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ISSN 1180-5218

Legislative Assembly
of Ontario

Second Session, 38th Parliament

Assemblée législative
de l'Ontario

Deuxième session, 38e législature

Official Report of Debates (Hansard)

Wednesday 9 August 2006

Journal des débats (Hansard)

Mercredi 9 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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Hansard Reporting and Interpretation Services
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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 9 August 2006

Mercredi 9 août 2006

The committee met at 1001 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. I'd like to call the committee hearings to order and welcome those who are here today substituting in any way and those who are permanent members of this committee. I hope that you have a rewarding day with the deputants. To those deputants who are here, I wish you well.

Just a couple of reminders to the committee: Amendments are due by August 23, and the due date for written submissions from the public is August 28. I believe clause-by-clause is August 29 and 30. That's just a reminder to the committee.

URBAN DEVELOPMENT INSTITUTE/ONTARIO

The Vice-Chair: First on the agenda this morning we have the Urban Development Institute. If you would like to make your way to the chair and have a seat, there's water there. You will have 20 minutes to make your presentation. Should you not require the full time, we'll take the remaining minutes and divide them between the three parties and we'll have questions. Welcome to the committee hearings. Please state your full name so it's recorded for Hansard.

Mr. Neil Rodgers: Thank you, Mr. Chairman and members of the committee. My name is Neil Rodgers. I am the president of the Urban Development Institute of Ontario and we are pleased to be here before the committee today.

UDI has many concerns with a number of the elements of the draft legislation as in our view the bill, if passed as currently drafted, would dramatically increase uncertainty and infringe on the rights of private citizens to such an extent as to create an untenable imbalance between the public and private sectors. This, in turn, has the very real potential of making the planning approvals system in Ontario unworkable.

UDI supports consistency with provincial policies and plans, but we have a number of concerns with this particular section of the bill as currently drafted. The proposed changes would impose a rigid rule of law that is at odds with the long-standing common approach of the Ontario Municipal Board and the courts, which is generally to apply policies and plans in effect on the date of application while having regard to the facts and best available evidence.

As well, we are objecting to the lack of certainty afforded by this section, particularly if applicants have filed materials, perhaps through the complete application requirement process, in good faith, as municipalities could potentially delay addressing controversial projects in anticipation of changes to provincial policies or plans and by declaring an application premature or by refusing to make a decision. Without a fair and consistent approach, municipalities and applicants face enormous and potentially paralyzing uncertainty.

UDI recommends that the bill be amended to provide that decisions and comments of approval authorities be consistent with provincial policies in force on the date of application and conform, or not conflict, with provincial plans in force on the date of application.

In the event that the province fails to accept this particular recommendation, we recommend an alternative: that this section of the bill be deleted in its entirety, allowing the OMB and the courts to continue to balance the Clergy principle with the best available evidence.

With respect to transition provisions, the bill as currently drafted potentially allows for the legislation to come into effect retroactively to December 12, 2005. Given the complexities of the bill and the confusion and disorder that retroactivity creates, we do not perceive the need to depart from the province's well-established custom when amending the Planning Act in the past and therefore recommend that Bill 51 come into effect on the date of royal assent.

With respect to introduction of new evidence and material before the Ontario Municipal Board, we take

exception to the provisions in the bill that restrict the right of private parties but not public bodies to introduce new information and/or material into evidence during an appeal hearing at the board. These provisions are inherently unfair, run counter to rights of natural justice and, if these sections of the bill are passed as currently drafted, will create significant administrative and logistical problems, perhaps at the municipal council level, that will add unnecessary costs and delays to an already expensive and lengthy process.

We recommend that the province amend this section of the bill to provide that: (1) new information and/or material be allowed to be introduced into evidence at any time during a hearing of an appeal at the OMB; (2) municipalities and approval authorities be granted the right to bring a motion to return an application to council for review upon the introduction of new information and/or material into evidence; (3) the OMB be granted the authority, upon a motion from the municipality or approval authority, to return the application and the new evidence to council for review along with a request to council to provide a recommendation to the board within 30 days if the board determines that the new information and material introduced into evidence could have materially affected council's decision; (4) in the event that council fails to make a decision on an application, the municipality's right to bring a motion to return the application to council upon the introduction of new information or material into evidence is forfeited.

With respect to rights of public bodies, we assert that the public interest is more than adequately protected during the planning process and that providing public bodies with superior rights during a hearing is redundant and would create an unjust double standard between private persons and public bodies. As provided for in Bill 51, any person or public body that has participated in the planning approvals process has the right to appeal a decision of council and, in the unlikely event that the public or provincial interests are at risk, the minister, through amendments made in Bill 26, may declare a matter of provincial interest.

UDI believes that restricting the rights of persons but not public bodies that have not participated in the planning approvals process is inherently unfair, has the potential to be used in a vexatious and obstructive manner and would allow far too much uncertainty in the planning approvals process. Public bodies that have not participated in the approvals process should be subject to the same restrictions, as contemplated in Bill 51, as private citizens who have not participated.

To provide fairness, we recommend that the bill be amended to prohibit public bodies that have not participated in the planning approvals process from appealing a decision of council being added as a party to a hearing of an appeal at the OMB and introducing new material and/or information into evidence during a hearing.

You've heard a lot about the issue of complete application. We believe that the arguments put forth in support of municipal authority to impose complete application requirements have been vastly overstated and that the province's response, through legislative amendment, is excessive. As each municipality is unique, so are the individual sites and applications and their supporting information.

We remain skeptical that the complete application provisions in the bill and the associated regulations can adequately address the complexities inherent in the policy and land use decision-making process in Ontario. Specifically, the development industry is concerned that complete application requirements will be used to frustrate legitimate applications, as the potential exists for approval authorities to establish onerous requirements of unnecessary or costly studies for contentious projects for purposes of obstruction and delay.

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Given the enormous challenges of addressing complete application requirements through regulation and official plan amendments, UDI would prefer to see the establishment of a consensus-based process similar to the models used in the city of Toronto, the city of Mississauga and the town of Oakville, whereby applicants and municipal planning staff decide together what information and studies are required to support the application. If the province does not see its way to accept this recommended alternative, UDI suggests that appropriate tension needs to be incorporated into the system to ensure that applicants are treated fairly.

As our second choice, we recommend, at a minimum, that the bill be amended as follows:

(1) Establish a 30-day deadline after an application is submitted within which the municipality is required to confirm to the applicant whether the application is complete or incomplete.

(2) Require that if the municipality deems an application incomplete, it must provide the applicant with a written list of missing information and/or materials. Once the applicant provides that information to the municipality, the application in deemed complete.

(3) Provide that if the municipality fails within 30 days from the date of submission to confirm whether an application is complete or not, the application is deemed complete.

(4) Grant an applicant whose application has been deemed incomplete the right to make a motion to the OMB as to the completeness of the application or the reasonableness of the municipality's requests.

With respect to restrictions on employment land conversions, we support the preservation of an overall sufficient supply of employment lands as well as the protection of strategically located employment lands. However, we have some concerns with the proposed sections of this bill as follows:

—Historically, a large number of residential intensification projects have occurred on former employment lands through the redevelopment of brownfields, and it is unclear how the province intends to reconcile these three key policy issues: preservation of employment lands, brownfield redevelopment and intensification.

—The proposed restrictions on appeals are very broad and include the potential to frustrate appropriate regeneration and intensification projects.

—The definition of "area of employment" is unclear, particularly as it applies to mixed-used and regeneration areas. For example, the redevelopment that is occurring along many of the city of Toronto's avenues is including retail uses at grade with office and/or residential above.

In light of the foregoing, we recommend the following:

(1) Stipulate that the sections within the bill regarding areas of employment are not applicable within a municipality until such time as the municipality has updated its employment land policies within its official plan subsequent to the bill coming into force. This will afford municipalities the opportunity to review and seek input regarding appropriate employment designations in light of the proposed amendments to the Planning Act in this bill and the Places to Grow conformity exercises that are taking place, primarily within the greater Golden Horseshoe area.

(2) Ensure that employment land definitions and policies are consistent and integrated with other provincial policies and legislation, particularly the provincial policy statements, the recently released Places to Grow plan, brownfield policies and other initiatives.

(3) Provide for a definition for mixed-used areas.

(4) Amend the definition of "area of employment" to clarify that the proposed restrictions do not apply to mixed-use areas such as office/residential or commercial/residential.

(5) Include major retail uses in addition to manufacturing, warehousing and office facilities in the definition of employment areas, as they provide significant employment opportunities within the communities.

With respect to a number of issues, including energy conservation, land dedications and parkland dedication, we have a number of issues.

UDI supports sustainable development but has concerns with the proposed sections of Bill 51 that address energy conservation, land dedications, design review and parkland dedication. These sections would allow municipalities to require substantially increased land dedications and set high design requirements at the sole expense of the applicant. Municipalities may provide incentives in the form of a reduction in payment in lieu of parkland dedications, but only if the applicant proposes land for redevelopment and meets sustainability criteria yet to be determined and as determined by the municipality. These dedications and requirements—for example, through municipal control of exterior design as relates to sustainable design, i.e., green roofs—may add significant costs to the applicant. As the bill does not provide any incentive for municipalities to work co-operatively with proponents, we foresee municipalities making excessive demands without concern as to their prohibitive cost, potentially threatening the economic feasibility of development and redevelopment applications.

Therefore, we recommend that the province amend the bill to require municipalities to offer applicants an offsetting credit on their parkland dedications, payment in lieu of parkland conveyances and/or development charges arising from these dedications and requirements.

With respect to parkland dedications, we are troubled that the province has not utilized this opportunity through the bill to address the oft-stated concern to the development industry regarding parkland dedication. UDI contends that the Planning Act is vague regarding parkland dedication requirements, often resulting in municipalities interpreting parkland dedication or payment-in-lieu provisions with the goal of maximizing land dedications and revenues rather than providing appropriate park facilities.

UDI submits that the parkland dedication provisions in the Planning Act need to be amended to more accurately reflect the true cost of providing park facilities to accommodate increased population. UDI believes that the Planning Act is being misinterpreted in many examples in Ontario and requests that the province clarify this issue by amending the Planning Act through Bill 51 to explicitly state that the conveyance of parkland be required at the draft plan approval stage, or payment in lieu of parkland dedication be calculated based on the value of the land on the day prior to the day of draft plan approval.

With respect to official plans—I'm going to consider the timing here—in order to facilitate increased certainty to landowners, ratepayers, municipalities and private citizens, UDI is of the opinion that municipalities need time limits within which they must review and update their official plans as part of the mandated five-year OP review. A mandated deadline is particularly important, as many of the bill's provisions and regulations do not come into effect within a municipality until its official plan is up to date. We submit that conflict is substantially reduced when stakeholders have the same expectations of what the rules are and when they are likely to change. We also submit that the province routinely imposes limits within which municipalities are required to update their official plans to conform with provincial policies and plans. The Places to Grow legislation, the greenbelt and the Oak Ridges moraine are a few examples.

We recommend that the bill be amended to require municipalities to complete their OP review update within three years from the date of commencement of the OP review.

In conclusion, we are committed to the principles of fairness, accountability, transparency and certainty. We have based our recommendations to you today on these principles and are hopeful that the members of the committee will see fit to balance these interests and amend the bill accordingly. Thank you, Mr. Chairman.

The Vice-Chair: Thank you for your presentation. We have about a minute and a half for each party, so we'll start with the official opposition.

Ms. Lisa MacLeod (Nepean–Carleton): Thank you very much, Mr. Rodgers. It was a very well laid out presentation, something that of course many people, many of the deputants, have brought to us in the last little while.

Yesterday we did hear a lot about the retroactivity clause and the dangers that will bring to your industry. I'm wondering if you could expound upon that, some of the dangers that you think your industry will face. You touched on it, but I think it's worth noting publicly right now.

Mr. Rodgers: The bill was introduced December 12, 2005. It's probably fair to say that once this bill gets back on the floor of the assembly, it could be the end of the year. So a year will have passed. A lot of the provisions in the bill, as I said in my closing remarks, come into effect when official plans are updated. In that period of time, a year, a lot has happened in the industry. A lot of applicants have continued to work in good faith with municipalities in meeting their requests, in dealing with ratepayer groups and other organizations to understand their concerns and incorporate them into their development applications. To turn back the clock and say, "No, this bill comes into force December 12, 2005," would, I think, send the industry and municipalities into a tremendous amount of uncertainty. Municipalities won't know how to deal with certain applications.

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Ms. MacLeod: Is it fair to say that there might not be a uniform approach to this, that some developers might be brought into question here and others might not be?

The Vice-Chair: Quick answer.

Mr. Rodgers: That is fair to say, yes.

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

Mr. Michael Prue (Beaches–East York): Due to your time constraints, you skipped the portion on design review. I want to go back to that because we had a couple of deputations on that yesterday, saying that this was an infringement upon the rights of people to build the kind of buildings that they were capable of building. You have recommended that these sections be deleted, allowing municipalities and applicants to continue to work together in good faith.

We also heard about having peer reviews or other groups—rather than having bureaucrats say what colour brick, you have a peer review to describe building materials. Can you describe what you really want here? You skipped it.

Mr. Rodgers: We're not convinced that architectural control will make the concerns of ratepayers or of local community groups any less. It's a very, very subjective process. Our preference, rather than having architectural control, would have been an urban design review panel. We have had a number of consultations with the city of Toronto, which is well advanced in this area of research. We are concerned that innovation and creativity may be stifled by perhaps overzealous municipal staff trying to deal with the interests of local politicians and the ratepayers. We're not seeing this as a win-win. We think it's potentially a very bureaucratic process that may not necessarily lead to the result that I think the government and the public want.

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

Mr. Mario Sergio (York West): Mr. Rodgers, thanks for coming down and making a presentation to the committee this morning.

We believe that public participation is very important during, especially, the initial process of an application. You think that the provincial response is "excessive" to some of the others, and this one here as well. How do you expect to have the public engaged early enough, especially when an applicant doesn't supply enough information to the local municipality?

Mr. Rodgers: If I recall, the word "excessive" was used perhaps near the beginning of the bill.

Mr. Sergio: Yes.

Mr. Rodgers: I think when the bill was first drafted, it was drafted primarily with the municipality and the municipal concern in mind. Public participation in Ontario has worked very, very well. The most significant amendment to the Planning Act was probably in 1983. Before that, public participation was really hit and miss. So I think what we're seeing here is, there's a point in the process where perhaps there is too much public process. It gets bogged down in committee hearings and public hearings and all that other stuff. I think our industry does a very good job of pre-consulting with our municipal partners. It does a very good job of knowing who are the right people in the community to speak to. I think the ones that make the newspaper, the ones that get sensationalized, are a result of media, and I think this bill has in some respects caught that attention. But I think it's not as bad as the picture is painted from time to time.

The Vice-Chair: Okay. We will have to stop at that point. Thank you very much for your deputation, and have a good day.

DAN THOMEY
JOHN MORAND

The Vice-Chair: Next, we have Dan Thomey and John Morand. Welcome. Once again, 20 minutes for your deputation. Any time remaining in that 20 minutes we will split between the parties for questions. Feel free to have a seat.

Mr. Dan Thomey: Ladies and gentlemen, thank you for having me here today. My name is Dan Thomey. I'm a farmer. I represent the Dale Road ratepayers' association just north of the town of Port Hope. We've been in existence since 1982.

There's good and bad to Bill 51 as far as Port Hope is concerned. With few exceptions, Bill 51 is the best legislation proposed in Ontario for years. As a farmer, I've travelled the roads to the food terminal, to downtown farm markets for the past 25 years and I can really appreciate what gridlock is all about. Having said that, I feel that Bill 51 is going to severely damage our town of Port Hope, as Port Hope is a very, very sick community.

Port Hope is contaminated with radioactive waste. The nuclear industry came to Port Hope in 1932. Our greatest claim to fame is that we manufactured the material that was used to do the atomic bomb. Presently, Port Hope

manufactures all the material that fuels our CANDU reactors, so it's a very important industry. Our problem is that when the industry first got started in Port Hope, they really didn't know what they were doing and they indiscriminately distributed all kinds of radioactive waste all over the town. To give you a visual idea of how much waste was distributed around Port Hope, if you took a train from Port Hope to North Bay with gondola cars, it would take that length of the train to move all the waste out of Port Hope. The single most dangerous commodity within this waste is arsenic. We have one dump in the middle of town that has 27 tonnes of arsenic in it. If it got into the water system of the city of Toronto, it would kill every person in the city.

One of the other problems we've got is they mixed this waste in with local municipal waste. We have a dump in town that has to be uncapped after 25 years of rotting in the middle of town. It's going to be so putrid when they open this waste site up that the federal government has arranged a buyout program for the people immediately around that dump site so they can have some relief if they can't stand the smell.

They say that it's going to take us seven years to clean this waste up. We don't have a start date yet. They're talking about 2008. Experience has shown that every time they put a shovel in the ground, they come up with twice and even three times the amount of waste that they estimate they have, so it could take up to 14 or even 20 years to clean this waste up.

Our town is seriously divided. The people who work in the nuclear industry within the town have enjoyed very good wages over the years. The people who do not work within the industry are very cautious of the industry now because of all the waste and pollution that has taken place. They're very scared. It's a matter of trust and believing how much damage is done by this waste.

On one side of the fence are Cameco nuclear and Zircatec industries, which are both owned by Cameco. On the other side of the fence is an organization called FARE, Families Against Radiation Exposure. FARE has 1,500 members within a town of 12,000, which is quite a substantial organization within the town, and they're putting pressure on to clean it up and move it out, that type of thing.

For the last seven years we've been working within the official plan. Our problem is that when we got involved in our official plan, we hired a Meridian consultant to do an official plan and, within that official plan, GGA Ltd. to do an economic development vision to incorporate within that official plan. The problem is that the two consultants have different points of view. GGA thinks that the town should have a new industrial park outside of the town, because they have identified our greatest problem as the stigma around our nuclear situation and our lack of a cleanup to date. Meridian, on the other hand, taking the lead from municipal affairs in Kingston, has said that we have to intensify, no matter what. The problem, of course, is that over the past 30 years we have not been able to intensify—there's all kinds of vacant land within the town—mainly because of the stigma that revolves around the nuclear situation. So we're in a Catch-22. What we would like is for the municipal affairs people to revisit Port Hope, revisit Northumberland. We deserve a chance at a reasonable life. If Bill 51 is applied to Port Hope at this point in time, because of our specific problems it will be another 20 years before we start to clean up and then be able to sell some of those lots within the town.

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That's what we want. We want this committee to recommend to municipal affairs to revisit Northumberland, revisit Port Hope, have a look at Northumberland's position. We would like to see Northumberland designated as a growth area similar to Peterborough and revisit the specific problems within Port Hope. That's why we're here today, ladies and gentlemen. I thank you very much for your time.

The Vice-Chair: Thank you. We have about four minutes for each party. Oh, I'm sorry.

Mr. Mel Edwards: Mr. Chair, I would like to say one thing. My name is Mel Edwards; I'm not John Morand. Morand couldn't be here. I've been a real estate agent for that area since 1988. Recognizing the fact that there is nothing to develop within the borders of the urban boundary now, we want to extend it to the north and rather to the west. They were forced to go to the west in 1990, by increasing the parts per million of those carcinogens from two to 15. They are now living on contaminated land and they want to push even farther west if they're going to develop any kind of industry. So the north would have the place for the industry. I've had to refuse some of the industries I've got like a bird in the hand because there isn't the population or the land to support it. One in particular was a 450,000-square-foot building for 600 people, and it was turned down. So Bill 51 should be revisited. The population growth of 16,000 from 2001 to 2021 for the whole of Northumberland—we want to put that many people in Port Hope to take the business down there.

I thank you for listening to my submission.

The Vice-Chair: Thank you. My apology for not recognizing you right off the bat.

We will go to questions. We have about three and a half minutes for each party. We'll start with Mr. Prue.

Mr. Prue: I'm sorry. I had to go out of the room very briefly, so I might have missed some of it. I'm having a bit of difficulty understanding how your deputation relates to the actual bill itself. It's the Planning Act and the Conservation Land Act. What have I missed? I understand that you want better development in and around your town, I understand about the waste and the economic difficulties, but how does that relate to the particular act we have before us?

