears to be overwhelming consensus among EA stakeholders that the MOE must develop appropriate policy and guidelines to ensure meaningful public participation in the EA planning and decision-making process."

The report also observed that "Public input received by the executive group also supported the need to substantially improve public consultation within Ontario's EA program," and stated that the expert panel retained by the minister "strongly urges the MOE to develop and

implement long-overdue policy and guidelines to ensure meaningful public participation in the EA process for all sectors subject to the EA act."

In its report, the advisory panel also noted that "The need for, and benefits of, funding public participation in the EA process is well documented in studies, reports and published literature," and went on to recommend the development of an appropriate participant funding model for Ontario that addresses those public participation funding concerns.

Interestingly, the advisory panel's report on environmental assessment reform also recommended that the provincial policy statement, which of course serves as the basis for the municipal planning and development decision-making process throughout the province, be adopted in the Environmental Assessment Act by cross-reference "as soon as possible." The advisory panel did not recommend an elimination of the Planning Act approval process in the context of approvals for energy undertakings. Rather, the panel recommended a better integration and coordination of those two—i.e., environmental assessment and planning/development—approval processes.

1130

People are often more interested in real world experience than they are in arguments based on the content of written reports. Before concluding my remarks this morning, then, let me give you a sense of our experiences of the environmental assessment process—experiences gained in the trenches—in the real environmental assessment world as experienced by the typical private citizen or citizens' group. We have been intimately involved with that process over the past three years as we have pursued our objective of a responsible and informed policy formulation and decision-making process in connection with the question of the appropriate scale and scope of wind power development on or in close proximity to the Niagara Escarpment.

Frankly, it has been upsetting and disillusioning. The project proponent has refused to share basic information regarding the project. Similarly, the provincial Ministry of Energy has demonstrated a shocking refusal to share such information with the local community, even after the award to the proponent by that ministry of a 20-year fixed price, multimillion dollar energy supply contract from the proposed project. At incredible expense of both time and money, we have organized and funded public information meetings, participated in conferences and written extensive comment papers to the Ministry of the Environment, the Niagara Escarpment Commission and the Ministry of Energy. We have made serious attempts to engage the project proponent in meaningful public consultation regarding the proposed project, and we have spent countless hours researching the relevant issues and evaluating relevant comparative experiences in other jurisdictions.

Indeed, in light of the project proponent's reluctance to share basic project information with us, we were obligated to go to the time and expense of a freedom of information act request, a request in which we were ultimately substantially successful but which involved a wait of nearly two years for the disclosure of basic information from the project proponent. And yet the end result of our efforts has drawn us to the upsetting conclusion that a concerned citizens' group, even one blessed with legitimate concerns regarding a credible environmental land use planning issue—in this case, the preservation of our Niagara Escarpment landscape for the benefit of future generations of Ontarians—has little to no ability through the current environmental assessment process to be heard, or even to be meaningfully consulted, when faced with big business and big government interests in the context of the province's proponent-driven environmental assessment process.

If our experiences with the environmental assessment process over the past three years—experiences which have involved incredible sacrifice on our part as we have diligently pursued appropriate protection for the Niagara Escarpment and support for the environmental land use planning objectives of the Niagara Escarpment plan—lead us to one unequivocal conclusion, it is this: that the environmental assessment process is currently not sufficient to, alone, protect the public interest or, for that matter, to protect the environment in the context of energy undertakings. Unless and until the environmental assessment process has been reformed, as recommended in 2005 by the reform recommendations which I have mentioned, section 23 of Bill 51, if implemented, presents a real risk of both harm to the environment and poor planning and development of energy undertakings.

Let me speak from the heart. It also has great potential to do irreparable harm to Ontarian's sense of equity and the sense that there is a meaningful role for local citizenry in the democratic decision-making process consistent with the best traditions of our political system. A loss of that sense, to be replaced with a sense that the individual citizen has no meaningful role to play in the context of significant local development issues, would be a tragedy and would run counter to our long-standing democratic process whereby the individual concerned citizen does indeed have a right to be meaningfully engaged in decisions which affect her or him. We ask that the potential for harm to our democratic process presented by section 23 be avoided by the deletion of that section from Bill 51. Thank you.

The Vice-Chair: Thank you very much. We have about two and a half minutes for each party. We'll begin with Mr. Prue.

Mr. Prue: Thank you very much. All but one person commenting on section 23 to date think it's a bad thing.

I just want to get my head around the two various aspects. We have an environmental hearing dealing with the environment, but the Planning Act goes into a lot more than that. Although it can deal with planning issues, it also determines whether or not it's an appropriate location for something to be built, whether the infrastructure is adequate, whether or not the community facilities are consistent, whether in fact the town wants it

at all. I understand you're here on behalf of a group that is unhappy about the Niagara Escarpment and the windmills. My own municipality of Toronto, which is coming up next, has opposed the gas-fired generation on the waterfront because that's where they want to build the Expo site, and it's not consistent with the city's long-term proposals. Should a municipality have the right to refuse energy infrastructure if it's not consistent with the official plan of the town or the municipality? Should they have that right?

Mr. MacGowan: I think they should have that right if indeed refusing the proposed undertaking is consistent with the provincial policy statement, but let me just make one point of clarification. I do want the committee to understand that we are not here today in order to voice opposition to any particular project. What we are trying to do is point out to the committee that there is real danger associated with section 23, in that it places reliance on an environment assessment process which has been recognized to be flawed. We believe very passionately that before any such legislative change should be implemented, the reforms which have been recommended to the Minister of the Environment regarding the environmental assessment process need to be paid attention to. Ultimately, I agree that if a project is consistent with the provincial policy statement, it should not be opposed, and in fact the provincial policy statement already provides that by way of the recent amendment that says planning decisions need now to be consistent with the provincial policy statement.

The Vice-Chair: Thank you. We'll move on to Mr. Flynn.

Mr. Flynn: Thank you for the presentation. I enjoyed it and I thought it was quite fair and balanced.

Supporters of this type of move would say that if you don't do something like this, you never get the projects built; everybody just opposes everything off into the future, and decisions aren't made. What would you suggest is a better way of us actually being able to build some of the energy infrastructure that is needed in the province?

Mr. MacGowan: I think the current arrangement, the current system that we have in place, at least in concept is a system that is workable, at a conceptual level. The concern we have is that in its actual implementation it does not lead to the balanced, fair and equitable results that are contemplated by the system design.

My own personal view on this is that we may end up with large-scale turbines on top of the Niagara Escarpment. Personally, I disagree with that, but if that is the end result that is ultimately achieved, I can live with it, as can my fellow residents, as long as the process that has been followed is fair and reasonable. So I think the system we have in place is workable, as long as indeed in its application the local citizens are given the ability to be heard.

If we were sitting here considering section 23 of Bill 51 five years from now, after the environmental assessment reform recommendations that are included in this report that I've cited had been implemented, then I don't think we'd be experiencing the sort of angst that we are experiencing regarding a flawed process.

1140

Mr. Flynn: Yes. I've just returned from a couple of weeks in Ireland. There are a lot of windmills all over the countryside in Ireland nowadays. I had mixed feelings as to how they looked.

What is it about your site in particular that you're concerned with that is attractive? Is there a lot of wind in that area? There must be something about this application that's compelling.

Mr. MacGowan: Frankly, I think that question is a good illustration of exactly what we're trying to say. I wish I could answer that question, and I feel that I'm entitled to answer that question. I feel that, as a resident of the local community, I'm entitled to that type of information from the Ministry of the Environment, from the project proponent. Instead, I'm having to say to you that I don't know. I can tell you that it's difficult to keep drifted snow blown out of my lane in the wintertime, but apart from that, I can't give you a scientific, fact-based response. I should be able to, because the ministry and the proponent should be sharing that information with me, but they're not.

The Vice-Chair: Thank you. We'll move to Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. As my colleague from the New Democrats pointed out, section 23 has received, I suppose, more debate than any other section of the bill at this point, almost everyone objecting to it. The question really becomes, first of all, what's the need for it? If municipal decisions have to be consistent with provincial policy, why can the province not put a policy in place as to where these types of facilities can go, and then the planning would automatically fall into that category? Municipalities would then look at the application based on local land use planning matters, as opposed to whether they want it or don't want it at all, because provincial policy says it can be in those areas. Would that solve some of the problems?

Mr. MacGowan: I think that would go a long way towards solving the problems, on the assumption that the public is actively and in a meaningful fashion engaged in that policy development process. Again, I could cite numerous examples of disillusioning experiences that we have had over the past few years trying to contribute to that process—which I agree is extremely important—but running into a brick wall or apparently running into a brick wall, even though we feel we are blessed with a very valid environmental concern, i.e., protection for the Niagara Escarpment landscape for future generations of Ontarians.

Mr. Hardeman: Could I ask you one other question, your opinion on it? Why is it, you believe, that the government would put something in place that says no land use planning hearing has to be held and no municipal involvement in siting a nuclear plant, but there will be

land use planning for a refinery? Why would you separate those two?

Mr. MacGowan: I'm sorry. Separating a nuclear facility from—

Mr. Hardeman: A nuclear facility under this act is exempt from the Planning Act; an oil refinery is not. What's the difference?

Mr. MacGowan: I don't see a rational conceptual basis for drawing a distinction. I recognize the importance of solving the energy crunch that we're facing in Ontario. I just feel there's a better way to do it which is heavily engaged in public consultation. Ultimately, the people who consume energy are people like me. Politicians make policy to solve the problems that people like me face when we turn on the switch and the light doesn't come on. If I'm going to be a part of solving that process—and I should be a part of solving that process—I should be actively engaged in the policy formulation process.

The Vice-Chair: Thank you very much for your presentation. Thank you for attending here today, and have a good day.

Mr. MacGowan: Thank you to everyone for your attendance and your attention.

CITY OF TORONTO

The Vice-Chair: Next we have the city of Toronto. Welcome. As with the other deputations this morning, you have 20 minutes. If you don't use the full 20 minutes, we will split the time between the three parties. Please state your name for Hansard before your presentation.

Mr. Ted Tyndorf: Thank you, Mr. Chairman. Good morning, members of the committee. My name is Ted Tyndorf. I'm here on behalf of the city of Toronto. I'm the chief planner and executive director of city planning.

Thank you for the opportunity to appear before you. It's an especially important time for land use planning in Ontario, with so many important legislative reforms reshaping the planning practice, including Bill 51 and Bill 53, the Stronger City of Toronto for a Stronger Ontario Act.

Mayor Miller presented the city's comments on the planning authorities of Bill 53 at the Bill 53 standing committee hearings. I'm here today to express the city's support for Bill 51 and to request the committee to consider some further changes to this bill to better reflect land use planning needs, priorities and practices in the city of Toronto, and indeed in the rest of the province.

The province's growth management objectives will be served best by local governments having the right planning tools to enable strong and sustainable communities to flourish.

Before I begin, I'd like to congratulate Premier McGuinty and Minister Gerretsen for their leadership in recognizing the need to empower and better prepare Ontario's municipalities to manage the significant environmental, social and economic challenges and opportunities presented by urban growth and development. This bill marks a historic milestone in the evolution of Ontario's land use planning process. Bills 51 and 53 and the Places to Grow Act have responded to many of the key issues regarding planning and OMB reform which have been consistently identified by Toronto city council in its reports and recommendations to the Minister of Municipal Affairs and Housing over the last couple of years.

Specifically, Bill 51 will redefine the role and scope of the Ontario Municipal Board; it will provide municipalities with the tools, powers and responsibilities needed to address the challenges associated with managing growth and development; it will provide an environment for an informed and well-documented municipal decision-making process and outcome; it will clearly state provincial interests in sustainable development and compact growth; and it will enhance requirements for public notice, information, consultation and engagement.

The city of Toronto supports these reforms and many of the provisions and requirements contained within Bill 51 around such matters as pre-consultation, clarifying provincial interests, parkland dedication, enhanced subdivision control and community consultation.

The city also supports the provisions concerning official plan and zoning bylaw reviews, although the requirement to bring the zoning bylaw into conformity with the official plan within three years of an official plan review will present significant challenges for the city of Toronto, with our inherited zoning complexities. Indeed, a similar issue will probably present itself in other municipalities across the province.

The city also strongly supports the provisions which protect employment lands. The elimination of the right of appeal to the OMB of employment land conversion applications that have been refused by the city council and the provincial definition of "area of employment" greatly reinforce the city's ability to protect its employment land base to accommodate future jobs and to grow the city's economy.

As with any new legislation, however, there are certain aspects of Bill 51 which could be improved to better reflect Toronto's planning context and the land use planning needs of Ontario's municipalities. These matters include OMB reform, complete application requirements, the exemption of energy undertakings from the planning process—I'm sure you've heard a lot of that already this morning—and official plan conformity with provincial growth plans. As well, an issue raised by the city in the context of Bill 53 could be addressed in the context of Bill 51 to the benefit of all Ontario municipalities. The ability to secure matters or conditions in binding legal agreements that can be registered on title for all powers regulating land use activity is an important tool which currently only applies to certain powers.

I'll briefly outline the proposed changes.

Regarding OMB reform, the city of Toronto council adopted the following recommendations regarding the reforms that were conveyed to the Minister of Municipal

Affairs and Housing as part of the planning and OMB reform stakeholder consultation sessions during the period leading up to Bill 51: first, that the OMB become a true appeal body and not a substitute decision-maker; second, that de novo hearings should only be held under certain and specified circumstances; third, that there should be a leave-to-appeal process; and finally, that grounds for appeal be limited to council acting "unreasonably" or in a manner not consistent with the provincial policy statement or any other provincial plans.

The reforms contained in Bill 51 do establish a higher standard for decision-making at the municipal level and modify the scope of the OMB's decision-making process. Bill 51 requires that the board shall "have regard to" council decisions and any supporting information and materials that council may have considered in making its decision. Bill 51 empowers municipal councils to require that development applicants provide all and any information council believes is necessary to make an informed decision at the front end of the approvals process.

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These are welcome reforms, but they're not as fundamental as had been advocated by Toronto council in its submissions. So Bill 51 falls short in making the OMB a true appeal body.

We respectfully request that the OMB process be further circumscribed to be a review or a true appeal of municipal planning decisions only, and that there be a leave-to-appeal process and that grounds for hearings de novo be limited only to council acting unreasonably or in a manner not consistent with the provincial policy statement or not in conformity with provincial plans.

Regarding complete applications, under Bill 51, once official plan policies are in effect outlining what is meant by a complete application for all types of development applications, council will be able to refuse to accept or to further consider these applications until all information or materials that it considers necessary have been received. Until council is satisfied that the complete information and fees have been received, the legislated timeframes for processing the application will not commence.

During the Bill 51 consultation period, the city of Toronto advised that the requirement to establish complete application information policies in an official plan was not compatible with the strategic high-level nature of Toronto's official plan and was not practical or desirable given the complex and varied nature of applications that we experience in the city.

