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Tuesday 29 August 2006

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Mardi 29 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 29 August 2006

Mardi 29 août 2006

The committee met at 1006 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. The standing committee on general government is called to order. We are here today for the clause-by-clause consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts.

I would like to start off by asking, are there any comments, questions or amendments to any section of the bill, and, if so, to which section?

Mr. Ernie Hardeman (Oxford): Before we get into clause-by-clause, Mr. Chairman, I noticed we have on our desk here quite a number of presentations that were not presented to the committee but were sent to us in writing since last we met, and I appreciate the staff and all the work they did to put them together. I wondered if, for the record and for posterity, we could get unanimous consent to read these into the record so they would be on the record for future reference as the province of Ontario is dealing with this very important act.

The Vice-Chair: We have Mr. Hardeman looking for unanimous consent.

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell): Can I comment on that? I believe we have received most of them previously from the clerk, and I had the chance to read some of them before, if not all of them, so I wouldn't support this motion.

The Vice-Chair: Do we have unanimous consent on this?

Mr. Michael Prue (Beaches–East York): This is the first time I've ever seen these. Were these sent sometime? I mean, I know I was away last week. Were they sent somewhere?

The Clerk of the Committee (Ms. Susan Sourial): Yes, they were sent electronically to all the MPPs.

Mr. Prue: Okay, because there's more than an inch worth of stuff I've never seen before sitting right here on my desk.

The Vice-Chair: Unanimous consent? No? We do not have unanimous consent.

We're into part I of the Planning Act amendments.

Section 1: We have a PC motion, subsection 1(1). This is page 1, I believe, of your notes.

Mr. Hardeman: I move that the definition of "area of employment" in subsection 1(1) of the Planning Act, as set out in subsection 1(1) of the bill, be amended by adding "but excluding areas of mixed uses" at the end.

The reason for this: We had quite a few presentations during the course of our hearings where concerns were expressed on behalf of the people presenting that in areas where it was mixed use, the rules that applied to lands of employment should not apply to areas of mixed use, because in fact it may be primarily areas that wouldn't be covered if it didn't have part of employment in it. This is intended that the general terms of the Planning Act would continue to apply to areas of mixed use and would not be exempted because they were lands of employment.

The Vice-Chair: Any further debate on this?

Mr. Mario Sergio (York West): This is indeed against what the bill is proposing, that the motion would exclude the areas of mixed uses, and we cannot support it.

The Vice-Chair: Any further debate?

Mr. Hardeman: I wonder if I could get the parliamentary assistant to explain that again, that this would be against the intent of the bill.

Mr. Sergio: Yes, indeed. The motion would exclude areas of mixed uses from the definition of areas of employment as proposed in the bill. Therefore we cannot support it.

Mr. Hardeman: I think we have a misunderstanding as to the intent. The reason it is written the way it is is because the bill does not mention the areas of mixed use. An area of mixed use is not necessarily primarily—or maybe only a very small portion of it may be—employment lands. This is really intended to clarify that employment lands are just that: employment lands, not lands that have a number of uses but also have some

jurisdiction or some employment lands. It's not intended to, nor does it, take away from the bill other than it allows development under the normal Planning Act where mixed uses are involved. It still doesn't change the intent of the employment lands.

Mr. Sergio: As a final comment, this again would limit the ability to further redefine and give the ministers the opportunity to deal with the true regulations with respect to areas of employment. That is why we cannot support the motion.

Mr. Prue: Just to add, the proposal that's been put forward is supported by a broad range of groups, including the Urban Development Institute and Pembina, which don't often see eye to eye but are agreed upon this. I think maybe the government should reconsider.

The Vice-Chair: Okay; we've had debate on this.

Mr. Hardeman: Recorded vote.

Ayes

Hardeman, MacLeod, Prue.

Nays

Balkissoon, Flynn, Lalonde, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Next we have a PC motion—subsection 1(1). I believe we have a typo here. I believe it should be 1(3).

Mr. Hardeman: I stand corrected if that's what it's supposed to be. Maybe we could ask the clerk to make sure. Okay. I move that the definition of "provincial plan" in subsection 1(1) of the Planning Act, as set out in subsection 1(3) of the bill, be amended by adding "in accordance with the procedures set out in section 3."

The Vice-Chair: Any debate? Any comments?

Mr. Hardeman: This is, again, to clarify the issue of a provincial plan, as it's defined in subsection (3), to make sure that it applies here too.

The Vice-Chair: Anything further? All those in favour? Opposed? The motion is lost.

We're moving on to page 3, subsection 1(3). This is a government motion.

Mr. Lou Rinaldi (Northumberland): I move that clause (f) of the definition of "provincial plan" in subsection 1(1) of the Planning Act, as set out in subsection 1(3) of the bill, be amended by striking out "made" and substituting "made or approved."

The Vice-Chair: Any debate?

Mr. Prue: It's not really a debate—and I realize this may just be housekeeping—but could the parliamentary assistant and/or the mover explain to me what the difference is between the previous wording, which was simply "made," and substituting "made or approved"? What is this intended to do?

Mr. Sergio: The motion dealing with the definition of "provincial plan" is a technical change that would broaden the authority of the minister to prescribe plans not only made by the minister but also those that are approved by the province.

Mr. Prue: Wait a minute. It's provincial plans that are made by the minister or those approved by the province. So it's a provincial plan which isn't made by cabinet but which is approved?

Mr. Sergio: And that's part of the province, yes. That's provincial plans, if they are approved by cabinet, yes.

Mr. Prue: So this is broadening it so that the cabinet can do it as well as the minister? Is that what this does?

Mr. Sergio: I would say cabinet is the government, so it has to go to the government if it goes to cabinet.

The Vice-Chair: Anything further on this amendment? All those in favour? All those against? The motion is carried.

We now move to page 4. It's a government motion on subsection 1(5).

Mr. Lalonde: I move that subsection 1(5) of the bill be struck out and the following substituted:

"(5) Subsection 1(2) of the act is amended by striking out '17(24) and (36), 34(19)' and substituting '17(24), (36) and (40), 22(7.3), 34(19).'"

The Vice-Chair: Any comments?

Mr. Prue: Again, I have to ask—and perhaps Mr. Lalonde or the parliamentary assistant can explain—why this amendment is there, why it's different from the one before, and what it does differently, because, quite frankly, I cannot tell from this motion or from what was written there before how this is any different and I don't know whether to support it or not. What is the difference between this and the old subsection 1(5) that you've struck out?

Mr. Sergio: There's a bit of a difference. This motion is a technical change to include a reference to subsection 17(40) in the public body restrictions of subsection 1(2) of the Planning Act. Further, this change maintains the one-window planning appeal process which limits the ability of provincial ministries to make an appeal only to the Ministry of Municipal Affairs and Housing.

The Vice-Chair: Any further comments on this?

Mr. Hardeman: Yes. I'd follow up the question from Mr. Prue. I just need to know what the change actually is. Obviously, there must be a reason. Most of it is identical. What is added to or taken out of the present section of the bill?

Mr. Sergio: As I said, this change maintains the one-window planning appeal process which allows the provincial ministries to make an appeal to the Ministry of Municipal Affairs and Housing.

Mr. Hardeman: What part of the present section—

Mr. Sergio: It refers to subsection 17(40), the public body restrictions of subsection 1(2) of the Planning Act.

The Vice-Chair: Any further comments? If not, I'll call the vote. All those in favour? Those opposed? The motion is carried.

Shall section 1, as amended, carry?

Mr. Hardeman: Recorded vote.

Ayes

Balkissoon, Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The section carries.

We now move on. Please bear with me. I've never chaired a clause-by-clause, so be patient with me, and I thank you.

Mr. Prue: You're doing a fine job, Chair.

The Vice-Chair: It's to keep track, this road map that I have here, and I thank the—

Mr. Hardeman: Mr. Chairman, I notice this is the first time that you're chairing the clause-by-clause. I've done this many times, but you're getting ahead of me. You're doing it so efficiently that I can't keep up.

The Vice-Chair: Okay. Let's carry on.

We'll move on to section 1.1 of the bill. We have on page 5 a government motion.

Mr. Kevin Daniel Flynn (Oakville): I move that the bill be amended by adding the following section:

"1.1 The act is amended by adding the following section:

"Information and material to be made available to public

"1.0.1 Information and material that is required to be provided to a municipality or approval authority under this act shall be made available to the public."

The Vice-Chair: Any comments or debate on this motion?

Mr. Hardeman: Again, I need an explanation of what it is we're doing.

Mr. Sergio: During the delegation presentations, there were a lot of requests with respect to additional information. Bill 51 proposes to allow municipalities to request additional information and material, all of which must be available to the general public.

The Vice-Chair: Anything further?

Mr. Prue: I support the principle, but there's nothing in here that says when they have to be given to the general public. Is it at the same time? And if it isn't, why? You might give it to them a month or two months later—

Mr. Sergio: Well, I think—

Mr. Prue: —after which it's no good.

Mr. Sergio: Mr. Chairman, I don't want to jump in all the time and cut the member short, but I think other sections of the bill will deal exactly with that.

Mr. Prue: Another section will deal with it. Okay.

Mr. Sergio: The timing, yes.

Mr. Hardeman: Hopefully, the parliamentary assistant is right that it's going to be explained more thoroughly later, but I think it's important—as it's written here, I'm not sure who is going to provide this information and when it's provided. So when somebody makes an application, does the information that's in the application go directly to the public at the same time or is it after the hearing has been held that the municipality is going to provide it to the public? The third option, of course, is that it must be provided in a public meeting.

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Mr. Sergio: The applicant would always be supplying the information. It's only one person. The applicant has to supply the information. As we move through the bill, a lot of the sections will deal with as to when and what information, new information, how much information, last-minute information. I think that as we move through the bill, we will get to some of the answers here. But directly in answer to your question, the applicant will have to provide all the information requested.

Mr. Hardeman: I just need it clarified, Mr. Chairman. When the applicant makes an application, does that information on the application immediately become a public document? Under the present structure, that wouldn't be the case; it's private information until it goes to the planning authority.

Mr. Sergio: I believe the municipality has the obligation to inform a local group's organization within seven days of receiving an application.

The Vice-Chair: Okay. You've heard the motion. All those in favour? Those opposed? Carried.

Shall section 1.1 carry? All those in favour? Opposed? It's carried.

There are no amendments to sections 2 and 3. Shall sections 2 and 3 carry? All those in favour? Opposed? Carried.

We go to page 6, section 4. We have a PC motion.

Ms. Lisa MacLeod (Nepean–Carleton): I move that clause 3(5)(b) of the Planning Act, as set out in section 4 of the bill, be struck out.

The Vice-Chair: Any comments, debate?

Ms. MacLeod: This is a concern that this section creates a moving target for those involved in the planning process. This is especially concerning as it relates to the point referenced just prior related to consistency with the provincial policy and plans at the time of decision. Further uncertainty and confusion will result with adoption and plans at time of decision of this provision if a number of agencies are permitted to create provincial plans. It may be unclear with a provincial plan that the proponent's application applies to a more alarming—is that with the government's proposal that application decisions be consistent with the plan in place at the time of decision. The more provincial plans being created, the more opportunity there is to having the perverse effect of reversing decisions.

The Vice-Chair: Any further comments? Okay. Mr. Hardeman.

Mr. Hardeman: I think there's an inherent problem in the bill the way it is and the consistency. This goes to the comment about "shall be consistent with" provincial policies. It's going to be a big problem in the rural part of the province as we look at the policy for preserving agricultural land. The province has a policy statement on preserving agricultural land for agriculture.

The Ministry of Natural Resources also has a policy on aggregate extraction, that you can't use that property for something else until you extract the aggregates. To be consistent with both of those policies is going to be very difficult, if not impossible. The way the bill is presently written, no decision can be made on either one on that piece of property if there are two policies that apply to the same parcel of land. So I think it's very important that that was clarified, and that's why I think it's so important that we eliminate that section so we don't have that conflict.

Also, as that policy of one of those changes during the term of the application, if presently the province says that of those two policies the agriculture one is the predominant one, it's the one that will take priority. If that principle changes and says that we've decided that aggregates are becoming a rare commodity so we are going to give it higher priority than preserving agricultural land, during the time of an application, they have to go back to square one because they cannot be consistent with that policy. So I think it's very important that this section be eliminated.

The Vice-Chair: Any further comments? Mr. Prue.

Mr. Prue: I just have a question of the mover. Would this not have the effect, though, of having municipalities, councils, the OMB make decisions which are not in conformity with plans like the greenbelt and the greater Golden Horseshoe and that kind of stuff? Would that not have that effect?

Ms. MacLeod: I think that the real issue here is exactly what Mr. Hardeman said, and it's which plan is actually taking precedence. That's not clear.

Mr. Sergio: I don't want to dwell too long, but that's exactly why we can't support the motion, because the proposed motion would strike out clause 3(5)(b) of the Planning Act as proposed in the bill. Indeed, the motion would delete the requirement that decisions under the Planning Act shall conform with provincial plans. Actually, you're doing exactly that, and we can't support it.

Mr. Hardeman: I think the operative clause is not the "consistent with"; it's that it must be consistent with the plan in place at the time of the decision. The concern is the changing of the provincial plan during the process of an application. In fact, the application is in and it's consistent with the policy of the time, but we know that governments can change policies, and if, during the review of this application, the policy changes, they have to go right back to square one. There's no certainty in the act to deal with that.

The Vice-Chair: Mr. Sergio.

Mr. Sergio: Yes, just quickly. I think that a lot of the stuff the member may be bringing forth may be explained and included in some other portion of the bill, so we wouldn't want to jump ahead of it.

The Vice-Chair: Okay. We've had the debate. All those in favour of the motion?

Mr. Hardeman: Recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Balkissoon, Flynn, Lalonde, Prue, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Moving on: page 7, section 4. This is a PC motion.

Ms. MacLeod: I move that clause 3(6)(b) of the Planning Act, as set out in section 4 of the bill, be struck out.

For reasons stated in the previous motion, with the inconsistency and the perverse effect of reversing decisions—that's why we move this forward today.

The Vice-Chair: Any further comments, debate? All those in support?

Ms. MacLeod: Recorded vote, sir.

Ayes

Hardeman, MacLeod.

Nays

Balkissoon, Flynn, Lalonde, Prue, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Shall section 4 carry? All those in favour? Opposed? Carried.

Now we move to section 5; no amendments to section 5. Shall section 5 carry? All those in favour? Any opposed? Carried.

Moving on to page 8, section 6. We have a PC motion.

Mr. Hardeman: I move that subsections 8.1(1), (2), (3) and (4) of the Planning Act, as set out in subsection 6(1) of the bill, be struck out and the following substituted:

"Local appeal body

"8.1(1) If a municipality meets the prescribed conditions, the minister may by bylaw constitute and appoint one appeal body for certain local land use planning matters, composed of such persons as the minister considers advisable, subject to subsections (2), (3) and (4).

"Term

"(2) A person who is appointed to the local appeal body shall serve for the prescribed term, or if no term is prescribed, for the term specified in the bylaw.

"Eligibility criteria

"(3) In appointing persons to the local appeal body, the minister shall have regard to any prescribed eligibility criteria.

"Restriction

"(4) The minister shall not appoint to the local appeal body a person who is,

"(a) an employee of the municipality;

"(b) a member of a municipal council, land division committee, committee of adjustment, planning board or planning advisory committee; or

"(c) a member of a prescribed class."

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The Vice-Chair: Comments?

Mr. Hardeman: We heard a lot of comments during the presentation about the local appeal body and who would be on the local appeal body and how it would be structured. Some presenters seemed to think that in fact it was a locally appointed body—that council, the same body who makes the planning decisions, would appoint the members to the appeal body to hear the appeals. That generated a lot of concern because it should be an impartial third party, not people on the body whose appointments depended on the same voices who made the original decision. They saw that as clouding the decision that would come from it. There was some thought that it should be a totally provincially appointed body, almost a smaller version of the Ontario Municipal Board that would be appointed just to look after those two criteria for the local municipality.

This amendment is intended to provide clarity that it is a local body; it will be locally appointed people to the body. The restrictions of who is not eligible to be on it are clear in this amendment, but the actual appointment would be made by the minister, as opposed to the local council. The minister does not make the original decision so he is in a better position to be able to appoint impartial third parties to the board, recognizing that he's going to pick them from the same community that they're going to make decisions for. I think this would provide a truer appeal body than allowing the local municipality to appoint. It appears to review the application.

Mr. Sergio: Just briefly: I concur with some of the comments from the member. However, the motion does not deal with who the members are going to be and who they're going to be appointed by, other than establishing this particular body, if you will, which many delegations were requesting or in support of, as you justly mentioned. Therefore, your motion proposes to remove council's authority to establish a local appeal body and provides that authority wholly to the minister. I think this would be contrary to what you really want, to what local municipalities were requesting: to have some more authority and establish their own appeal body to deal with minor issues.

The appointments to the various appeal bodies there: I think we'll see it in other areas. I have to concur with you that it perhaps should come from the minister.

Mr. Hardeman: I think, just quickly—and it may not be clear enough to the government side—the first section of the amendment is indeed the ability of the municipality to qualify. If they decide that they would want that local appeal body, then the minister would appoint that. Maybe it needs to be clearer that it's not an option for the minister that he not appoint it. But if the municipality qualifies under the regulations to have their local appeal body, I just can't imagine the minister not agreeing to allow them to have it, and then he would make the appointments. This isn't a matter of the minister deciding, which he already does under the rest of the act—he gets to decide whether they qualify to have a local appeal body. This says how it's to be appointed, where they qualify.

The Vice-Chair: Any further comments? All—

Mr. Hardeman: Recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Balkissoon, Flynn, Lalonde, Prue, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Next, on page 9 we have a government motion. Mr. Balkissoon.

Mr. Bas Balkissoon (Scarborough–Rouge River): I move that section 8.1 of the Planning Act, as set out in subsection 6(1) of the bill, be amended by adding the following subsection:

"Local and upper-tier municipalities

"(1.1) For greater certainty, this section applies to both local and upper-tier municipalities."

The Vice-Chair: Comments?

Mr. Prue: Just a question to the mover: We both came from Toronto city council. I know that that was a single-tier municipality, but before amalgamation, when Toronto had both upper and lower, the planning aspects were almost universally given to the lower-tier municipality. What is the intent to include the upper-tier municipality? I have some very real difficulty involving them in the planning process and I don't know why your amendment is doing that. Perhaps if you could explain why, I might support it.

Mr. Sergio: If I may, Mr. Chairman, either the upper-tier or regional municipalities, if they so wish, may create their own appeal body with respect to their own rules and regulations, or the lower-tier municipalities may have the local appeal bodies as well.

Mr. Prue: But what things could the upper-tier municipality possibly do on local planning matters?

Mr. Sergio: On a regional plan it deals with regional issues instead of the local, smaller municipality.

Mr. Prue: But these bodies are being set up for committee-of-adjustment decisions.

Mr. Sergio: Minor issues, yes.

Mr. Prue: How would that fall into the regional plan?

Mr. Sergio: The regional may have regional issues as well, or upper-tier.

Mr. Prue: So they both have a planning body and you'd have to go to both?

Mr. Sergio: But you may have an area that doesn't have a local municipality, just a regional municipality.

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: Yes. I would hate to explain the good things the government is doing, but there is a case in my municipality. In fact, the consent authority is with the upper-tier municipality.

Mr. Prue: So they'd have their own appeal body.

Mr. Hardeman: Well, according to this, this is what they're suggesting.

Mr. Sergio: If they so choose.

Mr. Hardeman: Presently, the way the act is written, without having the upper tier having an appeals body, it means that in Oxford county all the land division applications, all the consent approvals would have to go the Ontario Municipal Board, because they would not refer them to an appeals body at the lower because all the other planning matters are at the local municipalities. If you're going to have the jurisdiction at two levels, then you do need to have the authority to have the appeal body at two levels, though I totally disagree with the type of appeal body that's being structured.

The Vice-Chair: Okay. We've had comments. All those in favour of the motion? Opposed? Carried.

Next, page 10, we have a PC motion, subsection 6(1).

Mr. Hardeman: I move that section 8.1 of the Planning Act, as set out in subsection 6(1) of the bill, be amended by adding the following subsection:

"Appeal to OMB

"(9.1) An appeal lies to the Ontario Municipal Board from a decision of a local appeal body."

The Vice-Chair: Any comments?

Mr. Prue: If I can ask a question, would this not negate the benefit of autonomy provided to local municipalities?

Mr. Hardeman: No, I don't believe it does. It just says that when the local body does not deem it appropriate, the OMB must hear the appeal.

Mr. Sergio: Just briefly, Mr. Chairman, it was made quite explicit to the members of the committee from a number of delegations that they would like to have that authority; that that authority rest with the local municipalities and their decision is final when it comes to minor issues. So what this motion would do, indeed, is allow local appeal bodies' decisions to be appealed to the Ontario Municipal Board. We don't want that, and they don't want that either.

Mr. Prue: And Ernie, with respect, I don't want that either.

Mr. Hardeman: I would just point out that unless something is done with the present structure, if there is no appeal to a decision or the local decision-makers decide to agree with the application, even though it is contrary to the provincial policy—in fact, that's the only thing the Ontario Municipal Board hears under the new act. If it's contrary to the provincial policy, it will not go to the OMB. This suggests that it would have to go to the OMB if it is against the provincial policy statement.

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Mr. Sergio: Briefly, for the benefit of the member, Mr. Chairman, we are dealing here with very minor issues: setbacks, whatever. Appeal to the OMB will be there. I would say again, let's not jump ahead of ourselves. We have many motions ahead of us. We have a long day, and we'll be dealing with a lot of that stuff, which I'm sure the member wants to get into. But this one deals specifically with local minor issues and, definitely, you don't want those issues to go to the OMB every time. The local municipalities want the power to deal and have the final say at the local level.

Mr. Hardeman: Just one final comment. I'm just noticing here in my documentation that there is a concern that this is an unfair process. If it's a large project, if it's a big issue, it goes to the Ontario Municipal Board. If it's a small application and an individual has the same decision, only it's not big in the eyes of the decision-makers, it can't possibly go to the OMB. I think that's wrong. Everybody is entitled to the same hearing, the same justice. This is taking away the right of appeal for small applications for a small individual who's doing the same thing, only in a small way. That's being eliminated because it just goes to the local board and it stops there. They have no right to appeal that decision.

Mr. Sergio: To appease the member again, a big application or a small application makes no difference for an OMB appeal. This deals with small issues—setbacks, a site plan of a minor nature—and those decisions would be resting with the local municipality or body. An application still would be available to you.

Mr. Prue: I don't think it's fair to say that there's no appeal. I just can't let that lie. There are appeals through the courts. Anyone can take the case—the local municipality or the board—to the Divisional Court. I suggest that it would stop a lot of frivolous appeals that we're currently seeing at the OMB on minor matters. The person, if they strongly believe it, would have to argue it in front of a judge.

The Vice-Chair: We've had the discussion. All those in favour of the motion? Those opposed? The motion is lost.

Page 11, a government motion.

Mr. Rinaldi: I move that subsections 8.1(12) to (15) of the Planning Act, as set out in subsection 6(1) of the bill, be struck out and the following substituted:

"Same

"(12) For the purposes of subsections (11) and (15), an appeal is a related appeal with respect to an appeal under a provision listed in subsection (5) if it is made,

"(a) under sections 17, 22, 34, 36, 38, 41 or 51 or in relation to a development permit system; and

"(b) in respect of the same matter as the appeal under a provision listed in subsection (5).

"Dispute

"(13) A person may make a motion for directions to have the municipal board determine a dispute about whether subsection (11) or (15) applies to an appeal.

"Final determination

"(14) The municipal board's determination under subsection (13) is not subject to appeal or review.

"OMB to assume jurisdiction

"(15) If an appeal has been made to a local appeal body under a provision listed in subsection (5) but no hearing has begun, and a notice of appeal is filed in respect of a related appeal, the municipal board shall assume jurisdiction to hear the first-mentioned appeal."

The Vice-Chair: Any discussion on that?

Mr. Hardeman: Could I have the parliamentary assistant explain this for me, please?

Mr. Sergio: Yes. There are a couple of technical changes as well that are proposed to subsections 8.1(12) and (13) to clarify mainly when the Ontario Municipal Board has jurisdiction to hear planning appeals that would be before a local appeal body, and another technical change to subsection 8.1(15), which clarifies that the OMB would be required to hear those consent or minor variance appeals related to matters in the OMB jurisdiction.

Mr. Hardeman: Maybe the parliamentary assistant would not be able to do that, but could you tell me what an application would be that went to the local appeal body, the process—how would that get to the OMB? The applicant makes an application to have it heard at the OMB instead of at the local appeal body?

Mr. Sergio: It would depend on the nature of the application. If it is minor in nature, I don't think it would go to the OMB. There would have to be a reason for a major request for an appeal in a particular application for it to go to the OMB. The OMB would have to have jurisdiction on that matter as well.

Mr. Hardeman: I'm not quite sure I understand. Who decides on the nature of the appeal in order to make it go to the OMB?

Mr. Sergio: Very minor issues are dealt with, and the authority is final, at the local appeal bodies. If there are issues in a particular application that are of an OMB nature and they are beyond the local appeal bodies, then either side can appeal to the OMB.

Mr. Hardeman: I'm still confused. Who decides the nature of the appeal for it to go to the OMB?

Mr. Sergio: I repeat again, if the changes are minor, they should be dealt with solely by the local municipalities and the local appeal bodies. I don't think the OMB would have jurisdiction over that. If the changes would be larger, if you will, or more of a substantive matter, then the OMB would have jurisdiction in that and the applicant or the local municipality can appeal to the OMB.

Mr. Hardeman: I still can't quite get it clear. I sat 14 years on a committee of adjustment. Every application that comes to the committee of adjustment is a minor variance. The applicant has decided it's minor. Now, how does it change from that for it to go to the OMB because it is not a minor variance? Who decides that it becomes an application worthy of the OMB?

Mr. Sergio: Staff is here; we can ask staff. But it's my opinion, the way I read this, that if the local municipalities, when dealing with an application, see that this is not a minor matter, then the local municipalities won't be referring those issues to the local appeal body because they may be of a bigger nature. Therefore, that decision won't be resting with the local appeal body.

The Vice-Chair: Mr. Prue had a question.

Mr. Hardeman: Okay, I'll come back to it. Maybe I'm not making myself clear.

Mr. Prue: I do. I just want to understand. If a developer appeals the decision, if the developer for some reason doesn't like the local body, thinks the people on the local body are too pro-neighbourhood, thinks they may be anti his developments in some kind of way, what is to stop him—this is going to allow, as I see it, that they're going to be able to go straight to the OMB and the OMB is then going to usurp the community input and deal with the process itself. That's what I see this doing. Is that what the intent is?

Mr. Sergio: No. I believe that if the local municipality makes a decision, if the decision has been made and there is a minor decision that should be referred to the local appeal body, if the local municipality sends that decision to the local appeal body, the local appeal body decision is final; there is no appeal. So the local municipalities would have to make a decision that it's over and above what they may be sending to the local appeal body to go to the OMB for an appeal.