Mr. Thomey: Bill 51 is going to force the intensification within the town of Port Hope, and it's not possible. Nobody's buying. We've got all kinds of land immediately around Zircatec, on three sides of Zircatec. They've been trying to give that land away for years, and

there are just no takers. Everybody gets wind of the problems that we have with the contamination and backs out; they go elsewhere.

Mr. Prue: So you want Port Hope to be exempted from the act?

Mr. Thomey: We want the Ministry of Municipal Affairs to revisit Port Hope and take the pressure off intensification. We need some scope here, we need some latitude here, because of specific problems that we've got.

Mr. Prue: I just want to understand. Do you know of any other towns or cities or anyone else who might or should be exempted for similar problems?

Mr. Thomey: I've never seen anything quite like Port Hope; really, it's that bad.

Mr. Prue: Thank you very much.

The Vice-Chair: Thank you. Next we'll have Mr. Rinaldi.

Mr. Lou Rinaldi (Northumberland): Welcome to Queen's Park. I didn't recognize you as my constituents, I guess, first of all. I know Mr. Morand quite well and I was trying to picture him in the crowd here today and I didn't see him.

Anyway, you bring some concerns related to Port Hope which—it's a long story; we could be here for a while, and the time doesn't permit it. But as you know, there is an extensive—mostly initiated by the federal government—cleanup process. I think the community has been well engaged in that process. Whether it's perfect or not perfect—I'm not an expert. What I would offer you today, because I concur with my colleague Mr. Prue: I'm not sure all this fits in with Bill 51 specifically. Being the first time I've heard it, and being the member for that riding—I had quite an engagement with Places to Grow legislation, which deals more with intensification and those things—I'd be more than happy to sit down with you at your convenience and maybe set up a meeting with some of the folks. I have been working with the community to address those issues of intensification, not just for Port Hope but for the whole of Northumberland, because that's part of the greater Golden Horseshoe, that growth plan. There are some concerns, I agree with you, on some of those numbers, and I've been working with the mayors and the county very, very closely to address those issues. I'd be more than happy to sit down with you folks at your convenience.

Mr. Thomey: I appreciate that very much.

Mr. Edwards: May I address that for one more second? There have been two studies done very recently, and they're only a couple of months apart: GGA and Meridian, and they contradict each other. What we're facing now is the urban boundary that they created with the first report, which takes it up to Dale Road, which would be sufficient for the 2021 goal. The next one, Meridian, has suggested that we don't need that extra land. There isn't any other land to be had. I know from first-hand experience that they just can't get the land that they need for the growth that they should have.

The Vice-Chair: Ms. MacLeod.

Ms. MacLeod: I would be willing to forgo my questioning if Mr. Rinaldi would like to speak with his constituents on this, because I think the three parties have agreed that maybe they're actually talking about an issue that might not be best suited for this bill. So would you—

Mr. Rinaldi: I'd be prepared to meet with them outside. I don't want to hold up things here.

Ms. MacLeod: Okay. Just quickly then, I'd like to ask the deputants: Section 23 of this bill would allow energy-related projects to be exempt from the planning process municipally. I'm wondering how you think that would impact Port Hope, meaning, somebody could build a nuclear power plant in your community without it going to your municipal government.

Mr. Thomey: I think the nuclear industry is that important and I think the powers that be are wise enough to put big enough buffer zones around their plants. I wouldn't have a problem with that. I know some people would, but I personally wouldn't have a problem with that.

Ms. MacLeod: Okay. Do you have anything to add, sir?

Mr. Edwards: Wesleyville would be a perfect place to have the energy spot—

Mr. Prue: You stepped into that one.

Ms. MacLeod: I'm wondering if this is a set-up by Lou to get some—

Mr. Edwards: Darlington had their problems after they put four more in there. We have the cement, everything, readily available for putting the foundation—continuing the foundation, I should say—and bringing the people in to work. There's no place for them to live. They have to come in from outside. The middle of Port Hope is dead to construction. Outside of Port Hope they're building on radioactive land now; there's nothing else available. I'm going broke as a real estate agent because of it.

Ms. MacLeod: Thank you very much.

The Vice-Chair: Thank you for your presentation this morning. Have a good day.

ONTARIO ASSOCIATION OF ARCHITECTS

The Vice-Chair: Next we have the Ontario Association of Architects. Please step up, make yourself comfortable. There's water. As with the other presentations, you have 20 minutes, and the remaining time not used will be divided between the parties. As well, if you're both speaking, please state your names at the outset of your presentations so that Hansard has a clear record. Welcome.

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Ms. Kristi Doyle: My name is Kristi Doyle. I am the director of policy at the Ontario Association of Architects. I thank the committee for inviting us here today. The OAA, for those of you who don't know, is the self-regulating organization for the profession of architecture in Ontario. We have already made a formal written submission to the committee on this issue; however, we wel-

come the opportunity today to make an oral presentation as well. While we understand the government's goals and objectives in amending the Planning Act, we do have some issues and concerns that we would like to voice.

I would like to introduce our president, architect David Craddock, who will review and highlight some of the key elements of our submission.

Mr. David Craddock: Good morning. I'm David Craddock. As Kristi mentioned and as we put in our submission, we are quite supportive of the legislation. We have some minor concerns that we'd like to address. I'd just like to highlight. In our submission to you, we had what we considered five major points.

The first was that we think we need to establish planning frameworks that basically include community design objectives. Our concern is that with the sizes and differing compositions of municipalities, there is not, shall we say, a very uniform standard throughout the province of planning principles and policies in place. We are a bit concerned. We think this legislation is well directed and sweeping, but I think particular concern needs to be addressed to individual municipalities. Municipalities such as Toronto, which has extensive planning background, will be able to adapt to it. We are concerned that many of the smaller municipalities, though, will need guidance from the provincial government on how to do this.

The second one: Link zoning conditions with development opportunities. We think that the ability to apply zoning conditions, including architectural and sustainable design, is a significant new power available to municipalities. However, the OAA is concerned that, along with that authority, municipalities should offer reciprocal benefits to developers. In effect, we're saying that they should be able to know, when they enter into a process, what they're required to do but also the benefits that can accrue to both them and the community by going through this process.

The third is probably our most important one. We feel that we need to ensure there are consistent design policies, development standards and processes with clear limits. This basically says that the OAA recommends that consistent urban design and built-form policies be established through regulation and throughout the province, because I think uniformity is something that is critical to the design community and also the development industry. Our concern is that right now we're going through a rather radical, in our terms, change in policies at the building department level with the permit process. This whole process, which has been going on for three years, underscores the need right at the bill and regulation level that attention be given so that it's uniform, because many of the problems we're experiencing now, the delays in permits and issuances that the development industry and the design community face, are just the result of not having a uniform process throughout the province. The intent was there when we started, but we've had difficulty getting consistency in every municipality.

The fourth is that we would recommend that design professionals should be consulted and involved in the entire municipal design review process. By "design professionals"—while we, of course, are an association that represents one body, we also believe that there are basically four groups you should consider.

Municipal staff architects and designers: Many communities have them. On the other hand, many communities are not able to afford them or do not have them. I think it should be a requirement, if they are going through this process, that municipal staff have architects or qualified designers on their staff. On the other hand, design consultants can be retained by communities to provide the service. We also think the design review panel process is a very viable alternative. You will find attached to our submission a fairly lengthy, detailed model of one such process of a design panel. It's something that has been tested. For example, I think many of you will know that Vancouver has been doing design review panels quite successfully for over 10 years. The experience we've heard from architects and also from builders in that area is that the quality of design has improved, and also the speed at which the processes occur, because it goes through a design panel, and by the time it reaches the permit process, many of the issues that arise now at that level have already been addressed and taken care of.

Basically, what we're saying is that we need to establish a model urban design and built-form policy guideline and design review process for all communities in Ontario. Uniformity, I think, is key, because every community has different needs, but on the other hand, I think they can be addressed in a uniform way.

Our submission, as you probably will have read, is that we, as the design community, are interested in assisting both the province and the municipalities. That's the basis of the presentation that we had in our submission.

Thank you, Mr. Chair.

The Vice-Chair: Thank you. We have about three and a half minutes.

Mr. Prue: If I could, Mr. Chair, I have to duck out, so I'll cede my time to the others.

The Vice-Chair: Okay. Thank you.

We will start with Mr. Sergio.

Mr. Sergio: Thank you for coming down and making a presentation to the committee. We value very much the input of various groups, and especially one such as yours.

With respect to industrial lands, and residential as well, do you believe that you should have the same controls and criteria apply to industrial land as to residential?

Mr. Craddock: Yes, I believe so.For example, in the city of Toronto there's a current issue going on in our waterfront, where we have a minor issue of industrial uses colliding with residential communities immediately next door. So I think there have to be different standards, and then different issues will be addressed. That's where I think good design review would take that into consideration, issues that we were hearing earlier, perhaps, in Port Hope, things that are particular. I think you'll see in our brief that we feel that this type of process is ideal for

communities that are specific. That's what we're trying to say. There is not going to be a model policy that will work for every town in Ontario; in fact, it's the reverse. Every town probably needs to be different, to take into account whether it is strictly residential or has industrial or has an historical characteristic that needs to be preserved.

Mr. Sergio: During the hearings, we heard from some proponents from the various industrial and residential sectors that this would be another way of perhaps extending the process, and it may be costly as well. Do you really believe that this would extend the process or that it would be costly in any way?

Mr. Craddock: I would answer it—I'll maybe let Kristi as well. We believe that it has the possibility of it if it's not handled properly. That's what we're getting at. As I say, in Vancouver, where they are doing the preliminary review, it's been in existence long enough. People understand the route and also the timing. They've basically been relatively successful, using the peer panel system, to concentrate on the issues early enough so that it speeds it.

It's like having any process where you know the time frames; you can take them into account. That's what we're getting at in our submission, why we believe the legislation has to have the framework clearly delineated so that basically all the players—the designers, the developers, the property owners—understand it and know that there is a sequence, that it isn't just something that might be two months in Port Hope, might be five months in Toronto, might be a year and a half in some other municipality. It has to have uniformity, because realistically, I think the bottom line for Ontario is that if it's not uniform, the communities that have longer time frames—and that perhaps in turn means higher costs—are at an economic disadvantage.

Mr. Sergio: Thank you.

The Vice-Chair: Ms. MacLeod.

Ms. MacLeod: Thank you very much, Mr. Craddock and Ms. Doyle.

I'm very intrigued by the design review panel. We heard a deputant yesterday in the hearings talk about it. I met with the city planner of Toronto last night, who also spent some time in Vancouver with that process. You've given us a fairly detailed proposal, which hasn't been read into the record. I'd like to give you an opportunity to discuss the design review panel for the people who are watching at home and the people who are here today who don't have this piece of paper in front of them, because I think it's a worthwhile idea.

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Mr. Craddock: In our submission, appendix A, one of the members on our committee designed basically and suggested, in reviewing the process, what he called the model design review. In it, the core ideas on the first page—maybe I'll read that. "It may be argued that third-party design review promotes or establishes community character by ensuring that certain urban design and architectural principles are followed. Design review can reinforce community identity in protection of a valuable asset or serve to regain lost identity, improve quality of life and create investment opportunity."

The rest of that brief—and we don't really have the time, unfortunately, to read it through—sets out a suggested process that says what the process is, when input is required by the applicant, when input is required by the municipality to review it. It sets governing submission requirements—and this is important—so that when an applicant or a developer or an owner comes in, they know going in what the application requirements are. That's huge, because if you go to a process where you come in and then find you need different numbers of drawings or different types of studies, that takes time. So it's saying that it's essential is to know the submission requirements. To know the process is key: the composition of a review panel, the timing, the schedule dates, having an organization known. It's sort of a transparency and an organization. We say that that type of process could probably be consistent throughout the province.

Ms. MacLeod: So you think that a design review panel included in this bill would actually significantly improve the bill?

Mr. Craddock: I think it would, because I think a few of the other submissions that you've received, and a few that we've seen, suggest there are stakeholders in the community—we represent one portion of it; the development industry, municipal councils—there are a lot of groups that want to become involved. Again, we're starting to see it in others. As I mentioned with Bill 124, there's more involvement in the industry as a whole. People are being much more open and collaborative, and I think this bill has that same opportunity.

Ms. MacLeod: Excellent. Thank you very much.

The Vice-Chair: Thank you for your presentation this morning. I wish you a good day.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Vice-Chair: Next we have the Canadian Environmental Law Association. Welcome. Make yourself comfortable. There is water. As with the other deputations, there's 20 minutes. Should there be time not used in your presentation, we'll divide it between the parties. Please state your name for Hansard purposes.

Ms. Jennifer Agnolin: Thank you, Mr. Chair. My name is Jennifer Agnolin. I'm junior counsel with the Canadian Environmental Law Association, also known as CELA. CELA is a non-profit public interest organization that was established in 1970. CELA's mandate is to use existing laws to protect the environment and to advocate for environmental law reform. CELA is also one of 15 specialty legal aid clinics in the province. We act on behalf of citizens or citizens' groups who are otherwise unable to afford legal assistance at hearings and in courts on environmental law matters.

I'd like to thank the committee for giving CELA the opportunity to speak today about Bill 51. CELA has been

extensively involved in land use planning and environmental law issues over its many years. During its three decades of existence, CELA lawyers have represented countless clients before planning tribunals, including the OMB and the consolidated hearings board.

It is this public interest mandate and background that feeds my comments today. These comments are also summarized in a written submission that was made by CELA dated February 24, 2006; it has been passed around the room.

In short, CELA is very supportive of Bill 51. We believe it is a strong step forward in creating a planning process that is responsive to the needs of municipalities, that enhances local democratic decision-making, and that will help create more environmentally sustainable and vibrant communities. In particular, CELA supports the following provisions: changes that allow municipalities to define "complete" applications; the requirement that the OMB have regard for decisions of council; the requirement that official plans be reviewed every five years; and enhanced public consultation for official plans.

CELA does, however, have very strong concerns with three provisions of the bill.

The first two concerns deal specifically with public participation and changes that we believe will severely limit the public's ability to effectively participate in local planning decisions.

To provide context, I'd like to explain that a very important part of my job at CELA is screening legal intake. I receive numerous calls and e-mails each week from citizens all over the province who have various environmental law issues and questions. A large portion of these calls relates to local planning, and specifically to hearings before the OMB. It is CELA's experience that it is already extremely difficult for private citizens and public interest organizations to effectively participate in OMB proceedings. Citizen participation should be enhanced and not limited.

First, CELA strongly objects to the proposed subsection 34(24.2) that restricts evidence permitted at OMB hearings. We understand that the motivation behind this section is to ensure that all of the relevant information pertaining to an application is submitted to councils before they make a decision and to preserve the role of the OMB as an appellate body. As stated earlier, CELA is in support of achieving this goal; however, this goal is accomplished largely with (a) the complete application provision and (b) the provision that the OMB must have regard to council decisions. The need for this section, therefore, does not exist. The result of the restricting-evidence provision instead has a disproportionately negative impact on the public's ability to meaningfully participate in appeals at the OMB.

Applicants have the time, business incentive and financial resources to prepare full applications before council. Members of the public have none of these advantages. It can take months for public interest groups to raise the funds necessary to hire the experts and lawyers to properly evaluate an application. Further, it isn't known to the public if this extreme effort is necessary until after a planning decision is made. The effect of limiting evidence, therefore, means that only the most affluent members of the public will be able to participate in planning appeals. This barrier to public participation results in significant inequities and less meaningful public access.

CELA's second concern is with the provisions that restrict the right of appeal of council planning decisions to public bodies and to those who made oral presentations at a public hearing before the decision was made. Currently, any person is allowed to appeal a planning decision to the OMB. There has been no indication or public discourse that there are problems with the current status of appeal rights. We are unaware of any need to change them. The change that has been proposed will effectively shut out a large portion of the public from the OMB. In many circumstances, residents do not become aware of a proposal or a council decision until they see a notice in the local newspaper after a decision has been made. Limiting appeal rights in the proposed manner effectively shuts out this large section of the public. This is the only group whose appeal rights are being impacted in Bill 51. CELA recommends that the proposed subsection 34(19.1) be deleted on the grounds that it is unjustified and contrary to the public interest.

Finally, CELA is strongly opposed to section 23 of the bill relating to energy undertakings. This section exempts from the Planning Act energy-related undertakings that have been subject to an environmental assessment and those that have been exempt from being subject to an environmental assessment. Energy-related projects can be characterized into three categories per the Environmental Assessment Act: those that are subject at some level, those that are specifically exempt, and then the remainder. Regulations promulgated under the Environmental Assessment Act, namely Ontario regulation 116 and sections 14 and 15 of Ontario regulation 334, purport that all energy-related undertakings that are not specifically exempt or covered by the Environmental Assessment Act are to be considered exempt. Effectively, the remainder category is considered exempt.

The effect of section 23, then, is that virtually all energy-related undertakings are exempt from the Planning Act. This means that important site-specific issues related to zoning, such as setback requirements, construction, traffic and overall official plan requirements, are not going to be considered at all for energy projects. The environmental assessment process, where it's actually implemented, does not cover these issues at all. These issues may be dealt with at a cursory level, but it's not required. Further, few energy projects right now are subject to full environmental assessments under the current regime.

In conclusion, CELA strongly supports Bill 51 and believes that it will create a better planning process in the province. However, the public must remain an important part of the planning decisions and it is CELA's strong

concern that the current changes could effectively shut out public interest groups from the process entirely.

Thank you again for this opportunity.

The Vice-Chair: Thank you very much. We have about six and a half minutes. I believe it's Ms. MacLeod.

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Ms. MacLeod: Thank you very much for your presentation today. Your concerns have been highlighted in the last three days of hearings that we've had on this bill; specifically, section 23 and the removal of the process for energy-related projects. How would you involve the public more in this? Do you suggest that we should maintain or remove section 23 entirely so that municipalities have a right to continue to be involved in the public process?

Ms. Agnolin: The latter of the two. CELA believes that the entire section 23 should just be removed and the municipalities should maintain the powers they have now with relation to zoning over electricity projects.

Ms. MacLeod: Just quickly, on the OMB and new evidence and that it can only be brought forward by a public body, obviously, we've heard some people oppose it and some people approve of this. But one of the big concerns I think a lot of people have is that public groups that are non-business or non-development, like citizens' groups or environmental groups, won't have an ability, after a council has made a decision, to introduce new evidence. What would you suggest? Would you suggest an approach that some of the developers have actually advocated, which is sending something back to council rather than the OMB shutting down new public evidence?

Ms. Agnolin: One possible approach that I believe has been suggested by the Pembina Institute is to develop a test where an interested party could show that the evidence would be necessary. I understand that the OMB, in the current Bill 51, does have some discretion to allow evidence to be submitted. I'm not familiar with the developers' submission. However, I do believe that at the moment, in the way it's put together, there's a lot of discretion at the OMB level. It's not quite known why this is even necessary, as I said in my submission. The requirement for complete applications addresses many of the concerns right now, so our suggestion is just to eliminate that section completely.

Mr. Kevin Daniel Flynn (Oakville): Thank you for your presentation. Just from the outset, I want to say how impressed I've been with CELA, from its early days to now. I think that one of the things you've really done over those years is to stand up for the little guy. When there has been an application to be fought, when there has been something to be done, CELA has been there. So I'm a little taken aback that you would suggest that we take section 23 completely out of the bill. With the background that I have in OMB reform, one of the things that was felt by the councils, representing the little guys in town as well, is that quite often the appeal that ends up on the desk of the OMB looks nothing like the application that was dealt with by council. So while I'm sympathetic to your saying that there should be the allowance for the new evidence, can you suggest a way that we could allow the new evidence yet at the same time ensure that the application that was heard by council is the one that is actually the subject of the appeal to the OMB at the end of the day?