The difficulty in crafting official plan policies that would anticipate requirements for the full range of application types and situations could result in ongoing official plan amendments to accommodate the variety of circumstances surrounding these various types of applications. This would be especially true given the new right of an applicant to appeal to the OMB for direction respecting the validity of individual complete application submissions. It should be sufficient for the city to pass bylaws setting out application requirements, as has generally already been accomplished through the city's Building Toronto Together development guide. An applicant would still have the ability to appeal to the OMB for direction.

We respectfully request that Bill 51 not require the establishment of official plan policies for complete applications.

Regarding binding legal agreements, in discussions of planning powers in the context of Bill 53, dealing primarily with demolition and conversion of rental housing, green roofs and site plan control, the city noted that to be most effective, all powers to regulate land use activity should include the ability to secure these relevant matters in binding legal agreements registered on title. Several powers have this authority, while others do not. We respectfully suggest that Bill 51 should provide explicit authority to allow a municipality to enter into agreements and register such agreements on title for section 45(9), particularly pertaining to minor variance, and section 36, which is holding bylaws.

We also note that in order to derive full benefit from existing powers in the Planning Act allowing for conditions to be imposed as part of minor variance decisions, section 37 bylaws or holding bylaws, these conditions should be considered to be applicable law under the Building Code Act regulation O. Reg. 305/03.

While it is not necessary to require binding legal agreements, section 42 of the Planning Act requiring conveyance of land for park purposes as a condition of development or redevelopment of land should also be considered to be applicable law under the Building Code Act.

Regarding exemption of energy undertakings from the Planning Act, the city has concerns with the provisions of Bill 51 that allow for certain energy projects to be exempt from the Planning Act. OPG and Hydro One are already exempt under the current Planning Act, and Bill 51 will allow new public and private sector energy projects or undertakings to be exempted by way of regulation if they have been through the environmental assessment process.

The evaluation of energy projects solely through the EA process places the focus only on identifying environmental impacts and potential mitigation measures. Land use, site plan and other planning issues are not evaluated, and as such an EA process is not an appropriate vehicle for the identification of planning-related issues. The city's view is that no additional energy undertakings should be exempted from the land use planning process even if they have been through an EA. Rather, energy undertakings should be subject to an evaluation under the municipality's site plan control and zoning processes, done in tandem with the environmental assessment.

Regarding conformity of official plans with the greater Golden Horseshoe growth plan, with the approval of the greater Golden Horseshoe growth plan under the Places to Grow Act, 2006, Toronto and other municipalities in the GGH are expected to bring their official plans into conformity with the growth plan within three years. Under the Places to Grow Act, the minister can unilaterally amend a municipal official plan to bring it into

conformity with a provincial growth plan, if a municipality has failed to do so within the legislated time frame. This ministerial amendment cannot be appealed to the OMB. However, if a municipality takes the initiative to amend its official plan to conform with the growth plan, that decision of the municipality can be appealed to the OMB. In our view, that is inconsistent. Such municipality-initiated amendments are undertaken strictly to comply with legislation and should have the same status as the actions of the minister in this regard.

The city of Toronto requests that the Planning and Conservation Land Statute Law Amendment Act be amended to disallow appeals to the OMB of any official plan amendment which was specifically enacted to bring local official plans into conformity with provincial growth plans.

In closing, I'd like to reiterate the city's support for the objectives of Bill 51 and most of the requirements and provisions. As I stated earlier, Bill 51 and the recently passed Bill 53 are historic milestones in the evolution of Ontario's land use planning process. Both bills have come a long way to responding to many of the key issues our council has consistently identified in its reports and recommendations. That being said, the city does have some concerns about some of Bill 51's provisions, and I've outlined those matters which we feel require further amendments to better reflect the city's needs.

On behalf of the city of Toronto, I want to thank the committee for its attention and careful consideration. We look forward to continuing to work with our provincial partners as Bill 51 moves through the legislative process, and to providing specific comments to your staff regarding the regulations that flow from Bill 51 and Bill 53.

As a final note and completely unscripted, I just wanted to commend the work of the OMB chair, Marie Hubbard, in the conduct of the hearing on our official plan. Her work has been exemplary and we appreciate all the effort that she has put in to making our official plan what it is today. Thank you very much, Mr. Chairman.

The Vice-Chair: Thank you very much. We have about two and a half minutes for each party.

Mr. Sergio: Mr. Tyndorf, thank you for coming down and making a presentation to us on behalf of the city of Toronto. Bill 51, considering it deals mainly with changes to the Planning Act and so forth, does mix with other ministries as well and the Ministry of Energy is one of those. We have heard our fair share with respect to that, but not from too many planners. We had AMO, we had some mayors, we had some councillors but not too many planners. They don't like Bill 51 or dealing with planning issues? But I'm pleased to see you as chief planner for the city of Toronto.

Just a couple of quick questions, if I have the time. Can you dwell on "the strategic high-level nature of Toronto's plan"? What do you mean by that?

Mr. Tyndorf: The official plan for the city of Toronto, the one that has been recently approved through the Ontario Municipal Board process, takes a very different approach to land use planning. It is a strategic document which is very different from the preceding official plans, which were very, very specific and contained a whole host of very specific details, most of which had to be amended for every application that came forward, which underlined the whole notion of having an official plan.

Mr. Sergio: Which other municipalities don't have, right?

Mr. Tyndorf: Well, I'm not—

Mr. Sergio: It's different?

Mr. Tyndorf: I can't speak to all municipalities but I do know that our official plan is different from most in that it does not contain any numbers, for example. The only numbers that it has in it are growth targets that were established through the Minister of Municipal Affairs for population and employment. Beyond that, there are no numbers, and that I think is unique in the province.

Mr. Sergio: Receiving rezoning applications with minimum information: We have heard from other presenters that applicants provide just a bare minimum of information. How do you deal with applications like that?

Mr. Tyndorf: At the present time, we are required to accept those applications that meet the minimum filing requirements. We then attempt to receive or obtain various other reports, whether they're traffic impact studies or certain environmental studies. More often than not we get them, but occasionally we get them very late in the process to the point where we may not receive all of the information that we need until the matter has been appealed to the Ontario Municipal Board. It makes it virtually impossible for a local council or a local community to be well informed as to the impacts of all of those development applications cumulatively as well as individually. To have a complete application package is something that we've been striving for, but without legislative authority we cannot require it.

1200

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: A couple of questions: One is the issue of not being allowed to appeal the changes to the official plan as they relate to the Ontario growth plan. It would seem to me that the only time one would appeal that is if it doesn't comply with the growth plan; the city thinks it does but someone else doesn't. That would be an appeal. Isn't there a need for that to be in place?

Mr. Tyndorf: I'm not sure. If the minister has the authority to amend the official plan to do exactly the same thing, it seems to me that the municipality should have that same protection. We are complying with provincial legislation, we are not setting new rules, so to go forward to an Ontario Municipal Board hearing bearing the costs of the hearing as well as the burden of responsibility and proof to justify, potentially, the provincial policy statement itself—remember, this is a hearing de novo as it's currently structured—means we are liable for questions coming from all sorts of different quarters. I think that's inconsistent with the intent of the legislation.

Mr. Hardeman: The second one is with the function of the Ontario Municipal Board and the request to change that to being strictly a review of the municipal decision. I would think that if they're obligated to make sure that the municipal decision is consistent with or they have regard to the decision, and the municipality must be consistent with the policy statement, no new evidence can be presented. So they're going to hear exactly the same information that was heard at council. What more could be done to make it just a review of the municipal decision?

Mr. Tyndorf: There is a process that we call a "leave to appeal" process. That would be a potential appellant bringing forward a case to a panel—regardless of whether you call it the OMB or whatever—to say that city council did not follow its own rules, acted unreasonably or is in violation of some other provincial mandate. At that point, the panel would make a decision as to whether they felt the appeal had merit or not. If it had no merit, that's the end of it. If it had merit, then it proceeds to a further hearing. That's similar to the practices you would find in court as well.

Mr. Hardeman: Would the OMB not be obligated to look at the decision, not only at the process of what city council had gone through, but whether in fact it is consistent with provincial policy statements?

Mr. Tyndorf: I think that would be part of the leave to appeal process. Appellants would make their case. The city would have a reply case strictly on that basis, not a hearing de novo starting from scratch, where the board then substitutes its opinion and decision for what the council's opinion and decision was.

The Vice-Chair: Thank you. Mr. Prue?

Mr. Prue: A few questions: The first one has to do with the zoning bylaw conformity. How long do you think it will take for the city of Toronto to get its OP and zoning bylaws into conformity? I know this is a horrible thing, because amalgamation made it—I don't think most of them are in conformity yet.

Mr. Tyndorf: We're getting there very slowly, in bits and pieces. At the present time, the city of Toronto is covered by somewhere in the range of 35 to 40 separate zoning bylaws. We have an ongoing project, which has been in effect for almost three years, dealing with the creation of a new zoning bylaw. We have made significant progress but we have not gotten to the point yet where we are changing zoning of individual properties. There are over half a million individually assessed properties in the city, and we would have to go through each and every one of them to ensure that we haven't violated the rights of those property owners. To ensure that we're bringing the bylaw into conformity in three years at this point looks like an impossible task, from where I sit.

Mr. Prue: So if the government or we were to move amendments, what would you think? Could it be done in a 10-year period—15, 20?

Mr. Tyndorf: I think after our first crack at the new zoning bylaw, we would probably be in a position to do it within the five-year period. But at the present time, we're looking at probably another three to four years before we're complete on this initial, new zoning bylaw process. So if the legislation is adopted the way it is now, we would not be in compliance with the legislation in three years' time.

Mr. Prue: All right. So we need an amendment maybe to make Toronto 10 years? Three plus five, plus two to spare.

Mr. Tyndorf: I'm not sure what the number is, but it's something that we could certainly give some thought to and provide some more information on.

The Vice-Chair: We'd appreciate that. Thank you for your presentation, and have a good day.

To the committee, I just want to draw your attention before we recess—we will be recessed until 1:30—to a presentation on your table from John Sewell, who'll be making a presentation by teleconference this afternoon. Also, from Mr. Richmond, the research officer, we do have, as he pointed out, a current copy of the table of contents of the Planning Act with all parts and sections identified. That's been attached with a memo from him. That should help us as we go through these hearings and go to clause-by-clause.

Ladies and gentlemen, committee, we stand adjourned until 1:30 in this room.

The committee recessed from 1206 to 1331.

ONTARIO NON-PROFIT HOUSING ASSOCIATION

The Vice-Chair: I would like to call the afternoon session to order.

First, we have the Ontario Non-Profit Housing Association; I believe three representatives from the association. Please make yourselves comfortable. There is water over at the side, should you need it. You will have 20 minutes for your presentation. Should you not require the full 20 minutes, we will take the remaining time and split it between the three parties. One other thing: For those people speaking, before you speak the first time, please state your name for Hansard. Welcome.

Mr. Sharad Kerur: Thank you very much, Mr. Chair and members of the committee. My name is Sharad Kerur and I'm the executive director of the Ontario Non-Profit Housing Association. Let me thank you on behalf of the 760 non-profit housing corporations that make up the Ontario Non-Profit Housing Association for giving us this opportunity to be here and to present our members' views.

With me here today on my left is Mr. David Peters, special adviser on housing policy for our association, and on my right is Mr. Paul Dowling, who is a member of the HomeComing Community Choice Coalition, an organization created in 2003 to promote the rights of people with mental illness to live in the communities of their choice.

The members of the Ontario Non-Profit Housing Association develop and provide affordable housing for a variety of populations, such as low-income families,

seniors, persons with disabilities, the formerly homeless, those who are considered hard to house, and those who suffer from mental health and addiction issues. However, as part of the development process, our members must often unnecessarily appear before the Ontario Municipal Board on claims of improper planning matters, despite having received approval from the municipality. All too often, these claims are merely a sham to mask other issues. Remove that mask and one finds not an attempt to deal with legitimate planning or zoning concerns, but illegitimate and unfounded discrimination aimed at people-zoning. Such activities result in having to unnecessarily incur higher, unpredicted legal costs which invariably must be borne by the taxpayer. Our interest is not to subvert a process where legitimate planning issues can be raised and addressed. Our interest is to ensure that such a process is not misrepresented in favour of something it was never intended to be.

Everyone will agree that affordable and supportive housing is a tremendous asset to all communities and that ensuring a planning process which facilitates rather than hinders good development is a necessity. The paper we are tabling with you here today offers a series of recommendations in nine different areas dealing with both amendments to the Planning Act and reform of the OMB that we are confident will strengthen the planning approval process.

I'll now ask Mr. Paul Dowling to start with our recommendations.

Mr. Paul Dowling: My name is Paul Dowling. As you are well aware, there are far too many people in Ontario who do not have decent, affordable homes to live in. Far too many people are homeless or live in housing which does not meet their needs, which is substandard or which costs so much that the people have no money left for food and other necessities of life.

After a 10-year-long drought, we are very pleased that all levels of government have now, in recent years, recommitted themselves to addressing the needs of these citizens through a range of government-funded initiatives to promote the development of affordable housing. We now have a new federal and provincial affordable housing program. The municipalities which are delivering the program are making additional contributions, and non-profit housing providers across the province are gearing up to build the much-needed housing for families, seniors and people with a wide range of special needs.

Unfortunately, once funding has been committed and a suitable location has been found on which to build the housing, the housing provider comes face to face with the planning process, and that's when things begin to slow down. In the community meetings which are required under the Planning Act and at municipal councils, housing providers must often deal with concerns about the proposal which can delay and sometimes stop their planned developments. Recently a housing provider in Toronto proposing a 30-unit project to provide supportive housing for people living with mental illness was taken to the Ontario Municipal Board by the local residents' association based on concerns about concentration of assisted and transitional housing. I'll quote: "Housing for persons with little or no disposable income is causing the destabilization of the neighbourhood." The OMB eventually ruled in favour of the development, but only after six months of delay, a three-week-long hearing and a legal bill which totalled in the hundreds of thousands of dollars. What a waste of time, resources and taxpayers' money.

We recognize that there are legitimate planning issues which need to be addressed, such as density and parking. We recognize that it is important to consider how the physical structures will affect others who live nearby. All too often, however, the concerns that are raised are about the people who will live in the housing and the perceived impact that they will have on the community because of their poverty, their disabilities and other life circumstances. ONPHA believes that to seek to exclude a housing development because the people who will live there are poor or live with disabilities is discrimination. There are far too many community meetings at which people have raised concerns about the introduction of supportive housing into their community. The way in which people who live with mental illness are described can be very hurtful. I've heard them referred to as rapists, murderers and pedophiles.

Out of ignorance and fear, neighbours demand to know the diagnoses of the people who will live there. Others bluntly say that they "just don't want those people here." Others express concerns about concentration, saying that the neighbourhood already has enough problems; the community has more than its fair share of people with mental illness or people living in poverty.