Mr. Prue: But if I can, section 13 says "a person may." This isn't saying the council does it. This is like anybody can do it. So a developer can use this as a way of getting around the local municipality.

Mr. Sergio: Again, if I can help, if it's a minor issue and it's referred to the local appeal body, that decision is final with the local appeal body.

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Mr. Hardeman: Going on with this one—and I don't want to prolong it unnecessarily but I think this becomes quite critical—I would say, in my tenure of 14 years on a committee of adjustment, 75% of the applications going to a committee of adjustment are based on being minor variances. So if a municipality, in the planning process, deems the answer to be no, it's because they don't believe it's a minor variance. According to this, to me that would mean that the applicant could then immediately take it to the OMB, because if it's not minor, it doesn't have to go to the local appeal body. I don't believe that council can say no to a minor variance and then say, "We think it's a minor variance, so it should stay with the local appeal body." I just don't know how a local municipality could make that decision. Maybe we do need staff to explain this better, because I think it's totally undoable.

Mr. Sergio: Disputes with respect to decisions at the local appeal body level are not appealable to the OMB. That is a final decision of the local appeal body, and it's not appealable to the Ontario Municipal Board. I can't say any more than that. The committee of adjustment is being replaced by the local appeal bodies.

Mr. Hardeman: I'll just read the amendment to the parliamentary assistant: "If an appeal has been made to a local appeal body under a provision listed in subsection

(5)"—that means council has made a decision and they have referred it to the local appeal body—

Mr. Sergio: Where are you reading that?

Mr. Hardeman: In your amendment.

The Vice-Chair: Page 11.

Mr. Hardeman: So the council has made a decision and referred it to the local appeal body. They're finished. "... (5) but no hearing has begun, and a notice of appeal is filed in respect of a related appeal, the municipal board shall assume jurisdiction to hear the first-mentioned appeal."

So the council has made a decision, they refer it to the local appeal body, the applicant doesn't like it, he appeals it, no one has any more say, and it goes directly to the OMB. That's what this is doing. It is circumventing the local appeal body. Maybe I shouldn't speak against it, because this is exactly what I tried to do in the last amendment that the government voted against.

Mr. Sergio: For the benefit of the member, could we have staff clarify this point?

The Vice-Chair: Can we have staff clarify this point? Please identify yourself for Hansard.

Mr. Irvin Shachter: I'm Irvin Shachter from legal services branch, Municipal Affairs and Housing.

Just to clarify how this particular section works, when a municipality has met the prescribed requirements and has put in place a local appeal body, that local appeal body is to be the only appeal body with respect to two kinds of matters: consents and minor variances. They could also hear a consent with a minor variance. That's the jurisdiction of the local appeal body. There would be no appeal from the decision of the local appeal body.

Regarding subsection (13) in the proposed motion: Just to bring it to your attention, the only change and the reason for the motion is the addition of the words "or (15)." The reason that was done was to try to have subsection (15) read a little bit cleaner and to introduce the term "related appeal."

If I can now talk about when a matter would go to the Ontario Municipal Board, should there be a situation where, for example, a proponent would have a zoning and a consent together relating to the same lands, those would be considered a related appeal. Both of those matters would go to the Ontario Municipal Board. There would be no discussion, there would be debate in that respect. It says the board "shall" assume jurisdiction with respect to those matters. It also applies to matters such as official plan amendments and things like that. So any time you have another kind of planning application that's connected with the consent or the minor variance, it goes to the OMB.

The reason that subsection (13) is there was a recognition that there might be circumstances where it wasn't clear as to whether the matter was a related appeal or not. So it was to import the concept of a very expeditious process for a third body to determine whether in fact it was a related appeal or not. Subsection (13) is actually not an appeal to the Ontario Municipal Board; it's a motion to the Ontario Municipal Board. As you might remember, this carries over a provision that's currently in the present act relating to site plan conditions. Somebody can, on a summary basis, go to the OMB and ask for almost like a ruling. This would work the same way.

I'm pleased to answer any questions you may have.

The Vice-Chair: Any further comments, questions?

Mr. Hardeman: Thank you very much for the explanation; it makes it much clearer. You mentioned that on these applications we need a third party to make a decision of whether it is a related appeal or a related issue on the same application. You're suggesting that the third party is the Ontario Municipal Board.

Mr. Shachter: Under subsection (13), that's correct. As you know, the section is clear on its on face in terms of what's considered to be a related appeal. It actually defines it in subsection (12) and then keeps that similar concept in subsection (15). But as I said, it is a recognition that there may be circumstances where a municipality and a proponent may be arguing about what the appropriate jurisdiction would be, and it was determined that in that case it was more efficient not to have the matter go to a court, for example, for a determination but to go to the board.

The Vice-Chair: Thank you for your clarification. A question?

Mr. Prue: I have a question, then. What if the Ontario Municipal Board, upon hearing the motion, determines that it ought to go—can they send it back to the municipality? Can they say, "This does not involve a zoning matter"? Because that's what is not clear here. What this says is that they shall assume the appeal.

Mr. Shachter: As a matter of fact, what's contemplated to be done is the board would make a decision, not on the substance of the matter but on whether, to use your example, the zoning application would constitute an appeal related to the consent. So should the board determine that it's not a related appeal, that's correct. What would happen is, that matter would not necessarily go back but the consent, for example, would be heard in the proper jurisdiction. It would be heard at the local appeal body and then the OMB would separately hear the zoning matter.

So you could have the outcome, where as a result of the board's decision on a summary referral, that the board could hear both of the matters if it was determined that the zoning and consent were related appeals, or they could be split up if the board determined the zoning was not a related appeal to the consent.

Mr. Prue: Okay.

Mr. Hardeman: Can I ask one more question on that? It's exactly the same as Mr. Prue just asked. If the board in the first instance on the motion decided that they were not connected, but obviously the developer or the applicant believed they were connected—that's why they went to the OMB—what happens if the two appeal bodies decide differently on the two applications? It was a consent and the motion says, 'Yes, but the development is not really contingent on that consent being granted." Which one overrides which?

Mr. Shachter: There should be no impact and one should not override the other. Once the board has determined that they're not related, it shouldn't make a difference if one body makes one decision and one makes another decision.

The Vice-Chair: Thanks for the clarification. We've had debate and comments. All those in favour of this motion? Opposed? Carried.

Page 12: I believe, because we had the government motion carry, this is a PC motion —

Ms. MacLeod: Yes, it's been carried.

The Vice-Chair: It's not required.

Ms. MacLeod: Exactly.

The Vice-Chair: We'll move on to page 13. This is a government motion.

Mr. Lalonde: I move that subsection 8.1(23) of the Planning Act, as set out in subsection 6(1) of the bill, be struck out and the following substituted:

"Restriction

"(23) This section does not authorize a municipality to,

"(a) establish a joint local appeal body together with one or more other municipalities; or

"(b) empower a local appeal body that is established by another municipality to hear appeals.

"City of Toronto

"(24) This section does not apply with respect to the city of Toronto.

"Transition

"(25) This section does not apply with respect to an appeal that is made before the day a bylaw passed under subsection (5) by the council of the relevant municipality comes into force."

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The Vice-Chair: Any comments on this motion?

Mr. Prue: Perhaps a question: I'm puzzled about how this does not apply to the city of Toronto. It applies to 450 other municipalities across Ontario; why does it not apply to Toronto?

Mr. Sergio: I believe that the city of Toronto already has that particular power.

Mr. Prue: Okay. It's in the City of Toronto Act.

Mr. Hardeman: If it's required not to apply to the city of Toronto, then does this section do more than just say that they can't have joint appeal bodies?

Mr. Sergio: Again, it refers to the upper and lower or the larger and local municipalities.

Mr. Hardeman: It goes back to the question that was raised earlier about having two appeal bodies. This section actually says you have to have two appeal bodies; you can't share one.

Mr. Sergio: You have to have two appeal bodies, the local and the regional, the upper tier—

Mr. Hardeman: The county of Oxford could not set up an appeal body to hear applications of consent and minor variances and all the municipalities of Oxford would share that service; they all have to set up a separate appeal body.

Mr. Sergio: Yes, but the act would give every municipality that wants to establish a local appeal body the authority to do so.

Mr. Hardeman: I guess my problem is, why would the government be interested in saying that the county of Oxford could not set up an appeal body to hear all consent and minor variances in the county regardless of which level of government made the decision? It just doesn't make sense to say that you can't have a single appeal body hear applications from two joint municipalities, yet they can hear the same application for the whole county.

Mr. Sergio: I'm sorry, I don't get the question, Mr. Chair.

Mr. Hardeman: This section is saying that we're going to have to have nine appeal bodies in Oxford county in order to use the local appeal authority—nine different ones.

Mr. Sergio: Existing? This is in their existing bylaws?

Mr. Hardeman: Presently they don't have an appeal body.

Mr. Sergio: Exactly, then. If they don't have an appeal body at the moment, as he is suggesting, if they want to establish a local appeal body, the act will allow that regional municipality to establish their own appeal body.

Mr. Hardeman: Yes, but this prohibits the county of Oxford from setting up an appeal body that can hear appeals in the county of Oxford. We have to set up nine.

Mr. Sergio: Are we reading two different things here, Mr. Hardeman?

Ms. MacLeod: I think what we're concerned with on this side is, you've actually created nine new layers of bureaucracy in Oxford county rather than one appeal body for the county. You're restricting the ability for all the municipalities—

Mr. Sergio: No. I mean, I think I have given an explanation to suffice—I want to make sure that they understand what the motion is doing. I wouldn't mind calling on staff again to explain more fully so that we don't have any doubts in their minds. Who would like to come?

The Vice-Chair: Once again, step forward and identify yourself for Hansard.

Mr. Shachter: Good morning. I'm Irvin Shachter from the legal services branch, Municipal Affairs and Housing. It is intended that only the jurisdiction that has the authority over the specific kind of application would be able to set up the local appeal body. For example, in the county of Oxford, if the lower tiers are the only level that have the authority to issue consents, then that would be correct; only the lower tiers would be able to establish local appeal bodies. On the other hand, if you have a municipality where there's an upper tier that does the consents, then that upper tier could set up the one local appeal body for all of the municipalities under it.

Mr. Prue: I just want to start thinking about—even though I'm from Toronto—small-town Ontario. These things cost a lot of money for local municipalities. We

have many of them that are 400, 500, 600 people, who may want to be involved, who may want to combine with other nearby municipalities, nearby places, and try to do something together to cut the costs. This would prohibit them, though, from doing that.

Mr. Shachter: That's correct, but at the same time it's also a recognition of the jurisdiction. You'll remember that if the lower tier is the only level that has jurisdiction with respect to a specific matter, you'd be giving the authority to an upper tier that didn't have jurisdiction to deal with that matter.

Mr. Prue: No, but I'm more concerned about three or four small municipalities in proximity getting together and saying, "We could have one appeal body. This works for us. Our three communities are within 50 miles of each other. We can each appoint two members, we can have a six-member panel, or each appoint one member and have a three-member panel. We can split the costs three ways. It works for us; we don't mind." But you're saying that this cannot happen.

Mr. Shachter: From a legal point of view, that's correct.

Mr. Hardeman: Again, going back to the local one that I understand, the problem we have is that all consents are at the upper tier with the land division committee. All minor variances are at the lower tier, and all planning matters are delivered by the planning department at the upper tier. No local municipality has their own planning department.

This amendment says, "Oh, and one other thing you have to do: You have to set up nine different appeal bodies if you're going to have a local appeal body," as opposed to letting the county, who provides all the planning services, have an appointed appeal body, because they have to have an appointed appeal body but they have to have it for consents and only consents. All the minor variances must go to eight different appeal bodies. They will be staffed by the same staff, because we only have one planning department in the whole county. It just doesn't make any sense. I think for an amendment to be put forward that would create that kind of a situation is a mistake.

Mr. Lalonde: I need a clarification. I guess Mr. Shachter could answer that one. Oxford county is a good example for my own riding also. The upper tier in my riding has one official plan for all, but some of the municipalities have their own control for the zoning. In this case, could four of the eight municipalities have a local appeal body and the other four under the upper-tier body? Can it be done? Eight municipalities; if some have their local appeal body and the others don't have, it goes to the upper tier. Can it be done that way?

Mr. Shachter: The provision contemplates that a municipality would, within the area of its jurisdiction, be able to set up a local appeal body. You'll recollect that it's not a requirement; it is discretionary. So the municipality can, for whatever reason it may determine appropriate, not wish to set one up. But if you have a circumstance where the local municipalities are the consent-granting authorities or the local municipalities are the minor variance-granting authorities, then you could have a circumstance where not every municipality within a region would conceivably have a local appeal body.

Mr. Lalonde: But those that don't have it could go to the upper tier.

Mr. Shachter: Those that don't have a local appeal body, any appeals would go to the Ontario Municipal Board. You'll remember that it's only the existence of the local appeal body that changes the appeal process. Without the local appeal body, the status quo is maintained. Nothing changes from the way the planning process currently is today. For example, consents or minor variances would still be appealed to the Ontario Municipal Board. It's only that when the local appeal body is in place that an appeal would be going to that particular body rather then the Ontario Municipal Board.

Mr. Hardeman: The intent of the act and the changes to the Ontario Municipal Board and the appeals tribunals that are going to be set up—local tribunals—is to reduce the amount of applications going to the Ontario Municipal Board.

Mr. Shachter: That's what I understand.

Mr. Hardeman: The second thing, of course, is: The reason that the government has decided that we should have fewer applications going to the Ontario Municipal Board is because of cost, because for a minor variance to go to the Ontario Municipal Board, both the applicant and the municipality spend a lot of money, and the province spends a lot of money on the hearings at the Ontario Municipal Board for something that's minor.

1110

First of all, this amendment, with your explanation, would tend to say that we're going to find the savings for the larger municipalities who have many applications and set up their own tribunals so they can save some money, but small ones don't have to bother. They can stay with the more expensive and more cumbersome system because they can't afford to set up their own appeals body. Then, just in case they look for a more economical and effective way of doing it by sharing that service with their upper tier or with their neighbouring municipality, we say, "Oh, no. You can't do that. If you can't afford one of your own, send them all to the Ontario Municipal Board, and pay the bill there." I can't understand, and maybe it's a political question, what rationale there is for saying that municipalities, since these appeal bodies, we've all been told, are going to be impartial third parties to hear appeals from councils—why councils cannot send it to an appeal body in a neighbouring municipality and share that service.

Mr. Shachter: I think, with all respect, I'm going to defer the answer to that question. It does tend to be a government policy issue rather than a legal matter.

Mr. Hardeman: Exactly, and I know Mario will explain it very well.

Mr. Sergio: No, I think we have dealt with it long enough. Mr. Shachter has responded to the question. I think that's it. No political issues here.

The Vice-Chair: Okay.

Mr. Hardeman: That's not good enough. I need an explanation before we can have this go to a vote. We can keep this debate going for three days, but unless we get some kind of answer, then we can't carry on.

Mr. Sergio: You're asking for—

Mr. Hardeman: A principle.

Mr. Sergio: No, you're asking a political question, so you want a political answer, and I'm sorry, I cannot provide you with it. There is no such thing. We have a motion in front of you. We have given you an explanation. You may support it; you may not want to support it. That's the end of the story. It's not a political question.

The Vice-Chair: Okay—

Mr. Hardeman: I have further comments, Mr. Chair. In fact, I have a whole lot of things I'd like to read into the record while we're at it.

The question isn't a political question. I want to know the rationale, why there is an inherent problem with the same body that makes the decision needing to have the ownership of the appeal body; why two municipalities appointing a joint appeals body would not work. Because that's what this amendment is intended to do: make sure that you never have joint appeal bodies.

We have the Ontario Municipal Board, which is supposedly the purest part of the system, that every municipality in the province of Ontario shares for appeal purposes. But when we're looking at local appeals, we can't have two neighbouring municipalities sharing the same appeal body. I'd like to know the functional rationale for that to happen. It's not politics; it is, why would that work better if it's owned by the individual municipality as opposed to letting the county of Oxford have an appeal body that everyone in Oxford county who has a planning matter relating to a minor variance or a consent application could go to that board and have their application heard as an appeal? That's the answer I need.

Maybe we have some rationale. I'm sure that the ministry has some rationale to prepare this amendment that says, "This is why we're doing that, because we don't think individual municipalities—we think individually they're honest enough, but collectively they can't appoint a body that would work." I don't know what the rationale is, and I'd like to hear that rationale. Until then, I don't think we should proceed until we have that rationale.

Mr. Sergio: With all due respect, I think Mr. Shachter has answered the question. I suppose there is some room in the regulations where this would allow perhaps two municipalities to decide among themselves who has authority over what. I don't take the threat that we cannot proceed unless he gets an answer. There is a motion here in front of the member himself. He may seek support and not get it. He may not like the answer, but I don't think he should be threatening the committee to proceed or not to proceed. I think we are willing to call another staffer and give further explanation, but I don't think you should be threatening the committee and saying, "We won't proceed anymore unless I get an answer." After all, you may like the answer that has been given to you or you may not like it, and vote accordingly.

The Vice-Chair: Mr. Flynn.

Mr. Flynn: I don't want to get in the middle of something here, but I do have an opinion on this issue, and I understand the frustration of Mr. Hardeman. He and I have been around local politics for some time.

There's always been a bit of friction between things that are done at the regional level or the upper tier and things that are best handled at the local level. That is something that has a history since the advent of regional and county government and isn't going to go away.

What this motion is doing, in my opinion as a former local councillor, is continuing the divisions of power that have been established and have been respected and are still being honoured today by the local government officials in the variety of jurisdictions. What this says to a constituent is that if your application is heard in the first place by a level of government, it will continue to be heard by that level of government right throughout the appeal process.

It just clarifies that there is not a division of powers, that for some reason the region or Oxford county is not going to step into this debate where the initial decision was made at the local level. Otherwise, if you take that argument on further you would say, "Why aren't minor variances done by Oxford county in the first place?" They're done at the local level for very specific reasons, and what we're saying is that for those very specific reasons, the appeals should be at that level as well.

Still, at the end of the day, the flexibility is provided by the motion that it's not compulsory that you even have an appeal body. It's an option to have an appeal body that's granted by this legislation.

Mr. Hardeman: Again, Mr. Chairman, this amendment is not about whether the upper tier is trying to take jurisdiction from the lower tier and whether they're going to have disagreements. It just says that if the municipalities in Oxford county want the ability to set up a hearing board that's going to hear applications for consent and applications for minor variances, they can't do it because of this amendment, because they can't share that service. Oxford county does the consent authority, so they can set up a local appeals body to hear the appeals to consent, and the Oxford county planning staff will staff that committee and they will work with that.

The local municipalities, all eight of them, can, if they would like, set up their own appeals body, or they can let the Ontario Municipal Board keep doing it, but they can't share that service with the same planning department and the same—Oxford county council is totally the mayors of the local municipalities plus two extra representatives from the city of Woodstock, so they're all the same representatives, but they can't use that appeal body because of this amendment.

I would like to know what the purpose of the amendment is. Why is it that we don't believe that the upper and the lower tier, if they wish to do so, can set up an appeals body to hear all planning decision appeals as they

relate to minor variances and consents? It's that simple, and I just can't seem to get an answer, and I'm going to keep plugging until I try and get one.

Mr. Flynn: Mr. Chair, I think at the end of the day, the answer may be that we just disagree. If you were to carry that argument further, why would you not have one appeal body for, let's say, all the regions in the greater Toronto area? Or why wouldn't the regions of Peel and Halton have a single appeal body? And how soon before you carry that argument to its logical conclusion? Are you sending all appeals to an OMB again?

The idea, the principle, that's being established here—and you may or may not agree with it—is that where the initial decision is made, the appeal is also made and heard. It's that simple in my mind.

The Vice-Chair: Anything further?

Mr. Hardeman: Is there any staff available that could answer that?

The Vice-Chair: Mr. Sergio.

Mr. Sergio: Mr. Chair, during delegation we heard from—

Interjections.

The Vice-Chair: Excuse me. Mr. Sergio has the floor.

Mr. Sergio: We heard during from the delegations that local municipalities liked to have their own autonomy, their own power, they want to establish their own local bodies. The intent here is to give those municipalities exactly that.

I believe—and this is my view—that if two or three small local municipalities, because they are too small or have no staff or no engineering, no planning, whatever it may be, decide to get together and have one local appeal body, it may be that there is enough flexibility, or the minister, by regulation, may allow that. I'm not sure.

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Mr. Hardeman: Thank you very much, Mr. Parliamentary Assistant. That's really the question that I have. Again, maybe we can get the legal branch back. If that's possible, I support it. But my understanding and my argument for the last 10 minutes have been that that was not possible. And I want to know why it isn't made so that it is possible, because that's what my small communities want. They want to be able to have joint services.

The Vice-Chair: Mr. Sergio, please.

Mr. Sergio: He wants to get to a political answer, which I don't have, unfortunately.

Mr. Shachter?

Mr. Shachter: Just to clarify, as it turns out, actually, there isn't this ministerial authority in order to set something else in place. It really is set out in the act itself, all of the provisions, so that should a municipality decide for whatever reason—economy of scale—it's sufficiently sophisticated so that it has its up-to-date plans and zoning bylaws to set one up, it would be the local municipality. Conceivably, it could result in a circumstance where in one region you would have a number of different municipalities setting up their own local appeal bodies. But it is contemplated that the municipality who has the jurisdiction to hear the consent or the minor variance would be the municipality that would be able to establish the local appeal body on its own, not in conjunction with any of the other municipalities.

So the long answer to your short question is no. The authority to set up the local appeal body is in the legislation.

Mr. Hardeman: So again, going back, the parliamentary assistant suggested that if two municipalities, for economies of scale or so forth, jointly set one up, that seems to make some sense, that they could work together.

Mr. Sergio: I said they may out of this context here. Don't quote me.

Mr. Hardeman: Yes. Again, Oxford county is kind of near and dear to my heart. Because of the combined planning function, they have certain responsibilities at the local level, certain responsibilities at the upper tier, but the planning department is all one group. The director of planning and development is one person who does all the upper-tier and lower-tier planning function. If this amendment is passed, would they be allowed to have an appeals body that hears appeals for minor variances which are granted by the committee of adjustment at the local municipality and land division consents which are granted by the upper tier?

Mr. Shachter: No. And in some sense, just to be clear, this motion is a clarification with respect to the authority. In my review of this particular provision, it really is the clarification. It wasn't that Bill 51 previously provided the authority for what you are proposing to occur; it really just clarifies that it can only occur through the local municipality, not in conjunction with any other municipality.

Mr. Hardeman: Could you enlighten me, from a functional point of view, what would be the positive of having it that way, making sure it was clarified that we could not have shared appeal bodies?

Mr. Shachter: I think I can speak to the answer in a functional—from a legal clarification point of view in terms of what I'm guessing you might be asking for, which is the underlying policy rationale, I can't speak to that. In terms of the planning aspects of it, certainly we have planners here who could speak to their view on what such a body might look like. But certainly all that this motion is doing with respect to this particular aspect of this provision is making it clear that the local municipalities who have jurisdiction over either consents or minor variances would be in a position to establish a local appeal body. The same thing for an upper tier.

Does it mean that it could be a duplication, that you could have more than one local appeal body in one particular region? I think that that's correct. But as I said, I don't feel qualified to really speak to the underlying policy rationale with respect to this.

Mr. Hardeman: So your contention is that this is a clarification from the act as we heard it at committee. Is it your legal opinion, then, that under the act before the clarification, if Oxford decided to set up a local appeals

body that would hear appeals in Oxford county, that would be against the rules the way it was written?

Mr. Shachter: I think it wouldn't be the act. With Bill 51, as presently contemplated, one could potentially make an argument that what you're proposing could occur. The difficulty with the argument, as I've mentioned before, is that you run into the problem of jurisdiction. Right now, if you have a certain jurisdiction, whether it's local or upper tier, which has jurisdiction over either a consent or a minor variance type of application, by allowing the other municipality to take on that role, they'd be taking it on without the jurisdiction to even have dealt with it in the first place. So it is problematic as a result, and this is why the clarification is there, that there might be an argument that could arise.

The Vice-Chair: Mr. Rinaldi.

Mr. Rinaldi: If I may add, part of my riding, Northumberland county, is one of only two counties in the province of Ontario that doesn't have any upper-tier planning whatsoever. Ernie, just to address your issue, and I know where you're coming from, that's a decision that the local county council makes. For example, if Northumberland county wants to have an upper tier, that's a decision they make at the local level, and that would move the whole process up the scale. So to say that they make little side deals, that's a decision they make locally. It's Northumberland county and Dufferin county that made their own local decisions to not have upper-tier planning. They could have the option of having one board, I presume, if those counties decide to have upper-tier planning, but that's a decision that has to start locally. At least that's my interpretation.

Ms. MacLeod: With respect, Mr. Rinaldi, the way this is written, it's removing the option for regional cooperation; that is exactly what it's doing. You're removing the ability to share costs and share administration.

Mr. Rinaldi: If I may, if the county of Northumberland—they have the jurisdiction to do that—makes the decision to have upper-tier planning, it's a decision they make locally. Then they could form their board, I would think. But at the local level they don't want any part of that.

Mr. Hardeman: Again, I want to go back to the legalities of it, the jurisdictional problem we have that if the local decision is made, we need the local appeals body from the same jurisdiction to hear the appeal. It would seem to me that it would imply that there was a connection to it. In fact, I think some of my local constituents are going to see a bias, that the same people—again, the motion was defeated to have the minister appoint that appeals body in the local municipalities, so now they're going to be appointed by the local council, whose decision the committee is going to hear. I think the public is going to see some bias there, rather than having it going to another appeals body that isn't involved.

I guess my question really is, on the other side of it, from a legal perspective, what negative part is there to having a third party who is not connected to the municipality hearing appeals, as though it was the Ontario Municipal Board, only appointed at the local level and done much more economically, effectively and efficiently? Is there a function problem or a legal problem with having it go beyond the planning authority that's making the decision?

Mr. Shachter: I don't want to get into, again, the underlying planning rationale or the policy rationale for setting it up. But when you have a municipality that has set up a local appeal body—and I understand the concerns you've raised with respect to the perception of bias—the local appeal body is a tribunal. It is bound by all of the rules and laws that apply to tribunals in the hearing of matters. Should the tribunal not exercise its jurisdiction properly or not reach a decision in a proper manner, then an application could be made to court. So there are checks and balances with respect to the system as it exists today, and as it would exist should there be a local appeal body.

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You speak to having a third body. The difficulty I have is that what you would be doing is, instead of creating a local appeal body to hear local matters—so you'd be in some sense diverting appeals that would otherwise be going to the Ontario Municipal Board with respect to consents and minor variances—you'd be now adding an additional body. So you'd have local appeal bodies, you'd have an appeal body that I would presume would not be local and then you'd have an Ontario Municipal Board. I'm just not sure, having regard to the appropriate mechanism for a resolution of these matters, that that would be the way you might want to go.

