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Wednesday 30 August 2006

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Mercredi 30 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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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 30 August 2006

Mercredi 30 août 2006

The committee met at 1005 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

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 Chair (Mrs. Linda Jeffrey): Good morning. The standing committee on general government is called to order. We're here today to resume clause-by-clause consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts. We're in clause-by-clause consideration and yesterday we left off, I understand, at section 15. We're now on section 16 and that is a government motion. Mr. Rinaldi.

Mr. Lou Rinaldi (Northumberland): I move that subsection 42(6.1) of the Planning Act, as set out in subsection 16(1) of the bill, be amended by striking out "on the land" and substituting "on the land proposed for development or redevelopment".

The Chair: Any comments or questions? All those in favour of the amendment? All those opposed? It's carried.

The next motion is a government motion, Mr. Lalonde.

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell): I move that subsection 42(6.2) of the Planning Act, as set out in subsection 16(1) of the bill, be struck out and the following substituted:

"Redevelopment, reduction of payment

"(6.2) If land in a local municipality is proposed for redevelopment, a part of the land meets sustainability criteria set out in the official plan and the conditions set out in subsection (6.2.1) are met, the council shall reduce the amount of any payment required under subsection (6) by the value of that part.

"Same

"(6.2.1) The conditions mentioned in subsection (6.2) are:

"1. The official plan contains policies relating to the reduction of payments required under subsection (6).

"2. No land is available to be conveyed for park or other public recreational purposes under this section."

The Chair: Any comments or questions?

Mr. Ernie Hardeman (Oxford): I wonder if I could get a brief explanation of what this does as it relates to changing the present act.

Mr. Mario Sergio (York West): I guess this is where the official plan allows the local municipality to make some changes with respect to the in-lieu money for parklands. Municipalities have that option where the official plan allows a municipality to do that as part of the conditions of approval.

Mr. Hardeman: It would seem to me that under the present Planning Act, that's already allowed. In fact, they get their parkland in lieu and they can take cash payment in lieu or trade it for something else. I wonder what the reason for this amendment is, as opposed to changing what was in there before.

Mr. Sergio: I guess this specifies the reduction: instead of all of the lands, part of the land, part of the parklands where there is a sustainable benefit for the municipality to do so.

The Chair: Can I go to Mr. Prue or do you want to continue with your question?

Mr. Hardeman: I'd go on in the same vein, Madam Chair, just for a moment. I still don't understand. If the land for redevelopment, or part of the land, meets substantial criteria in the official plan and conditions set out are met, "the council shall reduce the amount of any payment required under subsection (6)." It would seem to me that that implies that they're forcing the council to do something that they would not necessarily have agreed to and I just wondered why that's being put in, or if that's already in the present act where, as we've done with a number of other situations, we've just taken the total section out and put a new section in where a lot of it stays the same. Maybe we could have the legal branch explain whether there is a—

Mr. Sergio: If you want to go that route, that's fine. Staff is here for that, Madam Chair.

The Chair: Good morning. If you could—

Mr. Hardeman: You're back. I'm sure you will introduce yourself.

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

The Chair: It sounds like they know you well.

Mr. Shachter: I'm not sure whether that's a good or bad thing. Thank you, Madam Chair.

Just to clarify, it is a situation where the whole of this section has been taken out of the bill and put back in again, but the section does contemplate that a municipality would be giving a credit for the cash-in-lieu payment otherwise required, if certain conditions are met. The motion, though, instead of allowing the credit to be in the discretion of the municipality—you'll notice the bill talks about "may"; the motion provides that it "shall." So if the conditions are met, the municipality has no discretion as to whether to grant the credit or not.

Mr. Hardeman: To make sure I understand it, I was right, then, in my question to suggest that, really, the change in this section is to mandate that the municipality must do it rather than that they may do it.

Mr. Shachter: That's correct.

The Chair: Mr. Prue.

Mr. Michael Prue (Beaches–East York): Don't go. I struggle to try to figure out the difference between this amendment and what was in the original bill. Can you tell me? I couldn't even find the change of word.

1010

Mr. Shachter: That's correct. If you match the original Bill 51 provisions with the provision of the motion, the substantial change is the change from "may" to "shall." There are wording changes in order to make this section read better, but that's not substantive. The only substantive change is the mandatory requirement for the credit.

Mr. Prue: So the change of this in the government's motion is that they've changed the "may" to "shall."

Mr. Shachter: That's correct.

Mr. Prue: Then I would like to ask the parliamentary assistant why.

Mr. Sergio: The minister says that perhaps this is the way to go and it would send some direction to local municipalities.

Mr. Prue: So this is another thing taking away municipalities' rights that they've had in the past.

Mr. Sergio: You may construe it as such but I don't think so.

Mr. Prue: Before, they would have a debate; before, the council would determine whether to take the money or the cash in lieu, or the parkland. They would determine whether it was part of the deal, and now they have no option. Now they do what you tell them.

Mr. Sergio: Madam Chair, may I bring in Mr. Shachter again? I believe that the local municipalities can consider in lieu of and how much. Can you please explain again for the benefit of Mr. Prue?

Mr. Shachter: The current process as it exists now, as you may be aware, is that when there's a development that contemplates residential, for example, a municipality may take up to 5% of the land or the value of the land, which is cash in lieu. That's what is currently in the Planning Act. Bill 51 would provide for discretion for a municipality to give a credit against the money that would otherwise be required to be paid under cash in lieu, should the conditions relating to sustainability be met. The motion would then go one step further and would require, in those situations set out in Bill 51 where cash in lieu is required to be paid and credit is being considered, that that credit shall be given.

Just to let you know as well, the provisions relating to this matter have to also be in the official plan, just to clarify.

The Chair: Does that answer your question, Mr. Prue?

Mr. Prue: I guess, but I think Mr. Hardeman has another question.

Mr. Hardeman: I think, Madam Chair, I'm going to ask the legal branch to stay, because I thought I totally understood this amendment until your last explanation. I wonder if you could explain to me what would constitute a credit to the developer. You talked about the granting of the parkland or there could be 5% in lieu of parkland. What would be a credit to the developer that the municipality would have to accept?

Mr. Shachter: I would be speculating because it would be based on official plan policies that a municipality would have to put in place. But for example you could have official plan policies that say that if you have a certain type of sustainability—let's say you have green roofs, to use an example—because you don't have any parkland otherwise that you can give but you meet the sustainability criteria, a municipality could say, "Green roofs are worth a 2% discount" or something such as that.

Without wanting to say, "This is what municipalities will do," my sense of how this might work or how this could work is that you could actually have almost a scale of credits set out in the official plan policy. For example, a developer who was developing who didn't have land available to give for parkland dedication, who knew they'd have to do cash in lieu of parkland, would know, if they met these certain criteria, that they would be receiving a credit from the amount otherwise paid. Does that clarify how that would work?

Mr. Hardeman: I accept it as fairly clear, except that I'm not sure I understand how it would work. First of all, the official plan sets the parameters of the sustainability qualities that are worth credits. So they say that if you built, as you mentioned, green roofs, that will take up 2% of the parkland allocation; that would be a credit. So now you only have to come up with the 3%, because we have said in the official plan that a green roof would contribute 2% of that parkland dedication. Is that right?

Mr. Shachter: That's correct, or whatever the municipalities determine. As you know, section 42 does say a 5% maximum. You don't have to—

Mr. Hardeman: I just want to go a little further, whether this would work when it says that they "shall." I'm concerned about the implications of that. Presently, you are obligated in subdivisions to dedicate 5% parkland, or they can negotiate a dedication, cash or

otherwise, different from that. The act is quite clear that it's 5% of the land value, based on the undeveloped land at the time of approval. No one settles for that. Everybody gets more because they negotiate and they don't have to accept anything less. They just say, "Give us the lot and then we'll sell it back when the whole subdivision is developed and it will be worth the full price." Who decides under this, with the word "shall," whether in fact there is going to be a dedication of land or there's going to be cash in lieu?

Mr. Shachter: The answer to the question actually occurs before you get to the issue of "shall." The reason I say that is that usually it's a discussion between the municipality and the proponent, the developer. There will be a determination of whether there is land available in order to make it. As you know, in many cases the 5% may take so much land that there isn't a viable development parcel left, so the proponent may wish to offer cash in lieu. Sometimes the municipality would like to have cash in order to be able to develop parkland someplace else, other than in that particular location. So that really wouldn't be a "shall" situation. That would be something that would be determined between the two parties. The "shall" situation only works, then, if the parties have said, or there's been some sort of determination, that it shall be cash in lieu of parkland. If a municipality has in their official plan, through an amendment, put policies in relating to this credit situation, a reduction in the payment otherwise due, and if a proponent meets those conditions, then the credit shall be given. It's actually a two-step process.

Mr. Hardeman: What would encourage a municipality to put—we'll use the green roof example again—that in their bylaw when at any point in time, even if it's not in it, they can negotiate it? Now we're changing this word, and that seemed to work for me when the word was "may." But when you change this to "shall," why would they ever put that in their official plan? If they don't put it in, they may still negotiate it, but if they put it in, they're bound by it. It just doesn't make sense to take this approach. This will inhibit any municipality from putting it in their plan, because then they're locked in; they must give that in every case.

Mr. Shachter: I wish I could assist you with the answer to that, but unfortunately it's not a legal answer. It's really something a municipality will have to determine if it's most appropriate in any given circumstance.

Mr. Hardeman: If I could, just one step further on exactly that same scenario from a legal perspective: Does changing the word to "shall" make it so that they can no longer make the decision on individual applications, whereas if they left the word as "may," they could make it on individual applications, with exactly the same result in both, legally?

Mr. Shachter: I think the answer would be generally yes, but let me just clarify it, if I can, just to go back. I will try. The "shall" is directory. It means that if a proponent meets the conditions that a municipality has set out in the official plan policy—for example, the municipality has gone through the official plan process, they've amended it and they have the policies. If somebody meets those conditions, then, yes, you are correct: There is no discretion; that credit should be given. As to whether that disentitles any discussion aside from that, I can't say.

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Mr. Hardeman: Madam Chair, I support the word "shall."

Mr. Sergio: After all this?

Mr. Hardeman: After all this, but I would point out that the effect of this amendment is going to cause the sustainability of development to not appear in anyone's official plan and I think that's bad news. The effect of this is going to be totally different than the purpose it's being put there for. I think we will see that no municipality will put sustainability criteria in their official plan. They will negotiate them all after the fact and then they will never have to use the word "shall" in order to negotiate their subdivision agreements.

Mr. Sergio: I usually don't do this, Madam Chair, but—Mr. Shachter, just forgive me. Subsection (6.2.1) says, "The conditions mentioned in subsection (6.2) are...." These are the conditions under which the municipality would be obliged to do certain things; that's where the "shall" comes in. One of the conditions is in paragraph 2: "No land is available to be conveyed for park or other public recreational purposes under this section." Is this where the "shall" would come in and say, if there is no parkland to be given, then money or transfer shall take the place of the parklands?

Mr. Shachter: As I indicated before, it's one of the conditions that would have to be met. Paragraph 2 is, "No land is available to be conveyed," and then paragraph 1 is actually a condition but it will contain a number of subconditions; it will be the official plan policy. So once those are met, then yes, "shall" does require that that credit be given.

The Chair: Okay. Mr. Hardeman?

He was so happy a minute ago.

Mr. Hardeman: It seems every answer brings up more—

Mr. Sergio: He was ready to support it before.

The Chair: You tried to clarify that.

Mr. Hardeman: I need some clarification. My question is, if there is land available but the municipality has in their official plan that they give credit for sustainable development, for attributes to sustainable development, are you suggesting that, provided there is land available, the municipality would not be obligated to give that developer the credit for the sustainable development?

Mr. Shachter: The municipality could give the credit for that sustainable development outside of these provisions. For example, if you have land available but there are cash-in-lieu policies that provide for sustainable development and credits, you could still do that. But because you have to have no land available, it would not come under (6.2.1).

Mr. Hardeman: No, but my development has all kinds of land; but I can build another house on it, so I would like to keep it, as a developer. They have in the official plan that by building the green roof, I get a 2% reduction in the dedication of parkland. Are you suggesting that because there was land available, I could build the green roof but they don't have to give me the credit?

Mr. Shachter: I don't want to confuse matters, but can I just suggest that if it's a situation where you have, for example, what's known as greenfield development, usually there is land available to be conveyed in greenfield development. In that type of circumstance, this provision would not apply because there would be land available to be conveyed.

If in a circumstance where it may be a decision that you're making that land would be available to be conveyed but you'd like to use it for further intensity of development, or for whatever reason you and the municipality decide you're going to pay cash in lieu rather than land, it wouldn't come within this particular provision.

Mr. Hardeman: If the official plan says that we give a credit for the sustainability development, the single attributes—and we'll use the green roof again—2%. In a greenfield development, I want to build a development and I want to save some of the land—I want to minimize the use of the land. I'm going to build the green roof. The official plan says that that means I get a 2% reduction in the dedication. But you're suggesting that the municipality, because I have land available, doesn't have to give me the 2% credit?

Mr. Shachter: Because the official plan says they would give you the 2% credit, you would get it. My point is that that would be outside of this particular provision.

What I would conceive happening is, you'll have an official plan policy that says there has to be no land available; cash in lieu, then, would be credited on certain policies that are set out. But if land is available, that would take it outside of this provision. So you could, as you said, have those policies. There's nothing today stopping the municipality from putting those policies in place in their official plan document. So if you're in a municipality and you have—to use your example, a green roof would provide a 2% credit from the cash otherwise payable; then that's what the parties would follow.

The Chair: Any further comments or questions? Mr. Prue.

Mr. Prue: Just a comment, and I'm probably going to be the odd man out, since Mr. Hardeman has already indicated his support. I cannot support this. We had municipalities come here, and they came here on what was existing in Bill 51. There has been absolutely no discussion that I am aware of with any municipalities or with AMO on this provision that is going to circumscribe their role. They have an expectation, I think, from this government. The Premier stands up at every opportunity, talking about the partnership with municipalities, that they are a mature level of government themselves, and all of a sudden here is a provision that takes away rights they have enjoyed literally since Confederation.

People over there were mayors and councillors. People over here were mayors and councillors. We all know the negotiation that takes place. That's not going to take place anymore. I know they have to put it in their official plan, and Mr. Hardeman is right: They're not going to. But if they do, that whole negotiation with development interests is going to be taken away. Without the approval of somebody here from AMO telling me that they think this is a good idea, I certainly am not going to support it, because there has been zero consultation on this particular motion. It was not contained in the first draft. It said "may." It was just a continuation of everything you've ever done. And right today, there you go, you got a shell. Quite frankly, I'm not going to be putting my hand up to it. And a recorded vote, please.

The Chair: Mr. Hardeman.

Mr. Hardeman: Well, Madam Chair, I think Mr. Prue almost changed my mind here. My support is not that I think this is good idea; I think this is a bad amendment. I think it's bad to change the word. The reason I support it is that if the municipality has an official plan that says you get a 2% credit from your parkland dedication for building a green roof, then I think the municipality should be obligated to pay up for each and every one. It shouldn't be that they may give you the credit or they may not give you the credit. In fairness to everyone, they should get the credit.

But I have a real problem as to what impact this will have on municipalities putting sustainability factors in their official plan. Why would they do it? Because if they don't do it, they can negotiate all of them. They may negotiate them or they may give them 1%, they may give them half a per cent, they may give them nothing at all. They can do that. But if they put it in the plan, then they must give them what they say they do, under this resolution.

So I really don't believe that this is going to have any impact on increasing sustainable development. I think it is going to be fair that everyone who does it after the bylaw says so—everyone that does it gets equal treatment, being that the municipality must negotiate that percentage. Whatever they say, they must pay that out to everyone involved. So that would be the only reason I support it.

The Chair: All those in favour of the motion? A recorded vote has been requested.

Ayes

Brownell, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

Nays

Prue.

The Chair: That's carried.

Shall section 16, as amended, carry? All those in favour? All those opposed? That's carried.

Section 17: government motion. Mr. Brownell.