Can you imagine if people were to say, "This neighbourhood already has more than its fair share of Jews," or, "We don't want more black people here," or, "There are not enough services in this community to meet the needs of Chinese people; they should go somewhere else"? We all recognize those statements as discrimination, and we know that they are unacceptable, yet the same things are said in planning meetings every day about people living with disabilities and people living in poverty.

As you know, the Ontario Human Rights Code says that every person has a right to equal treatment with respect to the occupancy of accommodation without discrimination based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance. ONPHA looks to the government of Ontario to provide leadership in response to discriminatory community opposition, and we look to this legislation to be an important tool in the provision of that leadership. The Planning Act needs to be amended to explicitly name human rights as an objective of good planning.

The proposed bill provides that decisions of all bodies making planning decisions shall be consistent with provincial policy statements and provincial plans. ONPHA is

very supportive of this provincial leadership in key policy areas. Given the historical tendency to permit discriminatory community resistance to colour planning decisions, ONPHA recommends that the amendment to the Planning Act provide that planning decisions must be consistent with the Ontario Human Rights Code.

The existing Planning Act states that plans must "have regard to" disabled persons' concerns. The Ontario Human Rights Code states that agencies providing services must accommodate disabled persons to the point of undue hardship. ONPHA suggests that consideration be given to the implications of holding planners to the same higher Human Rights Code standard.

Many Ontario communities have provisions in their zoning bylaws which restrict the location of group homes. The definition of the group home usually includes a description of the people who will live in the group home, based explicitly on the disabilities that they have. Group homes are then required to be separated from one another. To understand the impact of such provisions, I ask you to imagine a bylaw which reads, "Houses providing accommodation for black people must be separated from other houses providing accommodation for black people by at least 500 metres." The intent is to avoid overconcentration of uses and people who are seen to have a negative impact on the community.

1340

In the United States, the Fair Housing Act prohibits discriminatory provisions in planning tools like official plans and zoning bylaws, including such things as people zoning, distancing requirements, the preservation of family character of neighbourhoods, differential standards, neighbourhood consultation and two-tier approval processes. We recommend that the amendments to the Planning Act should also incorporate similar prohibitions.

Fair housing provisions would differentiate between bona fide planning issues and attempts to exclude people because of prohibited grounds for discrimination. The provisions would prohibit the establishment of official plan policies or zoning bylaws which require or permit more onerous processes based on the characteristics of the people to be housed. Finally, fair housing provisions in the Planning Act would, as it says in the US joint statement of the Department of Justice and the Department of Housing and Urban Development, make it "unlawful to refuse to make 'reasonable accommodations,' (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling."

Mr. David Peters: My name is David Peters, with the Ontario Non-Profit Housing Association.

This bill is an interesting example, I think, of the Legislature's and the government's continual attempts to find a balancing act between the collective interests of society and the individual interests of both individuals and neighbourhoods or smaller components of society. It's a companion piece to the provincial policy statement, which was strengthened, the Strong Communities Act, the growth plan for the Golden Horseshoe, the new City of Toronto Act and several other initiatives.

It's an attempt to allow more latitude for municipalities to govern planning matters, so there are decentralization elements to it, but there are also components that are trying to strengthen the reinforcement of some collective interests that probably need more support than they used to.

The ability of our society to ensure that it's relatively easy to include affordable housing in communities is increasingly important, and you've heard my colleague speak about the various NIMBY issues that can get in the way. We think it's time to, in effect, strengthen the collective interest and ability to deal with these kinds of illegitimate and discriminatory behaviours. The environmental and sustainability arguments that you cite in the beginning of the act for intensification are pretty well accepted now. The need to house and integrate large immigrant and aboriginal communities in order to deal with the demographic issues that are coming our way and attach those communities to jobs is a crucial element in our ability to succeed and continue as a viable society. We also need to support the government's agenda to move more individuals and families out of expensive institutional settings such as psychiatric hospitals and long hospital stays into community settings, which we often in our world call supportive housing. These are all very important elements of the collective interest and we think we'll require some strengthening of the ability to enforce that.

The provincial policy statement of 2004 was a big step forward, but we still think the provincial interest in affordable housing could be stated more vigorously as a companion piece to the increased decentralization of planning decision-making. We speak in the brief of dealing with the full range of affordable housing, which includes social and special-needs housing, a full range of housing types, affordability and tenure, and permanent special-needs housing. This isn't really part of this act, to be honest with you, but we want to mention the fact that that's an area in the provincial policy statement that we think needs strengthening as part of the overall objectives that we're working toward, and it needs to be more explicit. We also believe the province should make inclusionary zoning legal and permit municipalities to use this tool to implement their housing policies.

The city of Toronto now, in its official plan amendments, is doing that. The official plan folks in Ottawa backed off it because the legal advice was that their ability to do that was not clear in law. So we think inclusionary zoning should be clarified; it's uncertain as to its status at this point in time. Inclusionary zoning is where you require a large development to include 25% of its housing as affordable housing—for example, at Donmount, the west lands and so on.

With respect to local appeal bodies, moving decision-making closer to the front line is something ONPHA supports, but the outcomes must be efficient, timely and affordable, and the appeals process must be independent.

So we're recommending that the Planning Act include the provision for appeal to the OMB if the local appeal body does not hear an appeal within a predetermined time—I think you've heard that from a number of deputants—and that this provision should be part of an overall framework of performance standards set by the province. In other words, the decentralization is a good idea but it needs to be in a context of performance standards.

We recommend that the exclusion from membership on local appeal bodies include persons who, by nature of their work or business, may be dependent on the goodwill of the municipal government for their livelihood. These would be housing/land developers, planning consultants and so on.

We also note that the current wording says the municipality only has to "have regard to" the prescribed provincial eligibility criteria, which we think is weak. We would recommend that the province appoint the members of the local appeal boards on the recommendation of the municipality and therefore do a weeding function.

With respect to the process, we've already spoken about filtering out illegitimate, discriminatory NIMBY objectives. I won't go into the logic. It has been well spoken about already.

We recommend that the Planning Act, subsection 17(45), allow the OMB to dismiss all or part of an appeal without holding a hearing if it is of the opinion that the appeal is based on discriminatory grounds or is tainted by discriminatory behaviour by the group in opposition. Additional evidence suggesting such a pattern should be admissible even if it has not been heard at the municipal level, and when the evidence of discriminatory NIMBY is not conclusive, the OMB should at least be able to send back the appeal for a rehearing. We also recommend that the claims of discrimination should be dealt with in a prehearing process.

With respect to the rules of evidence, one universally acknowledged abuse of the system is the ability for developers to run the clock on the 90-day rule; they would submit an incomplete application and then 90 days later take it to the OMB, where they think they might get a better shake. You've wisely dealt with that and the government has wisely dealt with it in its application by making the ruling that there will be no additional information or evidence brought at the OMB level other than what was before the municipality.

We think this will significantly increase costs. Funnily enough, one development lawyer told us this was the best thing to happen to their profession in a long time, because they would now have full hearings for every single one rather than just the ones that went to the OMB.

We recommend that the OMB be empowered to review the evidence and make its own decision based on the Planning Act, the provincial policy statement and the official plan and other planning-related law and only have regard for the municipal decision if the municipal decision is consistent with these contexts.

We also recommend—and I think this is important and may be consistent with some of the other deputants—that the Planning Act not only provide for the municipal capacity to define the requirements for a complete submission but actually require it so that everybody knows what they're supposed to do. At the moment, it's set up as a municipal empowerment rather than a requirement.

With respect to the Planning Act, we would establish a limit on the number of mandatory community meetings that a developer can be required to hold, and that limit should apply to all developers. The bill adds in one more open house meeting. Our experience has been that open house meetings are actually better than public meetings. Public meetings can get pretty rough and frankly weird, with all sorts of people saying all sorts of incredibly inappropriate stuff and untrained chair folks having a hell of a time trying to arbitrate and manage the meetings. Sometimes the chairperson is shouldered aside by the local councillor, who feels he's the person who should have the public face in the neighbourhood—fair enough in some respects, but not necessarily leading to a well-chaired meeting. So we recommend that the Planning Act establish a limit on the number of mandatory community meetings that a developer can be required to hold and that the limit should apply to all developers.

Sometimes people will say to one of our supportive housing providers, "You know what? You've got a pretty challenging project. Maybe you should have three meetings and really make sure everyone understands it." In fact, it doesn't lead to greater understanding; it just leads to a giant amount of vitriol and more divisiveness in the community.

As far as the right to appeal, recognizing the collective interest, Bill 51 will not allow appeals when a local municipality introduces as-of-right zoning for second suites. We applaud that step. It's a good example of strengthening the collective interest. We would apply the same thinking to official plan provisions and promote the development of affordable housing and the protection of human rights. Ultimately, as a society we have to accept that our larger collective interest in intensification and the protection of farmland, combined with the fact that integrated communities that include immigrants, low-income people, renters, homeowners and those who used to live in obsolete, expensive institutions are the basis of successful neighbourhoods. I think it was Jane Jacobs who said once that as the neighbourhoods go, so go the cities, and as the cities go, so goes the country. Thank you.

1350

The Vice-Chair: Thank you very much for your deputation. We have about a minute and a half. Just a very quick question from each—very quick.

Ms. MacLeod: I want to thank you very much for your deputation. I thought it was very interesting. It brought a whole new perspective from what we've been hearing, and I'm quite pleased to talk to you a bit about rules of evidence. My community has Nepean Housing, which is a very progressive not-for-profit housing organization, which I'm sure you're very well aware of. Lynn Carson is doing a great job there.

Rules of evidence: If this is passed the way it is, can you tell me what the costs will be—financial and on time limits—to people in terms of what a unit might cost, if it will cost more, and how much longer it might take to get somebody into a unit if everything has to go through council?

Mr. Peters: We don't have an exact process there. On the one hand, it will be probably less expensive than a full OMB hearing. On the other hand, it will depend on the extent of the conditions that the local hearing body establishes. If there are illegitimate processes that get to the OMB and then are sent back, that will extend the cost.

We thought about this, and our people said, "This might be too expensive for our folks." Well, it's too expensive as it is. If our recommendations are followed, and even without them, the process will be somewhat fairer than it is now. It's simply going to be the job of the government and the programs it has set up for affordable housing to accommodate any additional costs to ensure that a fair process results.

The Vice-Chair: Mr. Prue, a quick question?

Mr. Prue: I don't know how quick it can be. I think, to be fair, I can't ask a question in that short period of time. Go ahead.

The Vice-Chair: Okay. Do we have a question over here?

Mr. Sergio: Just a quick one. Out of so many, I'll put the easy one. Local appeal bodies: Let the province do the appointments upon the recommendations of the local municipality. Why would you recommend that?

Mr. Peters: Well, our experience has been that a third party will probably be better at ensuring absolute independence. Those local bodies have to be independent. At the moment, the rule is that the municipality only has to "have regard to," which, as you well know, is the weaker of the possibilities.

When I was with the province at the Ontario Housing Corp., the local housing authorities were appointed by the province. It wasn't well regarded in a decentralized world. When the devolution of housing took place, the local housing authority boards were appointed by the province on the recommendation of the municipalities, and very few of their recommendations were overturned. But there were a few real ringers that were caught and weeded out of the process, so we think it's a good process.

The Vice-Chair: Thank you very much for your deputation this afternoon. Have a good afternoon.

JOHN SEWELL

The Vice-Chair: Next, we have John Sewell. He will be with us through a teleconference. Good afternoon, Mr. Sewell.

Mr. John Sewell: Good afternoon to you.

The Vice-Chair: Do we have Mr. Sewell?

Mr. Sewell: Yes. Hello? It's John Sewell here.

The Vice-Chair: Can the committee members hear?

Mr. Sergio: We can hear him but we can't see him.

The Vice-Chair: No, you won't be seeing him. It's just an audio.

Mr. Sergio: I realize that.

The Vice-Chair: You will have 20 minutes for your presentation, Mr. Sewell. Should you not require the 20 minutes, I will divide the time up among the three parties, and we'll be starting off those questions with the New Democratic Party. You have the floor.

Mr. Sewell: Thank you very much, Mr. Chairman, and thank you for hearing me by telephone. I'm actually in Temagami at the moment. It's a nice, warm summer day here.

I will be relatively brief, and I want to restrict my comments to the sections of the bill regarding the Ontario Municipal Board Act. I know there are other changes being made in the bill that are useful, but I want to focus just on the OMB.

There are two suggestions in the bill for change to the OMB. The first is in section 3, indicating that the OMB "shall have regard to" the decisions of the municipal council. My experience is that's exactly what the OMB does now. There's always somebody at the board who is arguing on behalf of the municipal decision, so in fact the OMB must have regard to the current decision. That really doesn't change very much. I do want to point out the irony of the fact that the words "have regard to" are considered to be so weak that the provincial government, of course, has changed them in respect to provincial planning statements so that now decisions must "be consistent with" provincial policy statements rather than have regard to them. In any case, I don't think that's a change of any great seriousness.

Secondly, there are a number of sections in the bill—subsection 14(13) is one; subsection 8(9) is another—which state that except under limited circumstances, information not provided to council shall not be presented to the OMB. I would point out that in my experience this poses no impediment to developers, who currently swamp council with their many reports, but in fact it's a very serious limitation on community groups. Community groups only go to the Ontario Municipal Board after they've found that council has done something that they think is inappropriate, and it's at that point that they usually do a big fundraiser, hire a planner and go to the board. But if this new section is put in place, then community groups will be in a position that they won't be able to do that. I think the likelihood of community organizations raising money to hire a planner to give evidence to the municipality is very, very small. So this is something that disadvantages community organizations. I'm not sure that the government's drafter realized that at the time, but it is not a helpful change.

During the last year, I've been representing a number of community organizations and individuals at the board. I found it a very interesting and disillusioning experience. Citizens are at a great disadvantage before the board, mainly because the board seems to have no problem in scheduling very, very lengthy hearings that the community groups can rarely afford to participate in. They

can certainly not afford to hire legal representation for those hearings since they go on for two, four, five weeks and in many cases many weeks longer than that.

I've been thinking about how one might deal with those kinds of situations and I've been trying to look at how you might restructure the board, because I believe that having the board is a good idea, in order to ensure that people are not disadvantaged. I think that there are two major changes that should be made, and should be made in this bill.

The first is that the bill should be restructured to restore democratic accountability in planning decisions so that the key decisions are in the hands of the council, for better or for worse. I think the way to do that is to say that the OMB will only act as a review or an appeal body that intervenes when municipal decisions are contrary to either municipal or provincial policy or the process is unfair. I think they should be the only grounds for a successful appeal. The board would receive an appeal and would say, "Is this appeal specifying that the decision is contrary to municipal policy or provincial policy or is the process unfair?" If it found that any one of those things was the case, it would return the matter to the council for further consideration. That's one change I think should be made. I suspect that change can be made to section 3, an addition to section 3 of the bill.