Mr. Hardeman: We're getting closer to an answer here. Is it your legal opinion that as the bill is presently structured, the local appeal body would be obligated to be residents of the local municipality? Does it have to be that local, or could somebody from Toronto be appointed on an appeals body somewhere in the province?

Mr. Shachter: I apologize. I have to get my Bill 51. I haven't quite memorized it yet.

I just wanted to clarify that my understanding is that it is something that's going to be set out by regulation. I understand—and this isn't legal so I'm sort of putting on another hat—that the proposal for what would be included in such a regulation has been posted on the EBR.

Mr. Hardeman: So, in your opinion, the way the bill is presently written, the municipality can appoint?

Mr. Shachter: Subject to the regulation.

Mr. Hardeman: Is it presently in the bill that the municipality does the appointing?

Mr. Shachter: Yes.

Mr. Hardeman: But the regulation will define who would be eligible to be on the committee, so it is possible for the minister to say that they must all be local people?

Mr. Shachter: Without presuming what the minister would say, that's correct. The regulation could set out what the eligibility is as well as qualifications of the members of the local appeal body.

The Vice-Chair: Anything further? All right, we have subsection 6(1). All those in favour?

Mr. Hardeman: Recorded vote.

Ayes

Balkissoon, Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Page 14: This is a government motion.

Mr. Flynn: I move that subsection 6(2) of the bill be struck out.

The Vice-Chair: Any comments?

Mr. Prue: Could I ask for the rationale for doing so?

Mr. Sergio: It's a consequential motion for the purpose of deleting this section and it has been inserted in a new, renumbered section.

Mr. Prue: But does subsection 6(2) not deal with the city of Toronto?

Mr. Sergio: Yes, it does.

Mr. Prue: Can you tell me why the previous motion, number 13, said that it does not apply with respect to the city of Toronto, and now, in 14, it does? And it's all within the same section.

Mr. Sergio: It deals with the local appeal body, which does not apply to the city of Toronto. This gives it to the entire province.

Mr. Prue: As I understand the section—you tell me if I'm wrong—this is a provision respecting open houses, consultations, public meetings, and the notice will now apply to the city of Toronto. I don't really have any objection to it applying to the city of Toronto but I need to know the rationale why, in the previous government motion, subsection 8.1(24), "This section does not apply with respect to the city of Toronto," and in this motion it includes the city of Toronto where it didn't appear to before.

Mr. Sergio: I believe the City of Toronto Act does not include that.

Mr. Prue: It doesn't include the provision for public hearings?

Mr. Sergio: No, but if they want to establish it, they can. That may be part of the new City of Toronto Act.

Mr. Prue: It may be.

The Vice-Chair: Anything further on this motion?

Mr. Sergio: They have a committee of adjustment. They may change it.

The Vice-Chair: Okay. I'll call for the vote. All those in favour? Opposed? Carried.

Shall section 6, as amended, carry? All those in favour? Opposed? Carried.

Moving on to page 15, section 7. It's a PC motion.

Ms. MacLeod: I move that subsection 16(2) of the Planning Act, as set out in section 7 of the bill, be amended by striking out "may contain" in the first line and substituting "shall contain."

This amendment is meant to eliminate the ambiguity of the section. It is felt that this change will eliminate an escape clause in a section where a great deal of work in terms of the official plan will be done.

The Vice-Chair: Any comments? All those in favour of this motion?

Ms. MacLeod: Recorded vote.

Ayes

MacLeod, Prue.

Nays

Balkissoon, Flynn, Lalonde, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Shall section 7 carry? All those in favour of section 7? Opposed? Carried.

Moving on to section 8, page 16. We have a government motion.

Mr. Balkissoon: I move that subsection 8(1) of the bill be amended by striking out "26(5)" and substituting "26(6)."

The Vice-Chair: Any comments on the motion?

Mr. Prue: What's it for? I wouldn't be asking all these questions if you'd just give a one- or two-sentence rationale.

Mr. Balkissoon: It's just a technical issue.

Mr. Sergio: It's a technical motion to reflect the renumbering with subsection 26(5)—

Mr. Prue: That's all you have to say. Thank you.

The Vice-Chair: Anything from Mr. Hardeman?

Mr. Sergio: It may not suffice for Mr. Hardeman.

Mr. Hardeman: Yes. I'm just wondering. Striking out subsection 26(5) and then replacing it with 26(6): What happens to 26(6)?

Mr. Sergio: It's being renumbered.

Mr. Hardeman: Oh, so it's renumbered. So there would be no 26(6) anymore?

Mr. Sergio: Yes.

The Vice-Chair: We'll call the vote. All those in favour? Opposed? The motion's carried.

Page 17, a government motion.

Mr. Rinaldi: I move that subsections 8(2), (3) and (4) of the bill be struck out and the following substituted:

"(2) Subsections 17(15) to (19) of the act are repealed and the following substituted:

"'Consultation and public meeting

"'(15) In the course of the preparation of a plan, the council shall ensure that,

"'(a) the appropriate approval authority is consulted on the preparation of the plan and given an opportunity to review all supporting information and material and any other prescribed information and material, even if the plan is exempt from approval;

"'(b) the prescribed public bodies are consulted on the preparation of the plan and given an opportunity to review all supporting information and material and any other prescribed information and material;

"'(c) adequate information and material, including a copy of the current proposed plan, is made available to the public, in the prescribed manner, if any; and

"'(d) at least one public meeting is held for the purpose of giving the public an opportunity to make representations in respect of the current proposed plan.

"'Open house

"'(16) If the plan is being revised under section 26 or amended in relation to a development permit system, the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the information and material made available under clause (15)(c).

"'Notice

"'(17) Notice of the public meeting required under clause (15)(d) and of the open house, if any, required under subsection (16) shall,

"'(a) be given to the prescribed persons and public bodies, in the prescribed manner; and

"'(b) be accompanied by the prescribed information.

"'Timing of open house

"'(18) If an open house is required under subsection (16), it shall be held no later than seven days before the public meeting required under clause (15)(d) is held.

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"'Timing of public meeting

"'(19) The public meeting required under clause (15)(d) shall be held no earlier than 20 days after the requirements for giving notice have been complied with.

"'Information and material

"'(19.1) The information and material referred to in clause (15)(c), including a copy of the current proposed plan, shall be made available to the public at least 20 days before the public meeting required under clause (15)(d) is held.

"'Participation in public meeting

"'(19.2) Every person who attends a public meeting required under clause (15)(d) shall be given an opportunity to make representations in respect of the current proposed plan.

"'Alternative procedure

"'(19.3) If an official plan sets out alternative measures for informing and obtaining the views of the public in respect of amendments that may be proposed for the plan and if the measures are complied with, subsections (15) to (19.2) do not apply to the proposed amendments, but subsections (19.4) and (19.6) do apply.

"'Open house

"'(19.4) If subsection (19.3) applies and the plan is being revised under section 26 or amended in relation to a development permit system,

"'(a) the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the proposed amendments; and

"'(b) if a public meeting is also held, the open house shall be held no later than seven days before the public meeting.

"'Information

"'(19.5) At a public meeting under clause (15)(d), the council shall ensure that information is made available to the public regarding who is entitled to appeal under subsections (24) and (36).

"'Where alternative procedures followed

"'(19.6) If subsection (19.3) applies, the information required under subsection (19.5) shall be made available to the public at a public meeting or in the manner set out in the official plan for informing and obtaining the views of the public in respect of the proposed amendments.'"

The Vice-Chair: Any comments?

Mr. Prue: I have a question first and then I have a comment on a completely different aspect. I need to understand. This is a rather lengthy amendment. Is there a provision, or does the provision allow that there is both a public information meeting and a public meeting, or does it allow for the substitution of one over the other? Because in my reading of this, it appears that it may allow an open house for—how did I have this down? If there is a plan revision as required under section 26, the five-year review section, or in relation to the development permit system, then a public open house is held, but if the plan is being prepared for any other reason, then you have a public meeting. That's how I read this. That means that you substitute an open house for a meeting?

Mr. Sergio: Yes. Indeed the local municipality has the option to hold either/or.

Mr. Prue: Well, you have an open house—I don't mind having both, and very often in a planning process you have an open house so the public is acquainted with what is being proposed, and then you have a public meeting for them to comment on it. This would take away their right to comment on it.

Mr. Sergio: No.

Mr. Prue: Well, then, you'd have to have a public meeting as well. You just said that there wasn't one.

Mr. Sergio: Yes, you would have a public meeting, of course, yes, but with respect to the open house, I think it's a delegation again. Municipalities may say, "There may not be a need to have an open house; we just may have a public hearing."

Mr. Prue: No, I understand that and I have no difficulty with that. What I want to ensure, because it's not clarified to my mind in reading these sections, is that if there is an open house there must, in all cases, be a public meeting to follow.

Mr. Sergio: Yes, indeed.

Mr. Prue: So people can read this transcript in the future and know that there must be—okay. That was my question. But I do want to talk about another section.

The Vice-Chair: Okay. Mr. Hardeman?

Mr. Hardeman: Thank you very much. I wonder, in some of the areas—and I know it's a very involved amendment and it goes at great length to describe what is required in the public involvement in the process. If you

take, on the second page, that the notice "shall ... be given to the prescribed persons and ... bodies, in the prescribed manner"—in other words, the municipality gets to prescribe who they're going to let know and how they're going to do that. To me, there's some concern that if we need to tell them that they have to hold two meetings, at least, and they must do this and they must do that but they can set their own rules of how do it, in fact the rules could say, "We don't have to tell anybody except the ministry, and we don't have to do any more than call them on the phone," and they would meet the prescribed manner. In fact they could reduce public involvement by including that part about using the prescribed manner, rather than having the manner prescribed. Could you make a comment on that?

Mr. Sergio: I think municipalities are indeed required to notify the public. I don't think they would leave the public out by saying, "We invite so and so in and not the public." I think they are required to inform the public, to notify the public when they receive an application and to hold public meetings as well.

Mr. Hardeman: Just forget the person, then. If you look at the notice that's required—"prescribed persons and public bodies"—does that mean the upper tier could leave out the lower tier for notification? Who would monitor that to make sure that the appropriate public bodies were prescribed so they would get proper notice?

Mr. Sergio: If you read the motion, it also says that "the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the proposed amendments."

Mr. Hardeman: Yes, but when you go to section 17, on notice, it doesn't go very broadly into how much of the public—the open house must be held, but there seems to be very little indication of who they have to notify that they're holding it.

Mr. Sergio: I think the act here is suggesting and giving direction to the local municipalities. If the local municipality is a very small one, and they decide that they may want to notify the local people, I'm sure that they would be notifying everybody there, whoever is involved. They have the Municipal Act, the Planning Act, which calls for following a certain process, according to prescribed limits.

Mr. Hardeman: For further clarification, presently in the Planning Act, it says that everybody within 400 feet of the property must be notified. This seems to indicate that that would be eliminated.

Mr. Sergio: No, no.

Mr. Hardeman: This act no longer describes who has to be notified, just that it be in a prescribed manner.

Mr. Sergio: I think the local municipality decides who they're going to be notifying, but I'm sure that there are rules and regulations, and the Planning Act will be very specific to deal with that.

Mr. Hardeman: The other question, on participating at a public meeting: Having been to a number of public meetings, it says, "Every person who attends a public meeting required under clause (15)(d) shall be given an opportunity to make representations in respect of the current proposed plan." You hold your public meeting and have your time set from 8 to 11; what if everyone has not yet spoken? Would this then obligate another meeting?

Mr. Sergio: Definitely, yes.

Mr. Hardeman: Anyone who comes away from the meeting and says, "I wasn't heard," would precipitate another meeting.

Mr. Sergio: No. If someone was not present, I don't think the municipality would say, "We're going to give you another meeting because you weren't there."

Mr. Hardeman: I've seen some meetings where they ended with less than, "Shall we adjourn? Has everyone spoken?" So my suggestion is, does that mean, automatically, if it's a rowdy-type meeting, that they're going to have to have another one because somebody walks away from that and says, "I wanted to speak, but the mayor adjourned it before I had an opportunity"?

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Mr. Sergio: Well, I think the local municipality may decide, "Yes, we'd like to hold another meeting." I don't see a problem there.

Mr. Hardeman: I hate to be argumentative, but the problem is that this law isn't about what local municipalities are going to do on their own; this law is about what the province is going to demand they do. And that's why I want to know what it demands that that they do. What's the minimum standard they have to meet?

Mr. Sergio: That's right. And they have called the meeting. They have duly called the meeting within the time allotted. Now, if somebody is going to miss that meeting which he was duly notified for, you can't ask the municipality to call another meeting. But if the municipality wants to call another meeting, I don't think this is going to hold a local municipality to hold another local meeting.

Mr. Hardeman: Using the explanation that the parliamentary assistant just gave me, I'd like to know the reason for (19.1). It's quite explicit.

Mr. Sergio: It is quite explicit. So if all the information is provided to the general public at least 20 days before a public meeting, I'm sorry, I don't see the—

Mr. Hardeman: "Every person who attends a public meeting required under clause (15)(d) shall be given"—not "may be given" or not—

The Vice-Chair: You're under (19.2); is that correct?

Mr. Hardeman: Yes, (19.2).

The Vice-Chair: Okay. You did say "(19.1)," so that's where we were somewhat confused.

Mr. Hardeman: Oh, (19.2). Sorry. "Shall be given an opportunity to make representations in respect of the current proposed plan." Every person, not those who made appointments or those—so what I'm saying is, if we've got a thousand people in the room and they hold a meeting, that meeting, according to this law, would never end.

Mr. Sergio: Well, the prescribed meeting has been called. If they're going to get 10 people or a thousand

people and the local municipality wants to give them an opportunity to follow with another meeting, I think that's quite proper. But I think this sets the minimum standard for municipalities to hold a public meeting.

Mr. Hardeman: This doesn't put it in the municipality's hands. It says that "every person" who's there must be given an opportunity to speak. That's what it says. And I want to know: If that's not the intent, why is it there?

Mr. Sergio: Mr. Chairman, I don't have an answer. The act prescribes the local municipality to call a public meeting. To follow with another meeting, I think a local municipality may or may not go that particular route, but I think they are doing what the act is calling the local municipality to do, and I think that's fine. The rest? We have no idea if 10 people or a thousand people are going to show up.

The Vice-Chair: Okay. We've had, certainly, debate on this. I'm sorry. Do you have an issue?

Mr. Prue: I have a question and then an issue.

The Vice-Chair: Okay, I'm sorry.

Mr. Prue: I'd like to deal with an issue that hasn't been asked about yet, and that is:

"Information

"(19.5) At a public meeting under clause (15)(d), the council shall ensure that information is made available to the public regarding who is entitled to appeal under subsections (24) and (36)."

Well, one need only look over to number 19, which is two motions from now, and it spells out exactly who those people are. It's people who "made oral submissions at a public meeting or written submissions to the council.

"2. The minister.

"3. The appropriate approval authority.

"4. In the case of a request to amend the plan, the person or public body that made the request."

Everyone else is not entitled to appeal. That's what your amendment here is doing. What is being done in this section is saying, "You were in the room, you made an oral submission. However, if you didn't get a chance to make an oral submission because the council cut you off, too bad. If you haven't made a written submission in advance, too bad. If you're not the minister, too bad. If you're not an elected person, too bad." I really have some difficulty with approving (19.5), because you give this information out, and I have even more difficulty with number 19.

As the bill is drafted, it really reduces public participation in the planning process. It reduces it in a way that it has never been reduced before. Those who launch the appeals to the OMB usually are people who have financial resources. They're usually the people who are self-interested and take the time to prepare for the application, but ordinary members of the public have very limited time and expertise. They have very limited resources, by and large, to review the applicant's material and to consult expert advice in advance of public meetings. They often trust their local councillors, their local mayors to do the right thing and oftentimes, unfortunately, they are disappointed. They have to then try to launch appeals later. What this legislation is doing is forbidding them from doing so.

Now as a mayor—and as a local councillor before that, I witnessed the previous mayor—at the start of the hearing we advised people that if they did not make any statements, they "may"—not they "shall"—be prohibited from launching an appeal, but that would be left up to the Ontario Municipal Board.

What you're doing today is, you're saying you "shall" be prohibited from launching an appeal because you are not there, and the board has no jurisdiction. So what you're doing is, you are leaving out all of those ordinary people. Also, there's nothing here in the legislation that provides for any intervener funding. Even for those people who have the temerity, the unmitigated gall to stand up and oppose some big developer and his process, there's no intervener funding. You're not allowing for ordinary people to participate.

This whole thing is about cutting out the public. This section is an abomination because you're going to set it out right there in front of them that they are no longer entitled to be part of the process, and the later section is the worst one, section 19, where you outline who can be and who cannot be subject to the appeal.

I cannot support this. I think this whole thing, as drafted, is there to significantly limit the ability of the public to participate in appeals. It is something I cannot believe that this government is intent upon doing. If you want to comment, go ahead, but I cannot and I will not be supporting this motion, and I cannot and I will not support cutting the public out of appeals that they have had an unqualified right to participate in, or had the right to participate in with the consent of the Ontario Municipal Board, for the last 50 years.

The Vice-Chair: Mr. Lalonde did have a question.

Mr. Lalonde: I'd just like to make a clarification on this one, that 19.5 is very clear. We're not cutting out anyone.

Mr. Prue: You're advising who can and who cannot appeal.

Mr. Lalonde: At the present time the regulations are in place. The municipality has to advise anybody who's living within 400 feet of the area that the minor variance or the changes to occur are proposed; also anybody beside the 400 feet could make a presentation, either oral or in writing. It is there at the present time and—

Mr. Prue: This is talking about the right to appeal. This is not talking about the right to participate.

Mr. Lalonde: The right to appeal is the same.

Mr. Prue: No, it is not.

The Vice-Chair: Mr. Sergio.

Mr. Sergio: Just briefly. The member has the right to express his views with respect to this particular motion, but I'll tell you that the motion goes a long way in allowing individual people and groups to participate in the various debates and public hearings and follow the application. It is something that both local municipalities and organizations and even industry have been looking

for and have been asking to streamline the process. There are ample opportunities. As a matter of fact, this goes a long way to giving an opportunity to individuals to be heard.

Mr. Prue: But not to appeal. They can't appeal. Read section 19, who can appeal.

Mr. Sergio: Mr. Chairman, with all due respect, I think later on we may get into that, but at the present time, as he knows, being a former mayor and councillor, there are many times when either side can come in at the last second and make an appeal to a particular application. I think it is important to give everybody an opportunity beforehand to contribute either in writing or in person, make submissions, but this probably would eliminate someone coming at the last minute and saying, "I want to appeal." But at the same time, ample opportunities are given to individuals to make their views known.

Mr. Prue: If I could ask a question: Somebody is on vacation when the thing is held, has no idea it's taking place. Somebody's in the hospital and is unable to get there. They are now going to be barred. In the past, that was a reasonable thing that the Ontario Municipal Board could look at and could say, "We understand you were not around. We understand you were out of the country. We're going to hear your appeal." From the day you pass this, those people are barred.

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Mr. Sergio: I believe that the OMB would have discretion if—

Mr. Prue: They don't have it.

Mr. Sergio: If there is a situation where someone is stuck in the hospital or whatever, I believe that the OMB has discretion to receive information.

Mr. Prue: If you can show me the section, then I won't be so angry. Go ahead.

Mr. Sergio: I can call—

Mr. Prue: Call the staff. Show me the section where the OMB has that discretion.

Mr. Sergio: Yes, surely.

Could staff please confirm that?

The Vice-Chair: Can we get staff assistance?

Mr. Shachter: I apologize; I didn't get the question. I imagine it relates to the ability to appeal. I wonder if you could repeat the question so I can respond.

Mr. Prue: Yes, the question that I just asked, that the Ontario Municipal Board cannot hear appeals save and except the right of appeal is limited to the four people set out in the motion, which is number 19. It's limited to:

"1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council." So if you didn't make either oral or written submissions, you're not included there.

"2. The minister." So if you're not the minister, you're not included.

"3. The appropriate approval authority," which would be the municipality. If you're not a member of council, you're not included there.

"4. In the case of a request to amend the plan, the person or public body that made the request." So if you're not one of those people, then you're excluded.

I posed two questions. People who are outside of the country and who may not have known it was happening or were not within the jurisdiction and somebody who was ill or in the hospital or otherwise could not attend, and the parliamentary assistant said the board could hear that. I want to know the section of your act that says that that option is available to the Ontario Municipal Board and that a person can get in, because I don't believe the OMB would have the discretion; I cannot find it.

Mr. Shachter: First of all, let me respond by confirming that that's correct. If somebody doesn't fall within one of those four categories, they do not have the right to appeal—as of right. They do, though, have the right to ask the Ontario Municipal Board to be made a party to the hearing.

Mr. Prue: But not an appellant.

Mr. Shachter: Not an appellant, but certainly for the purposes of a hearing, once one is a party to a hearing, it's inconsequential as to whether one is an appellant or not.

Mr. Hardeman: What if there is no hearing?

Mr. Shachter: If there is no hearing, then the individual does not have the ability to appeal; that's correct. But in some sense, the board at the present time, as you know, may dismiss if an individual did not make written submissions or oral submissions before council.

Mr. Prue: They may, but now it will be "shall."

Mr. Shachter: That's correct. But, as I said, the authority is still retained. I believe I just referenced page 23 of the motions—not to run ahead; my eye just caught it—that you could be a party. No, I apologize; I do have the wrong reference. But I am aware that you can ask to be made a party at the hearing if there are reasonable grounds to be made so. But, as was indicated, if there is no appeal, then there is no ability to make that request.

The Vice-Chair: Anything further?

Mr. Hardeman: I want to follow through a little bit, the same as the previous question, but going back to the participation at the public meeting, recognizing that the public meetings are the meetings held prior to the council meeting where the decision is made. So I go to the public meeting, and it goes on and on, and they don't give me the opportunity to speak because the time has run out. The suggestion of the parliamentary assistant is that council would then hold another public meeting because there are more people who want to be heard.

Mr. Sergio: No, I said they may. It's up to them.

Mr. Hardeman: Yes, but as I say, I'm going to make the assumption they don't hold another public meeting. So I am now a citizen who has not been heard. Because I wasn't heard at the public meeting, I will not be notified of the council meeting where they're going to make the decision, so I will also lose my right to appeal to the Ontario Municipal Board. So how is it that that doesn't take away my right to appeal? Explain that.

Mr. Sergio: You can make a written submission to the OMB. You can make a written submission to council and be heard when the application goes to council.

Mr. Hardeman: I didn't know when it's going to council because they didn't have me on the record at the public meeting so they don't know who was there, so I don't get notified anymore. I'm just told that I'm no longer involved, because I wasn't heard at the public meeting and they decided not to hold another public meeting.

The Vice-Chair: Mr. Flynn.

Mr. Flynn: Yes. I wonder if we could have our staff just define—I think we're confusing some terms here. There's a public meeting and a meeting that is held in public. There's a public meeting in the planning sense of the word as a formal meeting of a constituted council that has a statutory definition, and there's a public open house. Any local municipality that I'm aware of, either at the regional or the local level—if you appear at a public meeting before that council and ask to be listed as a delegation, that council will continue to meet until you are heard, and if it means that further meetings are scheduled into the future, then so be it. I have yet to hear of anywhere in Ontario that somebody has registered as a delegation at a public meeting before a council and has not had the opportunity to be heard.

The Vice-Chair: I think you were interested in some legal advice.

Mr. Shachter: Mr. Flynn's actually correct. With respect to the statutory public meeting, the legislation as proposed does require that anybody who attends does have the right to be heard. Should time run out at the public meeting, I would anticipate that what would have to happen is the meeting would be continued; the meeting would not be closed. The meeting would have to continue until all those who were requesting the opportunity to speak can be heard.

Mr. Prue: If I can ask another question: What about a mother who has a couple of kids that she's put with the babysitter, and she's number 15 on the list. At about 11:30 at night they get to number 10 and she finally has to leave. They deal with the balance of them, and the next day she comes back and said, "But I really had something important to say." They say, "Tough," and nobody appeals, and she wants to appeal and she can't.

Mr. Shachter: Not wishing to speculate, I did spend a number of years in a municipality and I know that the clerk in most cases will take a list of the names of all of the individuals who were there. The individual could speak to the clerk about being changed in the order of deputants and could make arrangements with the clerk to be called the next night. But as I said, it would be speculation. I do know from my background that matters such as that can be addressed in the context of the statutory public meeting.

Mr. Hardeman: I just want to carry on with Mr. Flynn's comments about the difference between a public meeting—and maybe we'll ask the legal branch to stay.

Maybe it's defined in the act, but I was always told that a public meeting is a meeting that is owned by the public. It's not a council meeting allowing the public to speak; it's a meeting of the public. A public meeting is just that. It's not a council meeting; it's a public meeting. In my mind, I don't have to make an appointment to come and speak at a public meeting; I go to the public meeting and I'm heard.

I don't think this act, in this context, is implying that council must finish their agenda or come back for another meeting. It is a public meeting held for this purpose, and when all are heard who want to speak, you close the meeting. In fact, I don't see anything in here that requires any member of council to be present for the public meeting. Am I wrong?

Mr. Shachter: There are a number of different questions there, so let me try to respond to all of them.

I would suggest that a meeting of the public is actually something different than a public meeting, which is actually contemplated by—subsection 17(15) of the act says that you are required to hold a public meeting, and that's what everybody in jargon talks about. They call it the statutory public meeting.

Depending on the jurisdiction, it's either council that's going to hold it or, if I remember correctly, Toronto has empowered its planning committee to hold it, and council ratifies. But whatever it is, it is statutory-mandated by the Planning Act. There are no options as to whether to hold it or not.

The conduct of the public meeting outside of the requirements of the Planning Act would be something that would be covered by the Municipal Act and any procedural bylaw that a council would enact in order to deal with the hearing of deputations and other matters such as that.

Does that respond to all of the questions, or did I miss one?

Mr. Hardeman: I just want to clarify: Is there anything in the act that says that the statutory public meeting must have members of the decision-makers present?

Mr. Shachter: Does it—

Mr. Hardeman: Does it say that members of council must be present at the public meeting that's being held?

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Mr. Shachter: The Planning Act doesn't require that. Without getting out of my area of expertise, I recollect that it's a matter that would be dealt with under the Municipal Act and the procedural bylaw in terms of meetings of council, because as you will probably know, a meeting of council is actually a specific type of affair. It's not just a number of councillors getting together: It's mandated under the Municipal Act and it has the requirements for quorum. So you are correct: While the Planning Act does not have any requirement, those requirements are contained in the Municipal Act. Meeting requirements, such as statutory public meetings under the Planning Act and in addition to any other kinds of situations where meetings are required to be held, would be covered under the Municipal Act.