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh): I move that section 17 of the bill be amended by adding the following subsections:

"(1.1) Section 45 of the act is amended by adding the following subsection:

"Restriction

"(1.1) Subsection (1) does not allow the committee to authorize a minor variance from conditions imposed under subsection 34(16) of this act or under subsection 113(2) of the City of Toronto Act, 2006.

"(1.2) Section 45 of the act is amended by adding the following subsections:

"Agreement re terms and conditions

"(9.1) If the committee imposes terms and conditions under subsection (9), it may also require the owner of the land to enter into one or more agreements with the municipality dealing with some or all of the terms and conditions, and in that case the requirement shall be set out in the decision.

"Registration of agreement

"(9.2) An agreement entered into under subsection (9.1) may be registered against the land to which it applies and the municipality is entitled to enforce the agreement against the owner and, subject to the Registry Act and the Land Titles Act, against any and all subsequent owners of the land.

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

1030

The Chair: Any comments or questions? Ms. MacLeod.

Ms. Lisa MacLeod (Nepean–Carleton): I'm just wondering if they can explain the change of the last wording with respect to registration.

The Chair: Mr. Sergio.

Mr. Sergio: There are a couple of things, Madam Chair. It deal mainly with decisions by the committee of adjustment which restrict them in dealing with and making or approving conditions with respect to zoning, and further, that minor variances may be now registered against the land on which they apply.

The Chair: Mr. Prue.

Mr. Prue: It's probably not all that relevant, but I'm kind of curious, in terms of the registration of the agreement—it's "subject to the Registry Act and the Land Titles Act, against any and all subsequent owners of the land." There's been a spate of people who have had their houses stolen out from underneath them, and the law quite clearly says that somebody who obtained it illegally, without the bank doing due diligence, is now the owner. Are they subject to it as well?

Mr. Sergio: That's a different field, Mr. Prue.

Mr. Prue: I'm not sure. I just need to know, because it's—

Mr. Sergio: You're talking scams with respect to planning and zoning. That's a totally different issue.

Mr. Prue: No, no. It says it's "against any and all subsequent owners." Does that include owners who may not have come by it in a normal method?

Mr. Sergio: You want to ask a technical question? I have given my answer to you. Unfortunately, these scams do happen, but an owner is an owner, and that's more of a legal entity.

Mr. Prue: I take it then that somebody who obtained the house by way of a scam has to—

Mr. Sergio: There is a legal recourse, a legal process to follow.

The Chair: Do you want staff to try to attempt to answer that, Mr. Prue?

Mr. Prue: I just need to make sure that they are subject to the same as somebody who owned the house in a normal way. I understand, in the normal way it's a covenant, it follows—

Mr. Sergio: We're dealing with the lands—

Mr. Prue: I'm just wondering, because it was on the front page of the paper two days ago about the old man in Toronto. We know there are other cases. There are three or four pending before the court. Is this enforceable on them?

The Chair: Can I ask, are you equipped to answer that question or not? Or is that something you have to get back to the member on?

Mr. Shachter: I think, Madam Chair, to try to respond to the question to assist, first of all, it is a standard clause. It's required in order for agreements to be registered on title. The registrar requires that there be a statutory requirement. Does it bind future owners? It does bind future owners. It doesn't speak to how property is acquired. What it means when it says it binds future owners, as you may know, is it continues to stay on title no matter how the land is transferred or no matter how subsequent individuals acquire the land.

Mr. Prue: That's all I wanted to know. It binds them even if they got it in some way that is not particularly kosher.

The Chair: Mr. Hardeman.

Mr. Hardeman: Yes, it's on that same topic. My understanding is that the story in the paper, if it's relevant, was the scam with the seller, not the buyer. The title that the buyer bought is the title with whatever lien was on it.

Mr. Prue: Yes, but I just wanted to make sure they were bound. Okay.

Mr. Hardeman: Yes. I think they were, and that's why it's so difficult in getting it back to the rightful owner, because the present owner had a legitimate deal. It's just that it was a forged ownership of the seller, not the buyer.

The Chair: Any further comments or questions on this motion? Seeing none, all those in favour? All those opposed? That's carried.

Shall section 17, as amended, carry? All those in favour? All those opposed? That's carried.

Government motion. Mr. Rinaldi.

Mr. Rinaldi: I move that section 18 of the bill be amended by adding the following subsection:

"(0.1) Subsection 47(12.1) of the act is amended by striking out 'on its own motion or on the motion of any party' in the portion before clause (a) and substituting 'on its own initiative or on the motion of any party'".

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 18, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 19 and 20. Shall those sections carry? All those in favour? All those opposed? That's carried.

Section 21. Ms. MacLeod.

Ms. MacLeod: I move that subsection 21(2) of the bill be amended by adding the following provision between subsections 51(18) and 51(19) of the Planning Act:

"Regulations

"(18.1) The minister may make regulations,

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

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

We believe that this will make a better-defined application process and what constitutes a complete application. In essence, this proposed change will add time, money and additional process time to what is already overburdened by all three.

As written, the provision is vague and would allow municipalities to refuse to accept applications for rezoning, official plan amendments, plans of subdivision and consents unless the application is deemed complete according to the municipality standard. As a result, the right to appeal to the OMB does not begin until all requested information is submitted. There's concern that the section could be abused and utilized as a delay tactic. That's why we would like to bring that forward.

The Chair: Any further comments or questions?

Mr. Prue: I have a question of the mover. I'm just wondering here why you would want the minister to make regulations on documents that a municipality deems necessary in the building of anything, whether it be an apartment building, a condo, a single house or a subdivision. Are the municipalities not in a better place to understand on a case-by-case basis what might be needed on a big development? You might want shadowing of a tall building whereas you probably wouldn't want that in a subdivision. I'm failing to understand why the minister would have to be involved, because certainly every development is different.

Ms. MacLeod: We felt this time the bill is open-ended and this would be creating more certainty in the process. Mr. Hardeman may want to expound upon that, but we believe this resolution will actually put more certainty into the bill.

Mr. Hardeman: I just wanted to add to that. It's quite clear, and we had debate about this in a previous amendment, the words "shall" and "may." This is a "may," and I think is an area where—and I'm reasonably confident that it isn't going to happen a great deal or that it may never happen, but if for whatever reason someone in their own documents does not set up a proper listing of what are the required documents for a completed application, they would say after two months of review, "Guess what? We need another study. We don't have enough traffic studies to accommodate and review this application, so we need another study." If someone was abusing the system, the minister may actually outline those two issues: what is considered a complete application in order for that time frame to start for appeal process purposes, and if they're not holding sufficient public participation in it, the minister may by regulation have municipalities do more public consultation.

Mr. Prue: Okay, but this is what I'm failing to understand. If he makes regulations, it's binding on 450 municipalities. You're talking about one that may be throwing up a roadblock or two to a developer. Where I'm having some difficulties is, he makes a regulation, and say for instance the regulation says "a completed application" and leaves out "shadow study," because nobody is contemplating that there's going to be a 57-storey apartment building built in downtown Toronto, so there's no shadow study. That means when a municipality asks for a shadow study, they can't do it because the application's already complete.

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Mr. Hardeman: That may be true, but the municipality can put that in. But if the municipality intentionally doesn't put it in, doesn't make the listing, and then requests those one piece at a time as opposed to telling the industry what is required for this application—I'm sure in my community a shadow study would not be part of a complete application, because we don't have them.

Mr. Prue: Exactly.

Mr. Hardeman: Exactly, and if someone is abusing the system, the minister could change it so that they couldn't.

Mr. Prue: Again, I don't understand this. If the minister makes regulations, it's binding on every single municipality. The regulations are existing, so they're binding on every municipality. If I were to vote for this, it would say, "A completed application contains the following. " So if the municipality asks for anything that is not in there, anything at all, then they're contrary to the regulation and therefore they can't ask for it. That's what this is going to do.

Mr. Sergio: May I add something, and then we'll try and get on with it. I'm sure Mr. Hardeman is not suggesting that we take rights and powers away from local communities, local municipalities, with respect to requesting new information to support them in making their decision. I hope this is not the intent of Mr. Hardeman. Furthermore, as Mr. Hardeman has said, this would create severe disputes with respect to what

constitutes a complete application or an incomplete application. I believe again that this goes back to what we already discussed in previous motions, where we need all the information possible from both sides so council can make the best decision. So I would hope that this is the intent, to indeed provide all kinds of information so the best decision can be made. Further to the consultation, we have already dealt with it at length in previous motions as well.

Mr. Hardeman: I think if we go back to the consultation, particularly from the development industry, it was of great concern not how much would be in a complete application, but the timing of when they would be told what was required. There was a lot of concern that municipalities, in order to delay the process, may very well keep asking for another study and another study. This says—and that's why it's important that it is the word "may"—that if that was to happen, the minister may, by regulation, ask the municipality to prepare that document that is suggested. In another part of the act it says that the municipality may do that, but if they don't, this gives the minister the power to ask them to prepare their documents so they would know up front what a completed application looked like. I don't think it's that the minister would make uniform regulations across the province as to what a completed application is, but he could—

Mr. Prue: That's what it says.

Mr. Hardeman: The minister may by regulation instruct municipalities to do it.

The Chair: Can you finish with the clarification?

Mr. Hardeman: It doesn't say that; it doesn't have to. He can do that in any way he deems appropriate.

The Chair: This is a clarification, not a debate. Just so long as everybody understands, you're supposed to be going through the Chair for clarification of motions that are on the table, not debating them.

Mr. Prue: To the Chair: Does this say that the minister may make a regulation binding on a single municipality or does this include all municipalities if we vote for it?

The Chair: I think you're asking the mover that question, right?

Mr. Prue: You said I had to do it through the Chair.

The Chair: I'm just making sure that this isn't a debate that happens across the table, because we're going to be here all day. We have over 100 motions, and if we keep debating about the intent—you have something in front of you, and if you need clarification, we can go for clarification.

Mr. Prue: Please, if this passes, is this binding on all municipalities or can it, as it's worded—perhaps the lawyer can say. It seems to me that when the minister makes regulations, it's for everybody.

The Chair: Mr. Shachter? I have a feeling that you might want to just stay there for the morning, at least.

Mr. Shachter: Generally speaking—I didn't have an opportunity to look before the question, so I do apologize—regulations do apply across all of the province, but sometimes there are provisions that say that regulations can be made specifically or generally, so that they could be made to address a specific situation. But you are correct: Generally speaking, regulations in many cases are intended to apply on a province-wide basis.

Mr. Prue: Is there anything in here that would make it specific to one instance? The wording seems very general to me: "The minister may make regulations." It doesn't say about any specific municipality or in individual cases; it says, "may make regulations." Is this a general provision?

Mr. Shachter: The provision that's currently before the committee is a general provision. I'm just checking to see if I can see something elsewhere in the Planning Act that would provide for the minister to be able to make regulations on a specific or a general basis.

I'm unable to see it, but without having an opportunity to really review it in a little bit more detail, I don't want to say definitively that the minister could not make regulations on a specific basis.

Mr. Prue: But the wording here, is this is a general basis?

Mr. Shachter: Certainly the wording in front of us doesn't set out whether it's specific or general. That's correct.

Mr. Prue: Thank you.

The Chair: Mr. Prue, would you like another opinion? I understand you're looking for clarification.

Mr. Prue: Sure. I especially like lawyers. If you get two lawyers, you usually get three opinions, so please.

Ms. Lucinda Mifsud: Mr. Shachter is quite right. The regulation-making authority comes under 70.1. It does say the regulation made can be made general or particular. So it's probably likely that they could do it. It's very unusual to do regulation on a particular basis with so many municipalities. I don't think we've done it very often in the province, but I think it is possible.

Mr. Prue: Is the wording here general, in motion 77?

Ms. Mifsud: It says, "A regulation made under ... section 70 may be general or particular in its application," which means it can apply generally or in a particular case.

Mr. Prue: Yes, but the motion we have here, number 77: Is there anything in the particular wording of the motion to indicate that that is anything other than a general application?

Ms. Mifsud: The regulation-making power is not actually in here. I'm not sure whether it comes under 70.1 or this is its own story. If this is its own, you're quite right: It can only be done generally if there is nothing limiting it.

Mr. Prue: Thank you.

Mr. Hardeman: If I could ask through legal counsel—

Ms. Mifsud: I shouldn't have opened my mouth.

Mr. Hardeman: —if this is to pass, could the minister make a regulation that accepts the complete application form from every municipality that has one? Could

he make a regulation that obligated the municipality to set the standard individually?

Ms. Mifsud: No. That would be passing it on to the municipality, sub-delegating to the municipality, and what the minister should be doing is including the details in the regulation itself.

The Chair: Any further comments on this motion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

A government motion. Mr. Lalonde.

Mr. Lalonde: I move that subsection 51(19.1) of the Planning Act, as set out in subsection 21(2) of the bill, be struck out and the following substituted:

"Response re completeness of application

"(19.1) Within 30 days after the applicant pays any fee under section 69 or 69.1, the approval authority shall notify the applicant and the clerk of the municipality in which the land is located or the secretary-treasurer of the planning board in whose planning area the land is located that the information and material required under subsections (17) and (18), if any, have been provided, or that they have not been provided, as the case may be.

"Motion re dispute

"(19.1.1) Within 30 days after a negative notice is given under subsection (19.1), the applicant or the approval authority may make a motion for directions to have the municipal board determine,

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

"(b) whether a requirement made under subsection (18) is reasonable.

"Same

"(19.1.2) If the approval authority does not give any notice under subsection (19.1), the applicant may make a motion under subsection (19.1.1) at any time after the 30-day period described in subsection (19.1) has elapsed.

"Notice of particulars and public access

"(19.1.3) Within 15 days after the approval authority gives an affirmative notice under subsection (19.1), or within 15 days after the municipal board advises the approval authority and the clerk or secretary-treasurer of its affirmative decision under subsection (19.1.1), as the case may be, the council or planning board shall,

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

"(b) make the information and material provided under subsections (17) and (18) available to the public."

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The Chair: Any comments or questions?

Ms. MacLeod: This is going to be different from the previous section, and I'm just—

Mr. Sergio: No.

Ms. MacLeod: Well, you know what? You've got an awful lot of specific timelines here that at least in my copy of the bill we don't have, so I'm just wondering if I could be provided with the rationale for the timelines.

Mr. Sergio: We have already dealt with this in previous motions as well. This again deals with an application, giving direction to council, actually, to make a decision within 30 days if indeed the application is complete, what constitutes an application that's complete, and to respond within 15 days. If it isn't, then the applicant can apply to the OMB to get a decision on if the application was complete or not. We already dealt with this in previous motions.

The Chair: Any further comments or questions?

Mr. Prue: Again, I trust local government to determine in their best interest what documentation they need. I know that this is an outlet, I know it's an outlet that the developers have long been arguing they need, and I know that the government is trying to placate them with this motion. But I still think the municipalities are in the best position to know what documentation they need and ought not to be spending taxpayers' money running off to the board explaining themselves.

The Chair: Any further comments or questions?

Seeing none, shall the motion carry? All those in favour? All those opposed? That's carried.

The next motion, number 79, is a government motion. Mr. Flynn.

Mr. Kevin Daniel Flynn (Oakville): Good morning, Madam Chair.

I move that subsection 51(19.2) of the Planning Act, as set out in subsection 21(2) of the bill, be amended by striking out "subsection (19.1)" and substituting "subsection (19.1.1)".

It's just a consequential amendment.

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

The next motion is a government motion.

Mr. Brownell: I move that section 21 of the bill be amended by adding the following subsection:

"(3.1) Subsection 51(24) of the act is amended by striking out 'and' at the end of clause (k), by adding 'and' at the end of clause (l) and by adding the following clause:

"(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41(2) of this act or subsection 114(2) of the City of Toronto Act, 2006."

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

The next government motion, Mr. Rinaldi.

Mr. Rinaldi: I move that section 21 of the bill be amended by adding the following subsection:

"(5.1) Section 51 of the act is amended by adding the following subsection:

"Consolidated Hearings Act

"(34.1) Despite the Consolidated Hearings Act, the proponent of an undertaking shall not give notice to the hearings registrar under subsection 3(1) of that act in respect of an application for approval of a draft plan of subdivision unless the approval authority has given or

refused to give approval to the draft plan of subdivision or the time period referred to in subsection (34) has expired."