Another big problem, probably the most serious problem—and it's not of the OMB's making, although it comes out at the OMB—is the fact that there is no secure land use plan in any municipality in Ontario. We know that official plans are meant to be long-range statements of policy to govern councils' decisions, but the rule in Ontario municipalities is, if the official plan stands in the way of what council wants to do, then council amends it. Most municipal councils amend their official plan once every time they meet. Last year, I added up the number of amendments that were made to the official plan for the city of Toronto. The city of Toronto amends its official plan about 10 times a meeting. It has 10 meetings a year. It means that the official plan is amended 100 times per year. Obviously, it's not an official plan at all. It's a bit of a joke. I think we have to start to address this problem. To try to continue to turn a blind eye to it, in my opinion, is wrong. We must address that problem at the same time as we review the OMB's role.

1400

I think the bill should state that a municipal council should not be permitted to amend its official plan more than six times a year, and that any amendment it makes must be in conformity with the general intention of the plan. The Planning Act requires that official plans be updated at least every five years, and so the point is that if the municipal council feels that the official plan does not reflect what they want to do, then they can generally amend the official plan in saying, "We're going to replace the one we've got with something that's entirely different." But it should not be allowed to consistently and regularly amend the official plan the way it does at the moment, which makes a joke of the whole idea of planning.

There are two major changes that I believe should be made to this bill. The first is to define clearly what the OMB is doing as an appeal body, in indicating that it must determine if the council decision is in conformity with the official plan, if it's in conformity with provincial policy, and if the process is fair. If in fact it meets those three tests, then the board confirms the municipal decision, and if it does not, then it should return it to the municipal council for further consideration.

The second thing is that I think there should be a section in the bill which makes it very clear that a municipal council is only allowed six amendments per year to the official plan, and they all should be in conformity with the general intent of the existing plan.

I think those kinds of changes would significantly return decision-making to the municipal council and in fact would then start to put the OMB in a reasonable place where it is not something that's overriding municipal jurisdiction. There the nature changes, I would suggest, from the limited perspective from which I am looking at Bill 51.

Thank you, Mr. Chairman.

The Vice-Chair: Thank you very much, Mr. Sewell. You have left about three and a half minutes for each party. We'll begin with Mr. Prue.

Mr. Prue: John, good to hear from you again.

Mr. Sewell: Thank you, Michael. It's nice to hear from you.

Mr. Prue: I'm a little bit puzzled and troubled by the six times a year, because we have municipalities of many, many sizes. As you rightly point out, Toronto probably makes 100 amendments a year, but that's a city of 2.5 million people. We have towns in Ontario—I often talk about Highlands East, where my parents live, population 2,700 people. I doubt very much that they would ever make six amendments a year, yet they would have, under your scenario, the same rights as the city of Toronto in order to do that.

Can you explain how you think a number of six will work for towns as disparate as Highlands East, population 2,700, and the city of Toronto, at 2.5 million?

Mr. Sewell: Maybe there should be a distinction between the number of amendments and the size of the municipality. I wouldn't have any problem with that whatsoever. So if you want to say that if a municipality has a population of fewer than 10,000, it should only be allowed to amend its plan twice a year, I wouldn't have a great problem with that. What I'm trying to do is to bring a general control and meaning to the official plan so it is not constantly amended, and if what you are saying is that there are so few applications that are put before small councils that they are hardly ever amending their plan, then I have no question of reducing the number according to population.

Mr. Prue: I'm also intrigued—and I agree with the position that you're taking on the right of the Ontario Municipal Board to overturn a decision of the local council where it is contrary to the municipal principles, contrary to the provincial principles, or is manifestly

unfair. Do you think that there are any other reasons, other than those three, by which the OMB might overturn a development if it's unfair? What if it was contrary to law?

Mr. Sewell: Contrary to law? I guess the question is, what law would it be contrary to? The two big laws that control planning decisions are official plans and provincial policy statements. I'm not sure there are other laws which municipal—I don't know. If you wanted to add something about "contrary to law," I guess you could. I'm not sure what you mean. I was thinking, in listening to the previous deputation, about the discriminatory question, but of course that clearly fits in something—the process is unfair because it's discriminatory—so I don't have a problem there.

The Vice-Chair: Next we move to the government side, Mr. Flynn.

Mr. Flynn: Mr. Sewell, good to hear from you again.

Mr. Sewell: Thank you.

Mr. Flynn: Back in 2003, you gave an excellent presentation to the GTA task force on OMB reform on which I sat. Quite often I think you and I share a criticism of the OMB that goes back over a number of years and a feeling that something should be done about it. I refer to the report quite often because it's available on the site for the region of Durham. They grouped all the submissions, and your name appears through it quite frequently and in some positive ways. It appears to me that you asked us to include in our report, which we sent to the provincial government, about 10 items. As I go through the bill that's proposed before us today, I see we've addressed in good measure at least five of those, and another two will be addressed by the Public Appointments Secretariat over the next short while, I hope. Is it fair to say that it's not everything you want but this bill goes a fair way towards the reform we were looking at at that time?

Mr. Sewell: I think probably what's happened is I've changed my position in the last three years, and a lot of that has come from the fact that I've been asked by community organizations to actually take their cases to the OMB because they can't afford to hire lawyers. I used to be a lawyer many years ago but I haven't maintained my status with the law society, so I'm not any more. It means that I've been able to represent people and do the kinds of things that lawyers do for a much less financial hit than organizations would otherwise have to pay. It's in that learning about the OMB that I guess I've changed my mind and realized that in fact one has to start to restrict the kinds of things that the board can do.

If you're allowing the board to go through a whole new hearing process, as they're doing right now, and just starting everything over again, you're into very, very long hearings. There's one case that I'm involved with now where we've just filed the witnesses that we want and the witness statements. There are 58 witnesses. Well, this is going to go on forever. I don't know how a community organization can maintain itself before the board. That's why I think I've probably changed and said we've got to restrict the kinds of things the OMB is actually looking at.

The Vice-Chair: We'll now move over to the official opposition, Mr. Hardeman.

Mr. Hardeman: Good afternoon, Mr. Sewell. It's good to hear from you.

Mr. Sewell: Hi, Ernie.

Mr. Hardeman: I have about three items I just wanted to touch on very quickly. I want to say right up front that I agree with you that the issue of not being allowed to provide any new evidence is going to make it very difficult for the average citizen to appear at the Ontario Municipal Board with a credible defence for their objection because obviously they didn't prepare that when it originally went to council. What I find interesting about it is that the development industry has also put up a red flag on that, because they say that they will have to prepare a much more elaborate case for each application and council will have to spend a lot more time to hear that application because they can bring in no new evidence at the OMB hearing. Could you comment on that just quickly?

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Mr. Sewell: My experience with the development industry is that they provide extraordinary reports, very thorough reports, that are filed with staff. They often are not brought to the attention of the members of council because councillors don't read that stuff; that's my experience, anyway. So they've actually filed the material with the municipality. I don't expect that the development industry is going to have to provide new information, but I guess they might be worried about the fact that they're going to try and ensure that every councillor is aware that they've actually filed all that information. There might be an expense to that.

Mr. Hardeman: The other one I just wanted to touch on quickly, John, is the issue of the number of official plan amendments. If you include the fact that every amendment to the official plan must preserve the integrity of the official plan as it was originally written, if each application does that, is there any reason why you'd then want to put a limit on dealing with the intricacies of each application as long as the intent of the official plan is consistent throughout the process?

Mr. Sewell: If the intent of the official plan is consistent throughout the process, I can't see why we would have any more than half a dozen small amendments to the plan. The point is, if you want to have a broad plan that allows all sorts of things to happen, you should have a plan that says that, rather than having a plan that's restrictive, as many are, and is constantly being amended to allow this and then this and then this. So I don't think it makes sense to say that you can have 100 amendments to the official plan and all of them are maintaining the integrity of the plan. There is no integrity to a plan that's being amended 100 times a year.

The Vice-Chair: Thank you very much, Mr. Sewell. I appreciate your deputation here this afternoon.

Mr. Sewell: Thank you for accommodating me, Mr. Chairman; I appreciate it.

The Vice-Chair: I wish you a good afternoon. Thank you.

I just want to remind the committee members and the audience that the video conference, the teleconference, is being recorded by Hansard, so that information will be available, should you require it, in writing.

ONTARIO BAR ASSOCIATION, MUNICIPAL LAW SECTION

The Vice-Chair: Next we have the Ontario Bar Association. Step up and make yourselves comfortable. There is water over at the side, should you require it. As with the other deputations, you have 20 minutes. Should you not require the full 20 minutes, the time will be allocated between the three parties. When you begin speaking, please identify yourselves for Hansard.

Mr. Chris Williams: Certainly. Mr. Chair and members of the committee, my name is Chris Williams. I'm with the municipal law section of the Ontario Bar Association. I'm a past chair and I'm also on the advocacy and government relations section. With me today is Mr. Michael Stewart; he's a vice-chair of the municipal law section of the OBA.

As the committee may or may not know, the OBA is a non-partisan, voluntary association representing over 16,000 judges, lawyers and law students across Ontario, and we're a part of the larger Canadian Bar Association. The municipal section of which I'm a member, as is Michael, represents over 400 private and public sector service lawyers who represent the various stakeholders involved in the planning and development regime.

I note with some interest that some of the concerns of Mr. Sewell that we heard shortly after we came in may actually be echoed by some of the submissions we're going to make to you today.

Mike and I will divide the presentation into two parts. I'm going to deal with two issues flowing from Bill 51 and Michael is going to touch on OMB reform, which was to have been a part of Bill 51 but which does not seem to have been directly dealt with by that bill.

I should note, Mr. Vice-Chair and members of committee, that our role is not to deal with the policy of Bill 51, but is only to point out legal implementation issues which we think may create some unforeseen problems or may inhibit the full realization of the policy contained in Bill 51.

As the committee has undoubtedly heard and would know itself, Bill 51 effects a number of substantial changes in the planning and development process in Ontario through a very substantive amendment to the Planning Act. It will affect the way that all municipalities and the Ontario Municipal Board carry out their role and will have big implications for stakeholders in the process: property owners, developers, applicants, ratepayers and people like ourselves, the municipal bar. It's very clear that the policy direction is to empower local municipalities to ensure that the fundamental planning decisions are made at the local municipal level while ensuring that the local municipal level respects the broader policy directions from the province. It also purports to streamline and make the process simpler and more predictable.

One of the ways the local municipal empowerment is to be carried out—I think Mr. Sewell was touching on this when I came in—is through some changes in the rules of evidence before the Ontario Municipal Board. Today, if someone applies to a municipality for a change to their zoning bylaw or official plan and they don't like the decision the municipality gives them or the municipality neglects to make any decision at all, they have a right to appeal that to the Ontario Municipal Board. The Ontario Municipal Board then holds a hearing de novo, where what happened at the municipal council level doesn't play in in a big way. The Ontario Municipal Board, when considering the evidence that it views as relevant, wants to have the best and the most fulsome evidence available to it to make its decision on the best planning and policy grounds. So all the parties to a hearing, because this is the adversarial process, will put forward all of the evidence and all of the witnesses they think are necessary to make their case. The OMB likes that because that is how the adversarial process works, and that's how they feel that they get the best evidence to make the decision.

Bill 51 looks to change that in quite a substantive way, by providing that, except for municipalities or other public authorities, if a matter is appealed to the OMB, if the OMB, let's say, doesn't pass a developer's bylaw application or if the OMB does pass a bylaw application and somebody appeals the bylaw—for non-municipalities and non-public authorities, the only evidence the OMB can deal with is that evidence that was before the municipal council. That's a very substantive change in the rules of evidence. We understand what the policy is, but we think that this will have a number of unintended results which will essentially be destructive for the policy direction found in the bill.

If I was hearing Mr. Sewell correctly, one of the problems is that this will practically deny third parties, particularly unsophisticated third parties, access to the OMB, because today, if a ratepayer or somebody wants to object to a development in their community—maybe it's as simple as their next door neighbour doing something—they normally don't engage a lawyer or a planner or a traffic expert or an environmentalist or anyone else until the municipal council has made the decision and it's gone off to the OMB, because that's very expensive. In this case, the individual or the ratepayer group would have to spend a huge amount of money to hire these experts, to marshal the evidence and present it to the municipal council before they ever knew there was going to be a decision that they didn't like. If they didn't do that, they would not have the right to call that evidence at an OMB hearing, and their chance of success would be absolutely nil. It's our position—I think Mr. Sewell was on this same route as well—that this is a real, fundamental denial of justice to the small person.

The second area of concern is that this requirement, in our estimation, may lengthen the municipal process, may

complicate it—it may make life nice for us lawyers—because it's going to make the municipal process very legalistic. If someone is representing a sophisticated third party, someone—maybe a competitor, a store chain that isn't happy with an application a municipality is considering—they who have the ability to retain lots of experts upfront, and for whom for market reasons it may make a lot of sense to do that, will start to make the process at the council much less legislative, much less friendly for the individual and much more like a court proceeding. Undoubtedly, they will want to examine the experts from the other side. They'll want to call witnesses. They may even ask that the proceedings be recorded. There is lots and lots of opportunity to look for procedural errors that might get you into Divisional Court, especially if you would not be unhappy if the application were, if not turned down, at least delayed for a considerable period of time. We think that the policy direction of empowering municipalities, streamlining the process and making it friendlier for individuals will be quite substantially subverted by this well-meaning but we think, perhaps, not completely thought through restriction on evidence.

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Our third concern—there is a presentation that you should have received and you'll see this set out probably a little more eloquently than I can do—talks about third parties being able to abuse or manipulate the process. Again, a party may try to judicialize the process in front of council. They may wait until an OMB hearing and request the OMB to allow additional evidence in, and when they were denied that, go off to court. There just seem to be all kinds of ways that a sophisticated party who is determined could use this provision to really slow down the planning process and complicate it.

We've got a concern over that. What we would recommend is fairly simple, that this restriction on evidence be taken out and replaced with a provision that enables the OMB to refer a matter back to a municipality for the municipality to consider and then report back to the OMB, if there is new evidence that the OMB thinks could affect the municipality. In that way, in the situation perhaps described by Mr. Sewell, where sophisticated parties have all kinds of reports which they don't share with the municipal council and suddenly spring them at the OMB, the OMB would be in a position—and in fact, should—to then refer the matter back to council, if there is some new evidence that council should have had but didn't have. The punishment for the party that was holding on to their evidence is (a) they may get a decision they didn't like from council, and (b) things could be slowed down. But in this way, you're not going to punish the small person who wants access to the OMB. You're not going to slow things down—at least, not in the same way—and you're not going to judicialize the process in front of municipal council. This provision, in our estimation, when taken with some of the other changes in Bill 51 and previously in Bill 26, does empower the municipal council as the fundamental planning approval authority.