Mr. Hardeman: We're talking primarily here of reviewing or approving the official plan. It's quite an involved process and obviously there are quite a number of meetings held. The majority of meetings that I've been to concerning official plans do not have politicians there, or at least not in charge; they're being held by the planning staff to have public input into a public meeting reviewing the official plan. Would they cover the statutory requirement for this meeting we're talking about here?

Mr. Shachter: No. Meetings that are held to inform the public, at which planners are available to answer questions and the public can attend and see what's proposed, are not public meetings under the provisions of subsection 17(15).

Mr. Hardeman: The section you're referring to describes who shall be at the meeting and how it shall be—

Mr. Shachter: No, it doesn't. I'm sorry, I don't mean to belabour the point, but subsection 17(15) of the act says that municipalities are required to hold a public meeting. The form of the public meeting—who shall be in attendance, including councillors and the requirement for quorum—would be found in the Municipal Act. But you are aware, as you've indicated, that there are many circumstances where you have an official plan amendment—especially where you have a secondary plan, for example—and you anticipate a lot of interest from the public. What you will do is, in order to give that public as much information as early in the process as you can, hold information sessions. You may hold any number of them. They are not mandated under the Planning Act, although I do know, as a matter of best practice, that a lot of municipalities will hold them. What is mandated is what I call the statutory public meeting.

Does that assist?

The Vice-Chair: Thanks very much. We've certainly had debate on this. Let's call for the—

Mr. Prue: Recorded vote.

Ayes

Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: Carried.

Moving on to page 18, we have an NDP motion.

Mr. Prue: I believe it's probably redundant.

The Vice-Chair: Yes, I believe you're right.

Mr. Prue: I could read it out if you want, but I believe it's redundant considering what we've just done.

The Vice-Chair: Moving on to page 19; it's a government motion.

Mr. Rinaldi: I move that subsection 8(6) of the bill be struck out and the following substituted:

"(6) Subsection 17(24) of the act is repealed and the following substituted:

"'Right to appeal

"'(24) If the plan is exempt from approval, any of the following may, not later than 20 days after the day that the giving of notice under subsection (23) is completed, appeal all or part of the decision of council to adopt all or part of the plan to the municipal board by filing a notice of appeal with the clerk of the municipality:

"'1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.

"'2. The minister.

"'3. The appropriate approval authority.

"'4. In the case of a request to amend the plan, the person or public body that made the request.

"'No appeal re second unit policies

"'(24.1) Despite subsection (24), there is no appeal in respect of official plan policies adopted to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or row house situated in an area where residential use, other than ancillary residential use, is permitted.

"'Exception

"'(24.2) Subsection (24.1) does not apply to an official plan or official plan amendment adopted in accordance with subsection 26(1).'"

The Vice-Chair: Any comments?

Mr. Prue: I've already dealt with it, and I already think this is an abomination. Recorded vote, please.

The Vice-Chair: Okay, a call for a recorded vote.

Mr. Hardeman.

Mr. Hardeman: I'm a little concerned. A few years ago there was a great debate about second units, particularly within the city of Toronto. This seems to take away that debate and go back—I think it was the former New Democratic government that was doing it, but I stand to be corrected—to allowing it as a right. This seems to imply that that's what we're doing now: allowing second units as a right in residential areas. Is that a reasonable assumption that I'm making in this amendment?

Mr. Sergio: Yes.

Mr. Hardeman: I know we've heard a lot, in the previous committee hearings and in this one, that we've done consultations with municipalities, but was there any consultation done with the people who are going to be affected by this as to whether this is the right or the wrong thing to do?

Mr. Sergio: I believe that consultation has taken place, but you have to remember that these are all permitted where local municipalities allow those extra units.

Mr. Hardeman: Yes, but that's my real problem, because the last time this issue was a big issue, the province was telling the municipalities that second units would be a right in any residential area. The public was very concerned about that. They said, "That shouldn't be a right; that should be something that varied in different communities." Some communities were suited to it; some were not. The municipalities said, "Okay, then the province shouldn't force it upon us," but the public said, "The

municipality shouldn't be able to force it upon us either." Now it says that you're taking the right to appeal away from the residents, so now municipalities get to make the final decision and no one can appeal that anywhere else. I want to know whether there was any consultation done within the residential community as to how that will impact the residential community in—at that time the argument was particularly from Toronto, but it's true in my community too. There were a lot of areas where the residents believe there's a problem with a second unit as a right.

Mr. Sergio: I'm sorry; I thought you were just commenting.

Mr. Hardeman: No, and I just wanted to know what type of consultation was done with the public who are going to be affected by this.

Mr. Sergio: I'm really not aware. Staff would—

The Vice-Chair: Please state your name for Hansard.

Mr. Ken Petersen: Ken Petersen, Ministry of Municipal Affairs and Housing, provincial planning and environmental services branch.

We had comprehensive consultation that led up to the proposed reforms in the bill. This was something that did come up from a number of stakeholder groups, that something like this was required in order to provide for some affordable housing. This, in particular, does put councils in the driver's seat, though, because as part of their official plan they would need to put it in. The provision is saying that, in the event that the municipality decides to put these policies into their official plan—and of course, as a normal course of events, they always do the consultation and that sort of thing—those policies would not be subject to appeal.

Mr. Hardeman: When you spoke of the consultations with a number of stakeholders, were they primarily the stakeholders as it relates to the Municipal Affairs and Housing portfolio, or where they the general public who made presentations?

Mr. Petersen: As part of our broad consultation we went across Ontario, so we met with a broad variety of groups. To say that everybody would support this I think is probably not correct; certainly there was a mix of opinions. But certainly, a number of municipalities and groups that support affordable housing were saying that something like this was required.

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The Vice-Chair: Okay, thank you very much.

We will call the vote. Was this a recorded—

Mr. Prue: Yes, I asked for a recorded vote.

Ayes

Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Going on to page 20, I believe this is another one like 18; it's not required. This is an NDP motion.

Mr. Prue: I'm not sure. On a technicality, maybe in large part, but I noticed that the motion in number 19 was, "Subsection 17(24) of the act is repealed and the following substituted...." This one is dealing with subsection 17(24.1). I'm not sure—it's a technicality—whether or not the previous one actually did cover this.

Interjection.

The Vice-Chair: It did cover it.

Mr. Prue: It did. Well, I'm just asking the question, because it is marginally different. But if legislative counsel says it did, then I accept that.

The Vice-Chair: We carry on. Thank you.

Next is page 21. We have a government motion.

Mr. Lalonde: I move that subsection 8(8) of the bill be struck out and the following substituted:

"(8) Subsection 17(36) of the act is repealed and the following substituted:

"Appeal to OMB

"(36) Any of the following may, not later than 20 days after the day that the giving of notice under subsection (35) is completed, appeal all or part of the decision of the approval authority to the municipal board by filing a notice of appeal with the approval authority:

"1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.

"2. The minister.

"3. In the case of a request to amend the plan, the person or public body that made the request.

"No appeal re second unit policies

"(36.1) Despite subsection (36), there is no appeal in respect of the approval of official plan policies adopted to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or row house situated in an area where residential use, other than ancillary residential use, is permitted.

"Exception

"(36.2) Subsection (36.1) does not apply to an official plan or official plan amendment adopted in accordance with subsection 26(1)."

The Vice-Chair: Any comments?

Mr. Hardeman: Could I get an explanation for it as it relates to this one and the one we previously passed?

Mr. Sergio: I think that in this one here, if you have made an oral submission or a written submission, then you have a right to an appeal.

The Vice-Chair: Any further comments?

Mr. Hardeman: If the municipality is considering the second unit, and you have objected to it while they were considering it, you do have a right to appeal that, then?

Mr. Sergio: It deals with where the official plan is not exempt from approval. If you have not made an oral presentation at a public meeting or a written submission to council before a decision was made, then you wouldn't have a right to an appeal.

Mr. Hardeman: You have no right to appeal in the previous section for second units, and now this is giving someone the right to appeal?

Mr. Sergio: No. It would restrict the ability of those public bodies that could appeal an official plan where the official plan is not exempt from approval, without making an oral presentation at a public meeting or written submission to the council before council's decision, to only the Minister of Municipal Affairs and Housing.

The Vice-Chair: No further comments? We will have the vote. All those in favour? Opposed? The motion is carried.

Page 22, an NDP motion, and I believe it's the same situation that we had before.

Mr. Prue: I don't see any way around it. I keep trying to stop them and they keep voting me first.

The Vice-Chair: Next we have page 23, a government motion.

Mr. Flynn: I move that subsection 8(9) of the bill be struck out and the following substituted:

"(9) Section 17 of the act is amended by adding the following subsections:

"Restriction re adding parties

"(44.1) Despite subsection (44), in the case of an appeal under subsection (24) or (36), only the following may be added as parties:

"1. A person or public body who satisfies one of the conditions set out in subsection (44.2).

"2. The minister.

"3. The appropriate approval authority.

"Same

"(44.2) The conditions mentioned in paragraph 1 of subsection (44.1) are:

"1. Before the plan was adopted, the person or public body made oral submissions at a public meeting or written submissions to the council.

"2. The municipal board is of the opinion that there are reasonable grounds to add the person or public body as a party.

"New evidence at hearing

"(44.3) This subsection applies if information and material that is presented at the hearing of an appeal under subsection (24) or (36) was not provided to the municipality before the council made the decision that is the subject of the appeal.

"Same

"(44.4) When subsection (44.3) applies, the municipal board may, on its own initiative or on a motion by the municipality or any party, consider whether the information and material could have materially affected the council's decision, and if the board determines that it could have done so, it shall not be admitted into evidence until subsection (44.5) has been complied with and the prescribed time period has elapsed.

"Notice to council

"(44.5) The municipal board shall notify the council that it is being given an opportunity to,

"(a) reconsider its decision in light of the information and material; and

"(b) make a written recommendation to the board.

"Council's recommendation

"(44.6) The municipal board shall have regard to the council's recommendation if it is received within the time period referred to in subsection (44.4), and may but is not required to do so if it is received afterwards.

"Conflict with SPPA

"(44.7) Subsections (44.1) to (44.6) apply despite the Statutory Powers Procedure Act."

The Vice-Chair: Thank you. Any comments?

Mr. Hardeman: The problem I have is that the amendment is kind of convoluted. It's all nice words but—we'll start from the bottom up.

"Council's recommendation": The municipal board sends it back. Now remember, the municipal board in this amendment is obligated to look at the new information and make a judgment if in their opinion council would have made a different decision if they had had that information. They decide that the information is sufficient and is of the type of information that should have directed council to make a different decision, so they send it back. Council then, of course, is somewhat directed by the Ontario Municipal Board to change their mind, because the only reason they're being asked to review it is because the OMB has already decided that that information would likely have generated a different decision.

Then it comes back to the Ontario Municipal Board. Before, they had to "have regard to" the municipal decision, but the second time over they don't have to even do that. They may, but they don't have to. So if the council doesn't decide to change their mind, then the OMB doesn't have to take their position into consideration anymore. They can just carry on as they had originally decided, which was that this information is enough to change their mind. Am I wrong?

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Mr. Sergio: If I may, Mr. Chairman, I think that prior to, the OMB was requested to have regard to. The second time, when the application comes back from council again, they have to consider—not have regard to, but consider—council's decision, instead of having regard to.

Mr. Flynn: If I could add to that, just to Mr. Hardeman's point specifically, as I was reading that, it stood out. The wording is quite specific where it says "and the information and material could have materially affected," not "would have." So the choice is still council's as to whether it would have changed their opinion on that. That's what the board is seeking: a recommendation as to whether the new material that the board thinks could have—not would have—would have changed council's mind. So it's not being asked to reconsider or change its mind.

Mr. Hardeman: I stand to be corrected, but it would seem to me, if you were a member of the Ontario Municipal Board and you make a decision that this new information could very well have changed their mind, that means you have decided, as a member, that it would have convinced you to change your mind.

Mr. Flynn: No, but the wording is "could," not "would." The wording is very specific; it's "could."

Mr. Hardeman: No, that's what I say: If they think it could have, then personally they believe it would have. But if it doesn't, that means they're not making the right decision. So all of a sudden, the OMB gets to make the decision.

The Vice-Chair: Mr. Prue.

Mr. Prue: I hate to beat a dead horse, but I have to. Again, this is limiting the rights of ordinary people. If you look at it, it's limited right down. These are ordinary people who often will not have an opportunity. Who will have an opportunity in every single case is the development industry. It was in fact the development industry that came before this body and lauded, oh, just thought this was the greatest thing. It seems to me that you've fallen into their trap. They want to be able to push these things through. They don't want people coming out and appealing. They don't want people who find out after the fact, if they've kept it somewhat hidden, to be able to do anything about it.

Quite clearly, residents become aware of many of the council decisions when they read about them in the local newspaper. I have to tell you, and all of you who have been on local councils know, you get calls after the fact: "We didn't know that this was going on. We didn't see the ad in the Globe and Mail because we don't get the Globe and Mail," or "We didn't get the ad in the local whatever because we just didn't see it, but we did see the newspaper article that appeared a week later." All of a sudden they seem, and they are, very interested and have knowledge and have things they want to say. These people are going to be cut right out.

Who also is going to be cut out are groups that are not within the 400 feet perimeter, people who may have a very keen interest. It may be an environmental interest. It may be an interest in terms of the planning process, in terms of business opportunities. It might be a whole bunch of stuff. They would not necessarily be informed. They wouldn't get a letter to the effect. They may not see the ad in the newspaper, but they may see it a week or so later. Their entire submissions are going to be left out under this process.

Now I do see that there is something in there, and I'm not sure exactly how it works. If the municipal board is of the opinion that there are reasonable grounds to add the person or public body as a party, but that's going to be very hard. They're going to have to answer a whole bunch of questions why they didn't turn up. They're going to have to answer a whole bunch of questions what their submission was, whether it's a valid submission, whether it could make a difference. That's a really hard thing to overcome.

It seems to me that if you are truly interested in what the public and the local people have to say and not just what the developers have to say on these issues, because that's what this is coming down to, then you have to change what you're doing. It's probably too late because you've already voted for it three or four times in a row and you're going to vote for it again, but in some cases you have to decide which side you're on. I think that the public, in all cases, is right in the end. They have the right to be heard. They have the right to be consulted. They should have the right to appeal. They should have the right of a citizen to oppose any development at any stage which they think is detrimental to themselves or their community.

Again, I cannot support what you're doing. I cannot support it because all of you who have been involved in the process know how important it is to get the public onside if you are making changes to their neighbourhoods, changes to their municipalities, changes to their lifestyle or changes to how they earn a living. That's what's being done here. It seems to me only the developers are going to be heard in the future, and maybe that's the way you want it.

Mr. Sergio: I think we must not confuse two things here. The new, major information that is being provided, that the OMB sends back to council to make a decision—what the proposed legislation does now is bring the process upfront and deals with all those issues prior to. We have seen that individual groups have plenty of opportunities. This deals with new information that is being supplied. Where council has made a decision, it goes to the OMB. There is new information. The application is sent back, and then council says to the OMB, "Don't just look. Consider what we have decided based on the new information." I think it has nothing to do with cutting off anybody from public hearings at any particular time. That has already been dealt with upfront during the planning process.

Mr. Hardeman: I agree with my colleague Mr. Prue on the problem of people not being properly notified because they didn't get the full communications that some of us avail ourselves of. But this amendment really goes beyond that, for me. This is about the information that is presented after the appeal goes to the Ontario Municipal Board. We're going to make the assumption that the person who is appealing has the right to appeal. It hasn't been taken away from them for this purpose. They are making the appeal and we're talking about the information being provided and the OMB sending it back to council to make a decision before it goes back to them.

There are two things I wanted to clear up. The development did not come in saying that they didn't support putting more information. They were very adamant that they were concerned with the ability of some people to present new information and others not presenting new information. That was their concern, not their support. What they were supportive of was to limit the number of instances where people, at the last minute, could come in and put forward an appeal or be involved in the appeal process when they hadn't really brought their position forward during the process.

They were also very concerned that the OMB was allowed to then accept information, which all parties were not able to do, and the OMB could then decide to hear more information that was presented by one party or

a public body, that the applicant was not necessarily allowed to present and in fact is prohibited from presenting new information in support of the application.

I have concern that the process by when new information—the OMB, first of all, gets to decide whether they accept the new information, and then they get to decide whether in their mind the new information would have an impact on the decision council had made. Then, if they believe it did, they can send it back to council and council can send it back to them to make their final decision. It would seem to me that at this point, when they've made those first two decisions, rather than send it back to council and go through that whole rigmarole, why would they not just make the decision, since that's where the end decision is going to be made anyway? I think this is one area where it's going to prolong the process as opposed to shortening it, as everyone who presented to us was looking to happen.

Mr. Sergio: Just quickly, it's not that we're jumping ahead of ourselves a bit, but later on we will be dealing with what constitutes a complete application, the information required and stuff like that. I think some of those comments will be addressed later on.

Mr. Hardeman: I thank the parliamentary assistant for that. Some of those things will be helpful. But I think this process of sending an application back and forth, when we know that in the end the OMB is going to make the final decision, is a redundant process that's going to lengthen it and make it more expensive for everyone involved and have a tendency to bog down the OMB.

1240

Mr. Sergio: It's important to realize that this new information is not being provided solely by the developer, let's say. It could be a particular group that has good, new, serious information that council should be made aware of, and I think that's where it comes in. So if the information is of a nature that council will be taking into consideration and will be making a subsequent decision and then it goes again to the OMB, then I think that's a fair process for both individual groups and developers. Then, of course, the OMB will make a final decision.

The Vice-Chair: Thank you. I'll call the vote. All those in favour? Opposed? The motion is carried.

Moving on, we have page 24. I believe that the 24, 25 and 26 motions, certainly with the passing of this last one, 23, are not needed in our work here.

Mr. Prue: I think they're needed; I just think they're redundant.

The Vice-Chair: They're not needed in this process. I'm talking about the process.

Mr. Prue: All right.

Mr. Hardeman: I have a question to the legislative staff. The words "striking out 'other than a public body'"—the amended form still includes the words "other than a public body," doesn't it?

Or does it? I never looked. The Chair is so efficient, I haven't had the chance to check it all out.

Ms. Mifsud: It's changed slightly now, if you look at 17(44.1). It's a person or public body who satisfies one of the conditions set out in subsection (44.2), so it's a little more complicated than it was before.

Mr. Hardeman: So we can't do it just that way?

Ms. Mifsud: No. It doesn't work.

The Vice-Chair: Moving on to page 27, a government motion.

Mr. Rinaldi: I move that section 8 of the bill be amended by adding the following subsection:

"(9.1) Subsection 17(45) of the act is amended by striking out 'on its own motion or on the motion of any party' in the portion before clause (a) and substituting 'on its own initiative or on the motion of any party.'"

The Vice-Chair: We have the motion. Any comments?

Mr. Hardeman: Could we get an explanation for it?

Mr. Sergio: It's a technical motion to make clear that the Ontario Municipal Board can act on its own or by a motion from another party to dismiss a hearing.

Mr. Prue: I don't think the board can make a motion on itself—that's the problem with what they wrote the first time.

Mr. Sergio: They don't use that very often.

Mr. Prue: Oh, they don't?

Mr. Hardeman: It's a technical thing.

The Vice-Chair: All those in favour? Opposed? The motion's carried.

Page 28. This is a government motion.

Mr. Lalonde: I move that section 8 of the bill be amended by adding the following subsections:

"(11.1) Section 17 of the act is amended by adding the following subsection:

"'Same

"'(45.1) Despite the Statutory Powers Procedure Act and subsection (44), the municipal board may, on its own initiative or on the motion of the municipality, the appropriate approval authority or the minister, dismiss all or part of an appeal without holding a hearing if, in the board's opinion, the application to which the appeal relates is substantially different from the application that was before council at the time of its decision.'

"(11.2) Subsection 17 (46.1) of the act is repealed and the following substituted:

"'Dismissal

"'(46.1) Despite the Statutory Powers Procedure Act, the municipal board may dismiss all or part of an appeal after holding a hearing or without holding a hearing on the motion under subsection (45) or (45.1), as it considers appropriate.'"

The Vice-Chair: Any comments on this?

Mr. Hardeman: I've noticed that a couple of the amendments have had, "Despite the Statutory Powers Procedure Act...." What is it in this amendment that the Statutory Powers Procedure Act demands we do that this resolution is eliminating?

Mr. Sergio: This clears one very important aspect: It would allow the Ontario Municipal Board to dismiss an appeal of an application that was substantially different than what a council has considered. I guess this would bring an end to those applicants' applications coming in

at the last moment and going directly to the OMB, applications considerably different than what council had considered before.

Mr. Hardeman: Hard as it is to believe, I understood that part of it. I just want to know why it starts off by saying, "Despite the Statutory Powers Procedure Act." I want to know what in that act says that they couldn't do this without it being in spite of that. Why is that in there?

Mr. Sergio: Would our legal expert answer that?

Mr. Hardeman: The reason I bring it up—I think it's very important, while the legal branch is coming up—is that when you put that up front, it means that there is some right that people had before this bill came before us.

Mr. Sergio: I think it's a technical reference to the Statutory Powers Procedure Act, but we'll let Mr. Shachter—

The Vice-Chair: There seems to be some difficulty with "despite" and "in spite," so if you could clarify.

Mr. Hardeman: I believe I have some rights that this is going to take away from me.

Mr. Sergio: Okay. Let's hear.

Mr. Shachter: Currently, under the Statutory Powers Procedure Act, if the parties consent, a proceeding can be disposed of by a tribunal's decision without a hearing. It goes on to say, "unless another act says otherwise." Because the Planning Act contemplates that decisions can be made by the board to dismiss an appeal without a hearing, it has to trump the Statutory Powers Procedure Act in that respect. That's why it says, "despite the act."

Mr. Prue: I have a question; I'm not sure who would answer. The word "substantial" bothers me a little, because we've all seen, I know, a developer come forward with a 20-storey apartment building and then come to the board and say, "I only want a 15-storey." It's still an apartment building; it's still on the same footing. Is that "substantial"? What's the definition of "substantial"? Is the board left to determine that in every case, or is lopping five storeys off an apartment building not considered substantial and it would proceed?

Mr. Shachter: I think, Mr. Prue, you're correct in your question: It will be for the board to determine in every individual case. As more of these circumstances come before the board, you'll have a body of case law develop that sets out the factors one would have to consider as to, "What does 'substantial' mean?"

Mr. Prue: At this point, we would just have to leave it open, much as local committees of adjustment look at the factors: Is this minor variance in the public interest? They've got this idea in their head what constitutes—

Mr. Shachter: In the same way that you've got the four tests for minor variances, and those are set in the statute, you'd have the test developing for, "What is 'substantial'?" As you know, in this type of motion, you'd have the parties arguing before the board as to whether it is or isn't substantial. That's correct.

Mr. Sergio: I think it's fair to add, Mr. Chair, that we've dealt with that portion of a major application change, if you will, where council has not made a decision and the applicant brings that major change directly to the OMB. I think it's important that it goes back to council, that the OMB sends back that application to council, because council has not dealt yet with that particular portion of the application, regardless of how it may be, if it's 20 storeys or 15 storeys.

Mr. Prue: I understand all that, and I agree with all that. I'm just trying to get my head around "substantial." What it is, we don't know, but we'll find out in eight or 10 years when there's a good body of evidence.

Mr. Shachter: I don't want to presume as to what the board will or will not do in that respect, as to whether 15 storeys instead of 20 constitutes "substantial," or mixed use over just commercial constitutes "substantial." It will have to develop as the cases come before the board.

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Mr. Hardeman: On the same topic, the definition of "substantial": You mentioned that case law, the number of cases, will solve that for us, and eventually we will see, based on the OMB decisions, what the OMB considers substantial.

You mentioned minor variances. In all my time in minor variances, after all the OMB decisions on minor variances, I have never yet found an OMB decision that actually defines what a minor variance is. What is minor? Is it 100 feet? Is it one foot? Because every one is different. Why would we assume that "substantial" is going to be better defined than "minor variance"? No one seems to know what is minor and what isn't.

Mr. Shachter: To my understanding, over a number of years, the board has developed a series of factors as to what the four tests mean under a minor variance application. You are right: The board has said in many cases that "minor" is not necessarily a number. Because the board isn't a court and because, as you know, decisions don't bind future panels, these in some sense end up being—I hate to use the term "guidelines," but these will guide future panels of the board in determining how the tests are met. So I would say that in fact there is a level of clarity with respect to whether a proposed minor variance would meet the four tests in one case or not.

The Vice-Chair: Thank you to legal counsel.

We have a vote on this. All those in favour? Opposed? Carried.

Shall section 8, as amended, carry? All those in favour? Opposed? Carried.

I think we'll recess at this time. We will be back at 2 p.m. I wish you a good lunch.

The committee recessed from 1255 to 1402.

The Vice-Chair: Welcome back. I'd like to call the afternoon session to order. Before the recess, we were just entering section 9. I do not see any amendments to section 9. Is there anything on section 9 from anyone? If not, shall section 9 carry? Carried.

Section 10: We have a government motion on page 29. Mr. Flynn.

Mr. Flynn: I move that subsection 22(3) of the Planning Act, as set out in subsection 10(3) of the bill, be

amended by striking out "an open house and public meeting" and substituting "a public meeting."

Mr. Prue: Is that 29?

Mr. Flynn: No, this is 30.

Interjections.

The Vice-Chair: We're on number 29.

Mr. Flynn: Oh, I'm sorry. You're right. I thought we had dealt with it. Let me try that again. Actually, when you hear this one you'll probably understand why.

The Vice-Chair: Carry on.

Mr. Flynn: I move that subsections 10(1) and (2) of the bill be struck out and the following substituted:

"(1) Clause 22(1)(a) of the act is amended by striking out 'under subsection (4)' and substituting 'under subsections (4) and (5), if any.'

"(2) Clause 22(2)(a) of the act is amended by striking out 'under subsection (4)' and substituting 'under subsections (4) and (5), if any.'"

The Vice-Chair: Any discussion? Mr. Prue.

Mr. Prue: What does it mean? I'm sure you're asking the same question.

Mr. Sergio: I can respond to that.

Mr. Hardeman: That's my question too. It sounds like a very formal amendment, but I don't know what it does.

Mr. Sergio: We dealt earlier with another motion to remove the requirement for a mandatory public open house, and this motion maintains that policy intent. Also, the motion will ensure that in addition to material already required, any complete application material defined in the local official plan is forwarded to the appropriate authority as well. That's what it does.

The Vice-Chair: Anything further on that? If not, I shall call the vote. All those in favour? Opposed? The motion is carried.

Page 30: This is a government motion.

Ms. Jennifer F. Mossop (Stoney Creek): I move that subsection 22(3) of the Planning Act, as set out in subsection 10(3) of the bill, be amended by striking out "an open house and public meeting" and substituting "a public meeting."

The Vice-Chair: Thank you. Any discussion?

Mr. Hardeman: Yes. I wondered if we could find out why we want to strike out "an open house."

Mr. Sergio: This is a technical motion. We dealt with it already.

Mr. Hardeman: As I read it, it's technical but it says that we're going to replace "an open house and a public meeting" with "a public meeting." So in fact we are eliminating the open house.