Ms. Agnolin: I think that's covered to an extent by allowing the municipalities to define what a complete application is. I think one of the main concerns right now with the difference between the applications that are going before council and the applications that are going before the OMB is that there's no control right now by municipalities to define a complete application. Therefore, decisions are effectively made with very limited information. I think that, to an extent, is addressed by the requirement for complete applications and for municipalities to have that power now to require more information. I think that addresses that particular issue to a great extent. It requires applicants to put the money forward at the early stages and take the initiative at the very, very early stages instead of doing that later on. Then it's up to them if they have the resources to make repetitive—I don't understand why they would make repetitive applications and do continued work. I do think it's addressed by that requirement for complete applications.

Mr. Flynn: The other impact of the status quo, if you will, is some of the costs that are involved. In Oakville, which I represent, there was a fairly high-profile case that looked like it was headed for the OMB at one point, where the costs were estimated to be in the range of about $13 million on each side, for the developers and for the municipality. You're a lawyer, so that may be good news to you, but to the rest of us in town it wasn't.

Ms. Agnolin: I'm a legal aid lawyer.

Mr. Flynn: I understand. That was an awful lot of money to the rest of us. It seemed to me that you need to scope the issues in some way. This would seem to be a way of ensuring that the application the OMB hears is actually the application that has been dealt with by the preceding public process that was employed by the council. So you're saying that the other aspects of the bill that are being proposed in Bill 51 would more than cover off the elimination of the introduction of new evidence?

Ms. Agnolin: Exactly. The combination of the municipality being able to define complete applications and the OMB having to have regard for the council's decision, we believe, effectively covers that issue.

Mr. Flynn: Very good. Thank you.

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

CITY OF MISSISSAUGA

The Vice-Chair: Next we have the city of Mississauga, Mayor Hazel McCallion. Welcome. Make yourself comfortable. As with the other deputations, you have 20 minutes for the presentation. Should there be time remaining, it will be split between the three parties. For

Hansard purposes, I believe I already read that you're going to introduce yourself and others who may be speaking.

Ms. Hazel McCallion: Thank you, Mr. Chairman. It's great to be back again on legislation that's going through the House. I'd like to introduce, to my right, Ed Sajecki, our commissioner of planning, and to my left, Mary Ellen Bench, our solicitor. We appreciate the opportunity to come before the committee.

In the beginning—it's not in the presentation—I want to congratulate the government. The municipalities have been asking for changes to the OMB for years: the make-up of it, the process that we've experienced over many years. As you know, Mississauga has experienced a lot of development. We do not believe that the OMB should be eliminated; we believe there should be right of appeal by the developers, the citizens and the municipality. But we are very pleased with the changes that have been made to the OMB. We have concerns about some, of course, but this government at least has started the process, which is extremely important.

As you know, I've been a member of AMO for years, and we've been asking for changes to the OMB. I give you an example of a development in Mississauga—I heard that Oakville's was $13 million but ours was $5 million—in which the citizens opposed the conversion from industrial to residential, the city opposed the conversion and the industrial development around the acreage opposed it, and yet the cost of the hearing was $5 million—a waste of money when we need it for gridlock and all the other things that municipalities need for infrastructure. One person heard it, and fortunately it was in our favour, but a lot of money.

So thank you for this opportunity. As I say, the provincial government is to be congratulated for its planning reforms and for recognizing the importance of the role of municipal councils in land use planning. Strengthening the role of municipal councils and residents is important if we are to see communities grow and develop to their maximum potential. Bill 51 is a good step toward, balancing the role of the province in ensuring growth occurs in a coordinated and strategic fashion, with a role for municipalities to ensure the local perspective and character are not lost in the process. Bill 51 is also important in returning the Ontario Municipal Board to its original role as an appeal body on local planning matters and not the main decision-maker.

In so doing, Bill 51 is very significant to Mississauga because, as the focus of development shifts from greenfields to infill and intensification, consideration of redevelopment and intensification proposals will inevitably result in the need for municipalities to have access to full and complete information respecting development proposals that can be shared with local residents and businesses that will be impacted by these decisions.

You have received a copy of our commissioner of planning's report dated February 7, 2006. Although the city of Mississauga largely supports Bill 51, this report contains a number of recommended amendments to the bill that are supported by city council.

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First and foremost, Mississauga has grave concerns about the total loss of local planning control over energy undertakings, which will be exempted from the Planning Act by Bill 51 if they are approved under or exempt from the Environmental Assessment Act. We do not suggest that municipalities be permitted to prohibit these facilities, as that would not be responsible. We are, however, suggesting that municipalities should be able to identify appropriate locations for them in accordance with good planning principles. Just to add, we have worked with the OPA and with OPG to come up with a policy for the city of Mississauga to allow energy production plants in the right locations under the right conditions. We are not opposed to it.

After a comprehensive review, as I say, we recommended amendments to the Mississauga planning and zoning bylaw to maintain municipal control of generating facilities. This proposed amendment would completely remove energy undertakings from municipal regulation. In doing this, the province has seriously limited the ability of municipalities to manage growth in a coordinated and strategic fashion. With all respect, as long as municipalities are responsible in their consideration of these facilities, the province should defer consideration on their location to the local municipality.

Bill 51 introduces a number of changes to the mandated processes that municipalities must follow respecting planning applications. The current mandatory review of official plans every five years is continued. It was hoped that Bill 51 would clarify that the next review start five years after the completion of all outstanding appeals of a newly enacted official plan. Sometimes they go on for years; where an official plan has been appealed to the Ontario Municipal Board, it can take years for all of the outstanding issues to be determined and finalized. If a new official plan must be enacted five years after council approves it, then work on the new official plan must be taking place at the same time or shortly after the appeals of the existing official plan are finished. Reviewing and enacting an official plan is a very expensive and time-consuming process. The process of enactment of a new official plan should only be required five years after a newly enacted official plan becomes law, meaning that the five years start to run after the final appeal to the Ontario Municipal Board has been dealt with.

Added on top of this is the requirement that the zoning bylaw be revised within three years of the adoption of a new official plan. While no one would argue that zoning bylaws must be consistent with current official plan policies, it must be recognized that adopting a new comprehensive zoning bylaw is extremely time-consuming. We're going through that. When such a bylaw is appealed to the Ontario Municipal Board, it can take years before the appeals are complete. Accordingly, there must be a mechanism in the legislation for determining the start and end dates of these appeals in a way that makes sense. Municipalities must be able to rely on the official plan, once it has been approved, for at least a

couple of years before they have to turn their mind to a further revision and update. Without a period of stability, it would be extremely difficult to assess what actually needs to be changed or modified.

I question the need for putting a mandatory requirement in legislation that open houses be held and for including legislated requirements respecting notice. As committee members are aware, section 2 of the Municipal Act states that "Municipalities are created by the province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction...." When the current Municipal Act was enacted in 2001, it contained a number of specific notice requirements. In proposing amendments to the legislation in Bill 130, the Minister of Municipal Affairs and Housing has acknowledged that municipalities can exercise their powers and duties under other legislation, such as the Planning Act, without this detailed level of prescription from the province. In fact, the detailed notice provisions found in the current Municipal Act are to be replaced with only a broad requirement that procedure bylaws provide for public notice of meetings. Bill 51 should likewise be amended to recognize that municipalities are capable of determining how and when to provide notice to the public and when to hold open houses.

I strongly support the move to bring the OMB back to its role as an appeal body on local planning matters and not the main decision-maker. There is a need for a qualified, objective review of municipal decisions in certain situations, and the OMB is the appropriate place for this, not the courts.

Clearly, though, the greatest opportunity for public input and comment is at the hearings that take place in the local municipalities and not through the formalities of an OMB hearing. Many members of the public find the OMB process very confusing and intimidating. The cost of participating blocks participation by residents who can't afford to hire lawyers and other experts. Municipalities are the level of government that are most in touch with the pulse of the local community and the place where residents feel comfortable participating. Bill 51 recognizes this.

When a matter does proceed to the OMB, the proposed section requiring the OMB to "have regard" for the decisions of municipal councils is insufficient to achieve the intended objective of returning the OMB to its original role of a truly appellate body. Under previous versions of the Planning Act, when the OMB was required to have regard for provincial policies, the OMB interpreted this requirement in several ways. There was no consistency. This phrase did not place any compulsion upon the OMB to apply or follow provincial policy.

In recognition of this, the Planning Act has been amended to require municipal councils and the OMB to make decisions that conform with provincial plans and are consistent with provincial policy statements. Stronger language to give similar deference to decisions of municipal councils should be included in Bill 51. Alternatively, Bill 51 should be amended to make it clear that the standard of review by the OMB of the council decision is one of reasonableness. This will make it clear that the OMB can't simply substitute its own views for those of the municipal council.

Bill 51 deals with a number of other matters related to the Planning Act, one of which is community improvement plans. Traditionally, only lower-tier municipalities in a two-tier jurisdiction have been authorized to implement community improvement plans. This recognizes again that the local municipality is the level of government most in touch with the local community, whether business or residential.

Upper-tier municipalities should not be able to adopt community improvement plans without the consent of the lower-tier municipalities that are impacted. By "impacted," I mean lower-tier municipalities within the defined geographic boundaries of the community improvement plan as well as those upper-tier municipalities that will have to finance such plans through their upper-tier tax levies.

Amendments respecting site plan approvals are also welcome changes. By allowing municipalities a say in matters related to exterior design, municipalities will be able to better regulate and bring together the look and feel of a neighbourhood. This is especially important when dealing with applications for infill and intensification. Giving municipalities the ability to promote certain innovative ideas through sustainable design such as solar panels and green roofs is also welcome. One recommendation in this area, however, is that this amendment be expanded to include accessibility as a matter that a site development plan may deal with.

Mississauga strongly supports the provisions in Bill 51 that require applicants to submit a complete application to the municipality before they can appeal a development to the Ontario Municipal Board. We also support the provisions that limit the ability of the OMB to receive or consider technical reports that appear for the first time at an OMB hearing. After the matter is sent back to the municipality, however, Bill 51 only requires the OMB to consider council's decision if it is made within the prescribed time. This needs to be strengthened so that at the very least the OMB must have regard to council's decision.

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Finally, since sustainable development and support for public transit are identified by the province as matters of provincial interest, Bill 51 should amend the Environmental Assessment Act to facilitate the development of public transit and parks. Although hearings under the Environmental Assessment Act and the Planning Act may be combined, the process is very complex, costly and way too lengthy, and should be reviewed.

Thank you for giving us the opportunity to present Mississauga's long experience in development over the last 35 years to the committee.

The Vice-Chair: Thank you very much. We have two minutes for questions from each party. We'll start with Mr. Prue.

Mr. Prue: Two minutes? I'm going to try two questions. The first one is related to section 23 on energy proposals. You feel that the province should be able to mandate and say, "You're getting a nuclear facility in Mississauga," but that Mississauga should be able to say where it is. Am I getting that correct?

Ms. McCallion: Actually, we believe there's a necessity for having hydro generation plants in the province, and we all have to make our contribution—each municipality. We do not agree that they should be exempt. We disagree with that completely. We have proven—and we have the co-operation of the OPA and the OPG—that we have reviewed our designated industrial sites. They could go on any industrial site. We eliminated that and we tied it down that we will accept energy production plants in Mississauga based on us deciding where they should go, and under certain criteria as well—limitations. So we are very supportive of that.

Mr. Prue: Okay. The second aspect that I want to deal with, because I've only got two minutes—

The Vice-Chair: A quick question.

Mr. Prue: Yes—has to do with the zoning bylaws. The city of Toronto, because it was amalgamated, needs about another seven or eight years to get its zoning bylaws together. I take it that Mississauga also has difficulties with the three years. Could you tell me how long you need to be able to deal with this?

Ms. McCallion: I'm going to ask Ed to respond to that. I have no idea, but it's a very lengthy process.

Mr. Ed Sajecki: I can't give you a precise date, because I think circumstances from municipality to municipality vary. A small municipality would have a very different timeline than a large municipality like Toronto or Mississauga. I can tell you our own experience: We've been at it for about five years and in fact we're hoping to bring in, and I promised the mayor that we will be bringing, the final report to council in September for adoption. So I would say you're somewhere in that period of five to 10 years, but I think it varies with the complexities of municipalities.

Mr. Bob Delaney (Mississauga West): Thank you very much. Welcome, Madam Mayor. It's always good to see you. I think the ministry staff heard very clearly your points on revisions of official plans, but the point I'd like to ask you—you made several references to public participation. Could you tell us how Mississauga handles public participation on issues like this?

Ms. McCallion: Long before the mandated public meeting, our councillors, each and every one of them, hold meetings with the citizens. In fact, I can give you an example of a major development in Port Credit, where the starch lands were developed for residential. I would say that the councillor held at least eight to nine meetings with the public before it even got to council. Even the preliminary report came to council, and then the final report, after the mandated public. So our council is very conscious of public input.

In addition to that, with a controversial development—or with any development—they form focus groups. They'll call a major meeting of the entire area affected. Then they will ask a focus group to be appointed that will work with the councillor and the staff dealing with it. That's long before it comes to the planning committee, which is council of the whole, for consideration, for the official public meeting.

So we're very proud of our public input process. I think it solves a lot of problems. It has prevented many things going to the OMB, and the developers work with that focus group as well. It's a focus group made up of the developer's representatives; the staff is invited, and the public. That's long before it ever comes to council for any decision.

Ms. MacLeod: It's a pleasure to finally meet you, Ms. McCallion, Your Worship. I've watched you over the years, and I'm finally in the Legislature. I'm very excited. I have so many questions, but I'm going to limit them, following along the lines of my NDP colleague Mr. Prue, to the OMB. In my city of Ottawa, we've had numerous changes, revisions, to our official plan that go through council. Similarly, we have a lot of appeals there, just like Mississauga. I'm just wondering, on average, per year, how many appeals to your official plan do you have and how many times has council brought forward a change or a revision to your official plan?

Ms. McCallion: Ed?

Mr. Sajecki: We've really seen the numbers go down. By and large, we've been working out potential appeals in advance. The mayor pointed out the public participation process that we do go through, and that does involve the developers. We've worked on a lot of them. In terms of numbers, we probably had maybe 10 last year—major ones. I'm not talking about committee of adjustment; that's different.

Ms. Mary Ellen Bench: Yes, that's probably correct. But I think one of the things we were talking about was in terms of putting in place a new official plan. We just put in place Mississauga's plan about four years ago. We had a number of appeals. We're just finalizing those appeals now. So four years later, we're finalizing the appeals.

We're also working on our new official plan to meet the next deadline. We're just finishing one and we're up against the deadline for the next one going forward.

Ms. MacLeod: I would say my community is going through the same process.

Yesterday it was also suggested by one of the deputants that we should limit changes to an official plan by municipal councils to six a year. I remember working at Ottawa city hall and there were about six a meeting. So I was just curious to see how many you folks would have.

The Vice-Chair: Thank you very much. That brings us to an end of this deputation. Thank you, Your Worship, and to your staff for your presentation. I wish you all a good day.

ONTARIO HOME BUILDERS' ASSOCIATION

The Vice-Chair: Next we have the Ontario Home Builders' Association. Welcome. Make yourself com-

fortable. As with the other presentations, 20 minutes. Any time remaining in that 20 minutes after your presentation I'll divide between the three parties. Please, for Hansard, state your names if you're both going to speak.

Mr. Victor Fiume: Thank you, Mr. Chair and members of the committee. Good morning. My name is Victor Fiume and I am the president of the Ontario Home Builders' Association. I have also served as president of the Durham Region Home Builders' Association. I've been involved in the residential construction industry for two decades. I'm currently general manager of the Durham Group.

Joining me is Brian Johnston. Brian is the first vice-president of the Ontario Home Builders' Association and he is the president of Monarch Corp. He is also a member of the Greater Toronto Home Builders' Association, the Hamilton-Halton Home Builders' Association, the Ottawa-Carleton Home Builders' Association and the Waterloo Region Home Builders' Association, as well as serving on the board of directors at Tarion Warranty Corp. Monarch has built thousands of new homes and condos across the province over the past couple of decades. We are both volunteer members in the association, and we appreciate the opportunity to speak with you today.

I'd like to ask Brian to tell you a little bit about the OHBA.

Mr. Brian Johnston: Thanks, Victor.

The Ontario Home Builders' Association is the voice of the residential construction industry and includes 4,000 member companies organized into 31 local associations across the province. Our industry represents 5.6% of the provincial GDP and contributed approximately $34 billion to the province's economy last year.

OHBA would appreciate your consideration with respect to a number of concerns with the proposed Planning and Conservation Land Statute Law Amendment Act. Over the past couple of years, the development industry has been drastically overhauled by this government. The greenbelt, Places to Grow, building code changes, WSIB reforms, the proposed Clean Water Act and many more reforms have changed the way we in the development industry do business.

We have been consistent in our position that we are in favour, in principle, of many of the legislative changes. We have been equally vocal that while these changes are needed in order to manage and accommodate future growth, it is imperative that we offer Ontarians a broad choice in housing forms and allow them to make a choice based upon their individual lifestyles.

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OHBA has reached a consensus with the government on the need to better manage our growth and preserve what is important to all Ontarians—clean water, clean air and preserved green spaces—while at the same time working to accommodate the anticipated growth over the next 25 years.

The question arises: Have we, with Bill 51, assured ourselves that in fact everyone will respect the intent of the PPS and all other recent government initiatives? Will there be co-operation from all areas and ministries of the provincial government with respect to policy? Where we agreed that there were adequate assurances built into the legislation, we have accepted the conclusion. However, where we felt the wording or the basic premise of a section failed to meet these tests, we have suggested a further review or offered ideas which we feel are more appropriate. Our intent is to ensure that Bill 51 fulfills its goals.

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

Municipal councils make proper planning decisions on the majority of applications that appear before them. However, in some situations, applicants exercise their right of appeal to the OMB to ensure that their concerns are heard in a fair and impartial environment. The OMB must retain the right to hold independent, non-partisan hearings on a de novo basis and must continue to hear third-party evidence to ensure that a fair and impartial decision is made.

Planners, architects, engineers and economists are all part of a valuable brain trust that must be maintained as an integral component of the planning process via the OMB. Hearings de novo allow for a debate and comprehensive review of the planning merits of a case that cannot occur at a municipal council meeting. Therefore, OHBA recommends that the proposal to have no new evidence presented at the OMB be eliminated and that full hearings de novo be maintained.

The complete application provision in Bill 51 is vague and may allow municipalities to refuse to accept applications for rezoning, official plan amendments, and plans of subdivision and consent unless the application is deemed complete according to the municipality. OHBA is concerned that if acceptable terms of reference are not established, costs and time will inevitably increase.

A mandatory pre-submission consultation would help smooth out any misunderstanding and assist to streamline the approval process. If a municipality does not ask for a study at the pre-submission consultation, they should lose the ability to require it further along in the process. If the planning application is appealed to the OMB, then the applicant should be entitled to submit into evidence any additional studies which were not originally required by the local planning department.

OHBA recommends that the complete application requirements in Bill 51 be revisited to include a mandatory pre-submission consultation to outline the terms of reference for what is required in a complete application. OHBA further recommends that timelines be set for a municipality to deem that an application is either complete or incomplete. Lastly, Bill 51 must be amended to stipulate that only relevant information to support the application be required.

While public participation is an important part of the planning process, OHBA is concerned that an open house held on all applications will create delays in the planning process and result in additional expenses for municipal planning departments. Planning policies are a reflection of the public interest, yet it is the applicant who often stands to defend public policy through the implementation of their development. NIMBYism will undermine public policy at the expense of the applicant. Therefore, we recommend public open houses for OP amendment applications only.

OHBA does not support any recommendation for a local appeal body where the OMB is not granted the authority to hear an appeal of its decision. Exempting planning decisions from the review of the OMB or creating a local appeal body for certain types of applications would not serve the provincial interest.

Mr. Johnston: OHBA is in support of good urban design and architecture. However, our members have a number of reservations with respect to regulations and review panels that may politicize—I would say more than "may"; will probably politicize—and exercise control over architecture, urban design and built form. If given the opportunity, approval authorities will mandate the highest standard of materials, design and building features, which come at a high cost premium. Urban design staff are often not equipped to the point where they fully understand the cost implications of certain design and material choices. OHBA cautions that regulating urban design will create uncertainty in the planning process and not necessarily result in a better product.