The second area of concern—and it's a bit of a general bugagoo that we have at the OBA—is the rather generous use of regulation-making authority in Bill 51 where a number of substantive matters are left to the regulations as opposed to being found in the legislation. Those deal with not only transitional matters but local appeal bodies. That's the body that a municipality can elect to replace the OMB for some planning matters and also conditional zoning where very substantive conditions can be attached to an ordinary zoning bylaw. I won't say it's like a tax, but it's becoming very much like a charge. If you go through the list of things set out in a proposed regulation, you'll see infrastructure costs, costs to enhance natural heritage features, road widenings, things relating to parks. You're almost getting into an area that you've covered in DCs, but you're doing it not in the legislation but through a regulation. We have problems where regulations, first of all, set up quasi-judicial bodies such as the local appeal body and, secondly, attach new charges or levies. That should be done in the legislation. If you look at the Planning Act today, all of the conditions for subdivision approval, for site plan approval, are set out in the legislation itself, not by regulation. That's an area that we've got some concerns over.

I'd point out that Bill 51 sets out 19 authorities to make regulations. As I say, there's some prodigious regulation-making authority. One of the problems with that, even if you're not getting into real substantive legislative things like the conditional zoning or the local appeal bodies, is that it makes it very hard for entities such as ourselves to comment on the legislation because a lot of the picture hasn't been presented to us yet. Yes, some proposed regulations have been put on the Environmental Bill of Rights website for comment, but the descriptions of those regulations are so general and so vague it's impossible to understand what they actually mean. I'll use the example of the transitional regulation.

We all know that Bill 51 makes a lot of very major changes to the law relating to planning and development, and if you're an applicant, it may have a lot of consequence when and if that bill applies to you. There are a lot of applications in the pipe and there are a lot of applications coming in. So when the bill applies is important, but from reading the bill and the regulations, it's virtually impossible to tell.

If you go to section 27, it says:

"(1) The minister may make regulations,

"(a) providing for transitional matters respecting matters and proceedings that were commenced before or after the effective date....

"(2) A regulation under clause (1)(a) may, without limitation,

"(a) determine which matters and proceedings may be continued and disposed of under this act, as it read on the day before the effective date, and which matters and proceedings must be continued and disposed of under this act as it read on the effective date;

"(b) for the purpose of clause (1)(a), deem a matter or proceeding to have been commenced on the date or in the circumstances prescribed in the regulation.

"(3) A regulation under clause (1)(a) may be retroactive to December 12, 2005.

"(4) A regulation under this section may be general or particular to a specific application.

"(5) A regulation under clause (1) (a) prevails over any provision of this act....

"(6) In this section,

"'effective date' means the date on which section 27 of the Planning and Conservation Land Statute Law Amendment Act, 2005 comes into force."

That's very powerful regulation-making authority—and it's retroactive. Normally, legislation takes effect from the day that it receives royal assent or proclamation. In this case, theoretically the act could take effect back in December, and it could take effect for only one person and not for anyone else. So there is regulation-making authority that the bar association is very concerned with. We don't like retroactive provisions, but if they're necessary, they shouldn't be done through a minister's regulation where anybody could be singled out for special treatment. It should be set out in the legislation itself. Retroactive legislation should be used only in very rare circumstances. I can understand that there may be situations in dealing with planning and development matters where you don't want the horse to get out of the barn before the legislation comes into effect, but I think it needs to be thought through very carefully and dealt with by the Legislature and not by the minister through regulation.

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To illustrate my point about the Environmental Bill of Rights regulation, I'll read to you everything that it says about the transitional reg, except for the bumph that this has been posted so you can comment for 60 days. It says, "Proposed content: transition. The proposed new provisions of Bill 51 would apply to all applications made on or after the date the legislation comes into effect." I have no idea what that means. It's completely unhelpful, and it has led to a lot of misinformation, I think, in the development community, where one of the law firms, Davis and Co., sent a blog around saying that they think it's going to be retroactive to December 5, 2005. I have no idea, having read through Bill 51 and looked at that regulation, when the heck this bill comes into effect and when applications are subject to it and when they're not.

Just to wrap up on this part of the presentation—

The Vice-Chair: I would just like to remind you that you have one minute left.

Mr. Williams: We recommend that the regulations be provided to us in full form, that substantive matters not be set out in the regulations, and that any transitional matters be dealt with in the legislation, not in a reg. I'll turn it over to Mr. Stewart.

Mr. Michael Stewart: I'll be brief in the few seconds that remain. We have two main recommendations with respect to the Ontario Municipal Board. First, it is our recommendation that the level of compensation and benefits be increased to the level of provincial court justices. Second, we recommend that the initial appointments to the OMB should be for a minimum of five years, with renewals based on performance and with no overall maximum term limits. Given the time, I'll limit my comments on the OMB to that.

Subject to any questions, those are our submissions.

The Vice-Chair: Basically, we just have about 10 seconds, so we're at the end of your deputation. I want to thank you for coming in and making the presentation, and I wish you a good afternoon.

HILDEGARDE REIS-SMART

The Vice-Chair: Next we have a presentation from Hilde Reis-Smart. Welcome. You will have 20 minutes for your presentation. If you don't require the full 20 minutes, I'll divide the time for questions among the three parties. There's water, should you need a glass of water. Please identify yourself for Hansard.

Ms. Hildegarde Reis-Smart: My name is Hildegarde—that's the full name—Reis-Smart. Do you need the spelling?

The Vice-Chair: No, I think that's okay.

Ms. Reis-Smart: I really appreciate being given this opportunity to speak to you. I come to you with limited experience regarding the Ontario Municipal Board and also limited understanding of Bill 51. Perhaps you've dealt with the issues that I will focus on and I've missed your solutions. If that is the case, I apologize for my failure. However, understanding the bill as I do, I am compelled to speak because of the experience I've had before the OMB.

To begin, there are many good and necessary changes in this legislation; for example, the creation of appeal bodies at the city level, stronger protection of heritage properties, requiring complete applications for review, the greenbelt plan and so on. However, there appear to be areas that have not been addressed. Let me begin by relating my OMB experience.

The background on this is that in our neighbourhood, which exists in an older part of the city of Toronto and which is zoned residential R1, single-family dwellings only, and where the average gross floor area is 39%, there exist two duplexes with a total of four apartments on a single lot at a gross floor area of about 95%. It is a legal non-conforming dwelling as it was built before the bylaws came into effect. The owner built four more apartments for a total of eight units without permit in the basement, for a total of 135% coverage; this is in an area that averages 39%.

When the city became aware of the renovations, the owner applied for a variance to legalize these apartments. The committee of adjustment refused the application. The owner appealed to the OMB. The city, reasoning that the site was already over-intensified for a single-family neighbourhood and not appropriate to the zone, among other reasons, felt strongly enough that it defended the denial of the application at the OMB hearing. The OMB chair denied the appeal, also reasoning that the site was already over-intensified, was inappropriate for the zone

in which it was located, lacked the necessary parking availability and that the proposal provided an inferior and even unsafe egress for those apartments.

Not willing to accept the denial, the applicant made some modifications to the proposal and applied to the city to allow for three apartments and for a rezoning of the property, and these were denied for the same reasons. Once again the owner appealed to the OMB. Once again the city felt strongly enough that it defended its decision at the board.

What a difference a different chair makes. This time the chair found it quite acceptable to allow for a total of six units and to devote a chunk of the little green space that there is for a stairwell to the basement units, something that is totally out of keeping with the neighbourhood. Interestingly enough, the chair felt it was quite appropriate to import the parking standard from the commercial zone so that no further parking spaces for the extra units had to be provided.

The second hearing at the board raises these questions: What are the standards by which decisions are made? How can two board chairs see roughly the same application on the same site in two such divergent ways? City council voted to deny this matter not once but twice. Why were the wishes of the council, which must comply with its official plan, not respected?

This experience did not provide confidence in the impartiality or the even-handedness of the decision-making process of the OMB chair. Decisions end up being the luck of the draw. Ours was not the only such questionable decision. In fact, just last month the board allowed the over intensification of 1000 Mount Pleasant Road, in direct opposition to the specific bylaws and site plans that were developed to protect the neighbourhood in that community and the express wishes of the city.

Have you addressed this concern? And if not, when you write the regulations will you address this blatant disregard for valid official plans and bylaws? Will you ensure that there are clearly stated standards that must be adhered to?

More questions; what I have related is not all. The board is supposed to be a quasi-judicial forum that has a more dignified atmosphere than a committee of adjustment but nevertheless strives to be resident-friendly. At least that is how we found our first OMB hearing. What a shock to attend the second rezoning OMB hearing. The chair reprimanded the city solicitor and cut off residents giving testimony. In fact, the solicitor representing one of the residents did not lead his witness through her testimony for fear of irritating the chair and placing the focus on him rather than on the testimony. Astonishingly, the chair at one point, and I can only use these words to describe it, actually stomped out of the room. Disturbingly, at least to the residents present, the chair asked leading questions of the applicant as to how the basement entrance could be improved.

As an introduction to residents, the impression fused in their memories is one of the municipal board being a hostile place to residents and professionals alike and that OMB chairs can behave in an unprofessional manner and get away with it. The event raises these questions: Who is appointed? What expertise do they bring to the role? What are the standards applied in the selection process of members of the board? Who does the selecting of members? It is time to stop the practice of appointments as political rewards. What oversight is there to ensure that members are professional and even-handed? Most importantly, where is the accountability?

First, there were no minutes taken. Yes, the chair made notes, but that is a self-selecting process. If the lower-level committee of adjustment keeps minutes, why not the board? Should there not at least be a taping of the proceedings for reference if no minutes can be taken?

Secondly, why does one, unelected individual, responsible to no council, to no province except in a general sort of way, and certainly to no electorate, have the power to overturn the decisions of duly elected councils on applications that run counter to official plan prescriptions and that trample on any vision that a city may have for its various areas? I stand to be corrected, but I don't believe that this lack of accountability has been addressed.

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It is not good enough to be able to take the OMB to task at Divisional Court for errors in law or clear bias. A decision should be reviewable for its adherence to official plans, for its impact beyond a particular site, for the ability of a city to provide the necessary infrastructure to support the developments allowed and for a city to provide stable residential neighbourhoods. These neighbourhoods are crucial to the well-being and vitality of cities.

The board would serve the planning process better as an advisory body and let the politicians be accountable to the electorate.

A matter of words: In the legislation it states that the board is required to make planning decisions that are "consistent with" the provincial policy statement. Official plans must also be consistent with the PPS. So why must the board only "have regard to" decisions by municipal councils? The loop needs to be closed. The word "regard" connotes only a looking and not an engagement and relegates council decisions to a lesser standard. And what is the difference between "having regard for" as is presently required and "having regard to"? I fail to see the difference. We have all seen that "having regard for" has been an ineffectual requirement ignored with regularity as municipal decisions have been overridden many times, including our case. There needs to be consistency.

Limits on evidence and participants: The legislation introduces the following: Participants would be limited to those who took part in the process at municipal council and evidence presented at the same.

I understand that this concept was introduced to prevent developers and builders, whose very capable lawyers can find new angles, from bringing new evidence to the OMB to support a new hearing at the board. That is good. This prevents the revolving-door application. However, I am deeply concerned that this restriction will

be detrimental to the voice of the ordinary citizen or resident. The reason is that developers and ordinary residents exist on an unequal footing in this game, and to many lawyers, this is a game. Development lawyers and planners know the development process and planning legislation. They make their living using this knowledge. They spend their working days steeped in the planning process. It is what they do.

Residents, on the other hand, with rare exception, do not have planning expertise nor do they spend their working hours steeped in planning. When ordinary residents encounter a planning situation, they more than likely do not know how the OMB works, or even how the committee of adjustment works, what the official plans or bylaws state, or what provincial policy is. Suddenly they are propelled on to a steep learning curve that must be managed on their personal time, outside their working hours. They have to discover the sources of information and then digest them in order to understand the particular situation before they can formulate an appropriate response. Residents then have to organize to respond. In the meantime, the developer or builder may have been working with the city for months on an application.

Lastly, developers/builders can recoup the cost of applying to the OMB when selling and can claim it as a business expense. Residents, on the other hand, should they require the services of professionals, must hire with personal "after tax" dollars. It means going door to door to sell $20 memberships. It means fundraising and pleading for donations to build up any kind of a fund. This takes time, and it's after work time.

Residents, because they do not inhabit this planning process world, are not as likely to be attuned to various proposals that come before council, even if a city gives notice. It is often only when council has made a decision that there is awareness in the community of a proposal and facts that are relevant. If a developer/builder with the expertise available to them fails to present a thorough case, that is one thing. Residents failing to be aware of relevant facts is a different story.

You must know how difficult it is for residents to launch any kind of response. So why are you doing this to us? Why are you hobbling us even more? It is already a David and Goliath situation and now you want to take away even our slingshot.

The democratic element: This Liberal government is taking the initiative to examine how citizens can be more fully involved in the democratic process by creating a citizens' assembly whose role will be to examine that process and make recommendations for improvement. To improve the democratic process so that it takes into consideration the realities of the 21st century is a worthwhile goal, and I'm pleased that this step is being taken.

However, when I turn to the OMB process, I see, time and again, an unelected and unaccountable individual making a decision that overturns the decision of a democratically elected city council that has to follow an official plan that is supposed to be consistent with provincial policy. This is not fair, this is not right, this is not democratic, and this certainly does not stem the cynicism of the electorate.

If we truly wish to improve the quality of democracy in this province, we must address the lack of it in this legislation and in this process. It would be a grand step.

The Vice-Chair: Thank you very much for your deputation. We have about two and a half minutes for each party, starting with the government side.

Mr. Sergio: Thank you for your presentation.

Bill 51 does a couple of major things. One is to give the power to local municipalities. They are the closest to the people, as we say, so they would be able to make the best decision for their own local municipality. The other one is to give local citizens, individuals and local groups, the opportunity and make them responsible to participate in the planning process as well.

What do I mean by that, or what does Bill 51 impose, if you will, by that? I don't think that I, as a taxpayer, have to hire a lawyer, a planner, an engineer, a statistician, whatever, to make my point at council or a public hearing. I think it's enough that I participate and voice my concern with respect to that application. That, I would take as evidence if I want to appear later on at the Ontario Municipal Board.

I think, and correct me if I'm wrong in your view, what may constitute a frivolous appeal at the OMB at the last moment—it is to avoid those frivolous appeals by someone who did not make any appearance at any particular time. So I think that differs from, "Don't take my rights away." I think the bill gives you as an individual, or an organization, ratepayers, plenty of opportunity and wants you to participate. That is why we are saying to local municipalities—and I'm asking you the question—"local appeal bodies." Give them the local power. Do you favour giving—

Ms. Reis-Smart: Definitely. There are situations that shouldn't be at the OMB level; they are local—

Mr. Sergio: And final.