Mr. Sergio: I think "public open house" is not public meetings.

Ms. Mossop: But an open house could be just a little less prescriptive.

The Vice-Chair: Anything further?

Ms. Mossop: I was just saying it's a little less prescriptive. It keeps it more general. An open house could be part of a public meeting.

Mr. Hardeman: I guess my concern is the word "and"—"an open house and public meeting," and then we substitute "public meeting," which is only half of what was required before.

Mr. Sergio: The bill proposes that subsection 22(3) of the Planning Act provides that an open house and a public meeting are not required for an official plan amendment application if council refuses to adopt the proposed amendment.

Mr. Hardeman: An open house and a public meeting are not required—

Mr. Sergio: If council refuses to adopt the proposed amendment.

Mr. Prue: How does council know before it holds the open house and public meeting that it's going to refuse to adopt it? Are they going to look at it and say, "We're not going to adopt this"?

Mr. Hardeman: It's starting to get cloudy here. I guess it goes on with that. The public meetings and open houses are held before council makes a decision in the process. We don't wait to hear from the public until after the decision has been made. So when you don't hold one, I don't know how you would know that council is not going to adopt the amendment, so why would they not hold the meeting?

Mr. Sergio: In previous motions I believe we dealt with if council decides to hold an open house. Not on every application is it mandatory that the local municipality is going to hold an open house. We heard from small municipalities, where they said, "We don't want to have an open house." They may do away with it.

Mr. Hardeman: My concern is, if council gets to decide when they do or do not hold an open house, then why are we talking about open houses at all? They always have had the ability to hold one if they want one, and if this doesn't mandate that they have to hold one, why are we talking about them?

Mr. Sergio: That's why this is a technical motion which removes the reference to the mandatory open house. If they want it, they hold one.

Mr. Hardeman: This isn't what this motion says. This motion says to strike out the words "an open house and public meeting" and replace them with "a public meeting." So they're still saying the same thing about the public meeting. Then, when you go back to the act, it says that you don't have to hold an open house or a public meeting.

Mr. Sergio: That's exactly why. It is not mandatory. We'll leave it up to the local municipalities.

1410

Mr. Hardeman: If they don't pass the amendment.

Mr. Sergio: That's right.

Mr. Hardeman: But we have the sequence wrong. They don't know whether they're going to pass the amendment until after they've held whatever meetings they're going to hold.

Mr. Sergio: But it's still up to the local municipality if they want to hold an open house or not.

Mr. Hardeman: Let's forget the open house for a moment and go to just the public meeting. When would they decide that they're not holding a public meeting? This deals with—after they've decided they're not going to approve the amendment, then they don't have to hold a public meeting. Well, I would hope that they've already done it.

The Vice-Chair: Mr. Flynn?

Mr. Flynn: I was going to ask if Mr. Sergio or staff could perhaps explain for the benefit of all of us the requirements that municipalities have right now to hold public open houses and public meetings for certain types of applications, whether they be official plan amendments, zoning reviews, that type of thing. Each one, as I understand it, has a different type of criterion assigned to it. It may be good for us all to understand the existing situation and what this would change it to.

Mr. Shachter: Currently, the Planning Act says that despite the requirement to hold an open house, if council is going to refuse an application, then they may do so. You will know that in the bill there was a requirement that there be an open house and a public meeting. Because the open house requirement is now being deleted so that it only applies in those situations when there's a five-year review or development permit system review, then the requirement is no longer needed to make reference to that open house.

You had talked about the sequence of matters occurring. While I understand what you're saying, that you would expect a council to hold an open house—and they do have the authority to—they're not required to because the Planning Act currently provides that despite that requirement, if they're going to refuse, they don't have to hold the statutory public meeting. Does that assist in terms of understanding the sequence?

Mr. Hardeman: I understand the sequence and I appreciate removing the open house reference. I guess my question really comes from Mr. Prue's question. How would council know they were going to refuse the application if they haven't even held a public meeting? Would that mandatory public meeting not be held prior to council's decision?

Mr. Shachter: Pursuant to the provisions of the Planning Act currently, it's not necessarily a requirement. Council could make the decision based, for example, on staff's planning report, that the proposal is so inappropriate that it wouldn't even be necessary to hold a statutory public meeting before making the decision. So you could get information in other ways, other than just from the public.

Mr. Hardeman: If that were to happen—I find that a bit of a stretch, that council would review the application and the planning report before they held a public meeting. But if they did that, who would have the right to appeal the decision?

Mr. Shachter: Whoever in the Planning Act would have the right to appeal a council refusal. For example, the proponent would be able to; the minister conceivably could; an approval authority could.

Mr. Hardeman: So it could get to the Ontario Municipal Board under an appeal without ever having gone to the public.

Mr. Shachter: In that situation, it's conceivable that it could.

The Vice-Chair: Mr. Lalonde, you had a question?

Mr. Lalonde: I have a question just for clarification, again. Any request for amendment has to come up in front of the municipal council.

Mr. Shachter: That's correct.

Mr. Lalonde: Even if it is rejected, it has to come up at a public meeting.

Mr. Shachter: That's correct but it doesn't have to—

Mr. Lalonde: So it will be on the agenda.

Mr. Shachter: It has to come up on the agenda and it does have to come before council for its consideration; that's correct. But it doesn't have to necessarily come up at the statutory public meeting under subsection 17(15).

Mr. Lalonde: Exactly. But let's say a person comes in and he wants an amendment to the official plan for a 15-storey building and we find out that the fire department only has equipment to cover up to 10 storeys and the municipal council will reject it. Could the demandeur, the person who is asking for the amendment, appeal that to the local appeal board?

Mr. Shachter: Well, you wouldn't be able to appeal it to the local appeal board unless it was a consent or a minor variance. For example, if it was an official plan amendment or a zoning bylaw amendment, it could go to an appeal body; it could go to the Ontario Municipal Board.

Mr. Lalonde: That's it. Okay. I have the answer.

The Vice-Chair: Okay. Mr. Prue.

Mr. Prue: I remember once, when I was on council before I was the mayor, a similar situation. Somebody wanted to have a body transfer station in an ordinary house on a street in East York. The council, in its wisdom, unanimously said, "We're not even holding a public meeting. This is ridiculous."

I want to ask, if such a situation were to happen, and the gentleman or the person with the body transfer house was successful in appealing to the Ontario Municipal Board and no one was heard, how would the neighbours be able to influence that decision before the board since there were no deputants? How would they get standing?

Mr. Shachter: Meaning, under the current situation that's—

Mr. Prue: Under this situation that's unfolding here today. There were no deputants, therefore no one made any submissions; no one put any written arguments in. In this scenario that happened in East York all those years ago, how would any of those neighbours or people be able to have standing before the board to talk about having a body transfer station in the house next door to them?

Mr. Shachter: They would be able to participate in the hearing in one of two ways. If they had concerns, they could be asked to be made participants, and then they'd be able to come forward, give evidence and speak

to the various issues relating to the impact of the body transfer station in their neighbourhood. In addition, they could also ask to be made parties to the hearing.

You will remember from earlier that one of the bases upon which the board can grant party status is if there are reasonable grounds to do so. Without wishing to comment on whether that would constitute reasonable grounds or not, certainly that would be something that the board could take into account in determining whether they want to become a party or not.

Mr. Prue: Okay. But the people would not have an unqualified right to attend against such a thing, the municipal council having usurped the public process.

Mr. Shachter: I don't want to comment on whether the process has been usurped or not—I'm not really here to comment on that—but in terms of how they could participate in the process, certainly that would be the mechanism that I've laid out earlier.

Mr. Prue: Okay. Thank you.

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: Again, going back to making a decision without holding the public meeting, am I wrong, then, that if they decided to do that because it was such a frivolous or outlandish transfer station-type idea that planning staff presumed council would not approve it, so they take it to the council? They have to turn it down, so they have the same process, but in fact, under the law, you would be prohibiting council from making a positive decision. Is that right? They couldn't make a positive decision because they haven't held a public meeting.

Mr. Shachter: I think we have to remember, though, that the provisions provide currently that it "despites" that provision. So council could make a refusal without having to hold the public meeting, and it could be based on, as I said before, a staff report, for example, that might be a negative staff report.

Mr. Hardeman: But they couldn't make a positive decision without that public meeting.

Mr. Shachter: I think that's probably correct. That's right, in order to be able to decide rather than just a refusal.

Mr. Hardeman: So we have a hearing set up, and people would come to this meeting, but council does not have the ability legally to make a "yes" decision. Is that right? Because they haven't held a public meeting, so they can't make a positive decision.

Mr. Shachter: That's correct. Subsection 17(15) does require you to hold that public meeting before you make a decision. So it doesn't say before you make a positive decision, but it's before you make any decision with respect to the application that's before them.

Mr. Hardeman: So if you bring it before council without the public meeting, the only alternative, if we pass this amendment, is to say no. If they say yes, they must go back and hold a public meeting first.

Mr. Shachter: Except that currently the Planning Act outside of Bill 51 provides for that today. So what's being contemplated, I understand, does not change the current situation. It has always been contemplated. The Planning Act, as far back as I can remember, has said that if a council is going to refuse, they then don't have to go through that whole public meeting process. So that's what exists today. What's being contemplated does not change that.

1420

Mr. Hardeman: The previous government with the previous act was as silly as we are here today.

Mr. Shachter: I can't comment.

The Vice-Chair: Thank you for your counsel. I think we've had a good debate on this. I'll put the question: All those in favour? Opposed? The motion is carried.

Next, moving on to page 31, we have a PC motion.

Mr. Hardeman: I move that the subsection 10(4) of the bill be amended by adding the following provision between subsections 22(5) and 22(6) of the Planning Act:

"Regulations

"(5.1) The Minister may make regulations,

"(a) determining what constitutes a completed application for the purposes of this section; and

"(b) requiring that a pre-consultation process be established for the purposes of this section and setting out standards and rules for the carrying out of the pre-consultation process."

The Vice-Chair: Thank you. Any comments, discussion? No comments on this? I'll call the vote.

All in favour? Opposed? The motion is defeated.

Interjections.

Ms. MacLeod: If I could just hear—

The Vice-Chair: Okay. Those opposed—I'm sorry. Those in favour of the motion?

Interjection.

The Vice-Chair: Right, I did see.

Those opposed? I did see.

Interjections.

The Vice-Chair: It was clear to me. It's lost.

Next we have page 32, a government motion, Mr. Rinaldi.

Mr. Rinaldi: I move that clause 22(6)(b) of the Planning Act, as set out in subsection 10(4) of the bill, be amended by striking out "clauses (7)(c) and (d)" and substituting "paragraphs 1 and 2 of subsection (7.0.2)".

The Vice-Chair: Okay, thank you. Any comments?

Mr. Prue:: I'd just like to hear what it's about.

Mr. Sergio: It's a technical motion.

The Vice-Chair: A technical motion. Okay, we've heard the motion.

Those in favour? Those opposed? Carried.

Page 33, a government motion, Mr. Lalonde.

Mr. Lalonde: I move that subsection 22(6.1) of the Planning Act, as set out in subsection 10(4) of the bill, be struck out and the following substituted:

"Response re completeness of request

"(6.1) Within 30 days after the person or public body that requests the amendment pays any fee under section 69, the council or planning board shall notify the person or public body that the information and material required under subsections (4) and (5), if any, have been provided, or that they have not been provided, as the case may be.

"Motion re dispute

"(6.1.1) Within 30 days after a negative notice is given under subsection (6.1), the person or public body or the council or planning board may make a motion for directions to have the municipal board determine,

"(a) whether the information and material have in fact been provided; or

"(b) whether a requirement made under subsection (5) is reasonable.

"Same

"(6.1.2) If the council or planning board does not give any notice under subsection (6.1), the person or public body may make a motion under subsection (6.1.1) at any time after the 30-day period described in subsection (6.1) has elapsed.

"Notice of particulars and public access

"(6.1.3) Within 15 days after the council or planning board gives an affirmative notice under subsection (6.1), or within 15 days after the municipal board advises the clerk of its affirmative decision under subsection (6.1.1), as the case may be, the council or planning board shall,

"(a) give the prescribed persons and public bodies, in the prescribed manner, notice of the request for amendment, accompanied by the prescribed information; and

"(b) make the information and material provided under subsections (4) and (5) available to the public."

The Vice-Chair: Any comments?

Ms. MacLeod: I want to congratulate the member opposite for getting all that out. I thought that was great. It was a long one.

Mr. Lalonde: I'll read it in French.

The Vice-Chair: No comments? Mr. Prue.

Mr. Prue: I'm trying to understand the rationale, because it appears to me that this is something the developers have requested, who think that the councils are then going to request studies and additional information, and they don't want to provide it. Is that what this is for: to speed up the application and keep the developers happy? Is that what the regulation is about?

Mr. Sergio: I think this was addressed by a number of delegations on both sides. We were dealing earlier this morning with something similar with respect to timing and completeness of applications. I think it was Mr. Hardeman getting into that particular discussion. This addresses the fact that council has to make a decision whether an application that has been received is complete or incomplete within a prescribed time, which here is 30 days, and they have to respond to it in 15 days if it is indeed a complete application. So this deals with the documentation which is being brought to the local municipalities and the timing within which council has to make a decision.

Mr. Prue: But it's only the person or public body that made the application that can do this process. So in effect it's only the developer or the person seeking the change that can force the speed-up of the process. It's not somebody opposing it who can speed up the process or slow down the process; it's only the applicant. So surely this is for the developers. I don't see anybody else whom it could possibly be for.

Mr. Sergio: I think it works both ways.

Mr. Prue: How?

Mr. Sergio: It's up to the local municipality to say whether they have indeed received all the documentation with respect to an application or not. It could be a minor application and all the documentation should be—a major application may have leverage and have other information provided later on, but I think this is forcing the local municipality to make a decision and say, "Yes, the application is complete and it can go ahead." If it's not complete, then within 15 days after that, they have to make a decision on whether they need more material or not.

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: I have some concerns about the definitive dates and the timelines on this. I agree with Mr. Prue that this isn't going to speed up the process. What it's doing to the municipalities here is making sure that they have the review completed within the 30 days from the time they apply, because if they haven't, when they do their review and decide they need more information, they can't request it any more because they had said it was a complete application.

Having said that, I agree with the parliamentary assistant that we had a lot of presenters who came forward and said, "You have to have a process in place that puts a deadline on what the municipality can be asking for." There were some presentations that talked about how the municipality would review it for 60 days and then come back and say, "But we need another study." They'd go and do that and then later, rather than make a decision, they would want more information. So you need a deadline, but I'm concerned that if you put that 30-day time frame in this amendment, a lot of municipalities are going to have trouble actually even realizing what a complete application will be in this case. It could be quite an involved application where more information is needed on studies and so forth before they can properly deal with it. I'm not sure that this will leave it open enough for municipalities to be able to do that.

1430

Mr. Sergio: I think this deals with two aspects. It is giving local municipalities 30 days to deal with the material they have received, to make a decision if that is enough to call it a complete application or not and, I think, to maybe close the door for developer applicants, if you will, to come and give bits and pieces of information. So I think this works both ways. But within 30 days I think council should respond and say, "Yes, we do," or "We don't have sufficient information to make this a complete application.

The Vice-Chair: Mr. Lalonde.

Mr. Lalonde: I think this is a very, very good amendment. I remember that the previous government passed a bill because some municipalities were really dragging their feet, taking six and eight months before passing an amendment. I've seen that many times. The previous

government passed a bill that municipalities now are eligible or allowed to hire a private planner to review the application to make sure that everything meets the municipality's requirements.

Mr. Hardeman: Just one further question on the process after the 30 days and the request for the OMB to decide what a completed application will be in this case: Is this a similar process—maybe we need the legal branch to give us this—as we talked about earlier, that the OMB, as a third party, would actually make a decision on what a complete application is, as opposed to actually hearing the application?

Mr. Sergio: The way I read it, if council fails to make a decision to respond within the 15 days, then the OMB could be making that decision.

Mr. Hardeman: But the decision would be strictly based on whether it is or isn't a complete application, not on the merits of the application. Is that right?

Mr. Sergio: Yes.

The Vice-Chair: Okay. We've had a debate. All in favour of the motion? Those opposed? Carried.

Next we have page 34, a government motion.

Mr. Flynn: This is a consequential amendment to the previous item, I think.

I move that subsection 22(6.2) of the act, as set out in subsection 10(4) of the bill, be amended by striking out "subsection (6.1)" and substituting "subsection (6.1.1)."

The Vice-Chair: Any comments? All in favour? Opposed? Carried.

Page 35, government motion.

Ms. Mossop: I move that subsection 10(5) of the bill be struck out and the following substituted:

"(5) Subsection 22(7) of the act is repealed and the following substituted:

"Appeal to OMB

"(7) When a person or public body requests an amendment to the official plan of a municipality or planning board, any of the following may appeal to the municipal board in respect of all or any part of the requested amendment, by filing a notice of appeal with the clerk of the municipality or the secretary-treasurer of the planning board, if one of the conditions set out in subsection (7.0.2) is met:

"1. The person or public body that requested the amendment.

"2. The minister.

"3. The appropriate approval authority.

"Consolidated Hearings Act

"(7.0.1) Despite the Consolidated Hearings Act, the proponent of an undertaking shall not give notice to the hearings registrar under subsection 3(1) of that act in respect of an amendment requested under subsection (1) or (2) unless,

"(a) one of the conditions set out in subsection (7.0.2) is met;

"(b) if the plan is exempt from approval, the requested amendment has been adopted under subsection 17(22);

"(c) the approval authority makes a decision under subsection 17(34); or

"(d) the time period referred to in subsection 17(40) has expired.

"Conditions

"(7.0.2) The conditions referred to in subsections (7) and (7.0.1) are:

"1. The council or the planning board fails to adopt the requested amendment within 180 days after the day the request is received.

"2. A planning board recommends a requested amendment for adoption and the council or the majority of the councils fails to adopt the requested amendment within 180 days after the day the request is received.

"3. A council, a majority of the councils or a planning board refuses to adopt the requested amendment.

"4. A planning board refuses to approve a requested amendment under subsection 18(1).

"Time for appeal

"(7.0.3) A notice of appeal under paragraph 3 or 4 of subsection (7.0.2) shall be filed no later than 20 days after the day that the giving of notice under subsection (6.3) is completed."

The Vice-Chair: Any comments?

Mr. Hardeman: I just wanted to hear the comments from the other side, since I haven't got the act right here in front of me. What's the intent of this? I notice a lot of timelines in it. I understood we were going to get away from timelines specifically—forcing municipalities to adhere to a certain tight timeline.

Mr. Sergio: I think this differs a bit from a particular time. I think this would ensure, indeed, that council and the public would have an opportunity to review the application prior to giving the opportunity to an appealing body to make an appeal. In other words, there's no more such a thing that an applicant can go to the Ontario Municipal Board prior to having public hearings and having council have an opportunity to deal with the application.

The Vice-Chair: Any further comments? If not, I'll call the vote. All those in favour? Those opposed? Carried.

Page 36: a government motion.

Mr. Rinaldi: I move that subsections 22(7.1) and (7.2) of the Planning Act, as set out in subsection 10(6) of the bill, be struck out and the following substituted:

"Appeals restricted re certain amendments

"(7.1) Despite subsection (7) and subsections 16(36) and (40), there is no appeal in respect of,

"(a) a refusal or failure to adopt an amendment described in subsection (7.2); or

"(b) a refusal or failure to approve an amendment described in subsection (7.2).

"Application of subs. (7.1)

"(7.2) Subsection (7.1) applies in respect of amendments requested under subsection (1) or (2) that propose to,

"(a) alter all or any part of the boundary of an area of settlement in a municipality;

"(b) establish a new area of settlement in a municipality; or

"(c) amend or revoke official plan policies that are adopted to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or row house situated in an area where residential use, other than ancillary residential use, is permitted.

"Same

"(7.2.1) If the official plan contains policies dealing with the removal of land from areas of employment, subsection (7.1) also applies in respect of amendments requested under subsection (1) or (2) that propose to remove any land from an area of employment, even if other land is proposed to be added."

The Vice-Chair: Any comments?

Mr. Prue: It was just technical, and I may have heard it wrong; I just want to make sure that the record is properly reflected. I believe there was a misspoken word: "16" was used in lieu of "17" in one of the sentences. I just want to make sure that if and when the act is passed, it doesn't have that misspoken edition.

The Chair: Sorry, I missed it.

Mr. Hardeman: He said 16(36) instead of 17(36).

Mr. Prue: Yes. I believe it's under "Appeals restricted re certain amendments."

The Vice-Chair: Where it says "subsections 17(36)"?

Mr. Prue: Yes, 17(36). What was said was "16(36)," and if that's part of the official record, I think it ought not to be.

The Vice-Chair: It has now been clarified: 17(36).

All in favour of the motion? Opposed? The motion is carried.

Number 37, a PC motion: I believe it was already covered in the last one.

Moving on to page 38: This is a government motion.

1440

Mr. Lalonde: I move that subsection 10(7) of the bill be struck out and replaced by the following:

"(7) Subsections 22(9.2) and (9.3) of the act are repealed and the following substituted:

"Appeals withdrawn, amendment

"(9.2) If all appeals under subsection (7) brought in accordance with paragraph 1 or 2 of subsection (7.0.2) in respect of all or any part of the requested amendment are withdrawn within 15 days after the date that the most recent notice of appeal was filed, the council or planning board may, unless there are any outstanding appeals, proceed to give notice of the public meeting to be held under subsection 17(15) or adopt or refuse to adopt the requested amendment, as the case may be.

"Decision final

"(9.3) If all appeals under subsection (7) brought in accordance with paragraph 3 or 4 of subsection (7.0.2) in respect of all or any part of the requested amendment are withdrawn within 15 days after the last day for filing a notice of appeal, the decision of the council or planning board is final on the day that the last outstanding appeal has been withdrawn."

The Vice-Chair: Thank you. Any discussion? All in favour? Opposed? Carried.

Page 39. Government motion. Mr. Flynn.

Mr. Flynn: I move that subsection 10(8) of the bill be struck out and the following substituted:

"(8) Subsection 22(11) of the act is repealed and the following substituted:

"Application

"(11) Subsections 17(44) to (44.7), (45), (45.1), (46), (46.1), (49), (50) and (50.1) apply with necessary modifications to a requested official plan amendment under this section, except that subsections 17(44.1) to (44.7) and (45.1) do not apply to an appeal under subsection (7) of this section, brought in accordance with paragraph 1 or 2 of subsection (7.0.2).

"(9) Subsection 22(12) of the act is amended by striking out 'appeals under clause (7)(c) or (d)' and substituting 'appeals under subsection (7) brought in accordance with paragraph 1 or 2 of subsection (7.0.2)'.

"(10) Subsection 22(13) of the act is amended by striking out 'appeals under clause (7) (e) or (f)' and substituting 'appeals under subsection (7) brought in accordance with paragraph 3 or 4 of subsection (7.0.2).'"

The Vice-Chair: Thank you. Any comments? I'll call the vote. All those in favour? Those opposed? Carried.

That brings us to the end of section 10. Shall section 10, as amended, carry? All in favour? Opposed? Carried.

Section 11: I see no amendments. Any discussion on section 11? If not, shall section 11 carry? Those in favour? Opposed? Okay.

Section 12, page 40: We have a government motion. Ms. Mossop.

Ms. Mossop: I move that section 26 of the Planning Act, as set out in section 12 of the bill, be struck out and the following substituted:

"Updating official plan

"26. (1) If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, not less frequently than every five years after the plan comes into effect as an official plan or after that part of a plan comes into effect as a part of an official plan, if the only outstanding appeals relate to those parts of the plan that propose to specifically designate land uses,

"(a) revise the official plan as required to ensure that it,

"(i) conforms with provincial plans or does not conflict with them, as the case may be,

"(ii) has regard to the matters of provincial interest listed in section 2, and

"(iii) is consistent with policy statements issued under subsection 3(1); and

"(b) revise the official plan, if it contains policies dealing with areas of employment, including, without limitation, the designation of areas of employment in the official plan and policies dealing with the removal of land from areas of employment, to ensure that those policies are confirmed or amended.

"Effect of provincial plan conformity exercise

"(2) For greater certainty, the council revises the official plan under subsection (1) if it,

"(a) amends the official plan, in accordance with another act, to conform with a provincial plan; and

"(b) in the course of making amendments under clause (a), complies with clauses (1)(a) and (b) and with all the procedural requirements of this section.

"Consultation and special meeting

"(3) Before revising the official plan under subsection (1), the council shall,

"(a) consult with the approval authority and with the prescribed public bodies with respect to the revisions that may be required; and

"(b) hold a special meeting of council, open to the public, to discuss the revisions that may be required.

"Notice

"(4) Notice of every special meeting to be held under clause (3)(b) shall be published at least once a week in each of two separate weeks, and the last publication shall take place at least 30 days before the date of the meeting.

"Public participation

"(5) The council shall have regard to any written submissions about what revisions may be required and shall give any person who attends the special meeting an opportunity to be heard on that subject.

"No exemption from approval

"(6) An order under subsection 17(9) does not apply to an amendment made under subsection (1).

"Declaration

"(7) Each time it revises the official plan under subsection (1), the council shall, by resolution, declare to the approval authority that the official plan meets the requirements of subclauses (1)(a)(i), (ii) and (iii).

"Direction by approval authority

"(8) Despite subsection (1), the approval authority may, at any time, direct the council of a municipality to undertake a revision of all or part of any official plan in effect in the municipality and when so directed the council shall cause the revision to be undertaken without undue delay.

"Updating zoning bylaws

"(9) No later than three years after a revision under subsection (1) or (8) comes into effect, the council of the municipality shall amend all zoning bylaws that are in effect in the municipality to ensure that they conform with the official plan.

"Minister may request amendment to zoning bylaw

"(10) The minister may, if he or she is of the opinion that a zoning bylaw in effect in the municipality does not conform with the official plan as revised under subsection (1) or (8), request the council of the municipality to pass an amendment to the zoning bylaw to achieve conformity."

The Vice-Chair: Any comments?

Mr. Hardeman: I have three questions on it. It's a rather lengthy amendment. I was starting to think that maybe the government had decided to rewrite the act during the clause-by-clause process. We're getting close.

First of all, on the first part of the page that my colleague read:

"(ii) has regard to the matters of provincial interest listed in section 2, and

"(iii) is consistent with policy statements issued under subsection 3(1)...."

What is the difference between those two? What's the difference between the matters? It would seem to me that policy statements are of provincial interest—

Mr. Sergio: That's right; provincial policy statements.

Mr. Hardeman: Yes, but what are matters that are just of provincial interest but are not policy statements? I have some problems that that would open it up to a great number—all of a sudden the province could say, "The policy statements don't matter. You haven't thought about these things here. We have an interest in building a courthouse in the centre of your town and you haven't given that any consideration at all." That wouldn't be part of a policy statement. I'm wondering what is covering off that isn't part of a policy statement.