OHBA would consider support for properly constituted, voluntary design review panels, provided they are undertaken by an advisory panel whose membership is composed of objective design professionals as well as development industry representation. If established, design review panels must operate independently from local politicians.

OHBA recommends that proposed changes to section 41 of the Planning Act dealing with site planning control and urban design be revised to limit municipal power to control architecture and design. These provisions are at the expense of consumer choice and are counterproductive to provincial goals for affordable housing.

Mr. Fiume: OHBA is concerned that imposing conditions through zoning has the potential to make some projects economically unfeasible. Zoning conditions could significantly increase the cost of many projects, which would in turn impact housing affordability. OHBA recommends that the province amend Bill 51 to require municipalities to provide applicants with an offset credit on their parkland dedications or cash in lieu of parkland conveyance and/or development charges arising from proposed land dedications or zoning conditions.

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

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

As with any legislation which seeks to address well-entrenched ideals, the key is how we manage transition. OHBA recommends the need for clear transition regulations for applications currently in process. The province should ensure that applications be assessed against the plans and policies in force on the date of the application.

OHBA is in support of provincial efforts to ensure that municipal official plans and zoning bylaws are updated in a timely fashion and brought into conformity with the provincial growth plans and the provincial policy statement. These steps are crucial to achieve provincial intensification and sustainable development objectives. However, the municipal review of OPs and zoning should not be at the expense of future development applications. The province should assist municipalities financially if required. OHBA also applauds the government in its efforts to improve the quality of OMB decisions by enhancing the experience, qualifications, compensation and training of board members.

Lastly, the province must provide greater clarity with this bill and a number of other initiatives, such as Places to Grow and the Clean Water Act, as to who has the final authority or which policies will overrule others, to ensure a timely decision for development applications. The province must ensure that the economic engine of Ontario can continue to provide jobs while adhering to provincial policy.

In conclusion, OHBA supports a balanced land use planning system to ensure a clean, green, economically competitive province. However, from the industry's perspective, Bill 51, if enacted as currently drafted, has the potential to unnecessarily delay projects and obstruct intensification and urban renewal, thus hindering a number of the province's stated key objectives. Bill 51 will cause unnecessary delays and increase costs to an already lengthy and overregulated process.

In closing, I would like to reiterate that, as the engine that drives the provincial economy, the residential construction industry pours billions of dollars into municipal, provincial and federal coffers. It is in the best interest of all Ontarians that the provincial government work with us to ensure that the new housing and renovation industries continue to thrive.

Mr. Chair, members of the committee, I would like to thank you for your attention and interest in our presentation, and we look forward to hearing any comments or questions you may have.

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

Mr. Delaney: Thank you very much. An interesting brief. If I can summarize the message I heard, it's that OHBA seems to feel that developers know more about how a community ought to develop than the people who are going to live there for decades after the builder is gone and that the developers' views ought to supersede those of the representatives that communities elect to shape their future. So my question to you is, why do you feel that cities and towns in Ontario are not capable of managing development within their own borders, and why should developers make binding decisions on the pace and the mix of urban development?

Mr. Fiume: In fact, Mr. Delaney, quite the opposite is true. Developers themselves do not purport to be experts. Developers use the expertise of planners and consultants, and environmental people as well. We don't purport to have all the answers. I think what you'll find is that we very much act like municipalities and we bring in expertise to help the development process along, the development application along.

In regard to public participation, we are of the mind that public participation really needs to take place at the appropriate time, the appropriate time being the review of the official plan. Currently, the concerns we have are that many of the zoning designations in municipalities do not comply with their official plan. Ideally, what we need to do, and what Bill 51 does do, is ensure that these zonings will be brought into compliance with the official plans. But the discussion needs to happen at the official plan stage, with public input. That's why the official plan review was created. I think we are very, very happy to receive all kinds of input at that time. To take land that was designated in the official plan as high-density, or whatever the case may be, and then argue against it six years, seven years, eight years after it's been enshrined in the official plan we think is counterproductive. We welcome the discussions, but the discussions need to happen at the appropriate time.

The Vice-Chair: Ms. MacLeod.

Ms. MacLeod: Thank you both for your presentation today. In fact, I did not get from your presentation what my colleague across the floor did. In my own community, a very high-growth community, where Monarch Homes probably has built thousands of homes in the last three years, they've been great public participators with our city council as well as with our communities. I find in some parts of this bill that there's a penalty for that. I look at the retroactivity clause and I think we're punishing, as you say, good contributors to our economy, specifically in Toronto, and I guess in Ottawa and probably Mississauga as well.

I'd like to know more about the retroactivity clause, what exactly you think that will do to your industry.

Mr. Fiume: I guess ultimately what we are always looking for in this industry is certainty. It doesn't help our cause or anybody's cause when we put in an application in compliance with the current legislation and then have a new piece of legislation coming along a number of years later and affecting the decisions and the work that have gone into that application. The transition period is always the most important period. I think what you need to do is let the process that was in place at the time continue, while moving forward. We are certainly very happy to move forward with the new regulations that will be out there. The fact of the matter remains that these applications were brought in in compliance with existing legislation. What we need to do is move forward with those applications, get them improved where it is appropriate, and then new applications should be in compliance with the current legislation and provincial policy statements.

Ms. MacLeod: Would I be able to split my time? I think my colleague may want to—

The Vice-Chair: You've got about another minute.

Ms. MacLeod: Would you like to add anything, Mr. Hardeman?

Mr. Ernie Hardeman (Oxford): I would like to follow up on that just very quickly. Obviously, there was a concern on behalf of municipalities, and the government seems to have the same concern, that some applications languish for years and years, and we wouldn't want, under totally different legislation, to have things approved based on what was approved 10 years ago; the application has been there that long. Do you have any suggestions of how we could make that happen without retroactivity, whether there could be a timeline or something put on applications because of the change in times and the change in the need of our environment?

Mr. Fiume: Thank you, Mr. Hardeman.

The Vice-Chair: A quick answer.

Mr. Fiume: In Places to Grow, the government actually had a very fair transition policy, we thought. I'm not sure we have a specific answer, but certainly we would be happy to sit down with the province and figure out what would be a fair transition period. I don't think you can go back 20 years and automatically grandfather things in. I think where these projects are a significant concern to municipalities, they need to be addressed.

The Vice-Chair: Mr. Prue?

Mr. Prue: Your second recommendation troubles me somewhat, because you are recommending that the province eliminate the provision stating that the OMB "shall have regard to" municipal council decisions. The previous deputant, the mayor of Mississauga, is recommending that that isn't even strong enough. She gives similar deference to decisions of municipal councils as they deal with the province, where it says "must conform with." Why are you trying to eliminate this provision that the municipal councils be listened to?

Mr. Fiume: In fact, that's completely the opposite to what we have.

Mr. Prue: That's what you say.

Mr. Fiume: What we are saying is that, as it relates to complete applications and as it relates to any decisions, if down the road new evidence comes about and a motion is made to the OMB, councils would be given the opportunity to re-evaluate the application as it relates to any new information that has come along.

Our belief is that these decisions are best made by local councils through their planning department. In fact, the OMB is a last resort for us as developers, but a necessary one at times. I would think that none of us here in this association is saying that municipalities shouldn't have the right to make the decisions. The municipalities have the right to make the decisions and we hope they use that right prudently. But if they do not, and if new information does come up and we make a motion to the OMB, they should be allowed to re-examine any new information. We want the decision to be made at the local level.

Mr. Prue: All right, but I think you'd better reword number 2.

Number 9: You recommend "that the province review and amend its current definition of 'areas of employment' in Bill 51. Areas of mixed used should not be included in the 'areas of employment' definition."

In many municipalities, particularly those with infill, employment is starting to creep in and is in fact becoming part of neighbourhoods, live/work situations and things like that. Why do you want mixed use not to be included in "areas of employment"?

Mr. Fiume: It is as it relates to the review. So if you have a brownfield site with potential mixed use developments in there, in effect the legislation says it cannot be rezoned to any other use for other than employment lands unless there is a comprehensive five-year review, which would be the official plan review. Our suggestion is that in terms of mixed use, where you still will have employment opportunities, the council be allowed to make that decision at the time rather than waiting five years for a complete official plan review of all the employment land situations.

The Vice-Chair: Thank you very much. That brings us to an end of your deputation. Thank you for attending, and have a good day.

DUCKS UNLIMITED CANADA

The Vice-Chair: Next we have Ducks Unlimited. Please make yourself comfortable. You have water there. As with the other deputations, you have 20 minutes for the presentation. Should time remain after your presentation, we'll divide it between the three parties. At the outset, please state your name for Hansard purposes. Welcome.

Mr. Kevin Rich: Good morning. My name is Kevin Rich and I am the head of municipal extension programs for Ducks Unlimited Canada in Ontario. Thank you for the opportunity to address the committee regarding the proposed Bill 51, the Planning and Conservation Land Statute Law Amendment Act. From the outset, we would like to commend the government for its commitment to meaningful reform of the land use planning system and the Ontario Municipal Board, as evidenced by Bill 51 and other related pieces of legislation and initiatives.

Bill 51, in concert with the 2005 provincial policy statement, the Greenbelt Act, the Places to Grow Act and the Strong Communities Act and their related plans will help to ensure that Ontario's natural areas are sustained well into the future, providing a multitude of benefits to the citizens of Ontario.

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Members of the committee may well ask why our company would be interested in making a presentation on matters governed by Bill 51. The answer is quite simple: Our business is the conservation and restoration of wetlands and associated habitats for North America's waterfowl. These habitats in turn benefit other wildlife and people. An effective and efficient land use planning system with changes proposed in Bill 51 represents one of the key ways that governments and individuals can conserve wetlands. Conversely, inappropriate development of green space, aided and abetted by an ineffective land use planning system, represents a major threat to wetlands, both in terms of wetland area and wetland health.

Ducks Unlimited Canada is a charitable Canadian company operating across Canada and within Ontario. In Ontario alone, we've conserved over 900,000 acres of wetland habitat. Working with many partners, including over 1,700 landowners, we are also very fortunate to have the generous support and efforts of 25,000 members and 1,600 volunteers across the province. We've accumulated over 60 years of experience in the conservation of wetlands and associated habitats for waterfowl. Our conservation programs are guided by the objectives of the North American waterfowl management plan, a highly successful multi-stakeholder initiative, including senior governments in Canada and the US, as well as other non-government organizations.

The majority of our work takes place in rural Ontario. The Ontario component of our conservation vision calls for us to protect all existing wetland habitats and restore two to three times the amount of existing wetland area in southern Ontario. This is a significant undertaking, which we contemplate spending in the order of $100 million on over the next decade with our conservation partners in order to accomplish.

It's abundantly clear that wetlands in Ontario continue to be at risk due to land development pressures, as well as other factors. Over 60% of southern Ontario's wetlands have been lost, an area roughly twice the size of Algonquin Park. This number increases to a high of 90% in the province's extreme southwest. With this loss comes the loss of substantial societal benefits often unaccounted for in land use planning decisions. While many people understand the role of wetlands as critical wildlife habitat and valuable recreation areas, far fewer people understand their role in the protection of our supply of drinking water and water for other uses.

Putting a price tag on the whole range of those societal benefits is difficult to do, but has been attempted. One recent estimate from a study found that conservation of natural areas in an agricultural landscape in southern Ontario created a net value of between $80 and $340 per acre per year. To put this in perspective, for the regional municipality of Durham alone that translates into an

estimated economic value, for wetland areas alone, ranging from $4 million to $18 million per year.

One of the primary ways we plan to conserve existing wetlands is to assist municipalities, conservation authorities and other local organizations to develop and implement sound, sustainable and workable land use policies for conservation of natural areas. We do this largely by providing data on wetland benefits and values, wetland mapping and other expertise to municipalities in targeted areas of the province that they can use to develop appropriate policies to guide their own land use planning. As I mentioned earlier, inappropriate development of green space due to inconsistent land use planning represents a significant threat to the conservation of wetlands and the benefits they provide to all residents of Ontario. Wetlands and adjacent upland habitats in areas close to urban centres and urbanizing centres are particularly at risk. Even more so, wetland areas which lie outside the greenbelt plan area and lack the protection afforded by the greenbelt plan and other provincial plans, areas like south Simcoe county, for example, face a higher risk of loss even if the proposed Bill 51 is passed by your government.

We support the overall intent and direction of Bill 51. In general, we commend the government for its attempt to encourage more compact development and intensification, which should lead to reduced urban sprawl, improved energy efficiency and better protection of all green space. In particular, we support several specific aspects of Bill 51, including the provision for municipal councils to have more time to review development applications and the provision for the public to have greater opportunity to review and comment on official plans. These are both positive changes. It's worth emphasizing that while the data and information on the benefits of land development are readily available to municipalities, the data and information on the benefits of land conservation, and wetland conservation in particular, are hard to access and are often very complex in nature, particularly as they relate to economic benefits. Therefore, the more time a municipality has to gather and review such information, the greater chance they'll be able to make well-informed decisions on land use matters.

We support the ability for municipalities to prescribe what specific information is required to be included in development applications, which should improve the transparency and the efficiency of the development review process.

Regarding proposed changes to the role of the Ontario Municipal Board, DU strongly supports a shift for the Ontario Municipal Board from a decision-making body to a true appeal body with limited powers to overturn decisions made by local councils. New local appeal boards should aid in ensuring that decisions on local development matters are made by local councils and authorities and not by the OMB. We also support the requirement that municipal council and OMB decisions be consistent with current provincial policies and plans in place at the time those decisions were rendered.

We support amendments to the Conservation Land Act that enable the further use of conservation easements for the purposes of conservation and protection of water quality and quantity, as well as watershed management. We support the provision for the use of a development permit system across the province which has the potential, among other things, to protect sensitive shoreline habitats, including wetlands, while at the same time streamlining the approval process.

We would also like to take this opportunity to suggest a number of enhancements to Bill 51 and related provincial policy. Specifically, Bill 51 restricts who is entitled to appeal a council planning decision by excluding any person who is not a public body and did not make an oral or written submission before the council decision was made. In so doing, Bill 51 will unduly limit public participation in the appeal process and favour participation by the applicant and public bodies. Ducks Unlimited opposes this section of Bill 51 and suggests that this section be removed.

Bill 51 lacks any provision for intervener funding for community groups participating in OMB appeals. Lack of such funding seriously restricts the ability of underfunded groups, many of whom advocate for the broader public interest, to participate in OMB hearings. Ducks Unlimited recommends that the province develop a framework whereby intervening funding is provided.

To effectively implement the 2005 provincial policy statement, in particular sections dealing with water—section 2.2—approval authorities need clear guidelines from the province regarding the identification and protection of so-called "sensitive" surface and groundwater features. It is our understanding that no such provincial guidelines are yet available, and we strongly urge the government to work with municipalities and other stakeholders to develop these guidelines.

Effective implementation of the 2005 provincial policy statement's section 2.1, dealing with natural heritage, requires a consistent approach across the province to identification of natural heritage systems, often referred to as a system of connected cores and corridors of green space. It seems self-evident that such a system can't be protected from development unless it is identified and mapped, but in many parts of southern Ontario that mapping simply doesn't exist, largely due to a lack of municipal resources. Ducks Unlimited supports current efforts by the province to identify a provincial-scale natural heritage system via the natural spaces program but has concerns regarding scale and accuracy issues for the use of this data in local land use planning. In the absence of such provincial-scale mapping, the province should develop clear, defensible standards so that local municipalities can identify, map and conserve their own natural heritage systems.

Development of a natural heritage system and appropriate land use policies for conservation of that system in areas just outside the greenbelt plan will be particularly important in order to conserve green space in those areas of the province which are particularly threatened by development pressures, as noted previously.

Lastly, performance monitoring is currently not required under the Planning Act nor under the proposed Bill 51 for land use planning, although some municipalities have adopted this strategy to improve the effectiveness of their land use planning systems. To augment the monitoring undertaken by some municipalities, Ducks Unlimited encourages the province to undertake provincial-scale performance monitoring in support of the provincial policy statement in matters of provincial interest, including significant natural areas.

In summary, Ducks Unlimited strongly supports the government's proposed Bill 51, with certain exceptions and suggestions for improvements, as noted above. Together with other related pieces of provincial legislation in plans recently passed and proposed, we expect that Bill 51 will improve the accountability, efficiency and effectiveness of the land use planning system in Ontario and should result in the enhanced protection of valuable natural areas and resources.

Thank you for your time today. I look forward to any questions or comments that the committee may have.

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

Mr. Hardeman: Thank you very much for your presentation. I have to say I'm a little surprised, because there are two areas that I think, in my mind at least, are going to be quite negative to the interest of Ducks Unlimited in my community, and one is the right to appeal. You mentioned that that would be one of the improvements the government could make, which is to not inhibit the ability of people to appeal a council decision. But the way the legislation is written now, Ducks Unlimited would have to get involved with every application in my community, in the city of Woodstock, to make sure that there were no wetlands involved, because if they don't make a presentation to the application, not only can't they appeal, but even if it is appealed, they can't be heard at the OMB because they can't bring in new evidence. I would think that Ducks Unlimited would have grave concerns with that position, that in fact the public is being eliminated from the process, not helped with the process in this bill. There will be a lot of original applications that the public doesn't make presentations to in its first visit to council because they didn't know that the Brick wetlands were involved. It's one in my area that Ducks Unlimited was very involved with. I would think that they'd want to keep it that way, but they weren't at the first council meeting. So I think that would be very important.

The other part—and maybe you could help me with this; I'm not sure—is where you say that the Ontario Municipal Board function has dramatically changed, other than they can't allow you to put in new evidence, but they still make the decision based on the evidence that was presented at council. So it's not just a review of council; they "shall have regard to" council decision, not "be consistent with." Could you maybe help me with what you think is so much better about the OMB structure as it relates to Ducks Unlimited?

Mr. Rich: Okay. I'll start with the second part of that question. It relates to the comments we made regarding the Ontario Municipal Board. We think the largest improvement there relates to the restrictions proposed in Bill 51 that would prevent the Ontario Municipal Board from overriding municipal decisions on expanding settlement areas or development of new settlement areas. That was the key area of interest for us as a way of continuing urban development and urban sprawl.

With respect to the first comment on the restrictions of who may appeal decisions made by council, we were of the opinion that restricting those rights to individuals who participate in the initial council hearings unduly limits participation by other people who were simply not available or simply did not get notice nor were aware of the decision at the time or the hearing at the time.

The Vice-Chair: I'll have to cut it there. Mr. Prue?

Mr. Prue: You did not deal with this, but it seems to me a natural that maybe should have been dealt with, and that's section 23, which no longer gives the municipalities any rights over energy projects. We've had a number of groups come forward with large-scale windmill projects that they are opposing. Part of the opposition has to do with their being dangerous or in the flight paths of birds. Are you concerned at all that municipalities are out of the energy business and that large windmills can be sited literally anywhere, usually along the lakes?

Mr. Rich: Our research division is currently looking at the impacts of wind farm developments on migratory birds, including waterfowl, so I'll reserve comment on that from the science standpoint. I think I'd better just leave it at that.

Mr. Prue: Okay. You've said that the municipalities should be involved in all other aspects of wetlands. Should they be involved in any aspect where wetlands or potential wetlands might be impacted by a nuclear plant, wind farms, gas-fired generation or any other such developments?

Mr. Rich: I think in general municipalities should have the right to guide land use planning and conserve all natural areas, including wetlands that may be impacted by energy projects.

Mr. Prue: Thank you.

The Vice-Chair: Mr. Sergio.

Mr. Sergio: I don't have any particular questions. I just want to thank you for your interest in Bill 51 and a good presentation.

Mr. Rich: Thank you very much.

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

This committee stands recessed until 1:30 p.m.

The committee recessed from 1206 to 1331.