Ms. Reis-Smart: —minor and final. The problem is the ability to get the information out to the residents, to the community. For instance, what happens on one street doesn't get known on the next street, and yet it may impact on the next street also.

The Vice-Chair: Thank you very much. We'll move over to the official opposition.

Ms. MacLeod: Thank you very much for your very interesting deputation. I'm very concerned with pages 1 and 2 of your deputation, with regard to what a difference a chair makes. I think that's a very sad commentary. I'm just concerned—you raised a number of questions, and I can't help but think about the local appeal bodies that could be established by a municipality. Some of the same questions that you're asking about the OMB, I certainly have about local appeal boards. For example, what are the standards by which decisions are made? What about chairs; how are they chosen? Are they trained properly? Is it going to be a professional body? I'd like to know your views on that.

Ms. Reis-Smart: I think they definitely should have some sort of professional expertise, have an understanding of planning. In the one situation, there was a second chair, and he was being trained in the process. He had been a politician. I don't know what his total background was, but the question arises: What kind of expertise did this person have in order to sit on that body? I know that my councillor ended up being a member of the board, and of course she had spent her whole working life dealing with these very issues. She would have known it in and out, so she would have made a perfect member because of her great understanding. So I think you do have to look at what they bring to it.

1450

Ms. MacLeod: So it shouldn't be a political appointment, for example. I'm just wondering, very quickly—

The Vice-Chair: I have to rule you—the time's up.

Ms. MacLeod: Thank you, Chair. I tried.

The Vice-Chair: I have to move on to Mr. Prue.

Mr. Prue: A couple of questions. You started talking about what happened in your neighbourhood. Was there a neighbourhood group or did you go as an individual?

Ms. Reis-Smart: No. We had an association that went and argued, but we were not—again, I don't have enough knowledge—a party to it; we participated.

Mr. Prue: It was my experience, way back when I was the mayor of East York, that there was a very large development and there was a developer who took the case to the OMB and it lasted for months. In the end, the neighbourhood group was left with a bill in the hundreds of thousands of dollars. Did this happen to your group too?

Ms. Reis-Smart: No. The reason is that the city felt strongly enough that their case was right, that it was way over-intensified, that they provided the solicitor both times.

Mr. Prue: So it didn't cost your group any money?

Ms. Reis-Smart: No, it didn't. However, one of the residents—the one who was living next door to this building—hired her own solicitor because she felt she needed more ammunition than she was getting through the city.

Mr. Prue: And that ended up being very expensive?

Ms. Reis-Smart: Oh, yes. She paid thousands.

Mr. Prue: You also talked about the difference that a board chair makes, and that can be absolutely true. The previous deputant suggested that the board people be appointed for five or six years at a time. Do you think that's wise? What qualifications do you think the board chair should have?

Ms. Reis-Smart: I don't think that's a problem as long as the chair is making decisions that are based on criteria that are fair, that are reasonable.

Mr. Prue: It doesn't matter how long they are appointed for or the process by which they get there? Right now, they're appointed by the party in power.

The Vice-Chair: Thank you very much. That's—

Ms. Reis-Smart: I'd rather they not be appointed; they should have criteria, what these people need to have to fulfill that role.

The Vice-Chair: We'll have to leave it at that. I'd like to thank you for your deputation here this afternoon. Have a good afternoon.

LONDON HOME BUILDERS' ASSOCIATION

The Vice-Chair: The next deputation is with the London Home Builders' Association. This will not be a video conference; it will be a teleconference. Unfortunately, we are having difficulty or they are having difficulty—somewhere there is difficulty—with the video part. I do believe that we have a Mr. Dave Schmidt and a Ms. Lois Langdon. Is that correct?

Ms. Lois Langdon: It's Lois Langdon. I'm here on behalf of the London Home Builders' Association. Mr. Schmidt is unable to be with us today.

The Vice-Chair: Welcome. I'll just say that you have 20 minutes for your deputation. Should you not require the 20 minutes, I will take the remaining time and divide it between the three parties here and there will be a question-and-answer period. So if you'd like to begin.

Ms. Langdon: I'm here on behalf of the London Home Builders' Association. My position is executive officer. I've been involved in the residential construction industry for 22 years, which includes 10 years in a management position with a building and development company and 12 years in my current capacity with London Home Builders. I'm here today on their behalf. LHBA acts as the voice of the residential construction industry in London and includes over 230 member companies. We're proudly affiliated with the Ontario and Canadian Home Builders' Associations and also *[inaudible]* in partnership with the London Development Institute. Due to prescheduled vacation commitments, the president of the London Development Institute sends his regrets, and my comments today will also be on their behalf.

LHBA and LDI would appreciate your attention to a number of industry concerns with the proposed Bill 51. Over the past several years, the development industry in London has been drastically overhauled by a number of initiatives, including most recently Ontario regulation 97/104, *[inaudible]* the new provincial policy statement, building code changes, WSIB reforms and the proposed Clean Water Act. While some of the changes are supported in principle by the residential construction industry, we have been vocal in that it is imperative that we offer *[inaudible]* housing forms at affordable prices to suit their lifestyles.

We have reached a general consensus with the government on the need—

The Vice-Chair: Excuse me for a moment. We'll just have to stop there for a moment. We're having some technical difficulties here in hearing you. Just bear with us for a sec. We're having it checked out here. I don't

know if it's from our end or from your end, but there were some sections that were missing in your presentation; your voice was not coming through.

Ms. Langdon: Sorry.

The Vice-Chair: Okay. The difficulty is at your end. Let's continue, and hopefully whatever has happened will have improved. Carry on.

Ms. Langdon: Thank you. I was indicating that there have been a number of initiatives over the last years that have overhauled our industry, most recently Ontario regulation 97/104 that we are currently scrambling to try to comply with and to work out; also the new provincial policy statement, building code changes, WSIB reforms and the proposed Clean Water Act. While some of the changes are supported in principle by the residential construction industry, we have been vocal in that it is imperative that we offer Londoners a broad choice in housing forms at affordable prices to suit their lifestyles.

We have reached a general consensus with the government on the need to better manage our growth, preserve our air and our clean water and protect our green spaces, while at the same time working to accommodate the anticipated growth over the next few decades.

Bill 51 proposes new, often time-consuming requirements for developers, a number of new powers for municipalities and a revised role for the OMB. LHBA and LDI are of the opinion that what may have been the intent of Bill 51—to reduce municipal and OMB workloads—is unlikely to materialize with the proposed changes.

London city council usually makes proper planning decisions on the majority of applications that appear before them. However, in some situations our members will exercise their right of appeal to the OMB to ensure that their concerns are heard in a fair and impartial environment. The OMB must retain the right to hold independent, non-partisan hearings on a de novo basis and must continue to hear third party evidence to ensure that a fair and impartial decision is made. Planners, architects and engineers are all part of a valuable consultation that must be maintained as an integral component of the planning process by the OMB. Hearings de novo apply for a debate and comprehensive review of the planning merits of a case that cannot occur at a municipal council meeting.

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The city of London operates on a committee basis, wherein all matters pertaining to planning are dealt with by a planning committee made up of elected councillors and it is the recommendations of the planning committee which are considered by council as a whole. Accordingly, very rarely does an applicant appear before council to present its support for a Planning Act related application. Rather, this process is all handled at the planning committee's public meeting forums. Generally, applicants are provided with a 15-minute window before the committee to present their application and support thereof for the committee's consideration.

Bill 51 proposes that no new evidence aside from that which is presented to council can be presented to the OMB. This requirement will significantly lengthen the time requirements of applicants before the city planning committee in order to ensure that all relevant and supporting documentation that they may need to rely on at a potential future board meeting is heard. Considering the planning committee agendas are already full, with meetings taking several hours, this requirement will significantly increase time requirements before the planning committee and ultimately cause unnecessary delays. With this "no new evidence" proposition, one can imagine development proponents now taking several hours before each planning committee to ensure every last report and documented information is presented to committee. Currently, reports and committee recommendations to council do not normally include all of the background information considered by the planning committee. Also, one can anticipate the need to have every professional consultant and legal representative involved through the approvals process to be in attendance at future planning committee meetings and the following council meeting to ensure that their information is appropriately conveyed. This will all cost significantly more time and inevitably more money. Therefore, LHBA and LDI recommend that the proposal to have no new evidence presented to the OMB be eliminated and that full hearings de novo be maintained.

The "complete application" provision in Bill 51 is vague and may allow the city of London to refuse to accept applications for rezoning, official plan amendments and plans of subdivision and consent unless the application is deemed complete according to the municipality. We are concerned that with a lack of timelines, an application may sit in limbo without a decision being made on the completeness of the application. If acceptable terms of reference for complete applications are not established, costs and time for both municipalities and applications will inevitably increase.

LHBA and LDI recommend that the "complete application" provisions in Bill 51 be revisited to include a mandatory pre-submission consultation to outline the terms of reference for what is required for complete applications and to assist in streamlining the approval process. LHBA and LDI further recommend that timelines be set for a municipality to deem that an application is either complete or incomplete.

Lastly, Bill 51 must be amended to stipulate that only relevant information to support the application be required. LHBA and LDI do not support the proposal for a local appeal body if the OMB does not have the authority to hear an appeal of its decision. Exempting planning decisions from the review of the OMB or creating a local appeal body for certain types of applications would not serve the provincial interest.

Our members are in support of high-quality urban design architecture. However, we have a number of reservations with respect to design regulations and review panels that would exercise control over architecture, urban design and built form.

The proposed changes to section 41 of the Planning Act deal with site plan control and urban design in order

to give municipalities new powers to regulate the exterior design of buildings. The city of London has approved commercial design guidelines already. This document is simply guidelines, suggested criteria, and is not enforceable under any prevailing legislation. This would change with the proposed change to the Planning Act. The difficulty here is that many retailers are not independent and work extremely hard to create a brand, which is carried forward from city to city where they construct new buildings, if you think of Costco, Future Shop or McDonald's as examples. This has benefit, as it makes them more readily recognizable to their consumers while at the same time keeping their design costs down. A dangerous precedent would be set if we start permitting municipalities to regulate bricks and mortar outside of the building code. LHBA and LDI are further concerned that approval authorities will erode housing affordability by maintaining the highest standard of building materials and features, which come at a high-cost premium.

LHBA and LDI recommend that proposed changes to section 41 of the Planning Act regarding site plan control and urban design be revised to minimize municipal power to control architecture and design. These provisions are at the expense of consumer choice and will deteriorate housing affordability.

LHBA and LDI are concerned that imposing conditions through zoning has the potential to make some projects economically unfeasible. Zoning conditions could significantly increase the cost of many projects, which would in turn impact housing affordability.

In regard to land dedications and densities, section 51.1 of the Planning Act indicates that "The approval authority may impose as a condition to the approval of a plan of subdivision that land in an amount not exceeding, in the case of a subdivision proposed for commercial or industrial purposes, 2 per cent and in all other cases 5 per cent of the land included in the plan shall be conveyed to the local municipality for park or other public recreational purposes or, if the land is not in a municipality, shall be dedicated for park or other public recreational purposes."

The 5% land dedication requirement is thought to be a reasonable requirement where it pertains to greenfield sites. However, the 5% parkland dedication requirement is imposed on all of the land included in the plan. This becomes problematic when the plan includes lands which are required to be dedicated to the municipality for some other underlying public interest; for example, schools, road dedication, stormwater management ponds and parks themselves. Accordingly, the land developer is now dedicating 5% of land for park purposes on top of the land that they are already required to dedicate for other municipal purposes. This leads to an inefficient utilization of land resources and greatly affects overall achieved densities and indirectly contributes to urban sprawl.

LHBA and LDI recommend that the province amend Bill 51 to require municipalities to provide applicants with an offset credit on their parkland dedications or cash in lieu of parkland conveyance or development charges arising from proposed land dedications or zoning conditions.

The proposed legislation includes a provision that would eliminate an applicant's right to appeal to the OMB if a municipality refuses its application for conversion of employment lands unless it is part of a five-year review of an official plan.

The definition of "area of employment," as currently written in Bill 51, indirectly includes mixed use, which effectively includes a residential component and will severely affect, if not paralyze, attempts at increased intensification. We recommend that the province review and amend its current definition of areas of employment in Bill 51 so that areas of mixed use cannot be included.

The key to Bill 51 which will address a number of well-entrenched practices is how we manage transition. Therefore, the LHBA and LDI recommend the province ensure that applications be assessed against the plans and policies in force on the date of the application. We further recommend that the act not be retroactive and come into effect on the date of royal assent.

LHBA and LDI are in support of provincial efforts to ensure municipal official plans and zoning bylaws are updated in a timely fashion and brought into conformity with provincial growth plans and provincial policy statements. These steps are crucial to achieve provincial intensification and sustainability.

We also applaud the government's efforts to improve the quality of OMB decisions by enhancing the experience, qualifications, compensation and training of board members.

In conclusion, the LHBA and LDI support a balanced land use planning system to ensure a clean, green and economically competitive city of London and province. However, from the industry's perspective, Bill 51, if enacted as currently drafted, has the potential to unnecessarily delay projects and increase costs to an already lengthy and overregulated process, which in turn will negatively impact affordability.

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In closing, I would like to reiterate that as one of the primary drivers of the local economy, the residential construction industry in London pours significant sums of money into the local, provincial and federal economy. It is in the best interests of all citizens that the provincial government and the industry work together to ensure that the new housing and renovation industries continue to thrive.

I would like to thank you for your attention and interest in my presentation, and I look forward to hearing any comments or questions you may have.

The Vice-Chair: Thank you very much for your deputation. We have about two minutes for each party to ask a question. We'll start with Mr. Hardeman from the official opposition.

Mr. Hardeman: Thank you very much for the presentation. You mentioned a number of initiatives that have taken place. Could you just give me a ballpark figure of

what impact it's going to have on the housing market in the city of London when you add all the initiatives that have been added to the process, including Bill 51 when it's passed?

Ms. Langdon: Are you looking for an actual dollar amount or percentage?

Mr. Hardeman: I think just the generalities of it, not necessarily the dollars per house but on a percentage basis, or just the impact, generally, on the industry.

Ms. Langdon: I don't really have information that I could give to you that would be even a percentage, but I can tell you that in the time that I have been with the London Home Builders' Association and, more importantly, in the last two years, the rapid amount of legislation that we have had to overhaul our industry with never impacts with more affordability; it always impacts in a negative way.

Mr. Hardeman: Thank you.

The Vice-Chair: We'll move to Mr. Prue.

Mr. Prue: A couple of questions. The first one: You made the statement about the definition of "area of employment" and that you did not want that to possibly include areas of mixed use. Can you tell us why?

Ms. Langdon: I don't have the answer to that. If I could take that question and send it to you in written form—would that be possible?