The Chair: Comments or questions?

Ms. MacLeod: Can I have a rationale for that?

Mr. Sergio: This will ensure that both councils and the public indeed will have an opportunity to review the contents of the application prior to an applicant's making a direct application to the Ontario Municipal Board or another appealing body. We believe it's good for the process where council will have an opportunity to review the application prior to having someone go directly to an OMB.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Next is a government motion. Mr. Lalonde.

Mr. Lalonde: I move that subsection 21(6) of the bill be struck out and the following substituted:

"(6) Subsection 51(39) of the act is repealed and the following substituted:

"Appeal

"(39) Subject to subsection (43), not later than 20 days after the day that the giving of notice under subsection (37) is completed, any of the following may appeal the decision, the lapsing provision or any of the conditions to the municipal board by filing with the approval authority a notice of appeal that must set out the reasons for the appeal, accompanied by the fee prescribed under the Ontario Municipal Board Act:

"1. The applicant.

"2. A person or public body who, before the approval authority made its decision, made oral submissions at a public meeting or written submissions to the approval authority.

"3. The minister.

"4. The municipality in which the land is located or the planning board in whose planning area the land is located.

"5. If the land is not located in a municipality or in the planning area of a planning board, any person or public body.

"(6.1) Subsection 51(43) of the act is repealed and the following substituted:

"Appeal

"(43) At any time before the approval of the final plan of subdivision under subsection (58), any of the following may appeal any of the conditions to the municipal board by filing with the approval authority a notice of appeal that must set out the reasons for the appeal, accompanied by the fee prescribed under the Ontario Municipal Board Act:

"1. The applicant.

"2. A public body that, before the approval authority made its decision, made oral submissions at a public meeting or written submissions to the approval authority.

"3. The minister.

"4. The municipality in which the land is located or the planning board in whose planning area the land is located.

"5. If the land is not located in a municipality or in the planning area of a planning board, any public body."

The Chair: Comments or questions?

Ms. MacLeod: As in previous motions, this significantly alters the piece of legislation before us. This is not the first time one sentence has been changed with two pages, so I was just wondering if we could receive a rationale for this and some examples of people who appeared before committee asking for this.

Mr. Sergio: Madam Chair, can we have Mr. Shachter? Unfortunately I have to leave the committee. I have to excuse myself.

The Chair: Mr. Shachter, can you respond to explain it from a legal perspective?

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Mr. Shachter: I can't speak to the rationale but I can certainly speak legally to what the provision would provide. It provides that—again, you'll remember that yesterday we spoke of setting out a list of who could appeal with respect to official plan, official plan amendment matters and zoning bylaw matters. This is consistent with that. What has now happened is that anybody can "appeal the decision, the lapsing provision or any of the conditions" that have been imposed.

You can see it on the list: "the applicant"; somebody who had, again, "made oral submissions ... or written submissions"; "the minister"; "the municipality"; or, "if the land is not located in the municipality," then "any person or public body." The reason for that basis is that, you may recollect, when you have land that's in an unorganized municipality, in many cases you won't have public meetings. It's really more of a southern type of concept, if I can use the term.

That's really what subsection (43) does too. It's the same thing. This one just deals with approval of the final plan of subdivision, so it's at two different points in the same subdivision application process.

I'll be happy to clarify further if you need any further clarification.

Ms. MacLeod: I see Mr. Hardeman coming in, so I'm sure he would like some clarification.

The Chair: Does that mean we do need more clarification? He's a smart guy who understands.

Ms. MacLeod: Yes, if you could repeat, just for Mr. Hardeman.

The Chair: Can I have you attach it to a question? I don't want him just to repeat what he said.

Ms. MacLeod: Sure. What I'm concerned about is that this significantly alters the piece of legislation which is in front of us. It's not the first time we've seen one sentence turn into two pages of motions. It's quite specific, and I would like to know, for clarification purposes, exactly what this will mean for the appeals process.

Mr. Shachter: Again, as I indicated before, I'm not really in a position to speak to what it would mean. All I

can do, unfortunately, and I apologize, is pretty much repeat what I've just said before, that it does set out a list of who could "appeal the decision, the lapsing provision or any of the conditions" imposed as of right. You can see paragraphs 1 to 5 set out the various groups or entities that could appeal. You'll remember that yesterday there was discussion of some reference of a person or public body who could appeal as of right if they'd "made oral submissions at a public meeting or written submissions to the approval authority."

The one paragraph I did direct you to was paragraph 5, that deals with circumstances—where you've got an unorganized municipality, you would not have a public meeting. So that could not be used as a condition to allowing somebody to appeal.

As I also indicated, the proposed subsection (43) speaks to the same concept. It just deals with a later point in the process. It deals with the point where there's an approval: "At any time before the approval of the final plan of subdivision...."

The Chair: Thank you. Any further comments of questions? Mr. Prue.

Mr. Prue: Just the comment that I will not be supporting this for the same rationale that I've not supported it everywhere else, because it leaves people out who are not able to attend public meetings.

The Chair: Thank you. The motion is on the floor.

Mr. Prue: And a recorded vote, please.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

The next one is a government motion. Mr. Brownell.

Mr. Brownell: I move that subsection 21(7) of the bill be struck out and the following substituted:

"(7) Subsection 51(48) of the act is repealed and the following substituted:

"Appeal

"(48) Any of the following may appeal any of the changed conditions imposed by the approval authority to the municipal board by filing with the approval authority a notice of appeal that must set out the reasons for the appeal, accompanied by the fee prescribed under the Ontario Municipal Board Act:

"1. The applicant.

"2. A person or public body who, before the approval authority gave approval to the draft plan of subdivision, made oral submissions at a public meeting or written submissions to the approval authority or made a written request to be notified of changes to the conditions.

"3. The minister.

"4. The municipality in which the land is located or the planning board in whose planning area the land is located.

"5. If the land is not located in a municipality or in the planning area of a planning board, any person or public body."

The Chair: Comments of questions? Mr. Prue.

Mr. Prue: It may seem hardly likely to happen, but I have to ask the question anyway. What if a decision is made to build a property in an unincorporated area, and in the 30 days or so where an appeal is open, that unincorporated area either gets swallowed up by an adjoining area or incorporates itself? Would a citizen lose his right to appeal? There would be no hearing, and all of a sudden he'd find himself in an incorporated area within the 30 days. What would happen?

Mr. Shachter: I have to apologize; I'm not in a position to answer that. I think you're getting into fairly detailed municipal matters.

Mr. Prue: The only reason I'm asking that is, would it not be appropriate to say "on the date the decision was made"? I'm just worried about the 30 days. Things can happen in 30 days.

Mr. Shachter: Well, I think one of the things you have to remember with respect to this particular provision is that it doesn't sit in and of itself. Again, this is part of the process. This only kicks in when you have changed conditions, so you already have the previous provisions applying in terms of the requirement to be part of the process. It really, in some sense, just extends that. I think what you'd want to do, though, is maintain the 30-day period, I would suspect.

Mr. Prue: No, but see, this is the only place where a citizen doesn't have to attend the meeting to have a right to appeal, if he lives in an unincorporated area. What happens to him in that appeal period, those 30 days, if he happens to then find himself in an incorporated area? Would he lose his right of appeal? That's the only thing I'm worried about. Once or twice a year you see some area in Ontario that either incorporates or an adjoining municipality will take over the unincorporated area. Once or twice a year that happens in Ontario. I'm just wondering what would happen to that citizen who had a right. Could it be taken away within the 30-day period if in fact he and his household found themselves in an incorporated area?

Mr. Shachter: I think I'd like to respond by saying that the concept has already been introduced in subsection 39 with respect to somebody being able to appeal without having to attend a meeting. So I believe, because that motion has been carried, the concept is already proposed to be carried forward.

Just because I can't resist commenting generally, I am aware of circumstances where there have been situations where municipalities have been organized in an unorganized territory. Again, it's not done in a vacuum. What has to happen is all of the planning tools—decisions have to be made as to how they are all carried forward. It isn't that one day you have one planning system and the next day people's rights are taken away. I understand there are

some decisions that are made as to how the process continues forward so that it does continue, so that things like you've suggested don't occur.

Mr. Hardeman: Just very quickly on that same topic—I find it interesting—what happens if this development was on the line between the incorporated and the unincorporated? Would everyone—

Laughter.

Mr. Hardeman: No, I think this is serious. In fact, one of the biggest developments in my riding straddles the boundary of two municipalities. The CAMI Automotive plant is 80% in the rural municipality and 20% in the town. They built it on the line. They didn't change the boundary. What I want to know is, does everybody become eligible to appeal or only those who live in the unincorporated?

Mr. Shachter: I think the one thing a lawyer learns very early on is not to answer hypothetical questions. Having said that, again, you'd have to take a look at the specific circumstances, but I'm not sure why one would then say that people who are outside of the jurisdiction really would gain rights of those inside the jurisdiction, if the line does become the line.

I am aware of and have dealt with circumstances when I was doing municipal law many years ago where you had developments that were on the line, where a boundary line would go between the two or a zoning line. Half of the land would be subject to one jurisdiction or one process, the other half would be subject to the other, as strange as that might sound.

The Chair: Any further comments or questions?

Mr. Hardeman: Going back to the amendment—

The Chair: Good.

Mr. Hardeman: I'm a little concerned about the section that any of the following may appeal any of the changed conditions imposed by the approval authority, which would be the municipality in most of the cases, to the Ontario Municipal Board. That means if it's going to the Ontario Municipal Board with changed conditions, it would be an application that has been approved by the approval authority.

Mr. Shachter: That's correct. It would have received what's known as draft plan approval.

Mr. Hardeman: So it goes to the Ontario Municipal Board because they have approved it and the applicant or someone else objects to it being approved.

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Mr. Shachter: That's correct, in accordance with the list of those people who could appeal, yes, or could appeal the change of the condition rather than the approval. Remember, the ability to appeal the approval is contained in another subsection of section 51. This subsection (43) only deals with the ability to appeal changed conditions. So the only matter that would be before the board is not the approval but the condition.

Mr. Hardeman: But no approval authority would change conditions on a denial. So we're going to have to assume that everything that's going there with changed conditions has an approval.

Mr. Shachter: That's correct.

Mr. Hardeman: Why would the approval authority want to object to it? Why would they still be listed as an objector, a possible objector? The municipality in which the land is located, why would they appeal their own decision?

Mr. Shachter: Are you talking about paragraph 4 in subsection (43)? I'm just not clear where you're referring to.

Mr. Hardeman: I'm referring to the two in conjunction, the appeal process and who may appeal. It's appealing the conditions. There would be no condition changes on an application that had been denied and the applicant is taking it to the board, because the municipality would not say, "We're going to change these conditions and then we're not going to approve the application." They would only change conditions on an approved application. Why would they, in number 4, then, still be listed as a potential appellant?

Mr. Shachter: Because the municipality is not always the approval authority. There are circumstances where the approval authority can be an entity other than the municipality.

The Chair: Thank you. Mr. Flynn? Sorry, I have another speaker. Can I come back to you?

Mr. Hardeman: Yes.

Mr. Flynn: I'm quite prepared to let Mr. Hardeman finish.

The Chair: Okay, sure. Mr. Hardeman.

Mr. Hardeman: Who else could it be other than the municipality?

Mr. Shachter: In the north, the minister is the approval authority for plans of subdivisions. I know—and this just comes to mind—when the old city of Toronto existed, Metro Toronto was the approval authority for plans of subdivisions for all of the local municipalities. If you applied this type of provision to that situation, what you'd have is that Metro Toronto would draft-approve, there would be changed conditions, as contemplated, and then the municipality within which the plan of subdivision is to be located could appeal those changed conditions.

Mr. Hardeman: But all those hypothetical ones, would that not be covered in number 5?

Mr. Shachter: No, because again, you have a circumstance where you could have an organized territory where the minister would still be the approval authority, or where you would have other than the municipality as the approval authority. You could have, for example, an upper tier as the approval authority for a series of lower tiers in an area.

The Chair: Mr. Flynn, did you still want to comment?

Mr. Flynn: Yes, I did, Madam Chair. I think it should be noted on motions 82 to 84 what the main intent is. During the hearings it was noted that public bodies were treated differently in their rights to appeal to the OMB than were members of the public or applicants. What this does is it restricts the public bodies, treats them very much the same as the ordinary person on the street or the

ordinary person who is applying or may be appealing to the OMB in this regard. That's the major effect of motions 82 to 84. People came before us, as a government we listened, and we're presenting amendments to make those changes.

Mr. Rinaldi: Just a quick thing to help Mr. Hardeman understand. In my riding, in the county of Northumberland, we have four municipalities that have formed a planning agency and they have the approval authority. I think it's the only one in the province of Ontario, actually, the Pine Ridge planning agency.

The Chair: Any further comments or questions?

Mr. Hardeman: I just want to go back to the comments of Mr. Flynn, and I appreciate that, but I think we all need to understand that when we heard from the presenters at our committee that the municipalities and the public bodies were being treated differently than the public, it wasn't about this. It was that the public was concerned that they were being excluded from appealing. I think Mr. Prue has been speaking to that all the way through the bill, that there are certain members of the public who do not have a right to appeal because they didn't meet the criteria going through the process. That was the concern.

The other part where municipalities and public bodies were being treated differently is that they have a right to bring in new evidence to hearings where the public, the applicants and so forth don't. I don't think this resolution—

The Chair: Mr. Hardeman, could you speak to just the motion, because we're going to get into a debate about what you heard in the hearings and—

Mr. Hardeman: Madam Chair, I'm getting to it. Thank you.

The Chair: Okay, good. Get to the clarification.

Mr. Hardeman: This resolution does absolutely nothing—I see absolutely nothing. Maybe you could point out where in fact it is giving more ability for people to appeal something that they previously didn't have. This amendment doesn't create new appeal authority for anyone, other than it lists municipalities, and I question as to whether that was necessary; obviously, it was explained that it was, and I accept that. But I don't want the record to show that somehow this does a whole lot to deal with what we heard from the public as they were making presentations, that somehow this is making it fairer, that the average citizen has the same power and ability, the same authority, as the public bodies that have been referred to. This doesn't give anyone further right to appeal, other than, as I say, the municipalities, which would not likely need it but do have a right to use it.

The Chair: I believe there was a question in there. Mr. Flynn.

Mr. Flynn: At the end of the day, I think we may have to just disagree on that. But clearly what I heard during the hearings, and what I think other members of the government side heard, was that there was potential for increased equity in the way that applicants were treated, that the right to appeal could be made more equitable. Motions 82 to 84 do that specifically, put all people on the same footing, except, of course, for the minister, who has the right to appeal at any time.

Mr. Hardeman: I don't want to be argumentative, of course, but I would ask the honourable member if he could point out which part of this amendment gives someone the right to appeal who didn't have it before the public hearings.

Mr. Flynn: That is why I'm making the point. You're talking about something that is not contained in the motion. What this does is make it a more equitable process by treating public bodies very similarly to the way that applicants are treated or are proposed to be treated under the new bill. What you're talking about is increased access to the OMB or something along those lines. What I heard the public ask for were very clear and transparent rules. They wanted to make sure that the applications that went forward to the OMB were the same applications that had been dealt with by the council and in public. What we tried to do in the bill is move things to the beginning of the process so the public is far more involved. That somebody has not made a submission in writing or been involved in the process and doesn't have the right to appeal to the OMB seems to have been the focus of the discussions yesterday, and for the short time I've been here today it appears that's going to be the focus today as well. At the end of the day, we're just going to have to disagree on that, I think.

The Chair: Any further comments or questions?

Mr. Prue: I want a recorded vote, please.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, Prue.

The Chair: That's carried.

A government motion is the next one.

Mr. Rinaldi: I move that subsection 21(8) of the bill be struck out and the following substituted:

"(8) Section 51 of the act is amended by adding the following subsections:

"Restriction re adding parties

"(52.1) Despite subsection (52), in the case of an appeal under subsection (39), (43) or (48), only the following may be added as parties:

"1. A person or public body who satisfies one of the conditions set out in subsection (52.2).

"2. The minister.

"3. The appropriate approval authority.

"4. The municipality in which the land is located or the planning board in whose planning area the land is located.

"5. If the land is not located in a municipality or in the planning area of a planning board, any person or public body.