Mr. Sergio: Without going to legal staff, let me attempt to answer your question. For example, when the minister says, "We give you five years for a new official plan and three years for zoning bylaws," and stuff like that, if they fail to do that, I think the minister can come in and make sure that indeed they bring their zoning bylaws within the three-year time limit. That would be one area.

Mr. Hardeman: Is that an item that's in section 2?

Mr. Sergio: Mr. Hardeman, this deals with some previous questions you had on previous motions here with respect to time—five years, three-year amendments—and as well, the employment lands. Okay?

1450

Mr. Hardeman: Yes, but if I could just carry on. This section deals with revising the official plan.

Mr. Sergio: Yes, in five years.

Mr. Hardeman: And then as they revise the official plan, these are things they must do: "(i) conforms with provincial plans," which makes good sense, "or does not conflict with them, as the case may be, (ii) has regard to the matters of provincial interest listed in section 2, and (iii) is consistent with" provincial "policy statements...." What is the difference of being consistent with provincial policy statements—why would they not be consistent with matters of provincial interest? Isn't a statement the statement of provincial interest?

I guess I need to know why because it's quite significant. The two terms, "have regard for" and "be consistent with"—I don't think there's anything in the planning process that's had more debate.

Mr. Sergio: To me, they are both the same, but we'll get a legal opinion.

Mr. Hardeman: I'd like to know why we have both here and what the issues would be.

The Vice-Chair: Mr. Prue, did you have—

Mr. Prue: Yes, but I believe he was about to get an answer.

The Vice-Chair: Oh, I'm sorry. I was sidetracked.

Interjections.

The Vice-Chair: Legal counsel.

Mr. Shachter: I understand, Chair, that the question related to the difference in the two tests that were set out and the revision of the official plan. As you will know, section 2 of the Planning Act sets out matters of provincial interest to which the minister, local boards and municipalities are to have regard. That is a test that is set out in section 2. Section 2 sets out the broad general matters of provincial interest; for example, things like the minimization of waste, orderly development of safe and healthy communities—the broad issues, the broad matters.

Section 3 is the section through which the provincial policy statement implements those matters of provincial interest. As you know, section 3, in that section, requires that decisions that are made are to be consistent with the provincial policy statement. So they are intended to be two discrete tests which people who are making decisions have to consider.

Mr. Hardeman: Thank you. The second one was on the consultation and special meeting, and it goes back to the discussion we had this morning about a public meeting. I find it interesting that (b) in subsection (3) is "hold a special meeting of council open to the public...." Would that meeting be appropriate to be the mandatory meeting for an official plan amendment or a bylaw change?

Mr. Sergio: Yes.

Mr. Hardeman: I think this was my argument this morning about the difference between a public meeting and a meeting of council that the public is invited to.

The Vice-Chair: Please identify yourself.

Mr. Ron Glenn: Ron Glenn, provincial planning and environmental services, Ministry of Municipal Affairs and Housing.

Currently in the Planning Act there is a requirement for council to hold a special meeting to consider revisions to the official plan. This is that same special meeting. In addition, if it's a five-year review—if you remember earlier from this morning—it's required to hold a mandatory public open house and a mandatory public meeting. So really there are three opportunities for the public to be engaged.

Mr. Hardeman: But this wouldn't be the mandatory public meeting?

Mr. Glenn: No.

Mr. Hardeman: Thank you. That's what I needed.

The last one is number (8): "Despite subsection (1), the approval authority may, at any time, direct the council of a municipality to undertake a revision of all or part of any official plan in effect in the municipality and when so directed the council shall cause the revision to be undertaken without undue delay." Could you tell me who that applies to? Who in the province requires official plan approval authority?

Mr. Sergio: Local municipalities.

Mr. Hardeman: All local municipalities?

Mr. Sergio: Yes.

Mr. Hardeman: They all require this. So what this is saying is that the minister can, at any point in time, ask anyone to do an official plan review?

Mr. Sergio: Not ask anyone, but may direct local municipalities, if they have not conformed to the provincial policies. If they are zoning bylaws or the five-year planning revisions, the minister can request that it be done.

Mr. Hardeman: So you're suggesting that the approval authority referred to here is the province for everyone?

Mr. Sergio: I don't get your question. I'm sorry. What do you mean?

Mr. Hardeman: It's quite clear: "Despite subsection (1), the approval authority may, at any time, direct the council of a municipality to undertake a revision of all or part of any official plan in effect in the municipality and when so directed the council shall cause the revision to be undertaken without undue delay." It doesn't talk about whether it meets guidelines or anything. It just says that the approval authority can tell anyone with an official plan to have a revision.

Mr. Sergio: But I believe that subsection (1) here says, "If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, not less frequently than every five years after the plan comes into effect...." If they don't do that, that's when the minister may step in.

Mr. Hardeman: But the headline of (8) is "Direction by approval authority." Who is the approval authority?

Mr. Sergio: Let's get staff. He will clarify it for you.

Mr. Petersen: In most cases it would be the minister that is responsible for the approval of an official plan, but in some cases that responsibility will have been delegated, for instance, to an upper-tier municipality or what have you. So this really reflects a current provision in the Planning Act, which basically provides approval authorities with this ability.

Mr. Hardeman: Could you tell me what percentage of the province, when it comes to upper-tier municipalities, has local approval authority and which ones the minister has the authority for? I'm a little concerned as to how broad this is, how many municipalities the minister can obligate to review the plan at his command after this act is passed.

Mr. Petersen: I don't know what the exact number is, to be perfectly honest, but the minister could make this request, or the approval authority that has that responsibility for approving the lower-tier official plans. So some of that responsibility is at the upper-tier level. In terms of percentage, I just don't have that figure right off the top of my head.

Mr. Hardeman: To the parliamentary assistant, I have some concerns. We have the provision in here, and we had some discussion about it at committee, about the automatic review of the official plans in five years. This section here would imply to me that in those areas where the minister has the approval authority, he could actually come out and say he wants it all done in the next six months, and they would be obligated to do it. There's no condition here as to what is required for him to ask for the review. He can just tell them to review it.

Mr. Sergio: I don't think he can just come within six months and force it. I think it's giving very clear direction to the local municipality to comply within the five-year period, and three years hence, but I don't see the six months.

Mr. Hardeman: I guess that's where we're getting to the technicality of it. It says, "Despite subsection (1)"—and subsection (1) is the one that says when the review must take place—"the approval authority," which in this case is the minister, "may, at any time, direct the council of a municipality to undertake a revision of all or part of any official plan in effect in the municipality and when so directed the council shall cause the revision to be undertaken without undue delay."

Mr. Petersen: Just to reiterate, perhaps, if this creates some clarity, there is an existing provision in the act right now that does exactly this, so this provision is in the act. It is restated in this particular section because it was rewritten, but the provision is in the Planning Act right now.

Mr. Hardeman: So this amendment is replacing a part of the Planning Act that's already there?

Mr. Petersen: That's right. It was done for the sake of making sure that everything kind of flowed together in a proper format.

Mr. Sergio: I think Mayor McCallion was quite happy with this amendment.

Mr. Hardeman: All is well that ends well.

The Vice-Chair: Thank you for your help.

Mr. Sergio: I should have said that before.

The Vice-Chair: Okay, we've had debate on this.

Mr. Prue: I still have my question.

The Vice-Chair: My apologies. Mr. Prue.

Mr. Prue: On the last page, subsection (9), "Updating zoning bylaws," you have left this in; this has not changed: "No later than three years after a revision under subsection (1) or (8) comes into effect, the council of the municipality shall amend all zoning bylaws that are in effect in the municipality to ensure that they conform with the official plan."

We had deputations from both Mississauga and particularly from Toronto, because poor Toronto, nine years after amalgamation, still has not consolidated all of their zoning bylaws. When they were asked whether or not it was possible within three years under this provision to comply with the plan, they said, "Definitely not," and they gave six or seven years as a minimum time to be able to comply. May I ask why you did not listen to that deputation?

1500

Mr. Sergio: As far as I remember, I was here as well. While I remember the city of Toronto saying, "Yes, six years would be better than five," I think most municipalities said, "We are quite happy with the five years." As a matter fact—

Mr. Prue: It's three.

Mr. Sergio: Three years—some questions were asked. I remember very well we asked some questions: "Can you do it within three years?" They said, "No problem."

Mr. Prue: Some said that, but we have the largest municipality in Ontario saying it cannot, and Mississauga also said they could not and would prefer a longer period of time.

Mr. Sergio: I think Hazel said she was happy with it.

Mr. Prue: I think Hazel did not. But my question is, why are you going with the three years when you obviously have some of the largest municipalities in Ontario who quite simply cannot comply? And those were only two that came here. I would question whether Hamilton, which was forcibly amalgamated, and Ottawa, which has the same exact problems, can comply with this legislation. You're forcing this, and we're going to have all of those combined municipalities, whether they be Sudbury or Hamilton or Ottawa or Toronto, in situations where they have hundreds and hundreds of extant bylaws that have never been successfully amalgamated in eight or nine years, and now they're going to have to do it all within three. I question how you think this is possibly going to work.

Mr. Sergio: Quickly, I think this would bring some conformity to the provincial plan, so I think three years seems to be quite acceptable.

Mr. Prue: On a recorded vote then. I can't support it.

Mr. Hardeman: One more question: We had the parliamentary assistant mention a couple of times that an individual was supportive of these amendments. I wondered if the committee could hear from the individual so we could be assured that she is so happy with the amendments as they're being proposed. I'm somewhat surprised that she would know about the amendments and had already consented to them when I didn't get them until last week when all this happened.

Ms. MacLeod: The city of Ottawa just e-mailed me and said they didn't even get the Liberal amendments.

Mr. Hardeman: I'm just a little concerned as to how Hazel got it all and we didn't get it.

The Vice-Chair: Okay. We'll call the vote. It's a recorded vote.

Ayes

Flynn, Lalonde, Mossop, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Page 41. I believe pages 41 and 42, because we're in the same situation—page 40 carried—the section was struck out and substituted. So yours reflects in that section, if I'm not mistaken. But it's open to you.

Mr. Prue: I would question: This is subsection (7.1). This is completely different; this is not anything that has been dealt with.

The Vice-Chair: Okay. Page 41?

Mr. Prue: You can tell me if I'm wrong, but adding a new subsection to something we've just passed is not—

Interjections.

Mr. Prue: I would draw your attention, Mr. Chair, to subsection (7). There is a (7) but there is no (7.1). All my amendment does is add a (7.1) to the bottom of it. It is not in any way changing what is here; it is simply adding an additional amendment to it. If there is any technical difficulty, the only difficulty would have been that maybe my amendment to the motion should have been dealt with first.

Mr. Hardeman: It should have been an amendment.

Mr. Prue: But it was not dealt with in that order.

The Vice-Chair: Okay. My understanding is that (7.1) should have been dealt with when the last motion was on the floor. I think that in order to open it up now, I would need consent.

Mr. Sergio: Let's get some clarification here: What the motion does indeed would remove the appeals related to official plan amendments that are required in order to conform with provincial plans.

Mr. Prue: I can explain it very simply if you will allow me to proceed.

The Vice-Chair: The thing is, it should be read first. It hasn't been read.

Mr. Sergio: That's fine; okay.

Interjection.

The Vice-Chair: It's out of order; right. I need consent to reopen the last one; that's the one on page 40.

Interjection.

The Vice-Chair: We're just getting some advice. What I see here and what I'm understanding—certainly the clerk will assist here—is that the section on page 40 was carried. In order to have this amendment, we would need unanimous consent to bring it on, and Mr. Prue would present it. We'd have a debate. It would be voted on as an amendment, and then we would vote on the amended motion. Is there unanimous consent to bring this forward? It's agreed.

Mr. Prue: If I could assist—

The Vice-Chair: We're reopening page 40. I'm asking for consent now to open the government motion on page 40. Do we have consent? We do.

Mr. Prue: If I could, because I'm trying to be fair here, there are both motions, 41 and 42. I would agree that 42 would be ruled out of order because we have dealt with that section.

Interjection.

Mr. Prue: You don't have 42? What's the next one? Because both of them will be subject to the reopening. I'm trying to be fair: 42 should be ruled out of order, and I would agree to that.

The Vice-Chair: That's fine.

Mr. Prue: Just to thank my friends for a hearing, you're not going to have to hear this one.

The Vice-Chair: That's just like those other ones that we've had all day.

Mr. Prue: Yes, exactly. To deal with 41—

Interjection.

The Vice-Chair: We're ruling it out of order because it's already been—

Mr. Prue: I'm just telling you that that will, I agree, be ruled out of order when the time comes.

The Vice-Chair: Right.

Mr. Prue: But 41—I've been given slightly amended wording now in view of what's happened.

I move that the government motion remaking section 26 of the Planning Act be amended by adding the following subsection:

"Appeals restricted

"(7.1) Despite anything else in this act, there is no appeal to the municipal board in respect of an official plan amendment that is made to ensure that the plan conforms with a provincial plan."

Just to explain what this is about, there are numerous provincial plans. The government has passed a whole bunch of them in the last two years. Virtually none of those plans have yet made it into the official plans of the municipalities of Ontario. There are growth plans, there's a green plan, there's a Niagara plan—none of these plans are there. They're new, and they will require the municipalities to bring their official plans into conformity with them at their next official plan review.

There are also many people out there who oppose those. You heard from them. What we don't want to happen is that they will attempt to appeal the council decisions, causing the municipalities to spend scarce resources and staff to go to the Ontario Municipal Board, when all the municipalities are trying to do, and what they are obliged to do, is bring their own official plan into conformity with the provincial plan.

1510

What we're saying is, if that's all they are doing in bringing their plan into conformity with the provincial plan, they ought not to be forced to go and defend that before the Ontario Municipal Board, hire lawyers, send planners and do everything else. We think that where the municipalities are acting in conformity with the province, there ought not be a right of someone to appeal.

Mr. Hardeman: I understand and respect the amendment for trying to clarify the fact that municipalities will be obligated to have an official plan that meets the provincial policy, because, obviously, the act now will dictate that they must be consistent with the provincial policy statements. These acts would be, in fact, policy statements that the province has made.

Having said that, with the other changes in the act to the Ontario Municipal Board, I think the Ontario Municipal Board will take that into consideration. That's why they were there. I think, on average, you will see very few people taking that challenge, because of their chance of success. Since the Ontario Municipal Board can't make the decision based on the old policies but on the new policies in effect at the time of the decision, I don't see them taking it to the board.

I have real concern that this is another case where we're going to take away someone's right to be heard by an overseeing authority such as the Ontario Municipal Board on decisions made by local municipalities. It's one thing to say an official plan amendment is not eligible for

an appeal if it's done to meet provincial policy statements, but if you can't appeal, can we be sure that everyone will be done with the end result that it meets the provincial policy, and no further or no different? I'm not sure you can be, and I think you need the ability to allow people to go to the Ontario Municipal Board if they have a rightful complaint about how the municipality corrected a problem or dealt with a problem. I can't support this.

Mr. Prue: You have 450 municipalities out there that are going to have to come in with conformity. Each and every one of them might be subject to appeal. Each and every one of them is going to have to spend money, and most of them don't have it. The choice is yours. It's as simple as that.

The Vice-Chair: Any further comments?

Mr. Sergio: Just briefly, Mr. Chairman. I sympathize with the member, because he's probably right, there are a number of applications outstanding, but it is because of exactly that, that there's a number of interrelated matters, and we really don't know if they are provincial plans and provincial policies and, indeed, what this motion does is remove, as Mr. Hardeman mentioned here, appeals related to official plan amendments that are required in order to conform to official plans. So I sympathize with the member but, unfortunately, I can't support it.

Mr. Prue: Recorded vote, please.

Ayes

Prue.

Nays

Flynn, Hardeman, Lalonde, MacLeod, Mossop, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Now, because we had this as an amendment, we have to go and open up—

Interjection.

The Vice-Chair: Sorry, it's open. We have to vote on the government motion—because it was opened, we have to vote on it. That's right. Mr. Hardeman?

Mr. Hardeman: Again, if the member is willing to withdraw it, I have no problem with not dealing with the three to six years, but it would seem to me that if the section has been opened, 41 or 42 is now in order.

The Vice-Chair: I think Mr. Prue was withdrawing it.

Mr. Prue: I didn't say I would withdraw it; I just said it should have the same fate as before, that it would be ruled out of order. However, if it is open and Mr. Hardeman wants to deal with it, then I guess he's technically right; it is open. I do not intend because I gave my word I wouldn't, but if he wants to, go ahead.

Mr. Hardeman: I don't think it's a matter of whose word it was, It's a matter, I think, of legalities. The section is open, so we should deal with it.

Mr. Prue: You're absolutely right.

Mr. Hardeman: I move that subsection 26(8) of the Planning Act, as set out in the government's motion, be amended by striking out "three years" and substituting "six years."

The Vice-Chair: Any comments on this? All in favour?

Interjection.

The Vice-Chair: It was an NDP motion; it's now a PC motion. This is what I'm calling the vote on. All those in favour? All those opposed? The motion is lost.

Now I open up the government motion on page 40. All those in favour? All those opposed? The motion is carried.

Now we're at the end of section 12. Shall section 12, as amended, carry? All those in favour? Opposed? Carried.

Thank you for your patience. There was a little confusion, but we'll get through it.

We move on to section 13. We have page 43, a government motion.

Mr. Rinaldi: I move that section 13 of the bill be amended by adding the following subsection:

"(1.1) Section 28 of the act is amended by adding the following subsection:

"Affordable housing

"(1.1) Without limiting the generality of the definition of 'community improvement' in subsection (1), for greater certainty, it includes the provision of affordable housing."

The Vice-Chair: Any comments on that motion? I'll call the vote. All those in favour? Opposed? The motion is carried.

On page 44, a government motion.

Mr. Lalonde: I move that subsection 13(4) of the bill be struck out and the following substituted:

"(4) Subsection 28(4.1) of the act is amended by striking out '17(15) to (22) and (31) to (50)' and substituting '17(15) to (23) and (31) to (50.1).'

"(4.1) Subsection 28(4.2) of the act is amended by striking out '17(15) to (30), (44) to (47) and (49) and (50)' and substituting '17(15) to (30.1), (44) to (47) and (49) to (50.1).'"

The Vice-Chair: Any comments?

Ms. MacLeod: Could the government tell us what this means practically, in terms of the rationale?

Mr. Sergio: These are technical changes to recognize such a section renumbering.

The Vice-Chair: Any further comments? We'll vote on that motion. All those in favour? Opposed? The motion is carried.

Page 45 is a government motion. Mr. Flynn.

Mr. Flynn: This is another technical change. It just makes reference to a new subsection.

I move that section 13 of the bill be amended by adding the following subsection:

"(6.1) Subsection 28(8) of the act is amended by striking out 'under subsection (6) or (7)' and substituting 'under subsection (6), (7) or (7.2).'"

1520

The Vice-Chair: Thank you. Any comments? Okay. All those in favour of the motion? Those opposed? Carried.

Shall section 13, as amended, carry? All those in favour? Opposed? The motion is carried. The section is carried.

We're on section 14, page 46. We have a PC motion.

Ms. MacLeod: I move that subsection 14(4) of the bill be amended by adding the following provision between subsections 34(10.2) and 34(10.3) of the Planning Act:

"Regulations

"(10.2.1) The minister may make regulations,

"(a) determining what constitutes a completed application for the purposes of this section; and

"(b) requiring that a preconsultation process be established for the purposes of this section and setting out standards and rules for the carrying out of the preconsultation process."

Similar to section 10(4), we believe that this could be abused and utilized as a delay tactic and that there's more certainty with this amendment for the process.

The Vice-Chair: Any further comments, discussion? Those in favour of the motion? Those opposed? The motion is lost.

We now move to page 47. This is a government motion. Ms. Mossop.

Ms. Mossop: I move that subsection 34(10.4) of the Planning Act, as set out in subsection 14(4) of the bill, be struck out and the following substituted:

"Response re completeness of application

"(10.4) Within 30 days after the person or public body that makes the application for an amendment to a bylaw pays any fee under section 69, the council shall notify the person or public body that the information and material required under subsections (10.1) and (10.2), if any, have been provided, or that they have not been provided, as the case may be.

"Motion re dispute

"(10.4.1) Within 30 days after a negative notice is given under subsection (10.4), the person or public body or the council may make a motion for directions to have the municipal board determine,

"(a) whether the information and material have in fact been provided; or

"(b) whether a requirement made under subsection (10.2) is reasonable.

"Same

"(10.4.2) If the council does not give any notice under subsection (10.4), the person or public body may make a motion under subsection (10.4.1) at any time after the 30-day period described in subsection (10.4) has elapsed.

"Notice of particulars and public access

"(10.4.3) Within 15 days after the council gives an affirmative notice under subsection (10.4), or within 15 days after the municipal board advises the clerk of its affirmative decision under subsection (10.4.1), as the case may be, the council shall,

"(a) give the prescribed persons and public bodies, in the prescribed manner, notice of the application for an amendment to a bylaw, accompanied by the prescribed information; and

"(b) make the information and material provided under subsections (10.1) and (10.2) available to the public."

The Vice-Chair: Thank you. Any comments on the motion? If not, I'll call the vote. All those in favour? Opposed? The motion is carried.

Page 48, government motion. Mr. Rinaldi.

Mr. Rinaldi: I move that subsection 34(10.5) of the Planning Act, as set out in subsection 14(4) of the bill, be amended by striking out "subsection (10.4)" and substituting "subsection (10.4.1)."

The Vice-Chair: Thank you. Any comments on the motion? I'll call the vote. Sorry. Mr. Hardeman.

Mr. Hardeman: I have a question. What does it do?

Mr. Sergio: It's a consequential amendment and is necessary to cross-reference a renumbered section. That's all.

The Vice-Chair: Okay. All those in favour? Those opposed? Carried.

Page 49, a government motion. Mr. Lalonde.

Mr. Lalonde: I move that subsection 14(5) of the bill be struck out and the following substituted:

"(5) Subsections 34(11) and (11.0.1) of the act are repealed and the following substituted:

"Appeal to OMB

"(11) Where an application to the council for an amendment to a bylaw passed under this section or a predecessor of this section is refused or the council refuses or neglects to make a decision on it within 120 days after the receipt by the clerk of the application, any of the following may appeal to the municipal board by filing a notice of appeal with the clerk of the municipality:

"1. The applicant.

"2. The minister.

"Consolidated Hearings Act

"(11.0.1) Despite the Consolidated Hearings Act, the proponent of an undertaking shall not give notice to the hearings registrar under subsection 3(1) of that act in respect of an application for an amendment to a bylaw unless the council has made a decision on the application or the time period referred to in subsection (11) has expired.

"Same

"(11.0.2) The municipal board shall hear the appeal under subsection (11) and shall,

"(a) discuss it;

"(b) amend the bylaw in such manner as the board may determine; or

"(c) direct that the bylaw be amended in accordance with the board's order.

"Time for filing certain appeals

"(11.0.3) A notice of appeal under subsection (11) with respect to the refusal of an application shall be filed no later than 20 days after the day that the giving of notice under subsection (10.6) is completed.

"Appeals restricted re certain amendments

"(11.0.4) Despite subsection (11), there is no appeal in respect of all or any part of an application for an amendment to a bylaw if the amendment or part of the amendment proposes to implement,

"(a) an alternative to all or any part of the boundary of an area of settlement; or

"(b) a new area of settlement.

"Same

"(11.0.5) Despite subsection (11), if the official plan contains policies dealing with the removal of land from areas of employment, there is no appeal in respect of all or any part of an application for an amendment to a bylaw if the amendment or part of the amendment proposes to remove any land from any area of employment, even if other land is proposed to be added."

The Vice-Chair: I just wonder if I could ask you to reread the first line on page 2.

Mr. Lalonde: "(a) dismiss it."

The Vice-Chair: Right. Now go down to "Appeals restricted," and read (a) again.

Mr. Lalonde: "(a) an alteration to all or any part of the boundary of an area of settlement; or"

The Vice-Chair: Okay. I wonder if you could read the two last lines on that page. I just want to make it clear—

Mr. Lalonde: Shall I read—

The Vice-Chair: It's not necessary to read the whole thing but I would say, for amendment purposes, start with—

Mr. Lalonde: "... to a bylaw if the amendment or part of the amendment proposes to remove any land from an area of employment, even if other land is proposed to be added."

Is that okay?

The Vice-Chair: Yes, thanks.

We've had the motion. Any discussion, any comments?

Mr. Hardeman: I'm wondering, in the appeal to the Ontario Municipal Board, who can appeal? Could I get some indication of what's the reason the minister needs to be able to appeal an Ontario Municipal Board—or force a municipality to go to the Ontario Municipal Board?

Mr. Sergio: I think this deals with some issues that we dealt with already before with respect to timing on decision-making on applications, including with respect to areas of employment. We want to make sure that indeed no decisions are made, especially with respect to areas of employment, without a council decision or consultation, which is a public hearing.

Mr. Hardeman: But if the applicant can appeal, could you indicate to me what you would see as the need for the minister to appeal? This is based on council not making a decision. Why would the minister ever want to appeal and force council to make a decision when they can force council to make a decision because they're the approval process?

Mr. Sergio: If there are provincial interests, I think the minister would have a right to an appeal, especially with respect to employment lands.

1530

The Vice-Chair: We have heard the motion. I'll call the vote. All those in favour? Those opposed? The motion's carried.

I believe we're on page 50 now. It's an NDP motion.

Mr. Prue: I believe it has the same fate as all the others.

Mr. Hardeman: Say it isn't so.

The Vice-Chair: All right. Page 51, we have a government motion. Mr. Rinaldi.

Interjection.

The Vice-Chair: Oh, sorry. Mr. Flynn.

Mr. Flynn: It's a long one.

I move that subsections 14(6), (7) and (8) of the bill be struck out and the following substituted:

"(6) Subsections 34(12) to (14.2) of the act are repealed and the following substituted:

"Information and public meeting; open house in certain circumstances

"(12) Before passing a bylaw under this section, except a bylaw passed pursuant to an order of the municipal board made under subsection (11) or (26),

"(a) the council shall ensure that,

"(i) sufficient information and material is made available to enable the public to understand generally the zoning proposal that is being considered by the council, and

"(ii) at least one public meeting is held for the purpose of giving the public an opportunity to make representations in respect of the proposed bylaw; and

"(b) in the case of a bylaw that is required by subsection 26(9) or is related to a development permit system, the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the information and material made available under subclause (a)(i).

"Notice

"(13) Notice of the public meeting required under subclause (12)(a)(ii) and of the open house, if any, required by clause (12)(b),

"(a) shall be given to the prescribed persons and public bodies, in the prescribed manner; and

"(b) shall be accompanied by the prescribed information.

"Timing of open house

"(14) The open house required by clause (12)(b) shall be held no later than seven days before the public meeting required under subclause (12)(a)(ii) is held.

"Timing of public meeting

"(14.1) The public meeting required under subclause (12)(a)(ii) shall be held no earlier than 20 days after the requirements for giving notice have been complied with.