Mr. Prue: Well, I suppose, but you did make the very strong statement that you did not want mixed use included in "area of employment." Or are you just reading this from someone else?

Ms. Langdon: It's partly presented on behalf of the LDI, and that is one of their points that I'm not totally familiar with.

Mr. Prue: All right. The second aspect: You were not in favour of having a municipal appeal body. The appeal body, as I understand it, is for committee of adjustment to take some of the load off the OMB. Can you tell me why you're not in favour of having committee of adjustment decisions adjudicated at the municipal level?

Ms. Langdon: It's thought that the municipal politicians are more affected by local neighbourhood groups, that NIMBYism is quite a part of what they deal with and that they will be swayed by that rather than being in keeping with a provincial policy statement.

Mr. Prue: Thank you.

The Vice-Chair: We'll move on to the government side.

Mr. Sergio: Just a quick question. It's very difficult to ask a question over the phone. It's much better when we see you so we can see your reaction as well. With respect to the changes that are being proposed, how do you feel with respect to the Ontario Municipal Board? Are they fair? Too stringent? Are we too lax? What changes would you like to see?

Ms. Langdon: We would like to see the OMB better supported in terms of the skills of the people sitting on the board. We would not like to see their powers to review municipal decisions eroded.

Mr. Sergio: Local appeal bodies: Who should be appointing the members, the province or the local municipalities?

Ms. Langdon: We're not in keeping with there being local boards.

Mr. Sergio: Local appeal boards.

Ms. Langdon: We're not in agreement with there being local appeal boards.

Mr. Sergio: I see. Thank you very much.

The Vice-Chair: Thank you for your deputation and have a good afternoon.

STANLEY MAKUCH

The Vice-Chair: We move on. We now have Mr. Stanley Makuch of Cassels Brock and Blackwell LLP. Welcome. Make yourself comfortable. There is water right beside you on the table. You will have 20 minutes. Should there be time remaining, I'll split it between the three parties. At the outset of your deputation, please state your name for Hansard.

Mr. Stanley Makuch: My name is Stan Makuch. I'm here basically because I have a wide practice in municipal and planning law. I represent municipalities, developers and ratepayer groups. I am an academic who has been a professor of law and planning at the University of Toronto for many, many years. After I left full-time, I continued to teach there. So I've been at the U of T for probably 30 years dealing with all of these issues and in fact wrote books as well as articles in books, about whether the OMB should be abolished, whether we should have it. It's a problem I've wrestled with for a long time, so I was very interested in the proposed changes, and thus wanted to address the committee.

I also have clients, quite frankly, who are concerned about this. They're obviously on the development side more than the municipal side. The municipal clients that I have—I'm a town solicitor, or a municipal solicitor, in three separate municipalities—don't really have the same kinds of concerns.

Let me just say that the beginning of my paper lists the six areas of concern that I have with the legislation. One is the limits to the right of appeal; the second is the limits on the right to seek party status; third, restrictions on the evidence that the OMB may hear; fourth, authority of municipalities to prevent appeals until additional information is received; fifth, the control of architecture through site plan approval; and finally, the appointment of local appeal bodies, which we've heard about.

I'm going to just go through those in order and tell you why I have concerns about those six aspects. There are other concerns I have but I thought these were the most important, so I wanted to deal with these.

I support the idea, obviously, of strengthening the municipalities. I think it's important that they function fully as senior levels of government do, but in my view these provisions don't strike a proper balance between the power of the municipality and the need to protect minority or private rights. That's the balance we're

always seeking, the kind of argument you hear about the Legislature and elected politicians deciding things and it shouldn't be decided by appointed people. That's the same kind of argument that we have with the Charter of Rights and Freedoms. It's fundamental to a democracy that there be elected bodies that get to respond to the local community but that there also be limits and controls on that power. We're always trying to get a balance between those two sides. I think in this case the balance has shifted too much to the electorate. I think, in fact, the OMB functions like a court exercising powers to protect people, the way the courts do with the Charter of Rights and Freedoms, and therefore we have to be very concerned before we take that power away.

Let me go through the six items that I list there. First is the limits on the right of an appeal to the board. It's limited in four different ways. The first three are because you can't appeal, under this legislation, with respect to an employment designation, altering a settlement, as I point out here, or with respect to two units in a building. Finally, there's the issue of where someone hasn't made the representation to council.

With respect to the first three, that is, no appeal at all with respect to employment areas, two units or settlement areas, it's just restricting the power of the board and the right to have that balance struck in that examination, and I don't see any strong reason for that. Why single out these matters? Why are these separate from other planning matters? I don't see a justification or a reason to do that. It will increase the expense and formality of appeals, because people will end up going to court on these matters, making it more difficult for them to participate. I think we should not have those kinds of limits. There's no reason why the board should be excluded from dealing with those matters.

With respect to the last limit on the appeal, that is, if someone has failed to make a representation to council, I think this is particularly problematic. We now have provisions in the Planning Act that the board can dismiss an appeal that's frivolous, that they think shouldn't be there. This law will simply say they can never be there. Somebody may feel they have a legitimate concern, and in fact they may have a legitimate concern, but they'll never get it there if they weren't there at council. If they happened to be sick, if they missed the notice, if they were unincorporated ratepayers' associations—these people are all left out: no hope, no way they can get before the board on an appeal. I just think it's too draconian. It's too strong a prohibition, especially when right now we have one where the board uses it quite often. If there's a frivolous appeal, there's no basis to it in planning, it shouldn't be there, the board can dismiss it and prevent a hearing from occurring. That discretion should not be removed.

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Go on to the second limit that's in the legislation, and that is to seek party status. Again, right now, anyone can come forward to become a party. It's good to try to encourage them to be at the city council or the municipal council meetings before they do that, but again, there may be some difficulty in doing that. Moreover, there may be people who don't appear at city council because the municipality is onside with their position. Somebody else appeals it, but they haven't said anything at municipal council because they feel that the council is onside and it's going to be approved. If it gets approved and somebody else appeals it, they can't go to that appeal and have party status because they didn't speak. It could affect them very much. But simply because they didn't speak is not a reason why they should be excluded. There is some power there for the board to play with that, but still, it seems to me there's no need to have restrictions. We don't have a problem with a multitude of parties, all sorts of people turning up at the board needlessly or without any foundation, and it seems to me we want to encourage that ability to be there. So that's the second point I have on page 2.

The third restriction is a restriction on the evidence that the OMB may hear. I think that's a very inappropriate one: a party other than a public body may not introduce new information or material that was not before council when it made its decision. As I point out on the top of page 3 of my submission, this provision will significantly affect the procedural fairness of the board. Firstly, it's unclear what is meant by "new information and material." If you look at that legislation, this would mean that there's no new testimony at the board, because that would bring new information and material. You can't do it; you can't file a new report, a new study. We're going to come to the issue of some special exemptions, but you can't cross-examine. That would be new information and material.

It seems to me that in drafting the legislation, that kind of problem and how broad this limit is was not examined. To me it was like people who didn't really go to the board and know how you would define this and what the parameters of it are. It's going to cause, I think, a great deal of problems and going to court trying to decide on what is new information and what isn't while you try to sort that out. I think somebody else pointed out, as I sat here listening to the few last speakers, that what it'll do is create an incentive to produce as much material as possible—which is, I guess, good in some ways—at the council meeting. Council meetings will become totally bogged down, because all lawyers will advise their clients to put all of the possible information that they could ever rely on. Right now, councils generally have a five- to 10-minute restriction on deputations. The act requires that there be a fair opportunity to make representation. You have to give all of that information; people have to have an opportunity to respond to all of that information; you can't do it in five or 10 minutes.

Nobody, it seems to me, thought about the impact that this could have at the council level. So they haven't thought about it at the OMB level, where there is this issue of what gets excluded. Therefore, everything has to go in early at the council meeting, and that's going to have a profound effect on the way that councils have to function. We're going to end up with a lot of court challenges, it seems to me, with respect to that.

There is also in the act a provision that public bodies can bring in new information at the board, even though the public can't; so again, a ratepayers' group couldn't, if it didn't do the work early enough, present it to council. Public bodies can bring in new information, yet it's the public bodies that get the application circulated to them early. They get knowledge of it way in advance, prior to the public ever finding out about it, yet they and not the public get the opportunity to come in late at the OMB. It seems to me that's not open and accountable and an appropriate way to deal with this process.

The third thing that I mention, at the top of page 3, the third paragraph, is that there is provision to let the evidence in if it wasn't reasonably available at the time that the council heard the matter or was dealing with the matter. There is a very stringent test in law now, and I think that test is going to be applied because it's the one applied by the Court of Appeal—very difficult, therefore, for ratepayer groups, the ordinary folk, to get any access at the hearing when it's called. If there is any permission given to get new information in—the regulations are providing for 30 days for council to respond because that new information has to go back to council and give them 30 days to respond—the reality of that is probably six months' to a year's delay in the hearing because hearings are scheduled very tightly and you have to find time available for all the lawyers, the board members etc. And if you delay it 30 days, that means their time is used up, it's gone. They then have to go back in the process and find a new date, and the way the system works it's going to be a long, long time; so incredible delay I think in terms of that provision causing problems.

Going on to the fourth one, on page 3, the authority of municipalities to prevent appeals until additional information is provided, municipalities can ask for information and the board can determine whether the information is provided, but the municipalities can keep asking for more and more studies. Whether they're relevant or needed is not controlled in the legislation or by the board. So if there is a need or a desire to delay the situation, simply ask for more studies. An appeal can never be taken until all the studies are done, and yet there is no mechanism to say, "What are the studies and when are they all done? How do we know that?" So an appeal can in fact be denied for God knows how long.

The fifth point I make, on page 4, is the control of architecture through site plan approval. This is an interesting issue from a legal perspective, because I think there is a whole Charter of Rights problem, and that is freedom of expression. The creation of architecture and buildings and what they look like—and I point out an important case that I used to defeat a city of Toronto bylaw, the Butler case. Even if it's a blank wall it can be expression, it can be a way of an architect expressing a view. Now the municipality is going to be able to control that freedom of expression. I think there is a real issue there of whether that will be held to be in conformity with the Charter of Rights and Freedoms. Certainly, if it's not related to safety there's a big issue, and even if it's related to urban design it's so subjective. How do you know what's beautiful? Are planners in our municipalities and the local politicians or, with all due respect, any of us the ones to decide what is beautiful for someone else? Anyway, I think there's a real problem there with the control of architecture and the Charter of Rights.

The sixth thing that I point out is the appointment of local appeal bodies. It's ironic, because in my view we need an OMB, very importantly, for review of committee of adjustment decisions. It's at the committee of adjustment that local decision-making and who's got the ear of the councillor and how many people are on which side have a profound effect on decisions. I was a vice-chair of the committee of adjustment in the city of Toronto; I know how the system works. I was also on planning board; I know how the system works. When you get people at that local level who have councillors' support, there's no hope for them. To go to an appeal body appointed by the local council, that is also going to be affected by the local councillor. What you want to do with a committee of adjustment appeal, it's not new planning, it's not changing the plan or the zoning bylaw; it's deciding whether a particular approval fits within the bylaw. It's adjudicative. It's making a kind of judicial decision; there are criteria there. That should be taken away from the local level, if anything should be. We're talking about democracy. That's not the place for it, when you're dealing with the committee of adjustment. The committee of adjustment appeals definitely should be left at the Ontario Municipal Board.

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There are a number of legal problems that arise from what I just said. There's a whole issue of bias. You may have heard it with respect to provincial and federal courts and whether judges are independent. You're going to have a bigger problem with local appeal bodies appointed by local councillors and how independent they are when the municipality appears before them. For sure, you're going to get an argument that the body is biased and cannot exercise its powers. It's a reasonable apprehension of bias. They don't even have to have bias, just a reasonable apprehension.

So you've got that in terms of the appointment, and paying the salaries and having the influence when you have a local appeal body. You also are going to appoint local people, who have to be ratepayers or residents in that municipality. Many of them are going to have influences from the local municipality, have their own personal biases that affect their decision.

Finally, you may also have a situation: How do the local municipalities bear the cost of that? Are they going to bear it out of the tax base? No. Then they're going to bear it out of the application fees and discourage appeals because now there will be a significant fee to try to cover the cost of the local appeal body. Again, something that, in my view, hasn't been thought through.

Those are six areas—I tried to be as quick and as brief as I could—that I think the legislation has some problems with. You obviously can see that I believe the board has

an important function, a balancing function, as I said at the beginning, not unlike the kind of tension we see at senior levels of government, if I can use that expression, with the charter and the provincial and federal governments. We see that as well here and I think it's an important institution that helps to evaluate and create good planning in the province.

The Vice-Chair: Thank you very much for your deputation. We have about a minute and a half for each. We'll start with Mr. Prue.

Mr. Prue: Just a question back here to the limits on the right to seek party status. You've made a pretty strong statement here on people wanting to get in to the appeal. You said that it "will place an additional hurdle upon such persons to obtain party status, and it is unknown whether the OMB will find such reasons to constitute 'reasonable grounds.'" I was puzzled by that. Any court of competent jurisdiction, any tribunal of competent jurisdiction can use its own good judgment, reasonable grounds to include something in. Why would you think this would be more difficult than in any other administrative tribunal?

Mr. Makuch: You're mixing up a little bit courts and administrative tribunals. Courts are bound by stare decisis. They have standards that they set and they have to follow previous decisions. The principles that they set out in those decisions have to be followed in subsequent decisions. Administrative tribunals, in effect, can't do that. If they do that, the courts will strike down decisions because they've fettered their discretion, they have restricted their ability to evaluate it totally and afresh. That's the problem you have with that kind of standard for them.

Right now, we don't have a standard of reasonableness for evaluating a planning decision. There is no standard in the Planning Act, because it doesn't work that way and it can't work that way. It's the same problem when you come to deciding on whether a person should be allowed in or not allowed in after the fact.

The Vice-Chair: Thank you very much. Next we'll move to the government side.

Mr. Sergio: Thank you very much for your presentation. Good to see you again.

Mr. Makuch: Good to see you.

Mr. Sergio: Look at all the work we will be creating for you lawyers in consulting.

Mr. Makuch: Quite frankly, I don't even get paid to be here. I'm here because I'm doing what I view is in the public interest.

Mr. Sergio: That's not my question.

You also have experience. You bring out many good points but, especially coming from Toronto, you've had the experience of sitting on the committee of adjustment and so forth. When developers bring an application with minimum information, doesn't the planning staff give you as an applicant, let's say, a list of what would be a complete application, things for you to bring forth?

Mr. Makuch: No. Some municipalities do, some don't, but none of them are relevant to the appeal period. I don't have a problem with one saying, "Here's the list of information. Provide it by the six months," or three months. "If you don't have it by then, we deem you to be refused, and you can appeal, because you haven't given us the material." I'm not trying to get the developer off the hook. The developer should have the obligation to bring that information. But what you don't want to do, and I think it's not in the public interest, is to say, "You have to have the information," and then they produce that, and, "By the way, do this and do this," and it goes on for years and years and years. It has already taken up too long—

Mr. Sergio: So there should be a time limit?