CONCERNED CITIZENS OF AMHERST ISLAND

The Vice-Chair: Good afternoon. I would like to call this afternoon session to order. First on the agenda we have the Concerned Citizens of Amherst Island. I would

like to remind you that you have 20 minutes for your presentation. Any time remaining that you haven't used in that 20 minutes we will divide between the three parties. I would ask also, when you first begin speaking, if you could clearly state your name for Hansard. Welcome.

Mr. Hans Krauklis: My name is Hans Krauklis. To my left is Urszula Stief. Sitting farther away is Erika Krauklis. She did all the driving.

Members of the committee and ladies and gentlemen, thank you for giving us the opportunity to present to you our concerns regarding Bill 51. We represent a group of residents on Amherst Island near Kingston, Ontario. Before starting the slide presentation, I would like to mention that the attachment to the letter that we sent you, which was dated August 1, in addition to providing background material also lists quite a few references. These papers which were listed are available on CD-ROM for further information.

In the letter, we also made reference to a nine-minute video that we prepared and which shows a part of the Melancthon wind farm in actual operation. The DVD is available for your viewing, if you like. I have it right here.

The first part of the slide presentation sets out our concern with Bill 51, specifically clauses 23 and 24. We then propose language for clause 24 that would allow us to continue to address our issues regarding commercial wind farms under the provisions of the Planning Act. The second and third parts of our presentation are intended to provide a more balanced perspective on the pros and cons of wind power than we usually get from the proponents of commercial wind farms and others.

Please bear with me as I go through the specifics of the two clauses and the modifications that we are proposing; it's a bit technical. Clause 23 amends the Planning Act with respect to potentially all undertakings relating to energy, at least that is how we understand it. If approved under or exempted from the Environmental Assessment Act, and fitting the definition of "undertaking" or "class of undertakings" that relates to energy under clause 24, which seeks to modify section 70 of the Planning Act, then such undertakings would no longer be subject to the provisions of the Planning Act but rather regulation by order in council.

We consider that the language of Bill 51, clauses 23 and 24, would give the provincial cabinet additional powers that are quite disproportionate to the perceived potential problem they are meant to address.

We list some of the adverse effects of clause 23 of Bill 51. It inappropriately prioritizes energy undertakings over other legitimate local and provincial issues; we could quote certain sections from the 2005 provincial policy statement to that effect if you wanted us to. It also constitutes an unfair impairment of local community rights, and we'll get into that later as well. The environmental assessment process is flawed, and Ms. Stief will have some examples of that a bit later on.

I think the central issue is this: a trade-off between expediency and the rights of citizens to due process. To me, that is the crux of the matter.

However, we do realize that the government of Ontario may have to expedite the construction of critically needed generating capacity to ensure energy security for Ontarians. We are prepared to accept a trade-off, but it should be spelled out clearly in Bill 51. We therefore propose inclusion of language in clause 24 that would limit the ability of Queen's Park to override the Planning Act only for essential undertakings relating to dispatchable non-intermittent energy, or wording to that effect.

In the next slide, we are offering the specific language, namely, "(h) for the purposes of section 62.0.1, prescribing an undertaking or class of [essential] undertakings that relates to [dispatchable non-intermittent] energy."

We ask only that Bill 51 should continue to respect the provisions of the current Planning Act, at least with respect to utility-scale wind power developments.

You may ask what some of these terms mean. In fact, I myself didn't know what "dispatchable" meant until a week ago.

"Essential": Making a significant contribution in narrowing the developing demand-supply gap for energy. The threshold might be 1% or 2% of the effective generating capacity in Ontario.

"Dispatchable": Here I will quote the Ontario Power Authority. They say, "A dispatchable resource, such as a natural gas-fired generator, can increase energy production when called on to meet increased demand. Power from wind, in contrast, depends on the force of the wind. For reliable supply, dispatchable resources are needed to complement wind generation." You have the quotation on the board.

"Non-intermittent" just amplifies the statement, because what we need is effective generation capacity that is controllable and is more or less quickly attuned to changes in demand. Examples are hydro, nuclear, fossil-fuel-based generation and cogeneration that provide base loading; as well, hydro and open-cycle gas turbine generation that can respond quickly when the wind doesn't blow. Renewable energy like biogas or geothermal could also be included. As we all know, the wind doesn't blow all the time and it's very variable, so you always need backup and standby generation capability.

Now I will turn it over to my colleague.

Ms. Urszula Stief: Now I'll discuss the local benefits and costs. The benefits will be: payments to landowners, approximately 1% of the project revenue; and payment to the municipality, approximately 1% of the project revenue. A quick calculation shows us a typical utility-scale wind power plant or wind farm costs approximately $400 million for 200 megawatts of installed capacity, or 100 wind turbines of two megawatts each. Each wind turbine is expected to produce at 30% effective capacity or 600 kilowatt hours for each of the 8,740 hours a year.

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The wind farm developer will have a 20-year contract with Ontario Power Authority for all the electricity pro-

duced. While the individual contracts with the OPA are commercially confidential, the average price agreed is 8.64 cents per kilowatt hour. Therefore, we can expect each of those wind turbines to generate approximately $450,000 a year in gross revenue. A typical annual payment for a turbine of this size to landowners appears to be approximately $5,000—ditto for local taxes.

Now, let's consider the statement by the Ontario Wind Power Task Force in its 2002 report that, on the range of moderate wind speeds found in parts of southern Ontario, commercial wind farms are profitable, but only with tax and market-based incentives. OPA pays 8.64 cents per kilowatt hour for wind-generated power, 3.3 cents per kilowatt hour for hydro power and about 5 cents per kilowatt hour for nuclear power. In other words, at least 40% of the wind power developer's revenue from OPA is subsidized by Ontarians as either taxpayers or consumers.

Now about the costs: upheaval during the construction phase; communal stress, health, safety, annoyance and environmental problems during the prospective 20-year operation. We will look specifically at wind turbine noise and setback requirements. I want to emphasize that the company promoting the Leader project, to which I will be referring, Enbridge, appears to have satisfied all provincially and federally set requirements. Our concern is not with the company, which is not, at this date, involved in the Amherst Island project, but rather with regulations made by the government of Ontario. The environment screening documents I'm quoting from are public documents and have been recently published. They apparently reflect the current provincial environmental standards, and the provincial standards apparently do not require testing for low-frequency sounds and vibrations below 63 hertz. Therefore, setback requirements between dwellings and wind turbines can be as low as 350 metres.

The next slide will show noise map of the Leader wind power project. It is a computer simulation of wind turbine noise levels. Many dwellings are virtually surrounded by the 121 projected wind turbines and as close as 350 metres to them. Once the project is in operation, actual noise levels might differ from the values of the computer simulation. I would not like to live in this kind of a noisy valley. Thank you.

Mr. Krauklis: I don't know if you can hear me.

The Vice-Chair: No, it will be impossible to record. You will have to sit at the microphone, please.

Mr. Krauklis: That's fine; thank you. I just want to say that if you look at this map, it shows this Leader project near Lake Huron. It's about 12 by 12 kilometres in area. The dark spots are the wind turbines, mounted on towers about 100 metres high. The lighter colours are the noise values, if you wish. On the side it shows the loudness in terms of decibels. It all meets provincial standards, but these are computer simulations, and the actual results may be quite different when you live there. I, for one, wouldn't want to live there.

There are many people in that area, and this is only a small selection of all the comments that we have in the attachment to the letter. A lot of people are extremely upset over there. Just to quote a few, this is a cluster which I selected. They're in the same sequence; I didn't cherry-pick at all. They say: "We, the people that live in this area, don't have any say. It's a done deal." "It will turn a rural area into a commercial venture. There is no regard for the people who live here." "I support green energy, but I believe these turbines do not belong in the neighbourhoods we live in." Finally, "More barren, appropriate sites should be chosen. We have no rights. It's an invasion." These are strong comments.

Before we discuss the local benefits, let's look at the Ontario-wide benefits and costs.

The benefits: Yes, there's a modest addition to effective generating capacity; it's quite small. There are some fuel cost savings. You can substitute wind power for natural gas, and you can stretch out hydro power if you have a dam. If you don't use the water today, you use it tomorrow. And of course, there's some industrial and construction activity.

The costs are: high capital costs, and we'll get into that; tax and market-based incentives, which were discussed before, which means subsidies borne by the Ontario taxpayers and consumers; and some life cycle environmental loading. That, perhaps, may be surprising to the advocates of green power, because when you consider the life cycle of wind power, it turns out that the greenhouse gas emission levels are about as high per kilowatt hour produced as when you build a hydro dam or a nuclear power station. Obviously, if you're burning fossil fuels, the greenhouse gas emissions will be higher, but it is by no means a clean industry as such.

Wind power in Ontario actually is quite plentiful. It's just in the wrong place. The OPA tells us that 95% of that potential is located in the Hudson Bay lowlands, far from the existing high-voltage grid. The wind power that's available down here coincides only 10% of the time with peak load demand in the summer and 20% in the winter. It's a marginal kind of thing as far as we're concerned.

This is the wind map of Ontario, which I cut out of the Canadian Wind Atlas. If you take the Great Lakes areas, you will see that if you could site a wind power plant in the middle of Lake Superior it would be quite effective; otherwise, it's more marginal. The inset at the lower left side is taken from the Ontario Wind Power Task Force report. They classify the wind speeds. Low wind, below seven metres per second, which translates into about 30 kilometres an hour, is not commercially viable. Then there's a band between seven and 8.8 metres per second, which is commercially viable but only with tax and market incentives; in other words, subsidies. If the wind is of higher force and blows more steadily, then it may well be comparative with all electricity generation sources. We will not argue that part at all.

How much time do we have left?

1350

The Vice-Chair: Two minutes.

Mr. Krauklis: Good. Greenhouse gas emissions: While the operation of wind turbines contributes little, if

any, greenhouse gases, the life cycle of industrial wind parks results in greenhouse gas emissions per megawatt of installed capacity as high as those of hydro and nuclear power. That is mainly due to the production and construction of materials which are used for these projects. We can add transportation and everything else.

Again, to quote the OPA, if you look at the brown part, that's the greenhouse gas emissions per kilowatt hour of the various modes. Wind is just about in the middle of the chart here. You can see that.

I may as well skip some of these things and just say that individual utility-scale wind power projects, usually in the order of 200 megawatts installed but only 62 megawatts effective generating capacity, can add only 0.2% to Ontario's supply and much less to peak capacity. Hence we contend that Queen's Park should continue to leave the approval process for such projects under the Planning Act. Thank you very much.

The Vice-Chair: Thank you. We have only about 30 seconds remaining. I want to thank you for coming in and making your presentation this afternoon. We do have your total submission here, the two parts of it. I would like to thank you and wish you a good afternoon.

Mr. Krauklis: Thank you very much. I would like to leave this video here in case anyone is interested in seeing how such a plant operates.

The Vice-Chair: Thank you.

ESCARPMENT BIOSPHERE CONSERVANCY

The Vice-Chair: Next we'll have the Escarpment Biosphere Conservancy.

Mr. Bob Barnett: Great. Thank you, Mr. Chair and members.

The Vice-Chair: Just one moment. I just want to remind you, 20 minutes.

Mr. Barnett: It'll be less than that.

The Vice-Chair: What time remains will be split between the three parties. If you would please introduce yourself, your names, for Hansard.

Mr. Barnett: I'm Bob Barnett. I'm the executive director of the Escarpment Biosphere Conservancy.

Just to preface my remarks, I'm going to talk mostly about the conservation easement part of this bill. Ontario, south of the shield, has only about 1.5% of the land base protected by parks. We're doing very well north of the shield, but south of the shield it's a pretty desperate, low percentage. So it's far less than the 7% that's required to comply with Canada's international biodiversity agreement that they bought into. I think all the stated objectives would have a lot more land in protection south of the shield.

We now have 30-odd land trusts conserving more land in southern Ontario, south of the shield, than all levels of government combined. Just over the last few years, these land trusts have put together 60,000 acres. Our own charity protects 5,167 acres—51 sites—and 14 of those are conservation agreements. So about a third of our program is involved with the easement discussions in the act.

In the big picture, we're now Ontario's second-largest land trust. It's kind of hard for me to believe it, but we actually have more land in protection than Ontario Heritage Trust, for example, and Ontario Nature, formerly the Federation of Ontario Naturalists. Also, we're ahead of, I think, some conservation authorities in areas protected.

We applaud the act. We think what's being proposed for the Conservation Land Act is very strong, but I do have a couple of specific suggestions here.

(1) We use the phrase "conservation agreement" rather than "easement." I think it would be helpful if the act did the same thing, because an easement means you're allowing something. Basically, what these agreements are doing is preventing things, stopping houses and severances. So it's a misnomer to call it an easement. We think "conservation agreement" covers both the easement idea and the covenant idea. But mostly what these agreements are about is covenant.

(2) We think there should be a consolidated registry for all of these properties that are covered by some kind of an agreement, whether it be with the municipality or a conservation authority or with us, the Heritage Act, the Agricultural Research Institute etc.—although they've never done any, I think. They should all be in one consolidated registry so that a municipality just has to look there; they don't have to go and search title—it's not complicated to figure out who has protection agreements on these lands.

(3) We're suggesting the wording of 6.2 should be expanded. The present wording says "no person shall construct or demolish." We'd like to add to that concept of "no person shall construct or demolish" the words "sever the land or change the land use." The reason we suggest that is that getting a building permit isn't a sufficient trigger. Lots of times people are going to change the land use and put in a golf course or a gravel pit that's not going to be caught by the building code provisions. We think it should be a Planning Act thing; they're changing the land use. We think that the act would be much strengthened if it covers things like severances and land use changes to golf course and gravel pit. So just "land use changes" is the way it would be worded.

(4) We're also suggesting, and have been suggesting for some time, that additional purposes be added to section 3.2. We are pleased that the new ones are added, but we'd like to see walking trails, recreation and areas of aesthetic or scenic interest added. Right now, only the Ontario Heritage Trust can hold agreements that have any teeth on those subjects. We think the land trust can contribute walking trails and recreational facilities to this province in those communities. We think we have a role to play. To be honest, the Ontario Heritage Trust has been resisting that because they'd like to have a monopoly. We don't see why they need to have a monopoly. We think the job would be done better if land trusts are allowed to help with those tasks.

My number (5) is a little bit more controversial. We think we should also be able to look after things like cultural artifacts, buildings, archaeological sites and cultural sites. Once again, only the Ontario Heritage Trust can hold those kinds of agreements right now.

Incidentally, we're only saying that qualified organizations should be able to do that, because not every organization would be able to look after an archaeological site, for example. But where the organization is qualified, we think they should be allowed to do it. The reason we'd like this is that sometimes you're doing two things at once: You're protecting the land, but there's also an archaeological site on it, or a building. Right now, if we want to protect the archaeological site of the building, we have to go running to the Ontario Heritage Trust. I don't want to insult them, but it's a huge job and a big production and it almost never gets done.

We think that communities would be helped by having this scope in their own local land trust. It allows other conservation groups to protect these areas, other than just the Ontario Heritage Trust. It allows greater scope for the donee. Often people are donating these lands. Often people don't want to donate just to government. The only way you can donate trails, right now, is to donate them to the government, so that's not good for many landowners. We think that the likelihood of getting the job done is much increased if we're allowed to participate in protecting these kinds of lands.

That's the legislation. Now I have some administrative procedural things that I think would be a good idea.

(1) The Ministry of Finance has the power to instruct MPAC, and they need no legislative authority to do this, that where conservation easements—I'm going to use that word—exist on the land, that the assessment on that land should be revised accordingly, because that owner doesn't have the full range of development capabilities. So two equal lands; one guy has agreed not to sever it, not to put houses on it, but right now he's got the same taxation as the guy right next door who has no restrictions.

Next, I think that the Ministry of Municipal Affairs and Housing has a kind of checklist that they have municipalities look through before they issue permits. We think this registry and the checking of that registry should be part of that checklist of the Ministry of Municipal Affairs.

The third thing: MNR's biodiversity group needs the resources to do the work to help with this act. We're very frustrated, because their funding has been cut a couple of years in a row. The Environmental Commissioner recommends that MNR get on with the task of protecting our biodiversity, and what's happening? The funds are being cut. So we're not getting the job done.

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I've got some specific problems. We can't get through the backlog of property tax exemptions because the staff aren't there to do the work.

The province's ANSI—area of natural and scientific interest—and wetland designations should be completed. The ministry doesn't have time to get to Manitoulin to do the ANSI study. We think that's unfortunate. Lots of areas of the province have been covered, but our understanding of what's important ecologically in the province—we have an arm cut off, because a lot of them have never been looked at. We've even tried to take studies to the government so all they have to do is put the rubber stamp on it. They won't do that. They don't have the staff time to even review what we've done and put a rubber stamp on it. I think it's important that this work gets done.

Next, we think there should be transfer funding so that organizations like ours can acquire these lands south of the shield. Right now, no funding is available except—in a footnote, there is some money to do surveys and appraisals, but there's no money to actually acquire land. There is a nice program called the natural spaces program, but the only people who benefit from that are the Ontario Heritage Trust, so any land that's acquired in that program goes to the government. That's not helping conservation groups like ours get the job done.

A little footnote: We have so far only used 14% of provincial funding to protect our $4.5 million worth of land. So we think we're good value for the dollar, and we'd like to see money put into that.

I'll also add that Ontario is way behind its neighbouring jurisdictions in looking after land around the Great Lakes. Ontario, in the best of years, is putting in $2 million or $5 million; these other jurisdictions are putting in hundreds of millions of dollars. I can't understand why Ontario is so different that we're not doing the job that the other Great Lakes jurisdictions are doing.

I appreciate this opportunity to address the committee. I look forward to your questions. We're trying to work in partnership to protect this land for the benefit of all of our grandchildren, and we hope we have an opportunity to get this job done together. Thank you.

The Vice-Chair: Thank you very much. We have three minutes for each party. We'll start with Mr. Prue.

Mr. Prue: Good to see you again, Rob. I haven't seen you for a while.

Mr. Barnett: I've been out doing this instead of municipal stuff.

Mr. Prue: Yes, instead of municipal stuff.

We had another group earlier—land conservation. Does the fact that municipalities are going to be frozen out of energy projects impact what you're saying in any way?

Mr. Barnett: I can't—

Mr. Prue: Section 23: The planning process can no longer be used for any type of energy process whatsoever. Is that going to impact you in any way?

Mr. Barnett: If we have an easement on a property, then our rules would overrule what any other private landowner could do. So if Superior Wind Energy or some other company bought a piece of land with an easement that said, "You can't put wind towers on it," our powers would govern. The municipality should look that up in the registry and say, "Ah, this parcel can't be used for wind generators; it says so right in the easement."

Mr. Prue: Okay, but what if the Ontario government said, "We want to use that for wind"?

Mr. Barnett: Then the only choice left for the government would be expropriation, and that might not be too attractive to some people.

Mr. Prue: I think maybe the last group should have heard you.

The conservation agreements: How many are there in Ontario?

Mr. Barnett: Approximately 100, with conservation groups like ours. There may be more with conservation authorities, but honestly, there are very, very few. The agricultural institute, as far as I know, has never done one. My number would not count those created by the Ontario Heritage Trust, and that's probably the only other significant group. They have some easements on land and others on buildings, but I don't know what their number is. All of the private ones and probably all of the ones with conservation authorities are included in that plus-or-minus-100 number.

Mr. Prue: More time?

The Vice-Chair: About a minute.

Mr. Prue: About a minute. I had one other question here.

It's okay; let it go.

The Vice-Chair: All right. Mr. Sergio.

Mr. Sergio: I enjoyed your presentation very much. I don't have any specific questions. I was just interested in what you had to say and appreciate your coming down to make a presentation to the committee. We have staff in the room here. I'm sure that they were listening to the presentation very attentively as well and will carry the message to the minister, and we'll take it from there. Thank you so much.

Mr. Barnett: Thank you.

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: I just wanted to quickly touch on a couple of different issues. Your number one item is to include the term "conservation agreement" with the concept of an easement. To me there's a difference. An easement gives the owner of the easement full access to the property in its present state. Whether there's an agreement on what they're going to use it for is irrelevant. If I get an easement across my neighbour's property, it means he can't do anything with the property that would prevent me from crossing it, and it would be registered on title. Whenever they wanted to do anything with the property, they would have to find out what they could do, and that would come up. With a conservation agreement, that wouldn't necessarily happen.