"Same

"(52.2) The conditions mentioned in paragraph 1 of subsection (52.1) are:

"1. Before the approval authority made its decision with respect to the plan of subdivision, the person or public body made oral submissions at a public meeting or written submissions to the approval authority, or made a written request to be notified of changes to the conditions.

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

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"New evidence at hearing

"(52.3) This subsection applies if information and material that is presented at the hearing of an appeal under subsection (39), (43) or (48) was not provided to the approval authority before it made the decision that is the subject of the appeal.

"Same

"(52.4) When subsection (52.3) applies, the municipal board may, on its own initiative or on a motion by the approval authority or any party, consider whether the information and material could have materially affected the approval authority's decision, and if the board determined that it could have done so, it shall not be admitted into evidence until subsection (52.5) has been complied with and the prescribed time period has elapsed.

"Notice to approval authority

"(52.5) The municipal board shall notify the approval authority that it is being given an opportunity to,

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

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

"Approval authority's recommendation

"(52.6) The municipal board shall have regard to the approval authority's recommendation if it is received within the time period mentioned in subsection (52.4), and may but is not required to do so if it is received afterwards.

"Conflict with SPPA

"(52.7) Subsections (52.1) to (52.6) apply despite the Statutory Powers Procedure Act."

The Chair: Any comments or questions? Mr. Prue?

Mr. Prue: Just a recorded vote.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, Prue.

The Chair: That's carried.

Mr. Hardeman, motions 85 and 86 are now affected by this motion because it's replaced section 51.

Mr. Hardeman: Withdrawn.

The Chair: You'll withdraw 85 and 86? Okay.

A government motion is next. Mr. Lalonde: number 87.

Mr. Lalonde: I move that section 21 of the bill be amended by adding the following subsection:

"(8.1) Subsection 51(53) of the act is amended by striking out 'on its own motion or on the motion of any party' in the portion before clause (a) and substituting 'on its own initiative or on the motion of any party'".

The Chair: Any comments or questions?

Mr. Hardeman: This is a question maybe to the clerk or to legislative counsel. I was wondering, would the effect of this be the same if that had been added on to the previously debated resolution? Is this just an add-on to that subsection? We've changed the whole subsection and now we're adding to the one we've just debated; is that right?

Ms. Mifsud: No. It's a little confusing because we're adding a provision into the bill which then amends a provision of the act that is not in the bill.

The Chair: Any further comments or questions? All those in favour of the motion? All those opposed? That's carried.

A government motion. Mr. Brownell.

Mr. Brownell: I move that section 21 of the bill be amended by adding the following subsections:

"(11) Section 51 of the act is amended by adding the following subsection:

"Same

"(53.1) Despite the Statutory Powers Procedure Act and subsection (52), the municipal board may, on its own initiative or on the motion of the municipality, the appropriate approval authority or the minister, dismiss all or part of an appeal without holding a hearing if, in the board's opinion, the application to which the appeal relates is substantially different from the application that was before council at the time of its decision.

"(12) Subsection 51(54.1) of the act is repealed and the following substituted:

"Dismissal

"(54.1) Despite the Statutory Powers Procedure Act, the municipal board may dismiss all or part of an appeal after holding a hearing or without holding a hearing on the motion under subsection (53) or (53.1), as it considers appropriate."

The Chair: Comments or questions?

Mr. Hardeman: Just a question, and we'll need the legal branch to say. "Despite the Statutory Powers Procedure Act": Is this the same as it presently is in the act?

Mr. Shachter: That's correct. It's the same rationale as we discussed yesterday with respect to the reason why it has to be in this provision.

The Chair: All those in favour of the motion? All those opposed? That's carried.

The last part of this bill is a Conservative motion. Mr. Hardeman.

Mr. Hardeman: I move that subsection 22(1) of the bill be amended by adding the following provision between—

The Chair: Mr. Hardeman, I've procedurally jumped ahead. I should have had a vote on section 21 before I got to you.

Shall section 21, as amended, carry? All those in favour? All those opposed? That's carried.

Sorry, Mr. Hardeman. You have the floor.

Mr. Hardeman: Thank you very much, Madam Chair.

I move that subsection 22(1) of the bill be amended by adding the following provision between subsections 53(3) and 53(4) of the Planning Act:

"Regulations

"(3.1) The minister may make regulations,

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

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

This is the same resolution for this section as there was for the previous section that we had considerable debate about: the minister's being able to fix a problem that existed, if it existed, with municipalities. The municipalities have the authority to do this throughout the act. This would give the minister the opportunity to do that if he did not believe that it was being done properly by municipalities. I think it's a safety net, if nothing else, to make sure that we address the problem that the industry told us in their presentations could occur: that municipalities would not set the criteria and then turn around and keep asking for information and delaying the process. That is why it's before us. I ask support from all sides for this amendment.

Mr. Prue: I will not be supporting this, for the same rationale as given before: because it's worded generally that the minister may make regulations; it's not specific to a problem but would encumber all 450 municipalities.

The Chair: Any further comments or questions? All those in favour of the motion? All those opposed? That's lost.

Government motion, Mr. Rinaldi.

Mr. Rinaldi: I move that subsection 53(4.1) of the Planning Act, as set out in subsection 22(1) of the bill, be struck out and the following substituted:

"Motion re dispute

"(4.1) The applicant, the council or the minister may make a motion for directions to have the municipal board determine,

"(a) whether the information and material required under subsections (2) and (3), if any, have in fact been provided; or

"(b) whether a requirement made under subsection (3) is reasonable."

The Chair: Comments or questions?

Mr. Hardeman: Yes, if I can have an explanation of what this is changing.

Mr. Flynn: It simply provides that the applicant is able to seek direction, in the case of a dispute, as to whether or not an application is complete. The intent is that a complete application would be defined under the official plan and approval process. If that were not successful or if there was a dispute at the end of the day, the OMB would have the ability to remedy that or would have the ability to hear an appeal on the completeness of the application.

Mr. Hardeman: If I could carry on, Madam Chair, with "(b) whether a requirement made under subsection (3) is reasonable": Does this give the OMB the opportunity to address what is considered a complete application in the municipal official plan?

Mr. Flynn: In specific circumstances. If there's a dispute as to whether—obviously, the applicant would feel that the application is complete. The municipality probably would feel that it isn't. The applicant then would have the right to go to the OMB to determine just who is right in that regard. That's the whole import of it.

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Mr. Hardeman: If I could, I just wanted to go on, as part of the discussion, to a number of motions back when we talked about the shadow issue for large buildings. If that were part of the city of Toronto's complete application, could the Ontario Municipal Board, under this section, decide that because of the type of development, it was unreasonable to ask for one of those studies?

Mr. Flynn: I suppose the OMB can do anything it wants to within certain parameters, but certainly I would think that the OMB could take a look, at the request of the municipality, for certain studies. If it thought that perhaps the requirements were onerous in certain applications, it could certainly say that, it could certainly make a ruling on that, but it's hypothetical. Shadow studies—

The Chair: Mr. Hardeman, can I ask you not to do the hypothetical thing? I think lawyers have difficulty answering it and people who are non-lawyers have even more difficulty. If it's a legal question, you can ask legal staff to give you an interpretation, but I think it would be unwise for any member here to speculate what OMB would decide or ask for.

Mr. Hardeman: I don't want to disagree with the Chair, of course, but I think I would leave it to the members on the government side if they wish to answer or not wish to answer. I would that they respect my right to ask the questions as I see fit.

The Chair: I understand, but I'm going to try and caution you. You can ask the question, but I'm asking you to please not ask for speculation.

Mr. Hardeman: I would then direct the question to the legal ministry staff as to whether, if we look at this section, a requirement made under subsection (3) is reasonable. Is the intent of that to grant the power to the OMB to make a decision whether complete application criteria, as set out in the municipal document, are reasonable, and could they—obliviously they're going to include a lot of things in that study based on all applications. If the application goes to the OMB, if it would be reasonably assumed that you don't need a shadow study, does this give the OMB the power to override the municipal standard?

Mr. Shachter: Yes. It's the same type of concept as was discussed yesterday with respect to the various types of applications, the ability, as was discussed before, for an applicant in a municipality to go before the OMB on a summary basis to determine (a) as you indicated, whether the application is complete, and (b) the reasonableness of the matters that are required in a specific situation.

Mr. Hardeman: Thank you.

Mr. Prue: I know it could be hypothetical, but I'm reading this and I'm trying to think of any condition whatsoever that a council would go before the OMB to argue whether the information they were requesting had been provided. The council generally says, "I want the information. I want more information." I understand why an applicant would go, and I understand perhaps why the minister might go if he was in favour of what the applicant was doing and didn't like what the council was doing, but can you tell me a circumstance under which a council—why is it in here? Why would you include the council? Why would a council go before the OMB to argue that the information they wanted—I mean, they have that authority without going to the OMB. They can just do nothing. Why would they go to the OMB?

Mr. Shachter: I think it's not a circumstance of the council determining whether what they have said is or isn't required. It's that any of those three parties may make the motion to the board. For example, if there's an impasse between an applicant and a council arguing with respect to what would be required, what would not be required, instead of having sort of a sandbox type of argument, then the council could actually take the matter to the board for determination, as opposed to waiting for the applicant to take the matter to the board.

Mr. Prue: So they could just usurp what they—okay. I don't think it's ever going to happen, but okay.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Next government motion, Mr. Lalonde.

Mr. Lalonde: I move that section 22 of the bill be amended by adding the following subsections:

"(1.1) Section 53 of the act is amended by adding the following subsection:

"Consolidated Hearings Act

"(14.1) Despite the Consolidated Hearings Act, the proponent of an undertaking shall not give notice to the hearings registrar under subsection 3(1) of the act in respect of an application requested under subsection (1) unless the council or the minister has given or refused to give a provisional consent or the time period referred to in subsection (14) has expired.

"(1.2) Subsection 53(31) of the act is amended by striking out 'on its own motion or on the motion of any party' in the portion before clause (a) and substituting 'on its own initiative or on the motion of any party'".

The Chair: Any comments or questions? Mr. Hardeman.

Mr. Hardeman: Could I get an explanation on the Consolidated Hearings Act, 14(1), as to what it says, in language I can understand?

Mr. Flynn: The intent is that people, applicants, cannot bypass the public or the council planning process by going directly to joint or consolidated hearings.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 22, as amended, carry? All those in favour? All those opposed? That's carried.

Next motion—the only motion I have is actually 94, and that is a government motion.

Mr. Prue: We have to deal with section 23.

The Chair: You can. How about after we do all the motions I have in front of me? Then you can speak to the section.

Mr. Prue: But I thought the procedure, Madam Chair—correct me if I'm wrong. We have been going through section by section. So shall section 23—

The Chair: I'm still on the section. I'm not finished the section. You will have an opportunity. I'm just going to deal with all the motions in the section and then you can speak to it. Okay?

Mr. Prue: Okay.

The Chair: So it's a government motion. Mr. Brownell.

Mr. Brownell: I move that section 62.0.1 of the Planning Act, as set out in section 23 of the bill, be struck out and the following substituted:

"Exempt undertakings

"62.0.1(1) An undertaking or class of undertakings within the meaning of the Environmental Assessment Act that relates to energy is not subject to this act or to section 113 or 114 of the City of Toronto Act, 2006 if,

"(a) it has been approved under part II or part II.1 of the Environmental Assessment Act or is the subject of,

"(i) an order under section 3.1 or a declaration under section 3.2 of that act, or

"(ii) an exempting regulation made under that act; and

"(b) a regulation under clause 70(h) prescribing the undertaking or class of undertakings is in effect.

"Same

"(2) An undertaking referred to in subsection 62(1) that has been approved under the Environmental Assessment Act is not subject to section 113 or 114 of the City of Toronto Act, 2006."

The Chair: Comments or questions? Ms. MacLeod.

Ms. MacLeod: Despite the minor wording here and the addition of "Same, (2) An undertaking referred to in subsection 62(1)," legal counsel, does this still exempt or remove municipalities from the planning process on a large-scale energy project?

Mr. Shachter: That's correct. Should a project or an undertaking, as is referred to, comply with the conditions that are set out in (a) or (b) of that clause, then neither the Planning Act provisions nor those provisions referred to in the City of Toronto Act would apply.

The Chair: Comments or questions? Mr. Prue.

Mr. Prue: I don't know who would answer the question but this is new to have been added. Why did you add it?

The Chair: Mr. Flynn, did you want to respond?

Mr. Flynn: The process, as I understand it—I'm a little bit at a loss that we're dealing with 94 and not with the PC and NDP motions. Can you just explain that to me?

The Chair: They're not motions.

Mr. Flynn: Okay. They're notices.

The Chair: They're notices, and I only deal with motions. I'll give people an opportunity to speak about the sections when we've finished with the business of the section.

Mr. Flynn: Okay. The one we're dealing with now is a technical motion that clarifies that 62.0.1 and 62(1) are intended to apply across the entire province. That's what's on the table before us, as I see it.

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Mr. Prue: This previously did not apply to the city of Toronto and you've now included them?

The Chair: Is this a legal question? Mr. Shachter, can you respond?

Mr. Prue: Is that the difference?

Mr. Shachter: That's correct.

Mr. Prue: Then I have to ask the question: The city of Toronto is in the process of fighting the province over the port lands energy project. By passage of this motion, you are going to usurp the authority of the city of Toronto to do that?

Ms. MacLeod: It's retroactive.

Mr. Prue: Yes, it's retroactive. If "(i) an order under section 3.1 or a declaration under section 3.2 of that act, or (ii) an exempting regulation made under that act," then it happens, whether the city of Toronto wants it or not. Is that the effect of this?

Mr. Shachter: If the question is a legal question, I guess the answer is, if it meets (a), which is the exempting regulation or those other matters under the Environmental Assessment Act, and there's a regulation that is made that applies to that undertaking or class of undertakings, then neither the Planning Act would apply nor those provisions in the City of Toronto Act that relate to zoning with conditions or site plan control, which as you know the city has, would apply.

Mr. Prue: That would mean that the city of Toronto's efforts to stop the province from building the port lands energy project, if this passes, would be negated. They would have no authority. They couldn't do it. The end. "Thanks for the fight. Goodbye, guys. Go home." Is that what this is about? That's what I think this is about.

Interjection.

Mr. Prue: So you're admitting that's what this is about.

The Chair: I have to stop the debate. Can you either ask a question of the member—

Mr. Prue: I asked the question but then he interjected.

The Chair: I understand that. I'm trying to make sure you play nicely. Mr. Prue, you still have the floor.

Mr. Prue: And I'm still asking the question.

The Chair: You're asking a question of legal counsel?

Mr. Prue: Yes, I am.

Mr. Shachter: I do have to apologize. I don't think I'm in a position to answer the question. It doesn't appear to really call for a legal interpretation. I have clarified the way the section is intended or works as it's laid out. I think issues about the port lands project or any rationale relating to it may be better addressed to the members who are here.

Mr. Prue: If this motion passes, would the city of Toronto have any authority to fight any energy project, anything at all, any differently than any other municipality in Ontario? That is, the province says, under section 23, "You can't do it," or "We're going to do exactly what you want and the planning process shall not apply."

Mr. Shachter: If I can just answer it a different way, both 62 and 62.0.1, which deal with Hydro One and OPG, and 62(1), which deals with undertakings other than those undertakings, would then be treated exactly the same across the whole of the province.

Mr. Prue: Then perhaps I can ask Mr. Flynn—who was about to answer, saying that he wants the lights to stay on—is this an attempt to stop the city of Toronto from fighting the province on the port lands energy project? Is that what you're doing here?

Mr. Flynn: I don't see the words "Port lands" anywhere in here. All proponents in Ontario, for any energy projects, are encouraged to follow the municipal process. That's clearly the intent of the government. I think that's clearly what the public would like to see, and I believe all political parties would like to see that. This exemption would be used as a last resort.

Mr. Prue: Then I take it that it gives the government of Ontario the final authority to say, "We are going to impose this upon you whether you wish it or not."

Mr. Flynn: When the need to supply energy to the province of Ontario reaches a certain point, and if an impasse is reached, the government of Ontario would have the authority.