"Participation in public meeting

"(14.2) Every person who attends a public meeting required under subclause (12)(a)(ii) shall be given an

opportunity to make representations in respect of the proposed bylaw.

"Alternative procedure

"(14.3) If an official plan sets out alternative measures for informing and securing the views of the public in respect of proposed zoning bylaws, and if those measures are complied with, subsections (12) to (14.2) do not apply to the proposed bylaws, but subsections (14.4) and (14.6) do apply.

"Open house

"(14.4) If subsection (14.3) applies and the proposed bylaw is required by subsection 26(9) or is related to a development permit system,

"(a) the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the proposed bylaw; and

"(b) if a public meeting is also held, the open house shall be held no later than seven days before the public meeting.

"Information

"(14.5) At a public meeting under subclause (12)(a)(ii), the council shall ensure that information is made available to the public regarding who is entitled to appeal under subsections (11) and (19).

"Where alternative procedures followed

"(14.6) If subsection (14.3) applies, the information required under subsection (14.5) shall be made available to the public at a public meeting or in the manner set out in the official plan for informing and securing the views of the public in respect of proposed zoning bylaws."

The Vice-Chair: Thank you. Any comments?

Mr. Prue: Again, this entrenches what you've already done, but I have to say it again: "(14.5) At a public meeting under subclause (12)(a)(ii), the council shall ensure that information is made available to the public regarding who is entitled to appeal under subsections (11) and (19)." There is no provision in the bill anywhere for people who are not present at the meeting to be given that information, even people who make written representations. There's nothing in here that says those who have made written representations shall be informed of the right to appeal; it's only those who are in attendance at the meeting. People who neither were at the meeting nor made written representations will not be given that information. Even if it runs contrary to them, they'll not be told. It seems that it is a way of making sure that the public is blocked at every exit.

Mr. Hardeman: I would agree with Mr. Prue, and obviously it's not going to change in this section, as it hasn't changed in all the others. I'll suggest to the government side of the committee that in my years involved in municipal politics, of the individuals who appealed planning applications, the vast majority were people who did not get involved with the system until after council had made a decision that was, in their opinion, contrary to what they wanted for their community. The general population doesn't seem to get involved in the process of applications until it becomes quite evident what's going to happen to their community and in their opinion it's wrong. As long as they agree with the applications, they have no interest in the planning process. They're not directly involved.

After this is put forward and implemented, I think we're going to see a lot of people who are going to come to municipal people and say, "How do I stop this now?" There is an appeal process, but the thing about it is, you had to have appealed last week. That's what every one of them who asked that question is going to get as an answer: "You've missed the boat." I think something needs to be done to stop that from happening.

Mr. Prue: If I could ask the government about the intention to provide that information to people who have made written submissions, because it's not in here. You're only saying that you do it at the meeting, and I think that's a glaring omission as well.

Mr. Sergio: If there is a written submission?

Mr. Prue: People are allowed to appeal if they either make an oral presentation before the meeting or provide written submissions in advance of the decision being made. But in here, the only place that they are informed of their right to appeal is at the meeting.

"Information

"(14.5) At a public meeting under subclause (12)(a)(ii), the council shall ensure that information is made available to the public regarding who is entitled to appeal," but there is nothing that says that you write to those people who made a written representation and who may not be at that public meeting. Surely they have the right to know they can appeal.

Mr. Sergio: I don't think this can be any clearer than what it is, and I think the explanation that our solicitor gave some time ago with respect to that process at public hearings—whoever is at a public hearing, has put their name down to speak or to make a presentation, it is quite normal that they will be notified—

Mr. Prue: What about the people who made written submissions?

Mr. Sergio: Both. I think if you are there and you make an oral submission, your name has been given as well. But this (14.5) is very straightforward and I don't see a problem with it. We tend to differ, Mr. Chairman.

Mr. Flynn: I would think, in answer to Mr. Prue's question, that any municipality that was acting in good faith would include that information in the advertising that would give rise to the person's attendance at the meeting or would give rise to the person sending in a written submission in the first place. I think what this is proposing is something over and above, that at the public meeting the rules as to who is allowed to appeal are clearly outlined.

Thinking of my own municipality, certainly we would apprise our citizens of their rights and their obligations under the new legislation as soon as possible. I see this as an add-on, something that makes the system better. I don't think it's the only way that people will be notified.

Mr. Hardeman: I'm a little concerned. I think the government's intention is that everyone should be in-

formed as to their procedure at the end of the decision-making, that if the decision is against their wishes, they have a right to appeal. But I also agree with Mr. Prue that there is nothing in this section—the section is quite clear that those instructions and that information be given to those who are present at the meeting, but there is nothing that says that if I wrote in to the public meeting—not to council who are necessarily making the decision but as part of the general mail-out and general information—the municipality is ever going to reply to me with even the decision they made or with my right to appeal. I think, contrary to the parliamentary assistant's suggestion that this is as clear as it can be, this is not clear as to what happens to a written submission and whether they ever get informed about their rights to appeal and even the decision made. It may be well after the appeal deadline before they know that council decided to approve the application as opposed to turning it down.

1540

Mr. Sergio: The only thing I can add, Mr. Chairman, is that I think, for the first time, the act, as it is proposed, goes a long way to bringing some real directions to council and some justice to the very populace, the ones who participate. In the end, it will be up to the local municipalities to inform the people. We have to see how this is going to work out. I believe that it's in the interest of the local municipality to see that, indeed, those who are at a meeting get to speak and those who want to make a written submission will be written back. I would think it would be in their interest to respond. I can't say if they will be responded to or not. That's too hypothetical.

Mr. Hardeman: I don't want to belabour this point, as this isn't a partisan position at all, but we have to remember that the decision made by the municipality—the municipality is not going to go to great lengths to try to get someone to appeal it. They've already decided that's the way it should be. So are we going to make sure that most of the municipalities are in fact going to inform the people who are going to appeal the municipal decision of how they should go about doing that? Or are we going to see that they send the notices out just after the deadline for the appeal, and their appeals will not be heard? It's important. As we look at the other part of the act, it talks about if municipalities, for whatever reason, decide to delay a decision-making, the applicants for planning can go to the Ontario Municipal Board to get the municipalities to move or to have someone else make a decision. But there's nothing in here that deals with people who have an objection to the application, who have written in their objection, but no one has told them how they go about taking it further if council disagrees with them. I'm a little concerned that council may not be quite as vigilant in making sure that the people who want to appeal their decision are informed of how they do that.

Mr. Prue: If I could, Mr. Chair, I'd like a question of the solicitor on that section, if he could answer that question. My question is a very simple one: If, at a public meeting, the council or the mayor or whoever is in charge of the public meeting reads out the clause and says who may appeal, is the council in legal compliance under this section if they do not send out letters to those who are not in attendance but who provided written submissions?

Mr. Shachter: In that circumstance, a council would have to provide information and notice in the prescribed manner, or the prescribed information, which would be set out under the regulation. In response to the question, under 34(19), one of the parties who does have the ability to appeal is an individual who made written submissions to council, so that what you would have is a circumstance where, if the person has already made written submissions to council, it would not be necessary for council to then advise them that they have the right to appeal, because they'd already have that right.

Mr. Prue: But they would have told everybody who was in the room that they have that right, but not the people who made written submissions.

Mr. Shachter: Potentially, because the persons who already made the written submissions already have the right to appeal.

Mr. Prue: But they may not know it.

Mr. Shachter: Except that the people who attend a meeting would have to be advised, because they don't know that just attending is not enough in order to be able to have the right to appeal. You see, it's a little bit of a different circumstance, because you have to actually make oral submissions at council in order to be able to appeal.

Mr. Prue: Okay. But would a council that stood up in the meeting and gave people the right be in compliance with this section of the act if they chose not to write to those who had made written submissions? Would they be in compliance?

Mr. Shachter: My understanding is, yes, they would.

Mr. Prue: That's what I thought. Okay. Thank you.

The Vice-Chair: Thank you. We have had debate on this.

Mr. Prue: Recorded, please. I want to see who wants to vote for that.

The Vice-Chair: I call the vote.

Ayes

Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Now we have page 52, an NDP motion. I believe it's one of those—

Mr. Prue: The same fate.

The Vice-Chair: Okay. Page 53: We have a government motion.

Mr. Rinaldi: I move that subsection 14(9) of the bill be amended by adding the following as subsection 34(16.0.1) of the Planning Act:

"Same

"(16.0.1) The prescribed conditions referred to in subsection (16) may be made subject to such limitations as may be prescribed."

The Vice-Chair: Any comments?

Mr. Hardeman: Just an explanation, please, of what we're trying to do here.

Mr. Sergio: Just briefly for the member, we want to ensure that there is indeed a consistent approach in use throughout the province; nothing more than that.

The Vice-Chair: We'll call the vote. Those in favour? Those opposed? The motion is carried.

Page 54, a government motion.

Mr. Lalonde: I move that subsection 34(16.2) of the Planning Act, as set out in subsection 14(10) of the bill, be amended by striking out "(16) and (16.1)" and substituting "(16), (16.0.1) and (16.1)".

The Vice-Chair: Any comments?

Mr. Sergio: We dealt with this before.

The Vice-Chair: We'll call the vote. All those in favour?

Interjection.

The Vice-Chair: Oh, I didn't see you. I thought you were voting; sorry.

Mr. Hardeman: I was going to ask a question because I'm still confused. We're striking out (16) and (16.1) and substituting (16) and (16.0.1). Why would we strike out (16)? You're putting it right back.

Interjection.

Mr. Sergio: It may be small in numbers—you're trying to confuse me—but it's a consequential amendment.

The Vice-Chair: We'll call the vote. Those in favour? Those opposed?

Ms. MacLeod: We just split the caucus.

The Vice-Chair: Carried.

Page 55, a government motion.

Mr. Flynn: I move that subsection 14(11) of the bill be amended by striking out "clause (12)(c)" at the end and substituting "subclause (12)(a)(ii)". It's just a consequential amendment.

The Vice-Chair: Any comments?

All in favour? Opposed? The motion is carried.

Page 56, a government motion.

Mr. Rinaldi: I move that subsection 14(12) of the bill be struck out and the following substituted:

"(12) Subsection 34(19) of the Planning Act is repealed and the following substituted:

"Appeal to OMB

"(19) Not later than 20 days after the day that the giving of notice as required by subsection (18) is completed, any of the following may appeal to the municipal board by filing with the clerk of the municipality a notice of appeal setting out the objection to the bylaw and the reasons in support of the objection, accompanied by the fee prescribed under the Ontario Municipal Board Act:

"1. The applicant.

"2. A person or public body who, before the bylaw was passed, made oral submissions at a public meeting or written submissions to the council.

"3. The minister.

"No appeal re second unit policies

"(19.1) Despite subsection (19), there is no appeal in respect of a bylaw that is passed to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or row house situated in an area where residential use, other than ancillary residential use, is permitted."

1550

The Vice-Chair: Any comments?

Mr. Prue: It's not a comment; it is just a request that this be a recorded vote. I would ask that it be split between the two sections—subsection (19), the appeal to the OMB, and subsection (19.1)—as they deal with two different things. I support one aspect and not the other.

The Vice-Chair: This is one motion, and we'll be voting on the motion.

Mr. Prue: You cannot split a motion?

Mr. Sergio: No.

Mr. Prue: It's two subsections, (19) and (19.1), dealing with two different aspects. One is dealing with second-unit policies, and the other is dealing with an appeal to the Ontario Municipal Board. I don't even see how they're related.

The Vice-Chair: It's in subsection 14(12) of the bill.

Mr. Prue: It's also in subsections 34(19) and 34(19.1). I don't know how a motion can't be split. I've never heard of this in my life. Is there some procedure in the province that will not allow a motion to be split? I'm not aware of any rule within the province of Ontario that does not allow a motion to be split.

Interjection.

The Vice-Chair: We're just getting some information here. While we're getting the information, did you want—

Mr. Hardeman: There's nothing I want more than moving this along, Mr. Chair.

I do have a question. Again, it deals with the person or public body who, before the bylaw was passed, made oral submissions at a public meeting. I'd like to know if there's any indication of how we're going to decide or how the Ontario Municipal Board is going to decide who spoke at the public meeting. There have been some questions asked from municipalities as to when they hold this public meeting, do they have to have a Hansard to record what was said so we know who has a right to appeal? There seems to be nowhere in the bill that defines, that suggests municipalities need to do that. Secondly, we keep talking about a person who made an oral presentation, but we have no record of who did. So I wonder if there's any indication as to how that's going to be handled for an appeal to the Ontario Municipal Board.

Mr. Sergio: I don't have a particular answer as to how the OMB would know if an individual has attended orally or in writing. But I would assume that if I were the applicant, I would make sure that the name of the appellant is somewhere registered, either by having given an oral presentation or a written presentation with the date or a letter to council of some sort. Other than that, I

really don't know how the OMB would, other than asking—it depends if they make a direct presentation themselves or through a lawyer or a planner or whatever. I really don't know. If there's a better answer—

Mr. Hardeman: I guess from that, and I don't want to prolong it, I would suggest that maybe the government needs to put something in there, at the very least by regulation, mandating that municipalities must record the proceedings at a meeting so there is a record as to who can appeal. I can see all kinds of cases where we might have a situation where the developer doesn't want the objections, so he just says, "Well, I don't remember them speaking." How do you prove that they did or didn't? So I would suggest that somehow we need to make sure that if we're going to depend on oral presentations, there's a record of those presentations being made.

The Vice-Chair: Thank you. We're still waiting on—I apologize.

Interjection.

The Vice-Chair: My advice here has been that these two sections that are being discussed and the desire to have them split really does not make sense unless they're part of the one motion.

Interjection.

The Vice-Chair: It can't. It doesn't make sense. I've been told it doesn't make sense to have them as two stand-alone motions, so we will deal with the motion that was presented and read by Mr. Flynn.

Mr. Prue: If I could, Mr. Chair, I just want to make a statement to the record, just so that it's very clear in the record. I am being now forced to vote against a motion because I disagree with the first half. I want it very clear on the record that I do, and the NDP does support, the second aspect of this; that is, that there be no appeal regarding second unit policies. But in spite of that, I will be forced to vote no even though I do support that.

The Vice-Chair: Thank you. We'll call the vote.

Ayes

Flynn, Lalonde, Mossop, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Page 57, an NDP motion. I believe it's—

Mr. Prue: The same fate.

The Vice-Chair: Okay. Page 58, a government motion.

Mr. Lalonde: I move that section 14 of the bill be amended by adding the following subsection:

"(12.1) Subsection 34(23) of the act is repealed and the following substituted:

"Record

"(23) The clerk of a municipality who receives a notice of appeal under subsections (11) or (19) shall ensure that,

"(a) a record that includes the prescribed information and material is compiled;

"(b) the notice of appeal, record and fee are forwarded to the municipal board within 15 days after the last day for filing a notice of appeal under subsection (11.0.3) or (19), as the case maybe; and

"(c) such other information or material as the municipal board may require in respect of the appeal is forwarded to the board."

The Vice-Chair: Any comments? Those in favour of the motion? Those opposed? The motion is carried. It had more than enough.

Next, we have page 59, a government motion.

Mr. Flynn: I move that subsection 14(13) of the bill be struck out and the following substituted:

"(13) Section 34 of the act is amended by adding the following subsections:

"Restriction re adding parties

"(24.1) Despite subsection (24), in the case of an appeal under subsection (11) that relates to all or part of an application for an amendment to a bylaw that is refused, or in the case of an appeal under subsection (19), only the following may be added as parties:

"1. A person or public body who satisfies one of the conditions set out in subsection (24.2).

"2. The minister.

"Same

"(24.2) The conditions mentioned in paragraph 1 of subsection (24.1) are:

"1. Before the bylaw was passed, the person or public body made oral submissions at a public meeting or written submissions to the council.

"2. The municipal board is of the opinion that there are reasonable grounds to add the person or public body as a party.

"New information and material at hearing

"(24.3) This subsection applies if information and material that is presented at the hearing of an appeal described in subsection (24.1) was not provided to the municipality before the council made the decision that is the subject of the appeal.

"Same

"(24.4) When subsection (24.3) applies, the municipal board may, on its own initiative or on a motion by the municipality or any party, consider whether the information and material could have materially affected the council's decision, and if the board determines that it could have done so, it shall not be admitted into evidence until subsection (24.5) has been complied with and the prescribed time period has elapsed.

"Notice to council

"(24.5) The municipal board shall notify the council that it is being given an opportunity to,

"(a) reconsider its decision in light of the information and material; and

"(b) make a written recommendation to the board.

"Council's recommendation

"(24.6) The municipal board shall have regard to the council's recommendation if it is received within the

time period mentioned in subsection (24.4), and may but is not required to do so if it is received afterwards.

"Conflict with SPPA

"(24.7) Subsections (24.1) to (24.6) apply despite the Statutory Powers Procedure Act."

1600

The Vice-Chair: Thank you. Any comments? If not, we'll have the vote. Those in favour? Opposed? The motion is carried.

I believe the NDP motion 60 and the PC motions 61 and 62, basically striking out—

Mr. Hardeman: Mr. Chairman, I need some advice from leg. council, but it would seem to me that the PC motion 61 to strike out "other than a public body" would also apply to the amendment that the government has put forward. They've changed the wording somewhat, but the issue is person and public body, and giving special status for the public body, and the intent of our amendment is to equalize it, to give the public body no preferential treatment. It would be, then, an amendment to the government motion.

Is that the one we just voted on?

Mr. Sergio: Yes.

Mr. Hardeman: I told you, Mr. Chairman, you're ahead of the game here. If it's already been voted on, I would suggest that—

The Vice-Chair: It has been voted on.

Mr. Hardeman: I express my great disappointment and I move on, recognizing the fate was going to be the same in the end.

The Vice-Chair: We will move on to page 63, a government motion.

Ms. Mossop: I move that section 14 of the bill be amended by adding the following subsection:

"(13.1) Subsection 34(25) of the act is amended by striking out 'on its own motion or on the motion of any party' in the portion before clause (a) and substituting 'on its own initiative or on the motion of any party.'"

The Vice-Chair: Any comments on the motion? Those in favour? Opposed? The motion is carried.

Page 64. We have a government motion.

Mr. Rinaldi: I move that section 14 of the bill be amended by adding the following subsections:

"(16) Section 34 of the act is amended by adding the following subsection:

"Same

"(25.1.1) Despite the Statutory Powers Procedure Act and subsections (11.0.2) and (24), the municipal board may, on its own initiative or on the motion of the municipality or the minister, dismiss all or part of an appeal without holding a hearing if, in the board's opinion, the application to which the appeal relates is substantially different from the application that was before council at the time of its decision.

"(17) Subsection 34(25.2) of the act is repealed and the following substituted:

"Dismissal

"(25.2) Despite the Statutory Powers Procedure Act, the municipal board may dismiss all or part of an appeal after holding a hearing or without holding a hearing on the motion under subsection (25) or (25.1.1), as it considers appropriate.

"(18) The English version of subsection 34(32) of the act is amended by striking out 'on its own motion' and substituting 'on its own initiative.'"

The Vice-Chair: Thank you. Any comments on the motion? Those in favour of the motion?

Mr. Prue: I'd just like to draw to the member's attention that there is a subsequent motion we will make, number 71, which I assume will be ruled out of order when we get to it because we're dealing with it now again. What number 71 attempts to do, and perhaps what this motion should have done as well, is allow municipalities the authority not to look at everything, as you're suggesting, which we agree with, save and except the placement of the portables. I wonder why the government, if you can answer, chose not to allow the municipality the option of looking at where the portables might be placed within schoolyards or on school property, because if one were to place the portables perhaps too close to homes where the noise might bother the enjoyment of the homeowners, or if the school chose to put them in inappropriate locations, perhaps close to contaminated sites or overhead wires or something that caused the municipality some grief, I wonder why the municipality would not be consulted at least as far as the placement goes.

What you've said is that they're totally exempt. They can put them wherever they want. They can put them right up to the edge of the property, they can put them right close to somebody's backyard or their swimming pool, and I'm just wondering whether this is an oversight maybe gone just a little bit too far. Could you comment on that?

Mr. Sergio: I will and I would. I'm sorry, are we dealing with 64 or 65?

Mr. Prue: Am I dealing with the wrong one? I thought I was dealing with—

The Vice-Chair: We are on 64.

Mr. Prue: Exempting of school portables from site plans?

The Vice-Chair: No, that's not 64.

Mr. Sergio: I'd love to answer your question at the next motion.

Mr. Prue: I'm sorry, I thought that was included in this one.

The Vice-Chair: You'll have the details when we get to it.

Mr. Prue: I walked in the door and I thought we were on that one already.

Mr. Sergio: Still with 64, and we'll move to 65.

Mr. Hardeman: Again, just a question. I think it was explained to me earlier and I've forgotten, the issue of "Despite the Statutory Powers Procedure Act" twice in this motion. What is there in the act—

Mr. Sergio: And probably you'll see it a few more times. It means the same thing.

Mr. Hardeman: I just want to know what I had before this bill came into effect and what rights are taken away from someone through this act, through this amendment.

The Vice-Chair: Once again, state your name.

Mr. Shachter: Irvin Shachter, legal services branch, Municipal Affairs and Housing. As you noted before, the provisions of the Statutory Powers Procedure Act require the consent of the parties to a tribunal for a dismissal without a full hearing unless an act otherwise states. The Planning Act is an act that states otherwise. So, for example, the Planning Act could dismiss a matter, an appeal, without the necessity of a full hearing. It's to trump over the provisions of the Statutory Powers Procedure Act. The reason it's there twice is because there was a concern that it was not sufficiently clear that it applied to both aspects.

Mr. Hardeman: Okay. Could you then further it for me, if you could, why that is necessary? We've had two, three or four different places in this debate so far today about, "Don't worry about it because that's the way it already is in the act." Why is it that in this one we don't want to take the way it already is in the statutory authority act; we want it changed to it not applying?

Mr. Shachter: The Statutory Powers Procedure Act sets out provisions that apply to tribunals generally across the province. It sets out what would be called the benchmark. It also provides that the tribunals can set out their own rules and regulations, their own practice and procedure, if I can call it that. It also, though, says that there are a number of circumstances where there are, if I can call it, rules that are set out in the Statutory Powers Procedure Act that will apply unless the tribunal that's hearing it or the act that gives the tribunal the authority to hear this matter says that the Statutory Powers Procedure Act doesn't apply.

In this particular circumstance, it is a situation where the Planning Act currently trumps the SPPA in that respect. You'll know that throughout the whole of the Planning Act there are opportunities for the Ontario Municipal Board to dismiss appeals without a full hearing for various reasons. Without being able to—despite the SPPA, you'd have to follow those provisions in every single circumstance. It would make it very unwieldy in order to do that in every single case. That's why you have the "despite" reference in this act.

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Mr. Hardeman: So the word "despite" the Statutory Powers Procedure Act—that's presently in the Planning Act?

Mr. Schachter: That's correct. That's the term that's used.

The Vice-Chair: We shall have the vote. Those in favour? Those opposed? The motion is carried.

We've come to the end of section 14. Shall section 14, as amended, carry? All those in favour? Those opposed? The section is carried.

Moving on to section 15, on page 65 we have a government motion.

Mr. Lalonde: I move that section 15 of the bill be amended by adding the following subsections:

"(0.1) Section 41 of the act is amended by adding the following subsection:

"Exception

"(1.1) The definition of 'development' in subsection (1) does not include the placement of a portable classroom on a school site of a district school board if the school site was in existence on January 1, 2007."

I just want to clarify the point that was raised a little while ago. The school board has to abide by the zoning bylaw for the setback of where those portable classes are to be installed.

The Vice-Chair: Any comments?

Mr. Prue: Just in terms of setbacks, most municipalities have side-yard setbacks of approximately one to two feet. Most municipalities have backyard setbacks of approximately 15 feet, or 20 feet in some cases. I'm just wondering why the municipality would not be involved. A setback is a very small, small thing. If it went to a committee of adjustment, a setback is a minor variance, because most homes are only a foot or two apart, at least in metropolitan areas. I'm wondering why the municipality would not be involved in the placement of a portable. You could have 20 or 30 children in a portable, so that if the doors were open, it would conceivably cause considerable noise if you have a house adjacent to it. I'm wondering why the municipality would not be able to have some kind of comment as to the placement or the most appropriate placement, in terms of the municipality's bylaws, in terms of noise or park space or any other thing that could be thought of. Surely they should have some say—not that the portable shouldn't be there or that it has to meet all the building code requirements. I understand where the school board is coming from, but certainly where it is in terms of the community and the neighbourhood is something I think they should be involved in. Can you tell me why not?

Mr. Sergio: I can't tell you why not, but I can tell you some of the reasons. I'm sure that you were present. Especially the school boards were quite adamant that they do have some control with respect to existing sites. Existing sites provide some constraints with respect to siting portables on a site, opening up the planning process, if you will, through a site plan or whatever have you. This will consider some very extensive time; that could be very expensive as well for the local board. I don't have to tell you that most schools abut residential areas. Sometimes one resident may have a genuine concern that the portable may be too close or whatever, and this would indeed delay considerably the process of locating needed portables on the site. Those were the reasons the school boards brought forward, and I think they are reasonable ones, even though I'm of the same opinion that, yes, they should have some say. Unfortunately, it deals with existing sites where there are site constraints.

Mr. Prue: But there's no limit to how long some of the portables sit on the site. I've seen portables on a site,

and you have too, for 10 and 15 and 20 years. What is conceivable here is that it would be on an inappropriate site, done in haste, and then be there forever. That's why I'm suggesting that maybe we should, even if it's in consultation with the municipality, rather than just leaving them right out and having the school board put it wherever they want—I don't know. I'm not sure that we're heading in the right direction with this aspect of the bill.

I'm only asking the government members—there's 71. I don't know; you don't have to pass that either. You can rule it out of order because you've already dealt with this one. But I do think there are going to be an awful lot of unhappy people around the province when a portable or portables end up very close to residential properties and remain there for years.

Mr. Hardeman: This amendment says that this act will not apply to portables. Presently, there are certain criteria of what the school board must do before they wheel in portables. They must apply to the municipality for permits to put them there. Is that taking that obligation away? Presently there must be setbacks and so forth in their planning document as to how far from the property line they can situate a building. This isn't taking that away, is it?

Mr. Sergio: No. First of all, they have to make the zoning bylaws that they indeed can set up portables on the site. If they are existing site excluded, the municipality will have to issue the permit. I don't think they can hold it back.

Mr. Hardeman: Let's look at the city of Woodstock bylaw. I expect even the school sites have minimum setback distances from their property line for buildings. Does that not apply when this law is passed?

The Vice-Chair: Perhaps legal advice on the question?

Mr. Shachter: Irvin Shachter, legal services, municipal affairs and housing.

Mr. Hardeman: It's nice of you to join us today.

Mr. Shachter: And I have to tell you it's my pleasure. Thank you.

It's not intended to supplant the current zoning provisions. So if Woodstock, for example, has a zoning bylaw that has height, massing, density, setback requirements, all those requirements would still apply.