Mr. Barnett: A conservation agreement includes both the covenant and the easement aspects of it; they're merged together in that collection of two words. Normally, the easement that we are granted in one of these conservation agreements is only the right to go and look at the property and make sure the rules are being followed. The easement part of it is fairly small, and that in itself wouldn't restrict building or other things. It's the covenant part that restricts it. In fact, most of our agreements say that nothing in this agreement shall allow the general public to use the property, so it's only we who have this very specific easement right, which is to go and check that they're following the rules. So that's really the smallest part of the idea.

The big part of the idea is this covenant thing, where they agree not to sever, build new buildings, cut down the trees, hunt—whatever they decide to do. That's the important part. The small part is that we're granted an easement to go and look at it. We've sort of been using the wrong words to describe what we're doing.

Mr. Hardeman: Going on to the other part about MPAC and the value of the property, does an easement devalue the property because it would be designed to its present and existing use?

Mr. Barnett: That's right. Our appraisers calculate that for us. The devaluation ranges from 20% to 80%, depending on which property. An 80% devaluation would come about if you had a wonderful waterfront property but you agreed never to build a building or a cottage on it; it would only ever be used for camping. That would be a pretty big devaluation.

Mr. Hardeman: The last point I wanted to ask you about was the Ontario Heritage Trust and the difference between other land trusts and the Ontario trust, the things they can do that your trust can't do. You want to make them equal. Is there a reason for them having these things, because that's the provincial responsibility and they can do it? Could you see any good reason why they would have everyone else doing the same things that the provincial organization is already doing?

Mr. Barnett: I guess in every aspect of life there is territoriality. I think they're very happy to be the only group that can do some of these things. I can't see a good reason for it for the trail or public recreation areas. We run the Cup and Saucer trail system up in Manitoulin. I don't see why we couldn't create an easement on another piece of trail up there, but right now we can't without going to the Ontario Heritage Trust. They claim that they're the only technical experts in the province. I would have some sympathy if they were talking about archaeological sites or something, but I don't think it's much of a brainer to look after a trail.

Mr. Hardeman: But you also talked about providing funding to purchase more easements. Is there any benefit to the province putting out money towards other trusts being able to purchase easements, as opposed to if an easement needs to be purchased for conservation, let the Ontario Heritage Trust do the purchasing?

Mr. Barnett: Mostly we acquire land, fee simple rights to land. We've purchased three of our 14 easements, so most, 11, were donated. So yes, there is a benefit, because often, for a fairly small sum, maybe 20% or 30% of the value of a property, you as a province or a land trust can prevent development on that property, which is the essence of keeping it green, keeping the migration patterns going. You can achieve a lot without a lot of money.

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

Mr. Barnett: Good. Thank you. Great to talk to you.

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SCHNEIDER POWER INC.

The Vice-Chair: Next we have Schneider Power. As with the other deputations, 20 minutes for your time period. Should you not require all the time for your presentation, I'll take the remaining time and split it between the parties. At the outset, please state your name for Hansard purposes.

Mr. Thomas Schneider: Thank you, Mr. Chairperson. My name is Thomas Schneider. I'm the president and CEO of Schneider Power Inc. Mr. Chairperson and members of the committee, I'd like to thank you for allowing me this opportunity to speak to you about Bill 51, the Planning and Conservation Land Statute Law Amendment bill. I'm here today to convey Schneider Power's support for section 23 of the current bill.

Schneider Power is a Canadian-based developer of renewable energy projects, and my family has over 112 years of experience in the electricity sector. We do focus on small-scale, low-impact wind farms that minimize impact on local communities, wildlife and the environment. We are located across Canada and internationally. Our projects in Ontario tend to be an average of around 10 megawatts, or five wind turbine generators. Our sites include such areas as up in Providence Bay on Manitoulin Island; the area of Innisfil, just outside of Barrie; the towns of Amaranth, Laurel and Trout Creek.

We are here today to comment on Bill 51 because we want to continue to invest in the province and to add more renewable sources to Ontario's energy mix. We understand the nature of the energy challenge faced by Ontario, indeed most jurisdictions, and we believe we can be part of that solution. But we are finding it increasingly difficult to operate in Ontario, given the multiple, overlapping approvals processes and the enormous expense that actually goes along with these inefficiencies. In fact, development and construction costs in Ontario right now are 30% higher than in any other country around the world when it comes to wind development. These added costs are particularly restrictive and are becoming more uneconomical to companies like ours that are investing in smaller, community-based projects. Change is necessary in order to make Ontario competitive and attractive for renewable energy investments.

Section 23 of Bill 51 addresses many of our concerns associated with the current approvals processes for energy projects.

The two-and-a-half-year provincial Environmental Assessment Act and Planning Act approvals process that we must undergo involves much duplication and therefore adds unnecessary burdens on not only the municipalities and the province but also smaller companies such as ours. For instance, municipal zoning amendments and bylaw reviews examine much of the same information contained in the provincial environmental review report. Municipal site plan agreements review location, height, number of turbines and setbacks from roadways as well as from other properties. Although these issues have already been legislated and are dealt with, they are also duplicated by not only the Ministry of the Environment but also the Ministry of Transportation, the Ministry of Natural Resources, NAV Canada and the Department of Fisheries and Oceans.

Not only are developers such as us asked to present the same pieces of information to several different approval bodies, but changes to a project resulting from one approvals process actually trigger a requirement to return for approvals that have already been granted on another application. Clearly, there are redundancies and a lot of duplication in that system.

The existing process also opens the door to a lot of NIMBY activism in the sense of, "We all want to use power, but don't build the power plant in our backyard." For example, we have had to manage project delays due to a group of recreational pilots who decided to mow their grass fields, call them unregistered airstrips and oppose our windmills so that they can fly over their neighbours' properties in a 10-kilometre radius. Although Transport Canada has rules in place regarding aeronautical obstruction and has granted aeronautical obstruction clearance for all our projects, we're operating in an environment where, for example, a recreational pilot's hobby can hold other landowners hostage—and not just the neighbours, but a 10-square-kilometre radius—by limiting what those landowners can do with their land, which trumps our ability to add clean, renewable energy sources to the electricity grid. Indeed, our company could have about 50 more megawatts of power on-line by now if it weren't for that.

Recently you've read in the news that Canadian Hydro Developers announced a year-long delay in construction of its Melancthon II wind energy project as a result of delays in the provincial and municipal approvals processes. The delays will cost them an additional $10 million, essentially, in my opinion, making the project unfeasible economically. That's not necessarily a prospect for any energy company looking to do business in the province, let alone companies investing in smaller community projects of 10 megawatts or less, such as ourselves. These inefficiencies are severely impacting developers' ability to do business in the province and our ability to add clean, renewable energy to Ontario's grid at a critical time for our province. We all answer to our investors and shareholders. A lot of times, a question that comes up is, "If it's 30% more expensive to build in Ontario, why are we building in Ontario and not somewhere outside of the province?"

Ontario is struggling with the twin challenges of generating enough energy to meet our needs while ensuring that the energy is safe, secure, affordable and clean, and indeed that it fits within the requirements of our communities. Unfortunately, oil and gas are becoming extremely expensive as much of the world's supply is in countries that are unstable. Like oil and gas, coal is a polluting fossil fuel and there's only a limited supply. We're already seeing a lot of the hazardous

effects of their emissions on our climate and the environment, whether in the form of smog advisories or in the shape of catastrophic hurricanes, floods and melting of the polar ice caps.

As we all know, humidex levels here hovered at almost 50 degrees Celsius last week, proof that this is a real and imminent environmental crisis. At the height of last week's heat wave on August 1, peak electricity usage hit highs of around 27,000 megawatts. That's the highest we've ever had it in the history of Ontario.

One of the solutions to this energy crisis is wind power. Wind power is clean, safe, sound and renewable energy, and it can be implemented within a relatively short time frame. As an energy source, it has moved rapidly from the margins to the mainstream, not only in Canada but the world over. Denmark generates around 20% of its electricity from wind power, while Germany and Spain are the world's biggest wind power generators. Canada has the potential to generate close to 5% of its power from wind by 2010. The great thing about wind power is that if a new technology comes along, wind turbines can be easily removed from a property with minimal impact on the environment, which can't really be said about hydro dams and nuclear plants.

The government of Ontario has indeed shown that it's dedicated to finding a solution to our energy crisis and has demonstrated that renewables will play a significant role in its strategy. In fact, the OPA has recommended that the province reach 5,000 megawatts of wind energy generation by 2025. If we are to meet these goals, we have to create efficiencies in the approvals process.

The government's commitment to supporting wind energy is reflected in the standard offer contracts for projects of 10 megawatts or less announced earlier this year. This measure went a long way towards helping small wind companies such as ours compete in Ontario, and section 23 of Bill 51 will as well.

It's our assessment that section 23 will rectify many of the challenges that we face by streamlining the approvals processes. The bill proposes that projects that undergo a provincial environmental assessment—which essentially all of our projects do—should be exempt from the Planning Act requirements. The environmental assessment process involves the majority of information and assessments that are also gathered via the planning assessment process and is broad enough in scope to address the range of issues covered by the planning assessment process. Other requirements such as aeronautical obstruction and communications interference are actually already covered under federal transportation legislation.

The provincial environmental assessment process is transparent, and municipalities, project neighbours and other stakeholders have the ability to participate and raise issues of concern. As a company, we do welcome the ability to continue to work in close consultation with these groups and the communities through this entire process. Indeed, we have had great success in townships like Central Manitoulin on Manitoulin Island, who worked together with us and saw wind power as a clean alternative to solving their power problems, even in an environmentally sensitive area such as Manitoulin Island.

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If these changes are not implemented, Ontario risks losing further electricity investment and it'll be virtually impossible for small renewable energy companies like mine to operate here. If this province is committed to increasing its energy supply while lessening dependence on heavy-polluting fuel sources, then change, such as the change outlined in section 23, is absolutely necessary.

Section 23 is a step towards ensuring that we see more electricity added to the grid and ensuring that this added energy meets our collective long-term vision of eliminating our dependence on heavy-polluting energy sources. This is also an important step towards making Ontario attractive to companies looking to invest in our electricity system. Given the opportunity, the wind power industry in Ontario has the potential to not only replace the 10,000 job positions lost in the automotive sector but to attract further billion-dollar investments from multinational turbine manufacturing companies such as Enercon from Germany, General Electric from the US and Vestas from Denmark, who have all shown interest.

I'd like to thank the committee for the opportunity to speak with you this afternoon. I'd be happy to address any questions the committee members may have.

The Vice-Chair: Thank you. We have about three minutes for each party. Mr. Flynn.

Mr. Flynn: Thank you, Mr. Schneider, for a great presentation. With the costs being 30% higher in Ontario, or I guess in Canada—is that right? Is that Ontario and Canada, or is that just in Ontario?

Mr. Schneider: That's actually just Ontario. To give you an example, for the entire permitting process in Ontario for our smaller wind farm up on Manitoulin Island, with everything included, it costs us around $290,000. In comparison, to do the same process with the same permits in Manitoba is $60,000. So there's a huge difference versus Manitoba.

Mr. Flynn: Almost 500% more.

Mr. Schneider: Yes. The other big difference is that in Manitoba, it's about a three-month process, whereas in Ontario it took us two and a half years. A lot of it has to do with duplication.

Mr. Flynn: Okay. How much of the costs, as a proportion, are included in that 30%? Is the approval process increasing things by 20%, by 60%? Of that 30%, is it all attributable to the process?

Mr. Schneider: Yes.

Mr. Flynn: Okay, good.

From your experience, the big fear obviously is that by making this change—some people have made the claim that it's going to impact on public involvement in the process, and everybody wants the public to be involved. At the same time, those same people will say, "Wind power should play a big part in our future; just don't build it in my neighbourhood. Just give me the electricity somehow, but don't build it around me."

What is not covered under the environmental assessment process that is covered currently under the Planning Act, and can you think of a way that we could maintain the public involvement but streamline the process and make all sides happy in this?

Mr. Schneider: One of the things we see that's not covered under the environmental assessment is really a local community's ability to determine which area is supposed to have a zoning, let's say, for commercial under their official plan. Every community will plan to have certain areas reserved for certain activities. The one thing is that most wind farms are built on agricultural land. That's pretty much a fact in Ontario, because we need the space and the separation from large buildings. The environmental assessment really covers pretty much all of the main concerns of the community, whether that be setbacks from roadways, setbacks from residences, whether that has to do with impacts on the local community or even with the heritage of the community.

The one thing that the environmental assessment doesn't deal with is the fact that these machines stand about 100 metres high and people will see them. How we can actually regulate that is an open question. In my experience, having built with our partner company over 200 machines worldwide, the first machine is always the most difficult one, because nobody knows what it looks like.

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

Mr. Hardeman: Thank you very much for your presentation. I want to go to the section that deals with taking the planning authority away from the municipalities. The whole bill is intended to put the planning squarely in the bailiwick of the municipalities. They get the responsibility to design and implement their communities as they see fit, except when it comes to energy projects, and it isn't just wind; it's nuclear, it's all energy projects. All of a sudden, for whatever reason the government feels appropriate, they don't think that should have good planning, because the municipalities shouldn't be involved. You suggest the municipality can get involved in the environmental assessment as a participant, they can tell the Environmental Assessment Board what they like or dislike about the project and then they can let the board make its decision. But the municipality will have no impact on the decision other than as a witness just like any other. Can you tell me why it is that the energy industry believes that it takes longer to do two processes at the same time than one process that does it all?

I do want to continue on that and say that you suggested the environmental assessment does most of what the Planning Act does already so we don't need to do both processes, and you mentioned the height of the building. It would seem to me that visual pollution is something the Environmental Assessment Board would look at; the planning board likely wouldn't. But the planning board would look at whether it was a good idea to put it on the one side of town in the residential area or on the other side of town in the industrial area, which the Environmental Assessment Board would not do. Can you tell me why it is you believe that the municipality should not be involved in helping to make those types of decisions?

The Vice-Chair: You have a minute to answer.

Mr. Schneider: Okay, I'll try to answer that in a minute.

Really, the problem in this dual process system is the duplication, and the fact that if there is a change made in one process we have to resubmit and get back into the queue with another process. That's the delay. By having one process, we would streamline that. So really, it is the fact that when you change one application because of a review with that body, it automatically triggers a review with another body because you have to change the submission. So there's a duplication.

With regard to the visual pollution and all that, part of that is actually covered under the Ontario Heritage Act as well. A lot of the communities have in their official plans restrictions on what can be built in what area. So it does take that into account.

A lot of the reasons why the energy industry wants to have this freedom are because we need to get away from centralized energy generation. It needs to be distributed generation, smaller generation right across the province so we don't have these major blackouts when a tree hits a power line in the United States.

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

Mr. Prue: I have two questions. The first one is from your statement at the bottom of page 4 and the beginning of page 5, talking about Canadian Hydro Developers. A one-year delay is costing them an additional $10 million. Where does this number come from? I'm just trying to think of how a one-year delay—did they borrow $200 million at 5% and have to pay it? And if so, why did they borrow $200 million in advance of an approval? I just don't understand.

Mr. Schneider: The delay with Melancthon II was that the municipality didn't give all the building approvals and there were further requests by the local community to step up the environmental assessment, to go from an environmental screening to a class environmental assessment. That in itself requires the use of many more consultants and a lot more studies to be conducted in more detail. For example, on the archaeological side, you not only need to do a stage 1 assessment but also a stage 2 assessment. That increases your consulting costs. That's just one of the factors that accounts for this increase in cost. Because Melancthon is such a huge project, the times involved are much higher.

Mr. Prue: Okay, so it's because they're having to pay in order to satisfy the many requirements of many agencies.

Mr. Schneider: Correct.

Mr. Prue: Not just municipal.

Mr. Schneider: Not just municipal, correct.

Mr. Prue: Okay. The statement at the bottom of page 5 also is puzzling to me, if you can explain this. It talks about 50 degrees Celsius last weekend. Yes, indeed, it

was. I don't remember there being a breath of wind, though. Somebody made the statement, and it's probably true, that the summertime, when we need the power the most, is when it's least likely that there would be any wind or any source of electricity from wind. Is that correct?

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Mr. Schneider: Yes, it's correct that the summer months are the least windy across the country, including Ontario. But the idea of the distributed generation principle is that it will be windy somewhere. On those couple of days when it was really hot in Toronto, if you were down at the waterfront, that wind turbine was actually spinning. Just because it's not windy in one part of the province, it certainly could be windy up on Manitoulin Island. So distributed generation has a tendency of mitigating that effect because we distribute it right across the province in different areas and different weather climate zones.

Mr. Prue: The windiest parts of the province, though, are around the Hudson Bay area. That's the place where wind farms would probably even pay for themselves. But we have no way of getting it here. Is that not correct too?

The Vice-Chair: Basically a yes or no answer.

Mr. Schneider: Yes, that's correct.

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

FEDERATION OF NORTH TORONTO RESIDENTS' ASSOCIATIONS

The Vice-Chair: Next we have the Federation of North Toronto Residents' Associations, George Milbrandt, co-chair. I forgot to mention that Helaine Becker has cancelled, so we've moved Mr. Milbrandt up.

You have 20 minutes for your deputation. Should you not require the full time, the remaining time will be split between the three parties. I would appreciate it if you would identify yourself for Hansard, by name.

Mr. George Milbrandt: I'm George Milbrandt. I'm co-chair of the Federation of North Toronto Residents' Associations, or FoNTRA.

FoNTRA was founded in February 2001. Two main reasons were to help clarify and strengthen Toronto's new official plan and to bring about meaningful reform to the OMB. We've been presenting proposals to the current government since February 2004.

FoNTRA is a non-profit, volunteer organization that comprises 21 member organizations. Its members, all residents' associations, include at least 125,000 Toronto residents within their boundaries. The 21 residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not whether Toronto will grow, but how. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.

We would like to thank you for the opportunity to propose some refinements to Bill 51, in particular the OMB reform portions of the bill, and section 45 of the Planning Act, which deals with minor bylaw variances. The specific refinements are included in appendix A for Bill 51 and appendix B for section 45. The detailed policy refinements that you find in the two appendices were put together by George Belza and Bill Roberts on behalf of FoNTRA and CORRA.

These proposed technical revisions would strengthen the provisions of the bill with respect to OMB reforms so that they actually work in the way described by Minister Gerretsen at a North York town hall meeting held on February 27, 2006. The suggested revisions to Bill 51 in appendix A would empower, rather than disempower, ratepayers' and residents' groups. They would also further empower municipal councils while providing safeguards against abuse.

A general discussion of the main effects of the refinements proposed in the six pages of appendix A may be summarized as follows:

(a) Where council decided to amend its official plan, the OMB would be required to "have regard to" that decision but still consider submissions in support or in opposition without limitations on evidence, including evidence brought before the OMB by ratepayer groups. I should note at this point that, in our opinion, there's a difference between allowing the introduction of new evidence at the OMB and the moving target that many developers offer. They bring a proposal to council and they modify the proposal before the residents even are aware of it. The residents make presentations when they're aware of it. It's further modified, and when we have the required public meeting, it may even be different again. And then it goes to either the committee of adjustment or the OMB and it could be different there as well. Something has to be done to deal with this moving target, which is different than the evidence aspect that I think a number of speakers have dealt with in previous submissions over the last couple of days, yesterday and last Thursday.

Let me continue about some of the effects of the proposals.

(b) Where council decided not to amend its official plan—that is, turned down a proposed development that does not conform to the official plan—the OMB would be required to defer to that decision except in instances of demonstrated unfairness, patent unreasonableness, error in law or fact, or material inconsistency with provincial policy.

(c) Limitations on evidence would apply to proponent appeals—developer-sponsored—of OP amendments not approved by council, but not to ratepayer or other third-party objections thereto.

(d) Dismissal of appeals due to abuse of process would apply to proponents—that is, developers, whether a large developer or an individual trying to do something to their personal properties—as well as objectors, ratepayers.