Mr. Makuch: Yes.

The Vice-Chair: Thank you very much. We'll move to Mr. Hardeman.

Mr. Hardeman: I was interested in the last one, the local appeals body. We've haven't had any replies, but we've heard questions during our hearings about who would be the local appeals body. There is some suggestion—no one's actually said it—that the local appeals body could be appointed by the provincial government. Could you explain to me, you being so involved with the situation, what would be the difference between a local appeals body appointed by the provincial government and the Ontario Municipal Board?

Mr. Makuch: There would be a difference in name, maybe a difference in salary. The board is totally underpaid. To me, it runs counter to what this legislation is trying to do. I think that's better than having it appointed locally. Then why not just leave it with the board? They're provincially appointed and they have the expertise.

Mr. Hardeman: In your interpretation, though, what you read in the act, a local appeals board would be appointed by municipalities, as you presently read it now?

Mr. Makuch: Yes. That certainly seems to be the intent and purpose of it.

The Vice-Chair: Thank you very much for your deputation this afternoon, and have a good afternoon.

REGION OF WATERLOO

The Vice-Chair: Last on our agenda we have the Bayview Village Association. They have cancelled, and also the Sudbury and District Home Builders. I see the regional municipality of Waterloo. You've just arrived. Welcome. Just step up to the table. Feel free to have a seat. There is water there. You have 20 minutes for the deputation. Time remaining, should you not require the 20 minutes, I will split between the three parties for questions. Please state your name for Hansard at the outset of your presentation. Welcome.

Mr. Rob Horne: Thank you, Mr. Chairman. Good afternoon, everyone. My name is Rob Horne. I'm the commissioner of planning, housing and community services for the region of Waterloo. On behalf of the region, our thanks for this opportunity this afternoon to

present our comments. We have provided a written submission to you today as well. My intention today would be to give you some highlights and then allow you to rely on our written submission for some additional details.

Since its formation in 1973, Waterloo region has consistently ranked as one of the fastest-growing communities in Canada. With a current population of about half a million, the region is now the fourth-largest urban area in Ontario and the 10th-largest in Canada. We consist of the cities of Cambridge, Kitchener and Waterloo, and the townships of North Dumfries, Wellesley, Wilmot and Woolwich. The region is home to one of the youngest and most culturally diverse populations in the province and in Canada, a population that drives the kind of advanced economy that maintains Ontario's competitiveness. We see Bill 51 as an important and welcome addition to the municipal tool box of legislative authority.

Planning wisely for the future has required our community to take a hard look at balancing the demands of growth with our exceptional quality of life. To this end, regional council unanimously endorsed its own regional growth management strategy, or RGMS, in 2003. Key elements of our strategy include a new rapid transit system, compact urban growth focusing on built areas, and the protection of both environmentally sensitive areas and prime agricultural lands. Our RGMS is being actively implemented, with over 70 initiatives now under way.

The province's approval of its own growth plan for the greater Golden Horseshoe is a very positive step for us as well and, in our opinion, for communities across southern Ontario. In addition to assisting the province in developing the growth plan, the region's own growth management strategy is a model to other communities, demonstrating how such plans as that for the greater Golden Horseshoe can be successfully translated to the community scale.

In order to successfully implement both the provincial plan and our own, there are two fundamental elements required from the province. The first is investment. The region is actively involved in a variety of discussions with several ministries, leading to a proposed federal-provincial-municipal partnership to build a new rapid transit system, which is now in the environmental assessment phase.

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The second key required element is the expansion of the legislative tool box. Bill 51 responds to this need and represents a major and long-awaited set of new tools. We're greatly encouraged by these tools becoming available in the very near future. Quite simply, municipalities require full legislative authority to implement their growth plans.

I'd like now to highlight a couple of aspects of Bill 51 that we're especially supportive of and explain a little bit why that is.

As you're aware, Bill 51 would significantly enhance the ability of our region, in partnership with our local municipalities, to implement the plans I alluded to previously. We're especially interested in the provisions that enable prescribed regional municipalities to create community improvement plans and to allow regional and local municipalities to participate financially and collaboratively in each other's community improvement plans. Second, we're keen on enabling approval authorities to require the dedication of pedestrian pathways, bicycle pathways, and public transit rights of way as conditions of draft approval for plans of subdivision and condominium; third, permitting municipalities to set conditions for zoning approvals; fourth, allowing municipalities to regulate external architecture, urban design and sustainability through site plan control; and finally, the ability of municipalities to regulate minimum and maximum density in zoning bylaws.

At the present time, the region is developing its own brownfield redevelopment strategy to implement the urban intensification objectives of our growth management strategy and those of the provincial growth plan. As part of the initiative, regional council this year allocated $2.5 million to start helping to alleviate the economic barriers of site remediation and redevelopment earlier in the development process. However, due to legislative restrictions in the Municipal Act, regional municipalities are limited in their ability to provide financial support for brownfield redevelopment. By allowing prescribed regional municipalities to establish community improvement plans, Bill 51 would enable such municipalities to provide tax assistance for remediated brownfield properties under the Municipal Act. This is a very important aspect of the bill to us.

As I mentioned previously, the region is currently undertaking an environmental assessment for a rapid transit system as well, to connect the three urban municipalities in the region through what's known as the central transit corridor. The system is intended to provide greater transportation choice for the residents of Waterloo region, to reduce automobile reliance, and to anchor re-urbanization within this corridor. Bill 51 supports the initiative by enabling approval authorities in the region to acquire public transit rights of way as conditions, as previously noted.

While conveying new powers to the region, Bill 51 will also significantly enhance the legislative authority of local municipalities, our partners. With an ability to regulate architecture, urban design and sustainability through site plan control, municipalities will be able to establish or maintain a unique sense of place in re-urbanizing neighbourhoods that will assist in attracting more people, business and investment. As well, the municipal ability to regulate minimum and maximum densities will be essential for directing growth to priority corridors and nodes and for meeting the density requirements prescribed under the provincial growth plan.

There are also some associated legislative amendments that I'd like to highlight to the committee.

As previously noted, we are engaged in an environmental assessment for our rapid transit system, and in

fact the growth plan explicitly recognizes this initiative by showing a proposed higher order transit corridor in the growth plan itself. Furthermore, Bill 51 supports the initiative by requiring all official plans, zoning bylaws and planning decisions to conform to the growth plan and by identifying the design of development that supports public transit as a matter of provincial interest. Notwithstanding this support, however, the Municipal Act currently permits the region to establish and operate passenger transportation systems that employ bus technology. In order to implement the RGMS and the provincial plan and to facilitate the integration of transportation and land use planning, the region has previously requested an additional amendment to Bill 51 which would clarify that the region may operate any of the full range of higher order or rapid transit technologies.

Finally, the region had previously requested that the bill include provision to add community housing or social housing as a sphere of jurisdiction under the Municipal Act for the region of Waterloo.

There are a number of aspects related to clarifying the planning process, and again I'd like to highlight only a small number of those.

Bill 51 proposes a number of measures intended to clarify the planning process, which include requiring more public consultation, pre-consultation and clarifying the submission requirements. The legislation places greater emphasis on decisions made by local and regional councils at the Ontario Municipal Board and will restrict OMB hearings to the information and parties that were before council.

Bill 51 proposes to streamline the OMB to be an appeal body for only significant planning matters by empowering municipal councils with the ability to create the local appeal bodies. The region, in short, supports these amendments, as they should result in a more transparent, accessible and user-friendly planning process with some local latitude.

Areas for further consideration: As I noted previously, the region strongly supports enabling regional municipalities to prepare community improvement plans. However, it's noted that Bill 51 does not specify which regional municipalities will be granted that authority, nor does it identify the matters that may be included in a regional municipal community improvement plan. Often, such outstanding matters in legislation like Bill 51 are addressed in accompanying regulation, and we recognize that regulation has been drafted and tabled. However, given that there are only six regional municipalities in Ontario, the region would suggest that Bill 51 be amended to permit all regional municipalities to prepare community improvement plans and to implement them with their partners.

As the province proceeds to enact any associated regulations, we would greatly benefit from such regulations being as empowering as possible rather than prescriptive. In particular, the region would like to have broad latitude in creating, implementing and designing community improvement plans.

In closing, the region of Waterloo commends the government of Ontario for proposing a set of implementation tools that complement the province's vision for managing growth in the greater Golden Horseshoe. Bill 51 contains many useful tools that when used in concert will greatly enhance the region's ability to implement the growth plan for the greater Golden Horseshoe and for the regional growth management strategy, specifically, in Waterloo region. The region is also encouraged by the opportunities that Bill 51 provides local municipalities for influencing development in their communities and looks forward to working with local municipalities in the region to harness the new tools for a mutually successful implementation approach.

I alluded to areas of Bill 51 that could benefit from further refinement previously. We are certainly very keen on our rapid transit initiative, with the full latitude of implementing transit and transportation choice and clarifying the ability to prepare community improvement plans.

On behalf of the region, thank you for this opportunity. Bill 51 is a progressive piece of legislation. It's well-written. It gives municipalities a greater ability to shape and enhance their communities for the future. The region is eager and willing to continue to work with provincial representatives to move forward with Bill 51 and to implement our common vision for balancing growth and quality of life.

The Vice-Chair: Thank you very much. We have about three minutes for each party, beginning with the government side.

Mr. Sergio: Thank you for your presentation. Tell me, Mr. Horne, how long it takes to process an application in your municipality, depending on the size of the application, of course.

Mr. Horne: I guess I'd have to ask back, what type of application? A simple zoning amendment could take six months. A plan of subdivision might take two or three years—just anecdotally.

Mr. Sergio: Is five years to amend your official plan long enough? Can you do it in five years?

Mr. Horne: The five-year requirement we can certainly abide by; I think that times have been changing so rapidly that we need to. I like what Bill 51 does in enhancing, basically, what the requirements are for a thorough look. I think five years is appropriate, yes.

Mr. Sergio: How do you get your citizens, ratepayers, to participate in various applications?

Mr. Horne: We basically use the full suite of opportunities: the media, personal notification, our transit buses, any and every opportunity that we can.

Mr. Sergio: Is your municipality in favour of local appeal bodies or boards?

Mr. Horne: Our position is simply this: If provision is made for them to be established, I think we'd welcome that. I know there are certainly two ways of debating them. I would suggest committees of adjustment work successfully. There could be different orders of com-

plexity with another local appeal body, but I think to provide the tool to municipalities is a positive step.

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The Vice-Chair: Mr. Hardeman?

Mr. Hardeman: Thank you very much for your presentation. A couple of areas that we've had some questions on, and you being the person to ask, being involved with the planning applications and the approvals of them, the architecture and urban design approval for municipalities: A lot of people—in fact, the presenter just before you said that he thought that was totally inappropriate that the municipality could design the type of building and the exterior of the building. Do you believe that in the planning process the local municipality is the appropriate place to design, to tell me what colour my building should be or the type of building I should build, providing that I'm building it according to the building code and the requirements of sustainability?

Mr. Horne: I think it's a fine balance. Control of massing and scale at this point, in my opinion, is not adequate. I would agree that we don't want to come down to the point of differences of taste, but I do believe that there should be greater latitude and I do believe that public—in this case, municipal—bodies can be the coordinators of a common vision. That's not to say that it's a unilateral proposition that municipalities would say, "This is what we want."

Mr. Hardeman: Someone brought up the interesting analysis of: What happens if city council doesn't like the looks of a McDonald's—you can't build one in Waterloo? Because they build a standard building.

Mr. Horne: Again, I think it's a good point. The point is well taken and it speaks to why we're here—to talk about that level of detail. I do agree that getting to a certain level of detail may be excessive, but my own opinion is that a greater level of authority with local municipalities in particular is a good thing.

Mr. Hardeman: The other one: We've heard presentations, particularly this afternoon a strong one, that they didn't feel that the changes to the Ontario Municipal Board were going to be positive, or at least not as positive as they could be, because really, the only thing that's changed is that they can't take any new evidence and they "shall have regard to" the municipal decision. Not that they "shall be consistent with" and have to follow it; they just have to look at it. Would you suggest, if you were writing the legislation, that you would strengthen that?

Mr. Horne: I'm comfortable with it as it is. I think it's one step short of perhaps going to a case-law-type of environment. I don't have a problem with it. I know there are other bodies that have suggested that if information doesn't come out early—I guess I'm confident enough that the board would make a decision accordingly to recognize that if information is coming that's new, that's significant, it would entertain that.

The Vice-Chair: Thank you. We'll move to Mr. Prue.

Mr. Prue: As I promised this morning, I'm going to ask this question. We had a gentleman, Mr. Terry H. Boutilier, the senior business development officer for the city of Kitchener, who said he knew you well.

Mr. Horne: Yes.

Mr. Prue: Okay. He came forward with a proposal this morning to revise section 28 of Bill 51 to allow the city of Kitchener to approach the region of Waterloo so that they could both shoulder the financial burden of new development. You have a statement which is beautifully written but doesn't come right down to it: "enabling prescribed regional municipalities to create community improvement plans and allowing regional and local municipalities to participate financially and collaboratively" etc. Is that what you're saying, or is he talking about something else?

Mr. Horne: We're basically saying the same thing. I think if there's any difference, it's how we're suggesting it be done. Our own preference would be, again, to have a permissive environment. Mr. Boutilier's comments, I think, are more specific to prescribing the city of Kitchener. But in fact, the $2.5 million that I alluded to as part of our brownfields strategy is in fact sitting and we're waiting to partner with the city of Kitchener on some initiatives but can't consider them, can't get them before council because we don't have the authority. Our take is slightly different; our goal is the same.

Mr. Prue: Okay. When you say it's different, how is it different? If we are going to make amendments, we can't satisfy both of you. How is yours different from his?

Mr. Horne: Well, the approach, as I understand from Mr. Boutilier, is to basically itemize which municipalities would be empowered to implement and invest in each other's community improvement plans. Our suggestion is, instead of doing that, why not simply empower all municipalities with that authority? If you take it that next logical step—I don't think the actual municipal investment will happen unless there is a buy-in, in any event. So regardless of how Bill 51 is structured, investment won't happen unless both upper and lower tier are on the same page. In this case, as I indicated, the city of Kitchener and I are trying to broker something as quickly as we can. Mr. Boutilier's approach is one which would get us there. Our preference is for a broader approach.

Mr. Prue: Thank you.

The Vice-Chair: Thank you very much for your deputation, and have a good afternoon.

To the committee, I'd like to thank you for your attendance today. This committee is now adjourned till tomorrow, Wednesday, August 9 at 10 a.m.

The committee adjourned at 1556.

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