Mr. Hardeman: And that would be uniform across the province. So this is just, as they were siting new facilities, they couldn't go beyond what the zoning presently allows as far as setbacks go?

Mr. Shachter: That's correct.

Mr. Hardeman: This will ensure that nothing will be closer to the line tomorrow than it was yesterday.

Mr. Shachter: Remember that this isn't dealing with zoning. Zoning yesterday and tomorrow remains the same insofar as this provision is concerned. This provision only deals with site plan control matters. So all of the matters that a municipality would require to be dealt with in site plans—landscaping, benches, location of parking lots, things such as that—would not apply if it was a portable classroom that was going to be located on a school site existing on January 1, 2007. But that doesn't take away from the zoning provisions that exist yesterday or tomorrow.

Mr. Hardeman: So if the bylaw states that for every so many student spaces we must have three parking spaces and they bring in 10 portables, so we need more parking spaces, you're suggesting that that part wouldn't apply tomorrow because that's exempt from the law now.

Mr. Shachter: The part of the zoning bylaw that would require parking spaces is not a site plan matter. Site plan deals with where the location of the parking spaces might be. The zoning bylaw will deal with the minimum number of parking spaces. No matter the number of portable classrooms that are located, you would still have that requirement, subject to either a zoning bylaw amendment or a minor variance.

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

Mr. Prue: I just want to be very clear, because all of the laws will apply, but who will enforce them? The municipality is not a player here. So the school board knows that you must be at least two feet from the fence where you commence the building of the portable and they decide to put it one foot from the fence because they don't have to consult anybody. They don't have to go to the municipality. They simply build it and there it is. What happens then? The municipality takes the school board to court? How is it enforced?

Mr. Shachter: I don't think it would be any different today than yesterday. It would still be an enforcement matter. I understand there are zoning bylaw officials, municipal officials, who would go out and enforce the zoning bylaws, because that is a zoning bylaw matter, not a site plan matter.

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Mr. Prue: So it would be up to the school board to interpret the law without consulting the municipality, commence the building and then the municipality would have to be ever vigilant, show up on the school board property and do the measurements without having approved the plans?

Mr. Shachter: One of the things we have to remember is, whether the site plan control is in place or not with respect to these particular circumstances, the school board would still require a building permit in order to be able to locate it, because a portable classroom would still be a structure under the Building Code Act. Whether the school board would comply or not, it would have to, at the very least, set out on the drawings that it used to make an application for the building permit where it proposed to put the portable classroom, whether it actually located it where it said it was going to or not.

Mr. Prue: So they'd have to say where they're going to put it, but then they don't have to put it there? That's what I think you just said to me.

Mr. Shachter: It is, but that was in response to your question, which was in some sense, if you're going to make the application for a building permit and you're saying, "I'm going to locate a structure in a certain

location," it's contemplated that that's where the location will be and that if a building inspector comes out to inspect, that's the location where one would find that structure. That's all I meant to say. One would anticipate that if you put it in the drawings, that's where it's going to be located.

Mr. Prue: And what this bill does in effect is, if the school board says, "I want it down in that corner of the property" and the municipality says, "No, it won't cause any grief and any problem if you put it up in that corner because there are no houses there," the school board can have the right to say, "We don't care. We're putting it where we want"?

Mr. Shachter: Only within the context—

Mr. Prue: I don't know that. That's why I'm asking the question.

Ms. Mossop: They're as responsive to the parents in the neighbourhood as the municipality, if not more so, because they live under their thumb, unlike the guys downtown.

Mr. Sergio: And it's for the local kids.

Ms. Mossop: If they live right next door to each other, the parents and the community are going to have a fair bit of influence with the local school, more so than perhaps a bunch of guys downtown. That's just my suggestion in a common sense approach to this issue.

Mr. Hardeman: I was just going to say, I think the public authorities are all very responsive to the public. Having said that, I guess one would have to wonder why this act would have to protect the school board from municipal government. That's really what this amendment is doing, which up until now was never required. The school board and the local municipalities decided collectively on a site plan as to where a portable should be put. Now what we're saying is they no longer need to have the site plan approval in order to put up portables. Provided it's zoned properly, which is institutional, and they meet the minimum setbacks from their lot lines, they can put them anywhere they want without asking the municipality.

I'd like to believe, Ms. Mossop, that they were all working strictly for the best interests of their community. Then we wouldn't need this amendment, because I think the municipalities very much want to do what's in the best interests of their communities and I'm sure school boards do too.

Ms. Mossop: So that's two layers.

Mr. Hardeman: But their needs are different. What we're saying is, they're going to put up as many units as they need even though the property's too small, and the municipalities can't stop them from doing it now.

The Vice-Chair: Mr. Sergio has the floor.

Mr. Sergio: I think we have covered most angles here, Mr. Chairman, but there was the presentation by the school boards in which they said, "You have to help us streamline the process so that we don't get involved and mired in a six-month hearing or delayed by someone living five blocks away from the school." It's a neighbourhood school. It's an existing site. It may be smaller than whatever, so they may have a constraint, yes, maybe abutting some residential area, but this deals with existing sites, with constrained sites, and it deals with expediency to accommodate perhaps an increase in students in that immediate neighbourhood. That school would be serving the local area and there is usually a parent-teacher council, whatever, which I'm sure has some influence as well. Schools and school boards, in most cases, are very much aware of local residents, local needs and local views.

Mr. Hardeman: I agree on that. I remember vividly the presentation from the school boards as to their concern, but I think we should all remember that their concern was not about the present process. They did not complain that they presently couldn't get their portables sited. Their only concern was that if you're going to make it more difficult and give more authority to municipalities, such as colour, design and exterior products, they couldn't even put in the types of portables they presently have.

Now, all of a sudden, we saw the fly on the wall, and the government has taken the sledgehammer to hit it, because all they wanted was the status quo, and the municipalities were happy with the status quo. They had site plan control on the portables. The school boards were happy, because they could bring in the standard portables, and they could work with the municipality on the site where everybody would think they were best suited.

Now, with this amendment, we have the situation that they no longer have to go through a site plan process with municipalities. They just have to go get a building permit and say, "We can plant. We can grow or build within two feet of the property line, so why don't we put them all as close to the street as we can so we have more playground in the back?" That's where they'll go and be part of the residential area.

I agree with you that something needs to be done to protect them from that other clause that we're going to deal with later about the design criteria. This is not solving the problem they spoke of; this is creating a bigger problem with taking the municipalities out of the planning process, as far as portables go.

The Vice-Chair: I think we've had debate on this. We'll have the vote. Those in favour of the motion? Opposed? Carried.

Page 66, a government motion.

Ms. Mossop: I move that section 15 of the Bill be amended by adding the following subsection:

"(1.1) Paragraph 1 of subsection 41(4) of the act is amended by adding at the end 'including facilities designed to have regard for accessibility for persons with disabilities.'"

The Vice-Chair: Any comments on the motion?

Mr. Hardeman: It's one of these motions where it is very difficult to resist saying it's a very good motion. I just want clarification as to "including facilities designed to have regard for accessibility". Does that mean that anything you do to a building to make it accessible to the

disabled will have to comply with this section? Is this just for special buildings or any building that puts a lift in?

Mr. Sergio: Any building.

Mr. Hardeman: To get this right: Any building is exempted from development, provided—this is in subsection 15(1) of the bill? That's the same section we were just dealing with?

Mr. Sergio: Dealing with 66?

The Vice-Chair: We're on page 66, yes.

Mr. Hardeman: Maybe you could clarify it for me then. What does this do for the buildings that are designed for the handicapped, for the disabled?

Mr. Sergio: It provides that a municipality may require plans to have regard for accessibility for persons with disabilities—exactly that, short and sweet.

Mr. Hardeman: Say that again?

Mr. Sergio: It provides that a municipality may require plans to have regard for accessibility for persons with disabilities. It's to make sure that they are accessible for persons with disabilities.

Mr. Hardeman: I quite agree with that. I just don't want other buildings exempt from the process.

The Vice-Chair: I'll call the vote. Those in favour? Opposed? Carried.

Page 67, a government motion.

Mr. Rinaldi: I move that subsection 15(2) of the bill be struck out and the following substituted:

"(2) Paragraph 2 of subsection 41(4) of the act is amended by striking out 'and' at the end of subparagraph (b) and by adding the following subparagraphs:

"(d) matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design, but only to the extent that it is a matter of exterior design, if an official plan and a bylaw passed under subsection (2) that both contain provisions relating to such matters are in effect in the municipality;

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"(e) the sustainable design elements on any adjoining highway under a municipality's jurisdiction, including without limitation trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities, if an official plan and a by-law passed under subsection (2) are in effect in the municipality; and

"(f) facilities designed to have regard for accessibility for persons with disabilities."

The Vice-Chair: Thank you. Any comments on the motion?

Mr. Hardeman: I'd like to move an amendment to the motion.

I move that clause 41(4)(d) of the Planning Act, as put forward by the government motion—that section (d) be struck out and the following substituted:

"(d) matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design, but only to the extent that it is a matter of exterior design, if,

"(i) an official plan and a bylaw passed under subsection (2) that both contain provisions relating to such matters are in effect in the municipality,

"(ii) the building is a designated heritage building or in a designated heritage conservation district under the Ontario Heritage Act, and

"(iii) the design details to not include specific materials that must be used;"

So that was an amendment to strike out section (d) of the government motion and replace it with our clause (d).

The Vice-Chair: Okay, that's the motion on page 68 that was just read. So we debate page 68, the PC motion just read, because it's been proposed as an amendment.

Mr. Flynn: I haven't seen it in writing, obviously, but it appears to be contrary to the amendment that's on the floor.

The Vice-Chair: It's on page 68. We're dealing with—

Mr. Flynn: I'd just ask the clerk to rule if it's not contrary to the matter that we were dealing with on 67. It doesn't appear to be an amendment to it; it appears to be directly contrary to what we would be asked to vote on.

Mr. Hardeman: Chairman, before you rule on its matter of order, I would point out that prior to reading the amendment, I was concerned as to whether I could put it in an amendment, because it is so similar to what the motion presently is. The only difference that I would refer to is (iii), which is, "the design details to not include specific materials that must be used". There is nothing in the motion that the government has put forward that says that certain materials are going to be designated. That's totally different, so it's not contrary.

The other two are in fact identical to the (d) motion, only, in my opinion, in slightly more explicit wording. I don't think, having seen the government motion, I could have come closer to clause (d) with the motion that I just read into the record. Now we can rule on it whether you think it's in order.

Mr. Flynn: With that explanation, certainly I would like to accommodate my colleague. Why would we not just deal with 68 and 67 out of order, then, and just vote on 68 and then go to 67 after that?

The Vice-Chair: Basically that's what we're doing here.

Mr. Hardeman: Mr. Chairman, that's exactly what will happen. As I've read the whole section into the act, if that passes, it would go into your motion. If it doesn't pass, then we deal with the motion unamended. I'm fully expecting the government to support this amendment because in fact it does make an improvement to the resolution quite extensively.

Mr. Flynn: I'm in your hands. I just want to deal with it in the proper manner.

The Vice-Chair: My understanding here is that this is proposed as an amendment. It's been read as an amendment. We will vote on it as an amendment; then

we'll vote on the government motion as amended, if it passes.

So we'll take the amendment first. It's on page 68. Yes, Mr. Hardeman?

Mr. Hardeman: I'd just like to explain, if I could, Mr. Chairman. As we look at the original motion and the amendment, as I said, on the first two points, "an official plan and a bylaw passed under subsection (2) that both contain provisions relating to such matters are in effect in the municipality"—that is in fact in the government motion.

The other one, "the building is a designated heritage building or in a designated heritage conservation district," again is part of the government motion.

"The design details do not include specific materials that must be used" I think is the one that is not in the government motion. But the intent of the government motion is to achieve a goal, an end result that we have consistent conformity within the building district or within the streetscape, so the municipality can design not only the architectural significance of a community but they can designate or mandate the looks of a community.

If you look at (iii), I think a lot of our developers were concerned about that, that the municipality would designate a type of material. If the developers can achieve a certain look and façade that the municipality supports, why would the municipality be concerned what type of material was used to do that? I don't think they should be allowed to say, "You must do it with glass or you must do it with plastic." If you can achieve the goal of the municipality in the streetscape that they're looking for, then you should be able to do that with the material that you can use, provided you meet the end result. That's why I think it's important that that part of it be included.

For the rest, it is an identical amendment to the government-proposed resolution. I think it's almost to the point of what we would call a friendly amendment, because the end result of this amendment, though it clarifies what we want to do, does not change the results that the government hopes to achieve with the amendment that's before us. I would ask for and fully expect that the government will see the wisdom of this and support this amendment because it will improve this section of the bill.

The Vice-Chair: Mr. Sergio.

Mr. Sergio: I'm sorry, I was just out for a short break. Can we have staff see how the clauses that Mr. Hardeman wants to incorporate into the government motion would fit or if they would create a problem for the government motion? Can we ask staff? I wasn't here.

Mr. Glenn: Ron Glenn, provincial planning and environmental services, Ministry of Municipal Affairs and Housing. Motion 68, in breaking it down, really takes the site plan control and the applicability of design elements only to heritage-designated buildings and heritage-designated areas under the Ontario Heritage Act. Contrary, the motion under number 67 allows municipalities, if established in their official plans, to apply external design controls to all areas in a municipality if they designate them and include them in a bylaw. So they are a little bit different within those two provisions.

The third provision, dealing with design materials: There is a provision existing in Bill 51 that talks about the types of materials and construction standards in the bill today. There are provisions under the building code that talk about types of materials and standards for construction that do put a prohibition already on detailing the construction standards or the type of materials. That would be under the building code.

Mr. Sergio: So, substantive change.

Mr. Hardeman: To the staff, the designation of type of materials in the building code would in no way relate to Bill 51.

Mr. Glenn: No, it's separate under the building code altogether.

Mr. Hardeman: I guess I'd like your opinion on (iii). Designating a type of building material in order to achieve architectural or colour or type of façade would not be covered in the building code. This would be beyond the building code. The way the government's motion is, it would be beyond the building code, where they could ask for glass instead of plastic.

Mr. Glenn: If it's a decorative nature, it would be beyond the building code.

Mr. Hardeman: I think that's really why—to the government members—I put that in, that they wouldn't designate the type of material, only the façade or the end result that they require, as opposed to telling them, "It must be built with this material." We could very well have the mayor have a company that produces a certain product and we could have council demanding that every developer use his product because that's what they wanted to see, even though it looks exactly the same as the competitor's product. I don't think that that's the right way to pass legislation. That's why I think it's important to the members of the government that we include that, that they can describe or prescribe a streetscape as its authentic look and as its structural nature, which the building code does, but cannot say which material you must use to get there.

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Mr. Glenn: I think we have to remember that for a municipality to be able to utilize this tool, they must also have official plan policies in place that set out the broad parameters on how they're going to deal with it, but they must also have a bylaw in place that sets out the specifics of how they're going to apply it, so that it doesn't become an ad hoc, site-by-site application, so that there is a standard set across the municipality.

The Vice-Chair: Mr. Prue.

Mr. Prue: Yes, just a question in terms of heritage buildings because I want to understand how this Conservative motion relates. I was, for many years, a member of the Toronto Historical Board. There was a huge debate all the time when buildings were being fixed up on whether or not they should try to use more or less original materials. So you would use single-pane glass as

opposed to double or triple; you would use wooden outside pieces as opposed to plastic, even though the wood might rot. Is this going to in any way change the historical designations to use original types of materials, on the one hand, but, on the other, is it going to in any way make it more difficult to get energy conservation and like measures by using materials which literally are no longer used?

I'm just wondering how this works in. I understand the conundrum, but I don't understand how this is going to impact.

Mr. Glenn: I think from the standpoint of the impact to the community, the Ontario Heritage Act and the requirements around building preservation still remain. This also talks under the site plan provisions of now talking about the other buildings in the area that may not be designated as heritage buildings, about maintaining community character and community streetscape. There's a blended fashion, so that you don't have a heritage area with a building that has been preserved and that's what you want to see on your street and the building next to it now becomes an art deco building. Now the community could set out how that streetscape is going to go, how new buildings or redevelopment fits in.

Mr. Prue: That's what the Conservative motion does?

Mr. Glenn: That's correct.

Mr. Prue: Okay, thank you.

The Vice-Chair: I think we've had a good debate. Thank you for your assistance. We will vote on the amendment. That's page 68.

Ms. MacLeod: Could we have a recorded vote?

Ayes

Hardeman, MacLeod, Prue.

Nays

Flynn, Lalonde, Mossop, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Now we will vote on the government motion on page 67.

Mr. Hardeman: Recorded vote.

Ayes

Flynn, Lalonde, Mossop, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Now we go to page 69, a government motion.

Mr. Lalonde: I move that section 15 of the bill be amended by adding the following subsection:

"(3.1) Clause 41(7)(a) of the act is amended by adding the following paragraph:

"4.1 Facilities designed to have regard for accessibility for persons with disabilities."

The Vice-Chair: Any discussion?

Mr. Hardeman: Again, I'd like an explanation of what this does for the disabled.

Mr. Sergio: Very simply, this motion provides that a municipality may require that facilities must be designed to have regard for accessibility for persons with disabilities as part of the site plan approval.

The Vice-Chair: Anything further? You've heard the motion. All in favour? Opposed? The motion is carried.

Page 70, a government motion.

Mr. Flynn: I move that section 15 of the bill be amended by adding the following subsection:

"(4.1) Clause 41(8)(a) of the act is amended by adding the following subclause:

"(v) where the land abuts a highway under the jurisdiction of the upper-tier municipality, facilities designed to have regard for accessibility for persons with disabilities;"

The Vice-Chair: Thank you. Any discussion? All in favour? Opposed? The motion is carried.

Page 71, an NDP motion.

Mr. Prue: Okay, not out of order this time, because it's a different section. You can vote against it if you want. I fully expect that.

I move that section 15 of the bill be amended by adding the following subsection:

"(4.1) Section 41 of the act is amended by adding the following subsection:

"Exception, portable classrooms

"(8.1) Subsections (7) and (8) do not apply if the development is the placement of portable classrooms by a district school board."

What this means is simply that the municipality would have some kind of option in assisting the board where the portables were located.

The Vice-Chair: Any further discussion?

Mr. Hardeman: Thank you very much, Mr. Chairman. I'm sorry for being somewhat out of my chair at the time when you recognized me.

The Vice-Chair: You're in it now, and I recognize you.

Mr. Hardeman: I will be supporting this amendment. Again, I think it's very important to recognize that the school presentations did not want to be excluded from the process. They did not want to push the municipality out of the process of telling or helping them to please the community or address the community's concerns through the process of site planning. They were just concerned that we didn't pass a law that would make it, first of all, almost impossible to locate a portable anywhere and, secondly, that they couldn't use the present portables because the municipalities, going back to the motion that was just passed, could actually tell them what colour they had to be and what material had to be on the outside of them. Now, with the amendment that was just passed, they can do that. They can all of a sudden say, "All these school portables are covered with tin, but the city has

decided we are no longer going to allow tin portables in our jurisdiction." So they would have to get all different portables before they could site them on the school site. What they wanted was the status quo, which is that the school site is zoned for educational purposes; we have a right to put portables there so we can educate our students. The only problem we have is that we have certain setbacks we must maintain. Beyond that, we have the city and the city planners to help us decide where best to site them within the context of our site to have the greatest positive impact on the community that we're serving. So I think this is really doing that, allowing them to carry on not only with the portables that are presently there but also to site future portables under the same criteria that they've used so far. Not one of the school boards came in complaining that the present structure wasn't working. They just said they didn't want to inhibit it by putting more restrictions on it and then not being able to site them.

I support this motion, and I would suggest the government support it too in order to not only address the problems of the district school boards but to also help address the concerns that municipalities will have when they no longer have any say where on the site the portables go.

The Vice-Chair: Thank you. Any further discussion?

Mr. Prue: Recorded vote.

Ayes

Hardeman, MacLeod, Prue.

Nays

Lalonde, Mossop, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Next we have, on page 72, a government motion.

Ms. Mossop: I move that subsection 41(16) of the Planning Act, as set out in subsection 15(7) of the bill, be struck out and the following substituted:

"City of Toronto

"(16) This section does not apply to the city of Toronto, except for subsection (1.1), paragraph 1 of subsection (4), subparagraph 2(f) of subsection (4) and paragraph 4.1 of clause (7)(a), which provisions apply with necessary modifications."

The Vice-Chair: Thank you. Any comments?

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Mr. Hardeman: I would like to know what the sections mean that do not apply to the city of Toronto but do to the rest of the province, and what impact that will have on the Planning Act as it relates to all municipalities when you take the largest municipality out.

Mr. Sergio: I think now it makes it province-wide instead of strictly the city of Toronto. Now it's province-wide.

Mr. Hardeman: It is province-wide?

Mr. Sergio: Province-wide, yes.

Mr. Hardeman: Yes, but why the exceptions for Toronto? This doesn't apply to Toronto, so that doesn't make it province-wide anymore. Why is that being done?

Mr. Sergio: I believe that it applies for the city of Toronto already. They already have that within the City of Toronto Act.

Mr. Hardeman: The wording is kind of suggesting the other way: "This section does not apply to the city of Toronto." That's kind of a negative to saying we're going to make it universal.

The Vice-Chair: Are we interested in getting a staff opinion?

Mr. Sergio: If staff wants to clarify that.

Mr. Shachter: Good afternoon. Irvin Shachter, legal services branch, municipal affairs and housing, still.

Ms. Mossop: Good afternoon.

Ms. MacLeod: Your nameplate will be ready soon.

Mr. Shachter: Well, thank you, but no, please don't.

Currently, subsection 41(16) excludes section 41 site plan provisions from applying to the city of Toronto because section 114 of the City of Toronto Act has its own site plan control provisions.

In order for the provisions you have been discussing today—portable classrooms and the three or four accessibility provisions—to apply to the city of Toronto also so that everybody across the province is on the same level playing field, what has to happen is that the section that says, "This section does not apply to the city of Toronto" has to be amended to say "except for" those sections that we're referring to, which are portable classroom provisions and the three or four accessibility provisions.

Mr. Hardeman: The parliamentary assistant was right.

Mr. Rinaldi: Always.

Mr. Hardeman: And we commend him for it, always. It doesn't matter where we have to go to get there, but the parliamentary assistant is right.

The question then becomes, to the parliamentary assistant, has the ministry been in contact with the city of Toronto to say, "Last week or last month we gave you total control of the site plan, save and except that this week we decided to take some of it away from you"? Because in all the things we've heard about the portable sitings, until this law came along—and from the explanation I've just heard, this would not apply to the city, so site plan control would have applied in the city of Toronto; now it doesn't.

Mr. Shachter: If I can interrupt a second just to clarify, what would happen is, this provision doesn't take away the site plan from the city of Toronto. If we remember, there are now two parallel systems in Ontario. You have site plan control within the city of Toronto and site plan control everywhere else in the province, under the Planning Act. The Planning Act is proposed to be amended to include a number of provisions relating to portable classrooms, so those matters would then be under the purview of site plan control by the various municipalities. At the present time, without a provision that makes those provisions apply to the city of Toronto,

the portable classroom provisions would not apply and neither would the accessibility provisions, but the city of Toronto would still be in control of the site plan control process within the city of Toronto.

What it does do, though—it does mean that the city of Toronto will have site plan control provisions in the City of Toronto Act and will now have additional site plan control provisions in the Planning Act.

Mr. Hardeman: Let me ask the legal branch: If this amendment was not passed, would the city of Toronto then be able to have site plan control on siting new portables?

Mr. Shachter: Yes. The provisions of one (1.1) would not apply.

Mr. Hardeman: This amendment is taking that away from them. They cannot use site plan control to site new portables.

Mr. Shachter: If I could just restate what you've said to apply it back to the provision, what this amendment is proposing to do is to make the provisions of 41(1.1), which is the portable classroom exemption, apply to the city of Toronto.

Mr. Hardeman: Just going back to the city of Toronto, up until now, without this amendment—if for some reason the call of nature came all of a sudden to all the government side and there were only two votes over there and there were three over here, and this amendment were to fail, then the city of Toronto, with everything that's presently passed, would still have site plan control over new portables in the city of Toronto.

Mr. Shachter: That's correct. You'd have a situation where the city of Toronto would have control over portable classrooms on school sites that existed as of January 1, 2007, and would not be able to have any control over accessibility for persons with physical disabilities.

Mr. Hardeman: It's not unreasonable that the mayor of Toronto, until this section is passed, would assume, "Don't worry. We're not covered by the site plan control restrictions for the rest of the province because we have our own site plan, so if they're going to impose a restriction on site plan control in the province, that's okay because we control our own." Thursday morning he's going to wake up and find out that he has been lumped back in the province for the restriction. Is that right?

Mr. Shachter: I can't really speak to the mayor's assumptions about this particular matter. I can only repeat what I've indicated before, that—

Mr. Hardeman: This section is what puts Toronto back in the regime of the total province. As the parliamentary assistant says, this makes it uniform. The City of Toronto Act made site plan un-uniform and this makes school location sites uniform again.

Mr. Sergio: Consistent throughout the province. Let me add this in answer to your question. If we were to take anything away from the city of Toronto with respect to the proposed legislation, the mayor of the city of Toronto would be here or on to the Premier or to the minister.

Mr. Hardeman: Mr. Chair, surely the parliamentary assistant isn't suggesting that both Hazel and the mayor of Toronto were notified of these amendments before I was. He doesn't know they exist yet, does he?

Mr. Sergio: I have no idea. The fact is that the city of Toronto and the rest of the province will be allowed to perform within the same laws with respect to new portables after January 1.

Mr. Hardeman: But no site plan for portable classrooms. Neither one has that now after this.

Mr. Sergio: That's right.

The Vice-Chair: I will call the vote.

Mr. Hardeman: Recorded.

Ayes

Lalonde, Mossop, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

We are at the end of section 15. Shall section 15, as amended, carry? Those in favour? Opposed? Carried.

Being that we are very close to the 5 o'clock time period, I do want to say that I appreciate your patience with me as the Chair here today. It was certainly a learning experience for me, and I do want to thank staff for your input and support. It was much appreciated.

We will adjourn—

Mr. Hardeman: Mr. Chair, before we adjourn, I just wanted to say we've had many Chairs, but there's none I want to trade you for.

The Vice-Chair: This hearing adjourns until 10 tomorrow morning.

The committee adjourned at 1658.

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Mr. Mario Sergio (York West / York-Ouest L)

Also taking part / Autres participants et participantes
Ministry of Municipal Affairs and Housing:
Mr. Irvin Shachter, senior counsel, planning law section;
Mr. Ken Petersen, manager, and Mr. Ron Glenn, acting manager, provincial planning and environmental services branch

Clerk / Greffière
Ms. Susan Sourial

Staff / Personnel
Ms. Lucinda Mifsud, legislative counsel,
Ministry of the Attorney General