Mr. Prue: Just to speak to it, then, those are all the questions I have. I don't know whether anyone else has any.

Mr. Hardeman: I guess this goes to the answer to the last question. Maybe I'm missing what this amendment does, and that's why I wanted to ask a question. This is going to be used, in the comments that were made, as a last resort. But in fact this isn't a last-resort amendment. This is an amendment that exempts the project from the planning process, so that's a first-resort action. If you were going to develop an energy project, you would not need to go through the planning process. Is that not right?

Mr. Shachter: If I can clarify the motion as opposed to the bill, as you know, Bill 51 already contains a section 62.0.1 that deals with various matters respecting private undertakings and the regulation and the application of the Planning Act. What this motion specifically does is, it includes the references to sections 113 and 114 of the City of Toronto Act. You'll remember that the City of Toronto Act has certain specific planning approvals in two areas: minimum-maximum densities, but zoning with

conditions, primarily, and site plan controls. So it's to cover off both in 62(1), which relates to Hydro One and OPG or the subsidiaries, as well 62.0.1, so that the treatment will be consistent, if I can put it like that. That's what the motion is to do.

Mr. Hardeman: I understand the connection that this actual amendment takes the City of Toronto Act and makes it consistent with the section of the bill as it applies to the rest of the province. But the effect of it—am I wrong in assuming that in the rest of the province the applications do not need to go through the planning process? Conversely, if this makes Toronto the same as that, are we eliminating the city's ability to circumvent, to slow down or to move the actual development, because it no longer requires the planning process?

Mr. Shachter: That's correct.

Mr. Hardeman: So it is as Mr. Prue suggested, then. If the objection from the city of Toronto presently is that it's improper planning and they're not going to approve the planning for it, this amendment will negate the need for that planning approval.

Mr. Shachter: That's correct, subject to compliance with the conditions that are contained in the section.

Mr. Hardeman: Thank you.

The Chair: If there are no further comments on this motion—

Mr. Prue: Yes, I wish to speak.

The Chair: You want to speak on the motion.

Mr. Prue: I've asked my questions. I want to say this. As members opposite know, the city of Toronto does not want you to locate the site where you want to locate it. They are in the process of using sections 113 and 114 of the City of Toronto Act—an act which you very proudly proclaimed and spoke to and argued in favour of in the Legislature not more than two months ago—to do what you said they could do. Now here you go, you're taking away what you gave them. You gave them the right for site plan approval, you gave them the right for zoning on projects, and now you are taking it away by virtue of this amendment.

I have to say I find this really quite disgraceful, because this was not the subject of any public hearings. When the city of Toronto came here, this motion was not before them. The city of Toronto did not talk about what you are attempting to do here today because they did not know you were going to do it. You did not put it in Bill 51. You are putting it here, at the very last moment, so that there can be no public comment from them, so that the mayor cannot come down here. I don't even know whether the mayor knows it's here. Did you even inform the mayor? This is a rhetorical question. Did you even inform the mayor and the council that you were doing this to them, that you were taking away rights that you gave them a month ago, when the mayor stood up with the Premier and thanked him very much for treating Toronto in a mature way? I wonder whether he's going to be saying that this afternoon when he finds out what you're doing today.

Quite frankly, this is but one thing you're doing to the city of Toronto. You can say you're treating all the municipalities the same way, and I guess you are. But I don't like the way you're treating all of them and I particularly don't like the way you are treating a city which you claim to have a special relationship with. We know the Premier continues to talk about having municipalities as special partners, as mature partners, as people with whom he can deal, and saying, "We want to deal with you in a really wonderful way." But what you're doing here, for whatever your own purpose is, is determining that the municipality ought not to have the rights that you gave them but one month ago and that you're claiming to be giving them still in the changes to the Municipal Act.

This means that not only is there going to be a port lands project in Toronto, but this means that every municipality in Ontario is vulnerable to whatever whim you or future governments have. There can be energy from waste if they don't want it. There can be a nuclear power plant in their downtown if you deem that that's appropriate, if they don't want it.

1150

Mr. Flynn: That's silly.

Mr. Prue: Oh yes, oh yes.

Interjection.

Mr. Prue: No, no. There's no planning process.

Interjection.

Mr. Prue: There's nothing they can say about—

The Chair: I'm not going to allow debate. Mr. Prue has the floor.

Mr. Prue: They have lost every single avenue of local control if this motion is passed, and if section 23 is passed.

What has this got to do with good planning practices? The location of energy projects needs to take into account the compatibility of the surrounding lands; it needs to take into account what the official plans of the municipalities are.

In this particular motion, number 94, the city of Toronto has deemed that the port lands are to be redeveloped. There is a plan to make this into one of the truly great cities of the world, similar to what has happened in London with Canary Wharf, or Barcelona or Chicago with the port lands. What you are determining is that you don't want to let them do that. You are determining that your priority is greater than their priority, and that you are going to use a sledgehammer to take that away.

I don't know what to say except that I am so incredibly angry—I am so incredibly angry. I don't know what you're going to say. You're probably not going to say anything in defence.

Mr. Flynn: I'm going to say a lot.

Mr. Prue: Okay, good. I want to hear this, because whatever you say, I'm going to get a transcript of this and I'm sending it to the city of Toronto council and to everyone else, because I want to see why you think it's important that something you so gladly gave them a month or two ago you're taking away, and why you think you should be able to impose your will over 2.5 million people in the city of Toronto, who want something else.

I just think this is beyond disgrace, what is happening here today—beyond disgrace. It's been done in the backdoor, it's been done without any public consultation. It's been done with a motion at the very last minute which has not been circulated to the city of Toronto, its staff or anyone else.

Madam, I think I've said enough, but I do want to a recorded vote.

The Chair: Mr. Flynn.

Mr. Flynn: That's absolute tripe. The city of Toronto spoke to section 23 when they were here in the public hearings. They fully understand—

Mr. Prue: Was this on there?

Mr. Flynn: They fully understand that the provision applies to them; that's very clear.

A similar provision exists right now for Ontario Hydro, OPG and Hydro One. We're proposing to extend those undertakings to any other projects around this. Already, Hydro One and OPG have this provision. I don't see a nuclear power plant in the middle of Toronto. They've had this provision for a long, long time. I don't think the alarmist stuff really serves this process at all. I understand you're upset, I understand you don't agree, but I don't think we have to use scare tactics to get our point across. Certainly we don't from the government's side.

The process is very similar to one that exists right now for OPG and Hydro One. Any proposed project is not going to be placed willy-nilly. They're still subject to the Environmental Assessment Board. They're fully regulated by the Ontario Energy Board requirements.

Exemptions under these circumstances are not automatic. Maybe the council can elaborate on this a little bit. They're not automatic. They'd require a regulation to bring them into force and would only be considered if we started to run into a situation where we needed a last resort, where the energy supply for the province or the energy supply for the area was somehow placed in jeopardy.

I think it needs to be said that we've done a lot to involve the public in this process. I've heard terms like "abomination" and "disgrace," and all sorts of things. We have to remember that we're dealing with an OMB process that existed under Mr. Prue's party and existed under the previous government as well.

What we have done to that process is increase public input tremendously. We've defined what a complete application is, and we've extended the time frame for applications from 90 days, as it was under the previous government, to 180 days. We've moved the consultation and the public input part to the front end of the planning process, where the public clearly wanted it, where they really wanted to be involved. We've made sure that the application that appears before the council is the one that will appear before the OMB, that applications aren't switched halfway through the process. We've strengthened the wording; we've now said that the OMB not just "must consider" what a council has to say, but must "have regard" for what that council has to say. We've given the OMB the authority and the power to refer information back to council if they receive information that they think, had that council had that information, they might have acted differently. Now the public can apply at any time during the process to be a party. If they're involved in the process they can apply to the OMB as well, obviously.

So I think we've done a lot to encourage public input in the planning process, which was sorely lacking when your party, Mr. Prue, was in power, and certainly the points have been made that some of the changes that were made by the previous government did not extend public input, but in fact severely inhibited it. So we're still asking, we're still insisting, that energy project proponents go through the municipal planning process. What we're saying is that in cases where the supply of energy is in jeopardy to the province of Ontario, to hospitals or to industry or to just plain old homes that want to have their lights on, there is an exemption power that exists to move that project forward. That's it in a nutshell. I know that Mr. Prue will probably not agree with that. I don't know where the other party stands on that. We've very clear on this.

The Chair: Mr. Hardeman, I think you indicated—

Mr. Hardeman: We thank the member from the government side for explaining the issues and the changes made to the Planning Act, but I think you totally glossed over the fact that for these purposes, for the energy purposes, you have exempted them from the Planning Act, so you've got much more government involvement but no municipal involvement in the energy ones. I think that's really the concern.

A couple of questions, and I'm not sure you can answer them. The parliamentary assistant yesterday during the hearings a couple of times mentioned the fact, first, that Hazel, and I suppose Mr. Flynn would know which Hazel I'm referring to—that I should ask her, because she agreed with what was being discussed here, what the government was proposing in one of the amendments. I was a little concerned about that, because how did the mayor of Mississauga know about the amendments before I knew about the amendments? Whether she agreed or disagreed was irrelevant. Then there was another issue an hour later and I said, "Are you sure? Have you talked to the city of Toronto about this, because you're taking authority away from them that you gave them previously, and now you're taking it back." They said, "Well, you ask Mr. Miller. He agrees with it."

I want to know, if those discussions have taken place between the government and the local municipalities, if any of that discussion took place on this amendment that changes the situation as it relates to the energy projects presently under way in the city of Toronto that will be affected by this amendment. Have any discussions taken place? Could you tell us that the mayor of the city of Toronto supports this amendment?

The Chair: Mr. Hardeman, let me just get some clarification. Your question was for the parliamentary assistant, but he's had to step out.

Mr. Hardeman: Obviously, the spokesperson for the government side; I don't care who answers it.

The Chair: So I'm just wondering, is there anybody from the staff perspective who can make that response?

Mr. Hardeman: I just want to know if that consultation took place.

The Chair: All right, then. We're going to be using Mr. Flynn's best knowledge as to what—

Mr. Flynn: Have I had conversations with the city of Toronto? Obviously not. Do I know of every conversation that's taken place on this issue? No, I don't. What I do know is that the city of Toronto appeared before us in the public hearings, asked for certain things, and understands that these provisions will apply to them. Obviously, Mayor McCallion was here and made a presentation. Whether the amendments that she asked for or that AMO perhaps asked for have been discussed specifically with Mayor Hazel, I think you would have to ask the staff. I haven't had those conversations with her.

Mr. Hardeman: Madam Chair, I would ask if we could have the staff come forward to say whether any of those public consultations took place. It was directly—and it will be in Hansard. The parliamentary assistant said yesterday—he was speaking to the amendment—that in fact those two, both the mayor of Toronto in the one case and the mayor of Mississauga in the other case, agreed with the amendment. So I want to know if this amendment has had that same discussion, if we can have someone from the ministry.

The Chair: Do we have any staff who have knowledge of this and can come forward and confirm this? No. I see nobody. Okay.

Ms. MacLeod, you had a question?

Ms. MacLeod: No, just a general comment.

The Chair: There's nobody who can answer your question, Mr. Hardeman.

Mr. Hardeman: Madam Chair, I would then respectfully request that someone be asked to get someone who could answer that question. It's a legitimate question that we have of staff. The answer may be no, but I'd like to know whether they did consultation on this project to come up with this amendment. I think that's a reasonable request. Any member of this committee has a right to ask for staff to report.

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The Chair: Mr. Hardeman, can I just interrupt? I think you've just heard from Mr. Flynn that they participated in the consultation in the course of the hearing process, so that consultation did occur. Mr. Flynn, can you add any more?

Mr. Flynn: No. I'm sure that Mayor McCallion would return Mr. Hardeman's call if he wanted. If she was involved in the conversation, she would certainly know, if she was involved in any way. I haven't talked to her. This bill's been out since December. It's been out going on a year now, eight or nine months, and this provision has not changed.

Mr. Prue: If I could, for the record, this amendment has been out for one day.

The Chair: Ms. MacLeod, you have the floor.

Ms. MacLeod: I just wanted to add a comment because we're talking about the public process and public input. I have to beg to differ with the government side on this. You'll take it as no surprise that I agree with Mr. Hardeman and Mr. Prue. You're severely inhibiting the public input in the planning process by eliminating the municipality here. You have limited debate on this piece of legislation. The city of Toronto has not seen this amendment. In fact, entire sections of this piece of legislation have been rewritten in the last two days. I'd like to know what consultation you took with the city of Toronto to arrive at this amendment.

Mr. Flynn: I believe you were present for the public consultation that took place—

Ms. MacLeod: I don't remember a city of Toronto councillor, a city of Toronto planner or the mayor of Toronto sitting here and asking for this to be introduced. In fact, I remember many municipalities as well as many other stakeholders coming to this committee and asking that this be removed, save major energy producers.

Mr. Flynn: The city of Toronto sat there at the end of the table and made public delegations that we all heard. I believe you were present; I know I was present. That consultation has taken place. Now we're dealing with amendments to the bill as a result of those consultations.

Ms. MacLeod: And nowhere did I ever see anybody come forward and say, "Put the city of Toronto into section 23 and make it retroactive to December 12, 2005." That is where I think my colleague to the left of me—

Mr. Flynn: You could be right.

The Chair: Can I stop the debate back and forth? Ms. MacLeod, you have the floor.

Ms. MacLeod: Thank you, Madam Chair. I believe that's all I have to say in defence of my colleague to the left of me. I think he's very passionate about this.

Just to add to Mr. Hardeman's comments, I was sitting here yesterday when I very clearly heard that two mayors in this province were privy to information before we were. I had on my BlackBerry an e-mail from a city councillor in Toronto that said that amendments weren't provided to them from the government side, so apparently Bob Chiarelli was left out of the loop, but that's no surprise to eastern Ontario. Again, I'm going to ask, did Mayor Miller or a city of Toronto planner explicitly ask for the city of Toronto to be added into section 23?

Mr. Flynn: Did you hear them ask when they were here making a public hearing?

Ms. MacLeod: I didn't, but we are now being told—

The Chair: Can I just stop the debate? I think you've had a question, and an answer has been given.

Any more comments on this motion?

Mr. Hardeman: Yes, Madam Chair. I just want to make sure we understand. Maybe we could adjourn until we can get the Hansard to prove it, but yesterday the parliamentary assistant made it quite clear that the two mayors involved would support and did support the amendment—not the public consultation, not the general terms of the whole bill. A lot of the bill I support. But he

referred to the amendment under discussion and he said in one case that the one mayor supported that amendment, and in the other case that the mayor supported that amendment.

I have no problem with the fact that they consulted on those amendments. It just brings up the question, if the government side could tell us yesterday in the debate that they had consulted with the mayors, I would wonder and question whether they could tell us whether they consulted with this amendment, or did they just go out without this amendment and this one was put in at the last minute so no one would know about it? It's rather important that we know that. That's why I think if that's the case, I'm quite willing to accept that, but I'd like to hear someone from the ministry say to what extent that consultation took place so I know, as we vote for this amendment, whether in fact it is supported by the city of Toronto. If the city of Toronto supports this amendment, I support this amendment, but I'm not sure that they do, because no one has been able to—

The Chair: Mr. Hardeman, I believe the question has already been asked. The answer, whether it was the right answer or not, was given.

Mr. Hardeman: Madam Chair, I'm sure that it's because of my inadequacy of the presentation that I didn't get an answer, so I wanted to make sure—

The Chair: No, I think you were very accurate.

Mr. Hardeman: —that everyone understood the gravity of the situation. It's so important that we all understand what's being done here.

It's rather interesting. An hour ago or so we were debating the issue of things that went to the Ontario Municipal Board and, if the conditions change, the rights that people have to be informed about those changes before the Ontario Municipal Board can make a decision on that application. Now, all of a sudden, we have here an amendment—

The Chair: Mr. Hardeman, can I interrupt you for just a second and remind you that you're speaking to the motion, which is 94. If you could speak to the motion—

Mr. Hardeman: Yes, and that's what I'm getting to.

The Chair: I hope you are, because you're going about it in a very circuitous fashion. You can still speak to section 23 because Mr. Prue will be, following the vote on this motion, but if you could get to the point that you would like to clarify on this motion that is before me, that would help me.