(e) The OMB's discretion as to the giving of notice, which discretion the board has abused—I have the words

"badly abused"; I don't know if it's badly abused but it certainly has been abused—would be stripped away in favour of statutory regulation, so there's no leeway as to who the board has to give notice to. It's stipulated. I have an example of a recent case where it was very difficult for the ratepayers to get recognition at the board because they weren't given proper notice of the hearing.

(f) In addition, provisions pertaining to so-called second-suite bylaws would be strengthened to enable groups to appeal second-suite bylaws that allow the character of neighbourhoods to be degraded.

I've got an example of one of the proposed modifications to Bill 51, and I would say just a couple of things about appendix A. The set-up of appendix A is the wording of the current Bill 51, as shown, followed by the suggest revisions. An upside-down v indicates a deletion from Bill 51's present wording, and underlined material indicates suggested modifications or additions to the language of the bill. So the one example from Bill 51 that I'd like to deal with is part I, the Planning Act amendments, and it's 2.1, the "have regard to," which has also come up in a variety of ways from various speakers in the last few days. The proposed wording is:

"2.1 When an approval authority or the municipal board makes a decision under this act that relates to a planning matter, it shall

"(a) have regard to any decision that is made under this act by a municipal council or by an approval authority that relates to the same planning matter; and". That's "relates to the same planning matter," not something that's different or has been modified on its way over to the OMB;

"(b) on request, consider any information and material that the municipal council or approval authority considered in making the decision described in clause (a) and any submission related thereto, subject to the provisions of subsection 22(7.5).

"The municipal board shall defer to any decision of a municipal council or approval authority consistent with the official plan in effect on the date of the decision, except in instances of demonstrated unfairness, patent unreasonableness, error in law or fact, or material inconsistency with the policy statements issued under subsection 3(1) that are in effect on the date of the decision or material non-conformity or conflict with the provincial plans that are in effect on that date."

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That's an example of the way appendix A is set up and the suggested wording, and this is probably one of the key amendments that we would propose to in fact do what the government claims the bill would do. We think there are some flaws in the current wording, and this would deal with that.

The other part of our submission deals with appendix B, a six-page appendix that deals with section 45 of the Planning Act, which is intended to deal with committee of adjustment cases or what are called minor variances. If acted upon, it would solve most of the problems related to committee of adjustment appeals. Currently, many significant changes to land use designations evade detailed municipal examination by being submitted as minor variance applications. The intent of this proposed refinement to section 45 is to codify a recent Divisional Court decision, the 2005 Vincent decision, that confirms there are four distinct tests, each of which must be satisfied in order to permit, but not require, approval of a minor variance application.

Over the years what has happened, it seems, is that even though the claim is that these four tests should be met for the committee of adjustment to deal with the matter and for the OMB to deal with the matter, many times the only test is the impact test. What we're proposing is in fact based on this recent Vincent decision that the four distinct tests have to apply. The wording of the proposed change to section 45 is shown in the brief on page 3. I would just like to focus on the four tests:

" ... provided that the variance application meets each of the following tests:

"(1) it is minor in size, nature, importance and impact;"—so impact is only one of the aspects of item 1;

"(2) it is desirable for the appropriate development or use of the land, building or structure in relation to the broad public and planning interest;

"(3) upon analysis, the general intent and purpose of the bylaw are found to be maintained; and

"(4) the variance conforms with any official plan in effect on the date of the application.

"For greater certainty, where the four tests are met, the committee retains residual discretion as to whether or not to approve the variance."

So if the four tests are met, that doesn't mean the variance is automatically approved; it just means they can consider it. Then the judgment of the committee of adjustment—or, if it goes, of the OMB—has to come into effect.

We would recommend that you amend Bill 51 as detailed in appendix A, and amend section 45 of the Planning Act as detailed above and outlined in appendix B. We ask that your government seriously consider the attached modifications.

I have a note here that if you have any detail questions as to the Planning Act and amendments and all the brackets and subsections and so on, you can contact George Belza. His contact information is here, and he would be pleased to answer any questions.

I would be pleased to answer any questions at this time. On page 4, the list of 21 residents' associations that are members of FoNTRA is included. I should also note that we've had a number of requests from additional ratepayer groups to join FoNTRA. At the present time we're not taking on new members. It's not for lack of interest; it's just that we're kind of at capacity right now to deal with such a large organization.

That concludes my presentation. I would thank you, first, for allowing us to make the presentation to the committee, and secondly, I would be pleased to answer any questions.

The Vice-Chair: We have about two and a half minutes per party. Mr. Hardeman?

Mr. Hardeman: Thank you very much for the presentation. I want to quickly deal with the issue of the information provided to the Ontario Municipal Board and the fact that we need to have the ability of the public to present to the Ontario Municipal Board based on the application that's before them where, in some cases you mentioned, it may have varied in some instances from where it was when it went through council.

The development industry has been very concerned that they think it's unfair—against natural justice—that as the bill presently is, the municipalities or the public bodies can bring new information to the board for the hearing but the developer can't. Your suggestion would be that the municipality should continue to be able to do that and the ratepayer should be able to do that; the only one who couldn't do it would be the developer.

Mr. Milbrandt: Generally speaking, yes. But there could be circumstances where the developer, because of some situation—evidence that the ratepayers brought forward, which altered the view of the world, if you will, around this proposed development. That could generate the need for the developers to counter what the ratepayer groups brought forward. So generally I would agree with what you said, but there could be some exceptions.

Mr. Hardeman: If that's the case, is it really worth the time to try to prevent them from bringing evidence? If we're going to say everybody can bring evidence in most cases, why are we curtailing it in others?

Mr. Milbrandt: As I understand the bill, as I've read it, we're trying to encourage the developer proponents to bring forth a full picture at the council level, which many times they don't. In my experience over the last 30-odd years, it just depends on who the developer is. Sometimes you get a full picture; sometimes you don't get a full picture until you get to the OMB.

Mr. Hardeman: The other question, if I could just quickly go on—

The Vice-Chair: A very quick one.

Mr. Hardeman: The minor variance: The intent in the bill is that minor variances would go to a local body, as opposed to the OMB, for review if they don't meet these challenges. What's your position on the local appeals body, as opposed to all planning matters going to the Ontario Municipal Board?

Mr. Milbrandt: I think a local appeal body is good. The city of Toronto has a committee of adjustment that hears local appeals, and whatever party is not satisfied with that outcome, they can take it to the OMB. To me, bylaw variances are what should be at the committee of adjustment level or the local planning board level, and it's just amendments to the official plan that should be heard by the OMB.

The Vice-Chair: Mr. Prue?

Mr. Prue: You've given so much detail here and not enough time for me to even read it all.

Mr. Milbrandt: I can appreciate that. That's why I had to select a very limited amount to present today.

Mr. Prue: I'd just like to ask some questions about section 22 of the act. This is on page 4.

Mr. Milbrandt: Four of appendix A?

Mr. Prue: No, at the beginning of what you said. It's restriction of evidence at a hearing. It's your belief that new evidence shall not generally be permitted unless deemed appropriate by the board.

Mr. Milbrandt: That's correct, generally.

Mr. Prue: I take it, then, that you think there should not be a trial de novo but it should just be an appellate body. You haven't come right out and said that. I just want to make sure that that's where you're going with this.

Mr. Milbrandt: Yes, generally that's the case. As I mentioned previously, there may be circumstances where you would want new evidence or new evidence is necessary, but generally speaking, I would agree with what you just said.

Mr. Prue: Okay. We have had some people before us who are suggesting, where the new evidence is deemed appropriate and the information is valid, that it would be necessary to have that new evidence sent back before the municipal council that made the original decision, if such new evidence would have been of such a nature that it may have changed the decision that they made.

Mr. Milbrandt: I agree.

Mr. Prue: You would see that happening as well—

Mr. Milbrandt: Yes.

Mr. Prue: —or would you see the board substituting its own—

Mr. Milbrandt: No. If it's of the nature you've described, that the board deems it could have changed the decision at municipal council—FoNTRA believes; it's not just me—it should go back to the municipal council then.

The Vice-Chair: Ms. Wynne?

Ms. Kathleen O. Wynne (Don Valley West): Hi, George. Thanks for being here.

Mr. Milbrandt: You're welcome.

Ms. Wynne: I just want to follow up on this evidence thing, because you and I have had a number of conversations about this in beautiful Don Valley West. Originally, there was a discussion in the ratepayer community about not wanting to have new evidence at hearings. There was a concern that the developer had the upper hand because there could be studies undertaken and a whole bunch of new documentation that residents' groups wouldn't necessarily be able to match. Is that true?

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Mr. Milbrandt: Absolutely, and that's still true.

Ms. Wynne: So before the legislation was drafted that was a concern.

Mr. Milbrandt: Yes, and it's still a concern.

Ms. Wynne: So the way the legislation has been drafted, there wouldn't be allowance for that to happen on either side, either the residents or the developer. If I understand what you're suggesting, there would be an asymmetry introduced into the bill so that the developer's evidence would have to be complete at the council level—

Mr. Milbrandt: Or fairly complete.

Ms. Wynne: —but the ratepayers and the municipalities would be able to bring new evidence to a hearing. Is that what you're suggesting?

Mr. Milbrandt: Yes. Our general focus has been on the ratepayer groups because, as has been pointed out in previous deputations as well as ours, many times residents aren't even informed. The proposal is in front of the planners at the local level. It may or may not be brought to the residents. They're not aware of it. It depends on the councillor in some cases. When there is a public meeting, the residents may not be fully informed. And most of the time, because of finances and resources, they want to see, in the case of Toronto, what the community council does with the item and what city council does with the item before they go out on a fundraising expedition to see what they can come up with.

An example: Some of you may have heard of the Minto at Yonge and Eglinton. That cost the local community close to $100,000. We weren't able to match in any way what the developer spent at the OMB, and we were just literally buried.

The Vice-Chair: Thank you very much. That brings us to the conclusion. I would like to thank you for your deputation and wish you a good afternoon.

ONTARIO WATERPOWER ASSOCIATION

The Vice-Chair: Next we will be moving the Ontario Waterpower Association up to the 2:50 time slot. I understand that Paul Norris, president, is ready. Just fire up your computer.

Mr. Paul Norris: I don't want to take up too much of your time fooling around with the computer. I'm completely willing to speak from the slides that I've handed out, if that's a better use of your collective time. You'll miss the map; that's the only thing.

The Vice-Chair: If you're satisfied with that—

Mr. Norris: Absolutely.

The Vice-Chair: Okay. I would just like to remind you that no matter how we're going, you have 20 minutes for your presentation. Should you not require the full time, the time remaining will be split between the three parties. If you could identify yourself for Hansard at the outset, that would be appreciated.

Mr. Norris: Great. Thank you for the opportunity to be here today. My name is Paul Norris. I'm president of the Ontario Waterpower Association. I'm on the first slide of nine, so I don't anticipate it will be much more than 20 minutes at all. I have had the good pleasure of participating on the government's electricity supply and conservation task force, where the issue of site development was of primary concern to our industry and, more recently, on the Minister of Energy's panel on environmental assessment. That's going to be the focus of my discussion today. I'm going to focus entirely on a section of the bill that deals with the relationship between the Planning Act and the Environmental Assessment Act as related to energy projects, and that's section 23.

The first slide is on the Ontario Waterpower Association, just a brief about who we are. We're the collective voice for the province's hydro industry, what's become known as the ubiquitous hydro industry. We're Ontario's primary source of renewable energy. We have about 8,000 megawatts of installed capacity. Our membership includes generators, consultants, service providers and legal consultants. We have about 100 members in the province.

Hydro in the province of Ontario is a fairly diverse electricity source in terms of ownership; it has been for about 110 years. We do have large generators like Ontario Power Generation, Brookfield and others like that. A lot of industrials rely almost entirely on hydro to manage their costs. I can think of Abitibi, Inco, Tembec and others who are using hydro as strategic energy assets. We have a number of private investors, and that constituency is growing. We also have a number of municipals, and that has been the case, as I say, for more than 100 years: Bracebridge; Peterborough, where I'm from; St. Catharines; Ottawa; Parry Sound—Bala is about to become one—across the province.

The next slide was the only one that really mattered in the slide presentation. The point I want to make here with respect to hydro specifically, and I suspect my colleague from CanWEA made the same point, is that in terms of land use planning decisions about hydro, it is where it is. You can't pick up and move a hydro facility. It's an asset that is geographically distributed across the province. The graph, were you able to see it, shows you 193 operating facilities in the province of Ontario. Up until about four years ago that number was about 500. Some 126 of them are south of the French and Mattawa in organized Ontario, and a number of them in northern Ontario are within 10 kilometres of a municipality. But it is where it is. In terms of land use and resource management planning, we've been through Living Legacy, we've been through a number of other planning initiatives, iterations of the Planning Act, and it's a little different when you're a resource that you can't plan for. What we've seen is that you can plan around, you can plan to eliminate, you can plan to restrict, but you certainly can't plan in terms of land use planning decision-making, in our view.

But it does matter. On the next slide, I have the question posed at the top: "Why does land use planning matter for hydro?" We're managing water, we're not managing land. But in the province of Ontario, the privilege of developing, operating and owning a hydro facility has nothing to do with water; it's all to do with land. It's a riparian right at common law. We have a Public Lands Act. We don't have water resource legislation such as they have in British Columbia, for example, that vests ownership of that resource in the private sector or in the crown. So the privilege of developing hydroelectricity in the province is fundamentally a function of ownership of the bed and the banks of the river.

In Ontario, by virtue of the Beds of Navigable Waters Act, the crown owns the beds of the river in the province

of Ontario, all those that are navigable, with very few exceptions, and certainly all of them in northern Ontario. In organized Ontario, the banks, particularly south of the French and Mattawa, are most often owned by either private citizens or were vested at one point in the crown and shoreline road allowances and now are vested in municipalities. But the privilege of developing hydroelectricity is fundamentally related to those two things: Who owns the bed and who owns the banks. So land use planning does matter.

More importantly, from our perspective, renewable energy clearly in the lexicon of the Planning Act is a matter of provincial interest. We saw some reference in the last version of the provincial policy statement to the incorporation of renewable energy, but certainly not in the context of, for example, the way we would look at aggregates or the way we would look at other kinds of resources that are where they are. But with the target of 5% by 2007, 10% by 2010 and 8,000 new megawatts by 2025, renewable energy is a matter of provincial interest.

Just to put that into context, we have 8,000 megawatts now. It took us 100 years to build it. We've got 20 years left to build 8,000 more megawatts.

I think our main point is that, in our view, it's not a matter of whether or not you should have a publicly accountable, environmentally responsible process for hydro development—absolutely. We're leading—and I'll reference it later on—a class environmental assessment for our industry with First Nations, with other stakeholders, with other interests on the landscape, because it's the right thing to do. We're not suggesting that we don't need a process; we're suggesting that we have one—or many, in fact. In our view, the public interest is served.

We're subject to the provincial Environmental Assessment Act, which is the focus of section 23. You can't build a hydro facility in the province of any greater than zero megawatts without an EA. That's the threshold for us. We're also subject to the federal environmental assessment act by virtue of the fact that we deal with fish and we deal with navigation. There isn't a development being moved through the process that isn't subject to both of those right now.

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We're also subject to water legislation. The Lakes and Rivers Improvement Act is a piece of legislation that deals with putting infrastructure in rivers. That's a process that fundamentally is about public accountability and environmental responsibility. It has as its tenet ecological sustainability.

The Ontario Water Resources Act has just been revised to put a focus on the permit to take water. Again, a process is put in place to engage the public to consider the environment. The federal Fisheries Act does the same thing, the Navigable Waters Protection Act does the same thing, and it can go on and on.

Our point is that we're not looking to be part of a publicly accountable, environmentally responsible process. We have one or more already in place. In our view, section 23 recognizes that in the proposed bill.

I'll give you a piece of what a process looks like in Ontario in the next slide. It is a complex process. From the time that you want to identify an opportunity—not have tenure to a site but identify an opportunity in this province—to the time you commission, the time you're producing electricity, it's easily five years, through the existing process. That process is the same whether you're building 50 kilowatts or 50 megawatts. It's, by definition, the same. There are no exemptions, under any of these other pieces of legislation, on the basis of project size for our industry. Only half of that process is controlled by the proponent; about half of it is in the hands of the regulators, be they environmental assessment, be they federal processes for the Fisheries Act or the other pieces of legislation that I've identified. There's ample opportunity for public engagement and certainly opportunity for local community involvement.

The process steps are not something you can compress for most of these things. While there are some sequential opportunities, it's not as if you can try to do everything at once. It's a stepwise process, and there are definite steps in that process that involve the public and engage the local interest, be it the municipality, First Nations or others.

I wanted to give you a case example. I picked this one because this is an example that was done by a municipality, to give you an idea of what a hydro development looks like in Ontario. This comes out of Bracebridge, Ontario. It's the High Falls redevelopment, in fact. It's a municipally owned water power facility; it has been since 1894. It was the first producing hydroelectric facility that a municipality owned in the province. The proposal that Bracebridge Hydro came forward with after commercialization of the market was to redevelop that facility using the existing infrastructure, no new environmental footprint, and they were going to double the energy output from 700 kilowatts—a pretty small facility—to 1,500 kilowatts. It took four years to go through the process of public engagement and environmental consideration. That's how long it took; lots of community involvement—I went to lots of town meetings—and lots of opportunity for local input that did, at the end of the day, influence what the facility looked like.

I can only suspect that with the standard offer program on the horizon, the program that is to incent new renewable generation, particularly in site distribution systems, that examples like High Falls in Bracebridge will only increase. We have two in Peterborough that are being built right now. I can't imagine any of those being built without local community involvement.

Our advice, in closing, and I'll entertain questions: We would strongly support section 23 of the proposed amendments. We see environmental assessment as a primary vehicle for consideration of the concerns about development on the environment. In fact, as I said before, our association, on behalf of the industry, is developing a class EA precisely for that purpose. We are engaging local stakeholders; we're engaging resource management interests; we're engaging energy interests; we're

engaging First Nations. We're doing that proactively on behalf of the industry. So we think we can deal with the concerns.

Further, we think that municipalities should be encouraged to enable renewable energy projects and protect existing opportunities. Again, it's a resource that is where it is. We can make land use planning decisions that fundamentally compromise the potential for that resource to be realized for future generations. I think the standard offer is a good example of that. We're certainly supporting that. We're reaching out to municipalities to help them understand what a hydro facility looks like. We just delivered a two-day course to First Nations in northern Ontario to help them understand how to build a hydro facility, and we'll do the same thing in the south.

I think, quite frankly, given a year and a half on the environmental assessment panel and previously in the supply mix discussions, the concept of regulatory integration should be more widely applied. Somebody needs to step back and ask, "Are our interests addressed; and if so, how? And if they're not, what are the residual interests that this other piece of legislation can deal with?"

We're subject to 50 or 60 pieces of legislation for every new development. A lot of those have the same two fundamental tenets: involve the public and consider the environment.

With that, I'll close. The picture that I have on the end was the only other good slide I had that warranted putting up. This is inside of London Street generating station in Peterborough, Ontario, where I happen to have the good fortune to live. Those units have been operating for almost 100 years. In 2003, when we had the blackout, we had the good fortune of having this in downtown Peterborough. They ran the electricity from that station, which is about a 2.5-megawatt station, to the hospital and we kept it running.

Thanks for your time.

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

Mr. Prue: You started off by saying—and it's true, it's trite—that the water is where the water is. And I don't understand. Other than redeveloping the existing water sites, particularly south of the French River, there's no new water source. If there were, it would have been tapped by now. The only thing that's possible is what you've pointed out at High Falls or what's happening in Niagara Falls as of yesterday: to try to further develop what you already have. I've never heard of a single occasion where a municipality has backed it up or tried to stop it or anything so that section 23 should cause you any umbrage at all.

Mr. Norris: There are opportunities that are being pursued right now in greenfield development in southern Ontario. There are two on the Trent-Severn canal right now, notwithstanding the fact that that's federal jurisdiction. There are greenfield sites.