Mr. Hardeman: Yes. Thank you very much, Madam Chair, and I have every intention of getting there. I'm using the issue of the previous example as to the contradiction that we have here in this amendment, that we think that if new information or new conditions are going to the Ontario Municipal Board—and this is the government's position on it. If it goes to the Ontario Municipal Board and there are changing conditions, here is a list of people who have a right to be heard about those changes before the Ontario Municipal Board can make a decision. This amendment is in fact changing conditions on an application, changing for the city of Toronto, making them part of section 23, which previously they were not. So it's a major change for the city of Toronto in the bill and, as was pointed out by my colleague, it's going to have a major impact on what's presently happening in the city of Toronto as it relates to energy projects. So far, I'm to gather from the answers we haven't gotten that they have not even been told that this is going to happen, much less whether they agree or disagree with it. It's just, we're going to tell them when the thing is finished whether they are part of section 23 or not.

I think it's very important that we not only appear to be fair, but that we are fair and have them be consulted on what the impact will be on their authority and their ability to regulate the city as they see fit. I think taking away their right to have input in the planning process that relates to all energy projects within the city is a major amendment that you don't make by decree and tell them after the fact that it's going to happen. I think that is what's happening here. I don't believe that they have been consulted on it, and I think we're just going to change the way the world turns for them and tell them tomorrow, when it's too late for them to do anything about it.

With that, you may have gathered, Madam Chair, I'm not supporting this amendment.

The Chair: All right, I think we've come to the end of speakers on this motion. A recorded vote has been requested.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

Mr. Prue, you have the floor, speaking to section 23.

Mr. Prue: I believe the notice 92 was the Conservatives first. I'm just trying to stay within the order, but I will speak first. I don't mind.

The Chair: You were the first one who indicated you wanted to speak, but I'm happy to go in the order that they were given to me, or they're before me, but you have just indicated a speakers' list. Because it's not to a motion.

Mr. Prue: Okay, I do wish to speak. Do my colleagues wish to speak first, because you do have the first motion?

Mr. Hardeman: No, it's fine.

The Chair: I appreciate the courtesy extended. Mr. Prue, you have the floor.

Mr. Prue: Thank you very much. We are not supporting this section. Obviously, you have seen the number of people who have come forward. Every single environmental group is opposed to what you are doing here. Every single citizens' group is opposed to what you are doing here. Every single municipality who spoke to

section 23, including Hazel McCallion, is opposed to what you are doing here.

I don't want to be alarmist, and I'm not being alarmist. I don't know what's going to happen in the future, nor do you. But I just want to put a couple of scenarios: You pass this today and you don't get re-elected. The Conservatives get re-elected. This will give them full authority to site coal plants—full authority to site coal plants. You've heard the debate inside the Legislature; you've heard the debate about clean coal, you've heard Mr. Yakabuski; you've heard other people talk about wanting to have those coal plants. You take away the right of municipalities to have any say whatsoever—this is an energy project—and it will allow any type of energy project whatsoever. It can be coal plants; it can be energy from waste; it can be something benign like windmills—although we've had a number of deputants talk about how they'd like to be consulted on those as well—and yes, it can be a nuclear power plant. That is not being alarmist. This government is on record as being pro-nuclear and wanting to spend up to $40 billion in refurbishing existing nuclear plants and building new ones. The municipalities which may be involved will have absolutely no say because of what you are doing here today.

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The screams may not be coming because everybody's got their fingers crossed. I know they've got their fingers crossed: "Please don't let it be me." They're just hoping that of the 450 municipalities, it happens to somebody else. But I will tell you, when it happens, as it has to the city of Toronto and the port lands, there are going to be screams. When it happens, Mr. Rinaldi, in your riding, there are going to be screams. In yours, Mr. Lalonde, in yours, Mr. Flynn, and in yours, Mr. Brownell, there are going to be screams when the municipality has no say whatsoever on the siting of energy plants. People are going to wake up and they're suddenly going to start asking why and how this has happened. We're going to be able to point the finger pretty bluntly, because I know what's going to happen on 23, the same as I just saw happen to the amendment: You're all going to put your hands up. But I want to tell you, if fate is good—and sometimes I love fate—I hope that those energy plants end up in your ridings, and that your municipalities turn around and say, "We want to be consulted." You are the ones who are going to have to go and tell them, "You're not going to be consulted, because I voted that you would never be consulted again." That is the reality of what you are doing.

We have a government, we have a Premier who stands up every day and talks about municipalities as if they're some kind of partners, as if they're some kind of mature government, as if they need to be listened to. But what we have here in this committee, and I'm sure what we're going to have as a result of this committee in the House, is a government that is bound and determined to have its own will, notwithstanding what the municipalities, the mayors, the elected councils and the people in those municipalities think is in their best interest. I find that really quite appalling; I find it totally appalling. This is not good planning process. It is not. It is ad hoc planning process by a government that is terrified of running out of energy.

I read the Toronto Star; I don't know why sometimes, but I do. Every week in the Toronto Star there is a little chart about energy, about electricity and usage, how much we're making and how much we're using and all that stuff. Only twice this summer, a couple of hours, did we import electricity. All of the demands of this province, save and except for a couple of times this summer, were met internally. There is no crisis, save and except the ones you are making yourselves.

Interjection.

Mr. Prue: Mr. Flynn, I can see your face. There has been no crisis this summer, save and except the ones you are trying to put in the public's mind. We are producing, and did all summer, sufficient electricity for the needs of this province. I don't know what's going to happen eight or 10 years down the road, whether we're going to have great need for more energy or not—

Mr. Rinaldi: It's called planning.

Mr. Prue: You can say that it's called planning, but many of the industrial users, which use a lot of this, are disappearing from this province. Maybe you need to talk about that too. I saw that another couple disappeared today; another couple of auto supply plants disappeared this morning, losing another 300 jobs in the Cambridge area. That's the reality: A lot of the big users, unfortunately, are maybe not going to be there, and planning needs to look at that too.

We in the New Democratic Party don't want to use the sledgehammer that you're using to, quite frankly, just say that everybody's pushed aside, that we're building these energy processes wherever we need to build them, on the anticipation they might be needed. What is important is conservation, and what you're not looking at is conservation. Instead, what you're using is a fear factor that we're going to run out: "We don't want the lights to go out." That's what I hear. Whenever you ask a question in the House or here in this committee: "We don't want the lights to go out." But the lights aren't going to go out, the lights have never gone out, and I am not one who believes they're likely to go out in the near future. And I'm not one who believes they're going to go out if you let municipalities continue to keep the option of having some kind of say whether or not it is an appropriate location for an energy plant in or near where you want to build it.

With the greatest of respect, going back to my own riding and what is there adjacent to it in the port lands, the arguments that are used to site it there are ridiculous beyond belief: "Toronto doesn't have the energy capacity inside the city of Toronto." Of course we don't. We get most of our electricity from Niagara Falls, we get it from Kincardine, we get it from Pickering. No, it's not located in Toronto. Does it need to be located in Toronto? That's the question. Somebody thinks we need to locate it in Toronto. I don't know why, but somebody thinks so.

This is what ordinary planning looks at. Can you get what you need in your own locality? Do you have to go somewhere else to get it? Can you build the right things there? Can you not?

In terms of Toronto, Toronto has a dream for its waterfront. I share that dream.

Mr. Rinaldi: Do you share the dream for waste, Michael?

The Chair: Mr. Rinaldi, I'm sorry, but Mr. Prue has the floor.

Mr. Prue: I have a dream for waste and it's probably far better than your dream, because probably mine's in Technicolor. But Toronto has a dream for what they want on their waterfront and it does not include a giant gas-fired, pollution-spewing energy project that you have in your dream. I think the people of Toronto need to be listened to, just as I think the people in other parts of the province need to be listened to in terms of how they want their communities developed and whether or not they're appropriate uses.

I have seen some of the people of Bath who are talking about the incinerator that's there and using it. If they want to use that, then God bless them. It's their community and I think they should have a choice. Or the people of Kirkland Lake, at one stage, wanted to put garbage in the lake.

Mr. Flynn: How about the folks in Michigan?

The Chair: Mr. Flynn, please. Mr. Prue, you still have the floor.

Mr. Prue: I intend to do the same when they're speaking, Madam Chair, because I might as well. If they can do it, I can do it even better, and I'll prove it.

The Chair: Mr. Prue, can you just speak to the section, please.

Mr. Prue: I am speaking to the section.

The Chair: I understand that.

Mr. Prue: I haven't deviated.

I do believe that the municipalities have the unqualified right, through the elected representatives, to do what is best for their municipalities. They will not allow the lights to go out—not in your municipality, not in mine. They will not allow the lights to go out. They will do what is necessary, as municipalities, as mature governments have proven that they can do.

I think what this government is doing is absolutely and totally repugnant. It is repugnant to me. It is repugnant, I know, to many people, including all of the municipal representatives, the community representatives, the environmental representatives and literally everyone who spoke to this bill, save and except the people you are trying to assist here somehow: the people in private development who are trying to get the easy road to building whatever kind of facilities they want to build, be it gas-fired, be it electrical, be it nuclear, whatever. They are the only proponents and the only people who agree with what you are doing.

I am opposed. I think the people of Ontario will be opposed. I have no doubt what is going to happen in this committee, but I will tell you, if this committee proceeds and passes this section, there will be one big fight in the Legislature. Be prepared. I'm telling you without threatening you, but be prepared, because I know what's going to happen if you include section 23. There will be considerable opposition debate, there will be considerable opposition anger and there will be, I'm sure, a long road to hoe when this comes back to the Legislature.

Recorded vote, Madam Chair.

The Chair: Mr. Hardeman.

Mr. Hardeman: A lot of what I was going to say has already been said by someone who understands the situation, I suppose, more acutely than most of us here because of the amendment that was previously made to the section with the motion from the government that actually now puts the ball squarely in the court where the present project is underway as opposed to where someone may want to site it in the future.

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I just want to start off by saying that we've heard the government side speak a number of times about the support and the lack of support and who supports what, but I think it's important to mention that none of those municipal people—mayors, council representatives and the people involved in the planning process—who spoke to the planning aspect of the bill spoke in favour of section 23. Every one of them said that generally they were supportive of the bill. They were quite supportive of the changes to the Ontario Municipal Board and the changes to a number of other areas. I'm not sure that support is going to continue when you look at how the bill has changed, because obviously the bill that we had public hearings on and the bill that the government is going to take into the House after these clause-by-clause hearings is totally different. A lot of changes have been made.

In my 11 years here, I don't think I've ever been involved in a bill where so many sections were completely removed and replaced with a totally different section. I've had many bills where there were a lot of changes and even more amendments than here, but to totally rewrite section after section, up to and including the point where opposition amendments, after we went to all the trouble of preparing them and so forth, no longer applied because they'd come on the agenda after the government's amendments to the same section—they've changed the section so much that the amendment doesn't apply any more. It's now out of order because the wording I wanted removed is no longer there. They've changed it to a different word. It still has the same negative impact, but it eliminated the ability of the opposition to deal with the topic at hand.

I just want to go to the section generally. If the total bill—I'm going to start there—accomplishes what the government said they wanted to accomplish with this bill, that would totally mitigate the need for section 23, because it was supposed to improve the operation of the planning process so that the development of the province would be done in an orderly fashion, in an expedient, effective and efficient fashion. That's the intent of the bill.

If that's the case, then why would energy—and I recognize the need for energy. I even recognize that there are going to be times when people don't particularly support the option of putting the development of energy plants in their local community, but energy is no different than all other development projects. They have to go through an approval process and then they have to build it, and we have to make that process as effective and efficient as possible.

If there was a new auto manufacturing plant that wanted to locate in Ontario, we wouldn't have a bill that exempted them from the Planning Act. We would try and expedite the process through the Planning Act to make sure that everybody had their say and so that the municipalities could make a decision that they want it in their community, where best to put it and in a way that it has as little negative impact as possible.

I have no reason to believe that municipalities wouldn't do exactly the same thing for energy plants. They're not a negative in the community if they're properly sited and properly located. I have no reason to believe that municipalities wouldn't accept that. But to pass a bill that says, "Because we want energy moved through the system faster, we want the municipalities out of the process, because they'll just hold it up": I don't believe that to be true. It's also bad planning policy to have any industry, whether it's government supported or government funded, totally exempt from the process.

We can make an argument, I suppose, and say, "Well, if you go under the Environmental Assessment Act, the board will consider some planning aspects." They will not consider the same planning aspects as they would if the municipality was doing it. The municipality, under the law, can go to the Environmental Assessment Board and ask to be a participant in the hearing. They cannot be part of the decision-making process, so they cannot go to the hearing and say, "We understand the province's need and the people's need to have energy plants, but we don't think that's the right place to put it. We think the area that we've designated over there as industrial is a far better place, and I don't think building it there is going to be any more difficult than where you're proposing to put it." That's the type of information I think municipalities could provide.

Incidentally, if the intent of this legislation is to move it along quicker, I can assure you that the environmental assessment process is much longer than the planning process for the same project. If an applicant decides that they want to build a certain facility, like a nuclear plant in downtown Toronto, it's going to take less time to put it through the planning process than through the environmental process. And they can be done concurrently, so there is no further waiting time.

The only reason, the only justification I've heard so far from the government as to why section 23 is there, is because they don't want municipalities involved with the decision as to where the energy plants are going to go. That's it. If that's the reason, I think it totally negates the planning changes we're proposing here. When we're saying that we're going to give more local authority to municipalities, this section says that's bull; that's not happening. When the rubber really hits the road, we are going to take that entity right out of the Planning Act, because we don't want the municipality messing around and telling us where electricity plants and energy plants should go; we can make that decision better on behalf of the people of the province than the local people can. I think that's totally wrong, and that's why I totally oppose section 23 in its entirety—not because I don't think we need energy plants; not because I think that the province doesn't need to get on with the job. I think it can all be done. Let all municipalities have authority to direct where they think it would fit within the community, as opposed to having the province say, "It's going there, come hell or high water." So I totally object to this, and I agree with my colleague from Toronto in not supporting this section of the act.

The Chair: Mr. Lalonde.

Mr. Lalonde: I'd just like to refer to some of the comments that my colleague Mr. Prue has referred to. We have to remember that we have to look to the future to preserve jobs for all the people of this province. We keep hearing in the House that paper plants, paper mills, at the present time are closing because of the cost of electricity. When we say that it's the cost of electricity, it's because we have to buy the electricity. You said that this summer we only had to purchase electricity twice. Do you remember last year, in September, that we paid up to $1.03 per kilowatt hour as the average for the month? We keep hearing in the House that the paper mills are closing because of the cost of electricity. In my home riding there was a windshield manufacturer that was really affected. So we have to look, for everyone in this province, at the creation of jobs, the preserving of jobs, and also to make sure that everyone has the lights on for the next generation to come. This is why this government has to plan for the future. I believe my colleague Mr. Flynn has explained the proper process. It's not automatic that the people would be able to build any energy plant in any place in this province.

The Chair: Ms. MacLeod.

Ms. MacLeod: Just to pick up on the point about our future, I represent one of the youngest, fastest-growing areas in all of eastern Ontario, maybe even in all of Ontario. As somebody who represents them as a member of their generation, I can assure you, right here and right now, we do not like the fact that our municipal governments will be eliminated from the planning process. We like to have say. We know that the local government has the greatest ability to connect and communicate with the residents. I've seen in my own community, and I know members opposite have seen in their own communities, that the local government has the highest rate of efficacy. I think it's important that we leave them in this planning process. I don't agree with removing them in section 23. I don't agree with section 23 as it currently stands, and I will be voting against it. I will be voting for my generation, which wants to put safety in their own community

first. I understand we're talking about jobs and about job creation and I'm not sure why, because that's not what section 23 is about. Section 23 is about eliminating local voices from local community decisions, and I cannot support section 23.

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The Chair: Mr. Hardeman.

Mr. Hardeman: In relation to Mr. Lalonde's comments about having to keep the lights on and proceeding to develop the generation capacity for future generations, we commend him for such a comment because I think that's true. I don't think we've done enough of that in the past number of years to move generation forward.