Having said that, I take your point. The notion, though, is that we're about to enter a stage in public policy associated with energy, through the standard offer, that pursues as an active objective new renewable energy development and side distribution systems. To have the spectre of having to go through another piece of legislative requirement doesn't make a lot of sense to me. We have the EA process in place. We have numerous other pieces of legislation that, as I say, do the same thing. It doesn't make any sense to me to have the spectre of the Planning Act hanging out there.

Mr. Prue: But it has been there for 100 years and it hasn't harmed your industry, as far as I can see, in any way whatsoever.

Mr. Norris: I can't point to any examples because we haven't built anything in 15 years in Ontario.

Mr. Prue: But in the first 85 years, can you tell me—

Mr. Norris: We closed 300 facilities south of the French/Mattawa between 1946, because we made different electricity choices.

The Vice-Chair: Mr. Flynn.

Mr. Flynn: I don't know if you were here when we had a presentation from the folks from Schneider Power, the windmill people.

Mr. Norris: Tom Schneider? No. I think they're a member of our association.

Mr. Flynn: He claimed that today Ontario as a jurisdiction has 30% higher costs than the rest of the world because of the process that proponents need to go through in Ontario, and compared us quite unfavourably to the province of Manitoba, where they seem to be able to do things a little more quickly.

If you take as a first principle that the public interest and involvement must be served and that is something that just cannot be set aside or diminished in any way, can you see a process that we could employ in Ontario that would allow the public interest to be served, allow the public to be involved, and yet allow the projects to proceed in a much more expeditious manner? If it's taking at least five years now, what should it take? What do you think? How could we serve the public, involve the public, build the sites? Should it be in a year, two years, three years? It should be less than five, obviously.

Mr. Norris: Yes, it should be less than five. It'll never be a year, nor should it be a year. Any prudent proponent spends a year to a year and a half in pre-feasibility, doing their biological homework, their community evaluation, those types of assessments, construction. I said about half of that five years is in the direct control of the proponent.

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What we've been pursuing through our class environmental assessment—and we're not pursuing that because we don't like EA or because we don't like the process—is the concept of one process for one project. That doesn't exist right now. Right now, you have a number of process flow charts that have no linkage. There's no linkage between the water resources process flow chart, the EA process flow chart, the Lakes and Rivers Improvement Act process flow chart. I firmly believe that you can still engage the public, involve the public, respect the public interest, but do it more expeditiously

and more efficiently. I think it serves the public better to have them involved and engaged early, when you can describe the process and go through a single process together, as opposed to giving them numerous opportunities to come in at different stages of the process, answering a question that was probably answered two years ago in the initial site design. That's one of the tenets of our class EA.

Mr. Flynn: Can I just jump in there? So you're saying involve the public earlier and have a single-track process?

Mr. Norris: Yes.

The Vice-Chair: Ms. MacLeod.

Ms. MacLeod: Thank you very much for your presentation, Mr. Norris. We thoroughly enjoyed it; we were just discussing that.

The question I have is, what level of government do you think actually participates the most with its constituents: federal, provincial or municipal?

Mr. Norris: What level of government actively participates directly most with its constituents? Municipal.

Ms. MacLeod: Exactly. So it doesn't really make sense to a few of us on this side of the fence that the first place to cut would be the planning process, the environmental assessment. I understand there are several processes that you have to take part in, but it's very hard for us to fathom when, on the other side, they're giving more powers to the municipality on evidence with the OMB through appeal boards and enhanced design control, that they would actually take the planning process away from municipalities. I think there might be a better way. I understand where you're coming from with one process and the need for linkage. Is there not a better way than to cut the municipality right out of this section 23?

Mr. Norris: I think what you're doing is integrating legislation, as opposed to cutting the municipality out. I think the municipality is still intimately involved. It's a matter of who's driving, right?

Ms. MacLeod: We all represent constituencies and municipalities, and I certainly have worked in the municipality. I know there are a number of former municipal councillors here. The most direct involvement, the people who can drive public participation in any community, seems to be the municipality and the ward councillors. By removing them from this process, I think there's a real concern there for the people who live in those communities. We're not advocating not streamlining this for you, but we do have a severe concern here.

Mr. Norris: I understand what you're saying. I guess I don't see it as removing them from the process; I see it as recognizing that there are at least two, in our case probably more, pieces of legislation that from our perspective achieve the same objectives.

Ms. MacLeod: Yes. I've been through three levels of government, as a policy adviser and now as a legislator, and I can tell you that at all three levels of government the people who are showing up to public meetings are showing up disproportionately at the municipal level. I think that almost any one of my colleagues here who has served at any level of government other than this one would probably say the same.

Mr. Norris: Sure, if you're talking about if a municipal politician, a provincial politician and a federal politician all having a public meeting on the same night, which one would be better attended. But if you're talking about whether or not a proponent of a water power development or an energy project is capable of engaging the public who have an interest in this project, I don't think that's a matter of comparing which politician can get the most people out; that's the proponent's job.

Ms. MacLeod: I'm talking about which level of government—

The Vice-Chair: Okay, that's it.

Ms. MacLeod: Okay, thank you. I still enjoyed it.

The Vice-Chair: We have come to the 20-minute mark. I want to thank you for your presentation and wish you a good day.

RESIDENTIAL AND CIVIL CONSTRUCTION ALLIANCE OF ONTARIO

The Vice-Chair: Next we have the Residential and Civil Construction Alliance of Ontario. Please step up. Make yourself comfortable. There's water there. Just a reminder: 20 minutes for the presentation. Should you not require the 20 minutes, I'll take the time and split it between the three parties. At the outset, when you speak, I would like you to identify yourself for Hansard.

Mr. Andy Manahan: Good afternoon and thank you very much, Mr. Chair and members of the standing committee on general government, for this opportunity to appear before you today to speak to Bill 51. My name is Andy Manahan. I'm an officer with the Residential and Civil Construction Alliance of Ontario, in addition to my full-time employment with the Universal Workers Union, Local 183. With me is Richard Lyall, executive director of the RCCAO.

The RCCAO is a newly formed alliance which brings together labour and management representatives from across the residential and civil construction sectors. Our members include companies and workers who build both low-rise and high-rise homes, as well as roads, sewers and water mains, bridges and other infrastructure projects. We actually just formed late last fall, and our first submission in fact was on OMB reform. We'll get to that a little bit later. Our most recent report, just to give it a plug, is The Infrastructure Funding Deficit: Time to Act, which I think we sent to all the MPPs. Our concern is essentially trying to fit infrastructure with the growth plan with the planning formula. We know it's a very ambitious set of objectives here, but we think generally we're heading in the right direction. We just have some comments.

Bill 51 is of substantial interest to the construction and development sectors in Ontario, including RCCAO. I would like to place on the record at this time that RCCAO recognizes the need for planning reform, and we

support the government's general direction in this area. For example, we are in alignment with the government's decision to resist the call for abolition of the Ontario Municipal Board, as was advanced by some advocacy groups and politicians. We think that the government made an absolutely correct decision in this regard. However, we do feel that Bill 51 does require amendment to ensure that once it is passed by the Legislature it will provide a fairer, more efficient and timelier planning and decision process for land use in Ontario. The fact that we are sitting here today is encouraging to the members of RCCAO. We believe that the government's decision to refer this legislation to the standing committee after first reading sends an important signal that there is a recognition that there might be a need for changes to get the balance right and hopefully to improve the process.

The RCCAO has prepared a written submission, which you all have. That details what we believe are the most important concerns with Bill 51. Certainly, we haven't done an exhaustive go-through point by point, but during our time here this afternoon I would like take the opportunity to touch briefly on the various concerns we have with Bill 51.

Application of the policy in force at the time of decision: This is the most significant concern that RCCAO has with Bill 51, the requirement that all planning decisions be consistent with policy statements and provincial plans in effect on the date of the decision. This a major departure from the current practice, where it is the rules in place at the time of application which prevail. We are asking that section 4 of the bill be deleted. There must be a reasonable cut-off point to ensure that everyone who has acted in good faith and has followed existing planning processes does not have their effort and often significant costs wiped out at the 11th hour, particularly when the planning approvals process can take years.

Limitation on evidence for appeal: We are concerned with the proposed new subsections 17(44.2), (44.3) and (44.4), which provide that, for private parties only, information and material which is before the municipal approval authority at the time of application can be admitted to an OMB appeal, yet at the same time public bodies will have the right to bring in new evidence without restriction. These subsections create a significant lack of balance between private and public bodies during the OMB appeal process respecting the submission of information and material. There is no justification for such inequitable treatment. Again, we request these subsections be deleted.

Complete applications: RCCAO understands the rationale for establishing a requirement for a complete application. However, we have real fears that leaving such determinations entirely to municipalities will result in hundreds of different standards across the province and many arbitrary decisions. We recommend that the province establish by regulation a definition of "complete application" to be followed by municipalities on a consistent basis.

Matters of provincial interest: Bill 51 amends section 2 of the Planning Act to provide two additional considerations in making planning decisions. We support the objective of sustainable and transit-intensive development. Indeed, promoting greater investment in public transit is one of RCCAO's major goals. However, to avoid uncertainty and endless debate between experts, the government should consider amending the bill or adding a regulation to define the term "development that is designed to be sustainable, to support public transit and to be oriented to pedestrian development."

The bill also provides that decisions under the Planning Act will have to "have regard to" previous municipal decisions. While it has always been clear that OMB decisions need to take into consideration previous municipal decisions, the standard of "have regard to" will introduce an element of inflexibility. We propose that the wording of section 3 of the bill, amending section 2.1 of the Planning Act, require that the OMB or other approval authority "shall consider" the municipal level decision.

Employment lands: Regarding the new restrictions that this legislation places on the conversion of employment lands to other uses, we are also recommending an amendment so that the provisions related to areas of employment do not come into effect in a given municipality until that municipality has reviewed its employment lands policies, published proposed new policies and allowed time for public comment. Again, what we're hearing from some of the RCCAO members is that certain provisions related to this do not really reflect reality in the marketplace.

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Site plan approval: RCCAO also has concerns with section 15 and the amendments to the site plan approval provisions. As well as the obvious difficulty in finding common agreement on what is good design with respect to matters such as colour, materials, finishes and architectural details, there is a real danger of NIMBY forces using design criteria to exclude, for example, low-cost housing projects or certain intensification projects that they really don't want in their area. If these provisions are retained to allow for local site plan approval on this detailed basis, we strongly believe that they should apply only to infill projects, rather than new greenfield development. It is with infill projects in existing neighbourhoods where the concerns about maintaining the existing community texture and architectural vernacular are focused.

Transition provisions: This is probably one of the higher-up ones in terms of our ranking of priorities on the bill. The transition provisions for Bill 51, as drafted, apparently will be brought into effect retroactive to the date of introduction on December 12, 2005. I guess that's about eight months ago now. In our opinion, there is no urgent issue that requires Bill 51 to depart from the normal legislative custom that it comes into effect on the day it is proclaimed. We ask that the provision to make it retroactive be reconsidered and that Bill 51 become law on the day it is proclaimed following royal assent.

I would like to thank the committee for this opportunity to share our concerns on Bill 51. Richard or I would be happy to respond to any questions you might have.

The Vice-Chair: Thank you. We have about four minutes per party. We'll start with the government side.

Mr. Flynn: Thank you for the presentation. It was one of the more balanced we've heard so far, I think. You addressed some of your concerns and yet brought out some of the points that are very positive.

I did receive something in my office about your organization. I thought it was very well presented. Obviously, your membership would have an interest in us having a very vigorous, dynamic construction environment. You want to see the building continue; you want to see the infrastructure continue to be renewed. So it was interesting to hear your perspective on this.

Some of the amendments that you've proposed—for example, where you talk about sustainability and that we need to define what sustainability is, would you suggest that the provincial government provide that definition? Do we need to give some guidance?

Mr. Manahan: I think some guidance would be preferable. Certainly there are some definitions under the growth plan for the greater Golden Horseshoe that talk about transit supportive development, but we think it needs to be fleshed out a little bit. There's too much room for interpretation by different municipalities or other jurisdictions that have a role in the planning process. I think if we could tighten up certain definitions, that would make the whole process more streamlined.

Mr. Flynn: A few groups have also commented on just what a complete application is. If you talk to the towns or the cities, they'll tell you one thing; if you talk to the industry, they'll tell you something else. Do we need one clear definition of what a complete application is for the province? Others have come forward and said, "Let us sort it out ourselves," in Mississauga or in Oakville. Would you prefer to see it province-wide?

Mr. Manahan: I'll start with my answer and maybe Richard can add, because I think we both have opinions. I don't think there's an easy answer. We could probably spend the entire afternoon just talking about complete applications.

The way the process has worked in many jurisdictions is, to get your foot in the door a developer often will be encouraged by a municipality to submit what they have just to get the process going. I think that works. It helps streamline. If there's other critical information that can be provided later, that makes a lot of sense.

With the whole direction of the planning reform and not wanting to hold up something—there are certain municipalities like Toronto that, through their development application review process, have defined what a complete application is. I think we can get there eventually, but I don't think, even with a definition, that you're going to be able to get there overnight because of the differences between small and large municipalities.

I'm certainly going to go to the AMO conference next week and talk to some of the municipal folks there and find out their opinion. So I don't have a complete answer, to use a pun.

Mr. Flynn: Would you be supportive of a design review team at the municipal level that included some form of representation from the industry itself?

Mr. Manahan: I think the industry should definitely be there but, again, architecture and design is such a subjective area. Personally, and despite what we've said here, I don't think the Vancouver model would necessarily work in all the jurisdictions in Ontario.

Mr. Flynn: Overall, you're in favour of the bill, but you'd like to see some changes. Would that summarize—

Mr. Manahan: Some tweaking or some major deletions, yes.

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

Mr. Hardeman: Thank you very much for your presentation. I found it interesting that the number one point you made was the issue of the timing of the decisions and the fact that all applications will be judged and must comply with the policy that's in effect the date of the approval, not the date of the application.

Mr. Manahan: Yes.

Mr. Hardeman: Then the last item is the timing of implementation and the retroactivity in the bill. I guess what I find interesting, and maybe a quick comment on this, is that the retroactivity is only half as bad as the future events, as policies may change—that all of a sudden an application that's made the day after the bill is implemented would in fact be judged on policy that's put in place three years later.

Mr. Manahan: Interesting point, and I guess the point I tried to make in the presentation is that often the developer, in terms of greenfield projects, in any case, will buy land perhaps even 20 years out, but let's say on average it's 10. I'm not sure exactly what the number is; it varies all over the map. The number of studies and the costs that have to be incurred, whether it be for environmental, heritage, conservation or preserving of neighbourhood amenities, that sort of thing, is endless. In our view, the retroactivity relates to the fact that while you're going through and having all those studies done, there's a certain law in place, and many of our members have gone through in good faith with those laws and we just don't want a change at the very last minute saying there's a new game in town.

Mr. Hardeman: The other issue I just wanted to touch on quickly was the colour and design, the architectural facets of a building. I want to say I did spend a number of years being mayor, directing and trying to guide council in the right way, and I don't think you could find a worse example of someone who could choose colours and architectural significance of buildings in my community. I guess I don't really see that that's a good approach, to let the local council decide what colour a building should be painted.

One of the things that I think is very important is that as we look around Ontario, we see a lot of significant,

identifiable buildings, identifiable as to their use, such as every McDonald's building in the province looks the same. This would allow municipalities not to allow McDonald's to build in their community because they would decide that they don't like the architectural look of that building.

Mr. Manahan: Just on that point, in terms of retail, I have seen, certainly in Europe and in places like Banff, where they do want to preserve a certain architectural look to the town, they've said to those establishments, "We don't want the big arches," or "We don't want the big signs. Try to make them small or integrate them into the façade of the building a bit better." So I think municipalities should still be able to have that sort of control. But what we're talking about is primarily major subdivisions, where one group may like a brick façade, another may like siding, another may like green roofs, and someone else may like sloped roofs. So you get into endless debates.

Mr. Hardeman: We've had a lot of presentations through our hearings process about the inability to include new evidence at the Ontario Municipal Board hearings. The development industry has concerns that it isn't fair that the municipality can bring evidence in but the developer can't. We've also heard that the public can't bring in evidence either. Today we had a presentation where they suggested an amendment that would allow municipalities or public bodies and the public to introduce new evidence, just not the developer. It goes to the complete application: A developer should have all the evidence available in their original application to clearly show what it is they're going to do, so they should never have to bring any more evidence. Could you explain that to me?

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Mr. Manahan: That would completely straitjacket the developer, and it's completely unfair. What's good for the goose is good for the gander, I guess, is my simple way of responding to that.

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

Mr. Prue: A couple of questions. I just want to be clear what you're asking for under employment lands. Are you asking that the employment lands provisions stay as they are in the act? Are you asking that they be changed? Are you asking that mixed use might be allowed? I'm not entirely clear.

Mr. Manahan: You know what? Could we get back to you with a more detailed explanation on that one, because quite frankly, we put together this submission fairly quickly?

Mr. Richard Lyall: I guess it would stay the same, but in terms of before any final decisions were made, that the municipality have a kick at the can, because depending on what industries are going in to a certain municipality, they can vary between municipalities. Of course, as we know, for some industries now the facilities themselves take up an enormous amount of space, but there isn't a high per capita employment base there, i.e., warehousing-type facilities and that kind of thing. For example, in a higher-density, higher-commercial type of mixed environment you'd have a much higher per capita employment base than if you get into, say, a municipality that's close to the 401 corridor where there's enormous warehousing. So you can have those kinds of changes and differences there that could be—

Mr. Prue: The reason I'm asking that is because we have had representations from communities in the Georgian Bay area—one of them—that have tourism as an industrial base, that we recognize it and that in fact that's the kind of buildings that are taking place there. We've had big cities saying, "What about mixed use," where they're building apartments where you have your business downstairs. We're certainly seeing more and more of those. When you put in your written response, could you include some of those examples and where you're coming from on those?

Mr. Manahan: Yes, we'd be happy to do that.

Mr. Prue: Okay. The second question I have relates to retroactivity, and I must admit to being equally as puzzled as you are. The government introduced this bill eight months ago this week, and here we are. I haven't the slightest clue why the initial draft bill was retroactive to that date. In your studies, in your preparations, have you come across any rationale to make this a retroactive bill? I haven't seen one like this for a long time.

Mr. Manahan: I guess that's why we're here. We're just arguing for the royal assent to be the date.

Mr. Prue: The same as every other bill, or nearly every other bill.

Mr. Lyall: Nearly every other bill.

Mr. Prue: Okay. My last question—and this is not meant to be any umbrage to you at all; I just have to make sure I know where your organization is coming from and where it's going to be. I know there were some difficulties with the union. This is the one with the Americans coming in and the trusteeship and all of that. Does your participation in this predate the trusteeship? Is it part of the trusteeship? What happens if it flips back? I need to know whether you're still going to be part of this group. I can turn around a year from now and say this is what you believe in, and somebody turns around and says, "No. Those were the other guys." So I need to know that.

Mr. Manahan: I was helping draft some of the bylaws for RCCAO last summer and last fall, and I was there at the inaugural meeting. I've been involved every step of the way with the reports.

Mr. Prue: Okay. So it doesn't matter which union this is, whether it's the Americans coming in or the Canadians, or whether the old president comes back; it doesn't matter. You're still going to be there.

Mr. Manahan: Well, let's face it. We're on Canadian soil, so if Americans have a different idea or a better way to do the planning process, I'm willing to listen, but we're looking at Queen's Park legislation here.

Mr. Prue: Thank you.

Mr. Sergio: I want to let you know that we as Liberals have nothing against McDonald's, believe me. We love their hamburgers.

The Vice-Chair: On that, I would like to thank you for your presentation and wish you a good afternoon.

Mr. Manahan: If only they served beer there.

The Vice-Chair: I would like to just remind the committee that amendments are due August 23 and public written submissions by August 28.

On a lighter note, I would like, on behalf of the committee, to wish Ms. MacLeod a happy anniversary tomorrow.

This committee stands adjourned until clause-by-clause consideration on August 29.

The committee adjourned at 1535.

Continued from overleaf

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