Having said that, the cost and benefit of section 23 is not going to change that. I would defy the government side to come forward with one example where the planning process has held up the development of electricity generation anywhere in the province of Ontario. He mentioned the paper mills, that northern Ontario is suffering because the paper mills can't afford the type of electricity cost. The big argument in northern Ontario was that they're generating enough electricity for the paper mills—

Mr. Prue: At 3.2 cents.

Mr. Hardeman: Yes, but it's being sold in a market where there's a greater revenue for it and they have to pay the higher price. The challenge is that we generate more to keep the market price down. But again, there is no evidence anywhere that suggests that the planning process is what's holding it up.

I would suggest to the government side to leave the municipalities involved and look at the Environmental Assessment Act to see if we can't find a way to make that work better. That's what's holding it up. It's not the planning process, it's not the city of Toronto saying, "We don't want it here," that's holding up this generation; it's the process that they're going through for all kinds of other things. I think taking the planning process out will eliminate the first step and make the other seven steps that they must go through much longer and much more onerous, because they didn't take that initial step to see whether it's good planning to put it there. They're going to go through the environmental assessment, they're going to have all the documents ready and then somebody at the Environmental Assessment Board says, "Oh yes, we're also responsible for the planning aspect of this, aren't we? Because it's the Consolidated Hearings Act and we're going to hear the planning application too. The municipalities no longer do that." And we turn it down because there's going to be too much traffic on the street there. Now all the others will be for naught.

It makes much more sense, where I come from, to decide whether the social impact of it is going to be acceptable before you do all the technical environmental reviews to see whether the plant itself will pass the test of the environmental assessment, and not have it all done and then find out, for other reasons and the public perception of it, that it's turned down because it's the wrong location. Let's look for the location first and then decide whether they can build an entity there that will work and will pass the environmental tests that are required in the province.

I think suggesting that it is for cost, as section 23 is there, the cost of hydro, is a long stretch. I think we're going to have trouble making those ends meet. As they say, that just doesn't fly.

The Chair: Mr. Flynn.

Mr. Flynn: I understand the emotion that's being expressed, and if I was from those parties perhaps I'd be expressing the same emotions. But OPG and Hydro One have had exactly this provision for a number of years. It wasn't changed by the Conservative government and I don't think municipalities were falling apart at the seams or felt like they were left out of the process. I don't remember an uprising within the Tory caucus to remove those provisions from OPG or from Hydro One. In fact, I think it was just an issue that people accepted and realized it was probably an efficient way to meet our energy needs.

I think, at the end of the day, you either believe in renewable energy or you don't; you believe in getting those projects built or you don't; you believe in renewable energy or you just like to talk about it.

We had a gentleman here who is trying to do business in Ontario. His name was Thomas Schneider. What he wants to do is build wind energy in the province of Ontario, and he made it very clear to us. He said, "We understand the nature of the energy challenge faced by Ontario, indeed most jurisdictions, and we believe that 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."

I won't read the whole thing. He then went on to say that section 23 of Bill 51 would allow him to do much more business in Ontario in a much more effective way to replace some of the energy that's being created from polluting sources with wind development.

I think that's what we all want and that certainly is the intent of the bill. Any proponent of any energy project in Ontario is still strongly encouraged to go through the municipal planning process, has to go through the environmental assessment process and has to stand by the provisions of the Ontario Energy Board. What this is, plain and simple, is extending what exists now and existed for some years with Hydro One and OPG to other energy projects in the province.

The Chair: Mr. Hardeman.

Mr. Hardeman: Well, I thought I'd said it all—

The Chair: I thought you had too.

Mr. Hardeman: —but the member opposite generates more questions than answers, I'm afraid. If all projects are still encouraged to follow through on the planning process, why is this section here? If we think

it's the right thing to do for developers to use that method, why would you exempt and make it so you don't have to? If you think it's the right thing to do, why not have everyone do it?

It just doesn't make sense where I come from that we say, "We're still going to encourage everybody to use the planning process. We think municipalities should be involved in how their community develops because we gave them the planning authority"—then why do we want to say that one individual who doesn't really care about that and just wants to get on with producing energy has been exempted from this? So the competitor can't afford to go through the planning process because, according to the government side, that's too expensive and cumbersome; you can't be competitive and follow the process. It would seem to me if that's a good process to follow, you would mandate that they all have to follow it, and what's fair for one is fair for us all. I would think that it would make much more sense.

I know why the OPG or Hydro One were exempt: It's because they were owned by the government. It was difficult for the government to make the rule to say, "You have to go through the municipality but we can override you at any point in time." I can see the difference now where the private sector says, "We want equal treatment." I would be supportive of an amendment that says the government-owned agencies also must comply with the Planning Act so municipalities would have some say into how that goes. I just don't believe that a race to the bottom and no one having to go to the local authorities is the answer at all.

The Chair: I have no more speakers to section 23. Shall section 23, as amended, carry?

Mr. Prue: A recorded vote.

The Chair: A recorded vote has been requested.

Mr. Flynn: Of what?

The Chair: A recorded vote has been requested on section 23, as amended.

Mr. Flynn: Are we dealing with the NDP amendment?

The Chair: No, they're not motions. This is just on the section.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

Section 24 has no amendments, but there is a request for discussion on this item. Mr. Prue.

Mr. Prue: Section 24 is a consequential section to section 23. In and of itself, it's just going to do the same thing. We've had considerable debate. I am opposing section 24 as I did 23. It's just another nail in the coffin, I guess, sticking it to municipalities.

A recorded vote on that, please.

Interjection.

The Chair: Are you voting or are you requesting—did you want to speak, Mr. Hardeman?

Mr. Hardeman: Yes. Again, I would agree. It's the same issue, only it goes a little further and applies further abroad. I too think it's wrong, but I think all the discussions would be the same. I see absolutely no good reason to exempt certain projects in the province from the planning process. If they're going to be part of our community, they should be part of our planned community. So I can't support that one either.

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The Chair: Shall section 24 carry? A recorded vote has been requested.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, MacLeod, Prue.

The Chair: That section is carried.

Section 25: Mr. Prue. You have the motion, and I believe there is a typographical error. Has that been brought to your attention?

Mr. Prue: Yes, it has been.

The Chair: If could you read it correctly into the record.

Mr. Prue: Yes, I will, but before that, I'd like to thank the staff for bringing that to our attention. It will now read, "Subsection 25(1) of bill (clause 70(1) of Planning Act)."

I move that clause 70(1) of the Planning Act—

The Chair: Mr. Prue, can I just stop you? The (b) is still in there.

Mr. Prue: Sorry. Okay: 70(1)(b) of the Planning Act.

I move that clause 70(1)(b) of the Planning Act, as set out in subsection 25(1) of the bill, be struck out and the following substituted:

"(b) prescribing information and material that are to be provided under this act and the manner in which they are to be provided;

"(b.1) requiring the municipal board to provide notice to any persons or bodies that may have an interest in or be affected by an application, referral or appeal made under this act, at the expense of the Municipal Board or such other person or body as the board may determine;"

If I can speak by way of rationale, there have been a number of cases brought to our attention of people, let me say, whose scruples are not the best who have been required under the law that is extant to go out and inform the public and those within the 400 metres or the radius of the time, date and nature of the appeal being heard before the municipal appeal board. They have done so in ways that, quite frankly, would not meet anybody's tests.

One of them that was brought to my attention was that in addressing the letters, instead of putting down—and

I'm just going to make this up; I don't want to identify the place—521 Maple Street, they put 521-13 Maple Street. They added "13" to the end of all of the letters as they went up and down the street so that they came back from the post office undeliverable. Then they said, "Well, we sent them out by mail." But of course they sent them out by mail and none of them arrived.

So that is what the purpose of this is: to put that responsibility in the hands of the municipal board, so that the municipal board would have the authority and the obligation to send out the letters to the people involved and affected, who would know the time and the date and the place of the hearing and what the nature of the hearing was going to be, and that the Ontario Municipal Board could either, under its own volition, pay for this, or they could charge it against the applicant, or they could charge it against the municipality or whoever they deemed to be the appropriate person, but that it would be done in what we consider to be a fair manner.

That's the whole intent of this. If the appeals process is going to be further narrowed so there are even less people involved, if it's going to be more difficult for individuals, we want to make sure that at least they are notified and that they are notified by a neutral party, not in all cases the proponent, who may not want to have them there.

The Chair: Comments or questions?

Mr. Hardeman: If I could, to the mover of the motion, the description of "any person having an interest in or affected by an application": How would one define that?

Mr. Prue: Unfortunately, the way the government has defined it. I mean, I don't know how it would be any different from that. Those who made a presentation, those who sent in a written submission, the minister, the council: I guess that's who they'd send it to. But at least we would be assured that those people would be informed of the proper date.

You see, when you appeal, you don't know when the appeal is coming up. That isn't set out at the time. Usually that's set out currently by the developer, who sends out the letters saying the appeal is going to be heard. They go before the board and they say, "We sent out the notices." But there have been many, many cases over the years—and I only gave but one example—where that has not been done in what I would say is a fair and proper manner. I'm simply requesting that in order that those people who have the right to appeal be notified and be notified of the time and date so that it doesn't go by without them being there, it be sent out by the neutral party, which I think in this case would be the board or the board's designate, and that the board could ensure the costs were appropriated to the appropriate appellant, be that the municipality, the developer or the individuals.

Mr. Hardeman: I don't disagree with it. I guess the question really becomes, is there some kind of mechanism that would ensure that—even using the government's definition of the parties, as limited as it is—the OMB had access to those parties to know who to contact?

Mr. Prue: You appeal, and the notice goes to the OMB. That's what I understand. That's the way it's always worked. You file a copy with the municipality, you file a copy with the proponent, you file a copy with the OMB. You can tell me if that's wrong.

Mr. Hardeman: Yes, but my question is, when you're talking about requiring the municipal board "to provide notice to any persons or bodies that may have an interest in or be affected by an application"—the original meeting was a public meeting where 10 people spoke.

Mr. Prue: Yes.

Mr. Hardeman: But how does the OMB know who those 10 people were?

Mr. Prue: Well, I believe—

Mr. Hardeman: Because the objector doesn't have that information and doesn't forward it. They just forward why they're appealing.

Mr. Prue: The OMB would have to then request from the clerk of the municipality who was there.

Mr. Hardeman: Okay.

The Chair: Any further comments or questions? Seeing none, shall the motion carry? All those in favour? All those opposed? That's lost.

Government motion is next. Mr. Rinaldi.

Mr. Rinaldi: I move that section 25 of the bill be struck out and the following substituted:

"25. Subsection 70.1(1) of the act is repealed and the following substituted:

"Regulations

"(1) The minister may make regulations,

"1. prescribing forms for the purposes of this act and providing for their use;

"2. prescribing information and material that are to be provided under this act and the manner in which they are to be provided;

"3. prescribing the manner in which any notice is to be given under this act, including the persons or public bodies to whom it shall be given, the person or public bodies who shall give the notice and the contents of the notice;

"4. prescribing the timing requirements for any notice given under any provision of this act;

"5. prescribing information and material that must be included in any record;

"6. prescribing plans or policies and provisions of those plans or policies for the purposes of clause (f) of the definition of 'provincial plan' in subsection 1(1);

"7. prescribing any ministry of the province of Ontario to be a public body under subsection 1(3);

"8. excluding any board, commission, agency or official from the definition of 'public body' under subsection 1(4);

"9. prescribing conditions for the purpose of subsection 8.1(1);

"10. prescribing a term for the purpose of clause 8.1(2)(a) and qualifications for the purpose of clause 8.1(2)(b);

"11. prescribing eligibility criteria for the purpose of subsection 8.1(3);

"12. prescribing classes for the purpose of clause 8.1(4)(c);

"13. prescribing requirements for the purpose of subsection 8.1(7);

"14. prescribing the methods for determining the number of members from each municipality to be appointed to a municipal planning authority under subsection 14.1(5);

"15. prescribing matters for the purpose of clause 16(1)(b) and for the purpose of clause 16(2)(c);

"16. prescribing the processes to be followed and the materials to be developed under section 16.1;

"17. prescribing municipalities for the purposes of subsection 17(13) and section 69.2;

"18. prescribing information and material for the purposes of clauses 17(15)(a) and (b), public bodies for the purposes of clause 17(15)(b) and the manner of making information and material available for the purposes of clause 17(15)(c);

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"19. prescribing, for the purposes of clauses 17(17)(a) and (b), clause 22(6.1.3)(a), clause 34(10.4.3)(a), clauses 34 (13)(a) and (b), clause 51(19.1.3)(a) and clause 53 (4.1.3)(a),

"i. persons and public bodies,

"ii. the manner of giving notice, and

"iii. information;

"20. prescribing time periods for the purpose of subsections 17(44.4), 34(24.4) and 51(52.4);

"21. prescribing public bodies for the purpose of clause 26(3)(a);

"22. prescribing upper-tier municipalities for the purpose of subsection 28(2);

"23. prescribing matters for the purpose of subsection 28(4.0.1);

"24. prescribing conditions for the purpose of subsection 34(16) and limitations for the purpose of subsection 34(16.0.1);

"25. prescribing rules of procedure for committees of adjustment;

"26. prescribing criteria for the purposes of subsection 50(18.1) and subsection 57(6);

"27. requiring that notice be given under subsections 51(20) and 53(5);

"28. prescribing rules of procedure under subsection 53(9) for councils and their delegates;

"29. prescribing persons or public bodies for the purposes of subsection 53(10);

"30. prescribing rules of procedure for district land division committees constituted under section 55;

"31. prescribing any other matter that is referred to in this act as prescribed, other than matters that are prescribed under sections 70, 70.2 and 70.3."

The Chair: Comments or questions?

Mr. Prue: I have a question concerning number 8. As I understand the motion, this would give the authority to allow the minister to make any regulations excluding any board. Could we go through it? Would that include any conservation board?

The Chair: Can we ask staff for a legal answer on that one?

Mr. Prue: Whoever can answer.

Mr. Shachter: As you know, section 70 sets out all the list of regulations that the minister may make with respect to the various matters. They track the matters that have already been dealt with previously in the act. If you go back to the definition of a "public body," you'll see that it's intended that a regulation can also set out what could constitute a public body for the purposes of the definition, or there could be a municipality, local board, ministry department, board, commission, agency or official.

Mr. Prue: But the question is—this is to give the minister authority to make regulation to exclude any board. I'm just asking, can that be a conservation board?

Mr. Shachter: I apologize. I just wanted to get some clarification. I understand that that authority is existing today, that this isn't new. So the answer is yes.

Mr. Prue: In terms of "commission," it can exclude a local hydro commission, a police commission?

Mr. Shachter: I have to apologize. I don't know if they would be included. It would be under either the Police Services Act or the Municipal Act as to whether they would constitute public bodies for the purpose of that regulation.

Mr. Prue: As an "official," could that exclude the Ombudsman?

The Chair: Mr. Prue, I think you've asked some good questions and you deserve some clarification. We're five minutes away from our lunch recess, so maybe you could provide those questions to staff, staff would have an opportunity and we could take our recess now, if that's agreeable to all members on committee.

We're at recess. We will be returning at 2 o'clock.

The committee recessed from 1256 to 1403.

The Chair: Good afternoon. We're here to resume clause-by-clause on Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts.

When we left off, we were on section 25. Mr. Prue had asked a question of legal staff. Do you need the question to be asked again? You have the floor, Mr. Prue.

Mr. Prue: I did have a discussion with legal staff, who informed me that it may be impossible to answer the question within the lunch hour. I told them to do the best they could, but not to starve.

The Chair: Okay. So how did we do?

Mr. Shachter: I just want to say that we did very well, because we didn't starve.

In order to properly answer the question, I think one would have to go back to the constating documents for any of the boards, agencies, commissions or officials. What I mean by that is—for example, the question's been asked whether it would include a police services board. It could potentially, but one would have to go back to the original documentation setting up such an agency or such an entity—or the Ombudsman, as was referred to in the question—in order to determine whether in fact they

would come within that provision. The reason for the difficulty in being able to do it over the lunch hour is that it would be a fairly massive project to go through each and every single board, commission, agency or official to determine, from their constating documents, whether in fact they would come within the reference in paragraph 8.

The Chair: Mr. Prue, you still have the floor.

Mr. Prue: The problem I have, then, is that to support this, I potentially support having some future minister shut out conservation boards, police commissions, the Ombudsman, any number of people who I think maybe should have an opportunity to comment, to participate. Is that the risk I run if I support this?

Mr. Shachter: Again, I wouldn't be able to comment on that without having the opportunity to actually go through the whole analysis of determining in fact which of those particular matters would actually be included within paragraph 8. At the same time, we are aware that this does go back to the one-window protocol, and I appreciate that the member is aware of that. But I can't comment or agree, unfortunately, without having had an opportunity or taking an opportunity to actually do the research in order to determine whether those entities are or not.

Mr. Prue: Could I ask whoever is going to be answering for the government—because I see the parliamentary assistant is not here—for the rationale for including this? Is it the intention to exclude somebody?

Mr. Flynn: I don't think we're including as much as not excluding. My understanding is that this is the existing condition; this is the status quo. Other governments have supported this in the past and our government is not changing it.

The Chair: Further comments or questions? Seeing none, all those in favour of the motion?

Interjection.

The Chair: Sorry, were you indicating? Mr. Hardeman.

Mr. Hardeman: I just wanted to ask the legal branch, looking at the 31 regulatory authorities in this motion, if you read number 31 and took out the word "other," would that not cover all of them?

Mr. Shachter: You have two circumstances set out in the 31 paragraphs. The first is what one would want to do, as I understand it. I don't wish to speak for legislative drafting counsel, but I understand that what one would want to do is tie in the specific regulation-making authority to the reference in the act. So you're going to have 30 references. As you can note, they refer back to various provisions in the Planning Act.

In addition, it would make some sense to have an overriding regulation that says, "prescribing any other matter ... referred to in this act as prescribed," other than matters that are already prescribed specifically. The matters that are referred to in paragraph 31 deal with matters that have otherwise been included in this particular section. So for example, section 70.2, as I recollect off the top of my head, I believe refers to development and permit system matters. It's to deal with matters other than those already addressed in those three areas. Simply put, you have a series of 30 paragraphs setting out specific authority, and paragraph 31 is the general authority with respect to any other areas that have been prescribed that haven't been picked up in the previous 30.

Mr. Hardeman: Then the first question is, this paragraph 31 does not give regulatory powers in areas that are not prescribed as giving the minister the authority to regulate that?

Mr. Shachter: If I understand the question, I agree. That's correct. The authority to prescribe would have to be contained previously in the act. It doesn't in and of itself give any other authority other than is contained already.

Mr. Hardeman: So it's more a catch-all, then, for if we missed one.

Mr. Shachter: That's correct.

Mr. Hardeman: But would it not be sufficient to deal with them all as one line?

Mr. Shachter: I have to tell you, I think I'm now outside of my area of expertise, because I believe that is a legislative drafting question. It deals with legislative convention. I don't know if it's appropriate, but I would defer to legislative counsel for that response.

Ms. Mifsud: I think what happened when this bill was first drafted was that they had very specific provisions. They went provision by provision, so they just built on that, you could say, referring to anything in this act as prescribed. I might add, though, the exclusions, other than matters that are on sections 70, 70.2 and 70.3, are there because those regs are made by cabinet. These here are ministerial regs, and so any time you see the word "prescribed," it means "prescribed by regulation by the minister."

Mr. Hardeman: I thank you very much for that. That's why I did point out that by taking out the word "matter"—because I realized that it would require the last part of that section to exclude those that weren't included. I was really wondering why we have to list 30 of them and then do the blanket coverage and say, "If we happen to miss one, "Maybe it should have been 32 and we missed two, so we'll put a catch-all in it." A catch-all would not have done it all.

1410

Ms. Mifsud: The catch-all, legally, would have done it all. As I say, I think we just built on existing things. Also, sometimes things are more important than others or we're afraid of something getting missed, so we put this catch-all so that you're not left with a reference to "as prescribed," and then there's no regulation-making power dealing with it. It really is just a precautionary thing.

Mr. Hardeman: Thank you. I'm just wondering—and I know the answer is going to be, "Well, it was already in the act, so it's in there again." I presume that's the answer, anyway. But I'm going to ask it anyway.

Number 25, "prescribing rules of procedure for committees of adjustment": It seems to me that if we're going

to give authority and power to a municipality that set up the committee of adjustment, then surely we would not be expecting the minister to dictate the rules and procedures of the committee that council has set up.

Mr. Shachter: If I could respond to that, that it's a matter more specific to the Planning Act than to the legislative drafting, you are correct. This is a matter that's currently in the act. It's been there, as I understand, for a period of time. I would suspect that the reason you would have that authority is to ensure that there is a minimum level of rules of practice and procedure, so you have administrative fairness built into the system, so there's a minimum level that's established that would apply to all committees of adjustment across the province no matter which municipality would set them up.

Mr. Hardeman: I guess this would be a comment to the government side: It would seem to me that if we're looking at changing the structure of how we deal with committee of adjustment decisions, as we are with the consent decisions, that can go to a local board, because we think they should stay very local. They shouldn't be a concern of the ministry or provincial policies. These are minor adjustments, minor variances and consent authorities that go to the local board. It would seem to me that if we're going to let the local people make the decision, we're going to let them appoint the board to hear their appeal, and we want to make sure we keep that board very local, it goes well beyond that premise by saying, "And the minister can set up the type of procedure they must use to come to the original decision."

Mr. Shachter: I don't argue with your concern. At the same time, I reiterate the comment that it's intended that at the very least there be a minimum level of administrative fairness contained in the system by the minister being able to prescribe rules of procedure. I'm not sure I've seen anything anywhere that really limits a municipality or committee of adjustment from introducing further rules in order to make sure that the committee of adjustment is responsive to the specific municipal circumstances.

Mr. Hardeman: The last question, if I might, Madam Chair, on that same issue: Are you aware that the minister has at the present time prescribed the rules and procedures used by any committee of adjustment? He's had the power to do it before. Has it ever been done?

Mr. Shachter: Off the top of my head, actually, I think it has. I just want to check. I stand to be corrected, but I seem to recollect vaguely that there are rules of procedure that apply to committees of adjustment. If not—I just want to make sure.

I've just had it clarified and I'm half right, as is many times the case. It turns out that notice provisions have been prescribed that would apply to committees of adjustment, but rules of procedure in and of themselves have not. So what that means is if you're the committee of adjustment, you've got to get certain notices prescribed, but in terms of how you actually set up your process, I guess you'd be subject to the procedures under the Municipal Act. The municipality would set up how you would have to operate, or could.

Mr. Hardeman: But this—

The Chair: Wasn't that your last question, Mr. Hardeman?

Mr. Hardeman: This section, as it's written, "prescribing rules of procedure for committees of adjustment," would not have any implication to notices given? That's not part of their procedure, is it?

Mr. Shachter: It would be my understanding that it would be part of their procedure, because when you're giving notice, remember, you're giving notice for the purposes of holding a hearing. So that would all be part of the process that a committee of adjustment would undertake.

Mr. Hardeman: Okay. Thank you.

The Chair: A recorded vote has been requested. This is on 97, committee.

Ayes

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

Shall section 25, as amended, carry? All those in favour? All those opposed? That's carried.

Section 26, no amendments. Shall section 26 carry? All those in favour? All those opposed? That's carried.

Section 27, Ms. MacLeod.

Ms. MacLeod: I move that subsection 70.5(3) of the Planning Act, as set out in section 27 of the bill, be struck out.

Simply put, we believe that this retroactivity clause doesn't need to be there. It shouldn't be there. It is not a level playing field, and it will be difficult to manage. I think it's fairly straightforward.

Mr. Prue: Just a question. I'm not sure whether it's to staff or to whoever is answering on behalf of the government. Why was the date of December 12, 2005, chosen?

Mr. Flynn: I believe that was the date of the introduction of the bill.

Mr. Prue: That's the date. Okay.

The Chair: Any further comments or questions?

Mr. Hardeman: The problem, of course, is retroactivity. Particularly in planning matters, I think there's a real problem with assuming that certain rules go into effect after the application has been made.

Again, talking in fairness, any planning application that was there after December 12 but has been dealt with will have been dealt with under the old rules. You can't go back and redo the approval, because the building is up in the sky now. Yet someone under exactly the same circumstances who applied exactly the same day is going to have to follow different rules because of this bill. To me, it's not natural justice that everyone isn't being treated the same. I think that's the reason why up until

now we have not as a society gone to retroactivity in planning matters. You go into those and implement them today if the law passes today and not before. So I strongly oppose retroactivity.

The Chair: Mr. Flynn.

Mr. Flynn: Just to be clear, some parts of the bill would be on a going-forward basis. Some of the regulations, as I understand it, would be retroactive, so the entire bill is not retroactive.

The Chair: Ms. MacLeod.

Ms. MacLeod: The problem is that we don't know exactly what the regulations are. To make a statement that the bill was introduced on December 12, 2005—in the last two days we've spent a good deal of time actually removing big portions of this piece of legislation and putting new portions in. I don't think that it would be fair to the development community or to anybody to be faced with retroactivity, with rules they didn't know at the time were going to exist, so I would respectfully request that the government side with myself and Mr. Hardeman on this issue.

The Chair: Can I remind committee that you're only speaking to the motion that's in front of you right now, it being struck out or kept in, and not going back to previous debates, either yesterday or today. Mr. Flynn.

Mr. Flynn: I don't think we've talked about that yet, and perhaps I wasn't clear. The bill is not retroactive.

The Chair: Thank you. No further comments? All those in favour of the motion?

Mr. Prue: A recorded vote, please.

Mr. Tony Ruprecht (Davenport): It's the amendment?

The Chair: Mr. Ruprecht, this is 98, which is the PC motion in front of you.

Ayes

Hardeman, MacLeod, Prue.

Nays

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

The Chair: That's failed.

The next PC motion, Mr. Hardeman.

Mr. Hardeman: The comments made by the member opposite that the bill is not retroactive—

The Chair: Mr. Hardeman, were you going to read the motion? That's the point we're at. We're not debating the last motion. We're at 99 now.

Mr. Hardeman: What's the—

The Chair: It's your motion. It's a PC motion. Ms. MacLeod?

Ms. MacLeod: I move that section 70.5 of the Planning Act, as set out in section 27 of the bill, be amended by adding the following subsections:

"Notice and comment period

"(7) A draft of any regulation proposed to be made under this section shall be posted on the website of the ministry on the Internet for at least 150 days before it is made and the public shall be invited to make comments on the regulation during that period."

The goal of this amendment is to eliminate the cover-of-night regulation changes that tend to occur and expire without any of the stakeholders being aware.

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The Chair: Comments or questions? Seeing none, all those in favour of the motion?

Ms. MacLeod: A recorded vote.

Ayes

Hardeman, MacLeod, Prue.

Nays

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

The Chair: That motion is lost.

Shall section 27 carry? All those in favour?

Mr. Hardeman: Debate on the section?

The Chair: We can have debate on this section. Mr. Hardeman, you have the floor.

Mr. Hardeman: It's going back to where I started earlier; I was just missing the amendment. The issue of retroactivity: The comment was made that the bill has no retroactivity in it, that the bill is not retroactive. Yet many of the things are retroactive, because of the implication that the rules that are in effect, the regulations and the policies that are in effect the day of the passing must be applied to every application approved after the bill receives royal assent. So in fact the planning process becomes retroactive because of the bill, and since this is the Planning Act, that makes the Planning Act retroactive. Maybe we can ask the legal branch if that's not true. You can say if it's not.

Mr. Shachter: No, no. If that was the case, I certainly would. The bill is not retroactive. That's the first thing—

Mr. Hardeman: But.

Mr. Shachter: Well, there's always the lawyer's "but."

The reason you might have a provision in a regulation to allow for transitional matters that speak to the first reading, or that speak to before the effective date of the bill, is to allow for the circumstances just as you've set out. You know the situation where somebody may get caught in the middle of the process, and because of the provisions, there's a possibility they may get treated differently. This bill doesn't speak back; it only speaks forward. But what you would want to have as an element of fairness, and this is my own point of view, are transition provisions to be able to say, for example, as was done in Bill 26, that if you had an application that was started prior to the effective date of the bill, whenever that date is, then you want to have a regulation that can reach back and say, "Yes, this is how you'll be treated." Without being able to look back and have a transition regulation, you can't do that, you can't give

those applications a bye from the provisions of the act, to use the vernacular. Does that clarify the distinction between retroactive and the use of the transition regulation?

Mr. Hardeman: Yes, it clarifies it, and I appreciate that. But the part of the bill that says that the criteria in place at the time, the policy in place at the time of the application approval, is the policy that applies to the application, is that not retroactivity because in fact that wasn't the policy in place at the time the application went in, and it does become the policy on which the decision is going to be made?

Mr. Shachter: I apologize, because I'm not sure I understand the first part of your question. Can you restate it?

Mr. Hardeman: The act says that the policy in place at the time of the approval is the policy that applies, right?

Mr. Shachter: You mean at the time that the decision is made.

Mr. Hardeman: Yes.

Mr. Shachter: I apologize. Yes, absolutely.

Mr. Hardeman: So if that wasn't the policy in place at the time of the application, doesn't that imply retroactivity?

Mr. Shachter: No. It affects rights towards the future, but it doesn't reach back and necessarily change anything. The application that you have is still the application that you continue to carry through. The planning regime that applies to that application has now changed. It now says that instead of, for example, looking at the date your application was made, which, as you've probably heard, the board has done in a number of decisions, you're going to be looking at the date of the decision. What has happened fairly often in the past is that you have transition regulations that speak to those particular matters. For example, it says that if you have had an application in place since prior to the effective date of the legislation, this is how you'll be treated, so that it can take into account the future application of planning regimes as against existing applications. But that, to my understanding, is not retroactivity.

Mr. Hardeman: We put two applications in on December 12. One was approved on January 12. With the other one, the municipality said they didn't have sufficient information, and it has not yet been approved. It now is going to be approved under different rules and different criteria than the one that was approved. They were both put in at the same time, so if they're dealt with using different rules, doesn't that make those rules retroactive?

Mr. Shachter: Not necessarily retroactive, but it might be a reason why, if you were in a position to do so, you might want to have a regulation in place that would provide for a transition of that particular application. For example, as a matter of fairness you might say, "Yes, we want all of the applications started before a certain date to be treated all in the same way." That's how you deal with the two different circumstances occurring.

Mr. Hardeman: Thank you.

The Chair: Mr. Ruprecht.

Mr. Ruprecht: My question is for legal counsel. Is it not true that the transition regulation could be—

The Chair: Mr. Ruprecht, could you speak a little closer to the mike, please.

Mr. Ruprecht: Could the transition regulation be retroactive, or is it only forward-looking, or could it be both?

Mr. Shachter: The transition regulation can speak back to the date of first reading. So it can speak back to a date before the date that the legislation came into effect without—

Mr. Ruprecht: Excuse me. "Speak back": What does that mean? Does it apply? Is that what you mean?

Mr. Shachter: Yes.

Mr. Ruprecht: "Speak back" means "applies."

Mr. Shachter: That's correct. A regulation could apply to those matters where an application has been commenced before the effective date of the legislation.

The Chair: No further questions or comments on this section? Shall it carry?

Ms. MacLeod: A recorded vote.

The Chair: A recorded vote has been requested on section 27.

Ayes

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

Nays

Hardeman, MacLeod, Prue.

The Chair: It's carried.

There are no amendments on section 28. Shall section 28 carry? All those in favour? All those opposed? That's carried.

We're on section 29, government motion 100.

Mr. Lalonde: I move that subsection 3(6.2) of the Conservation Land Act, as set out in subsection 29(2) of the bill, be struck out.

The Chair: Any comments or questions?

Mr. Prue: Why?

Mr. Flynn: It was felt that the proposed requirement that any demolition—and that's emphasis on "any demolition"—or construction of a building to require the consent of the easement holder would likely discourage the granting of easements in the first place. It was also felt that there is a proposed electronic registry that should be able to accommodate this requirement through simple inquiries as data queries. This was just felt to be an onerous requirement that was not necessary.

The Chair: Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Prue.

Mr. Prue: I move that clause 3(11)(d) of the Conservation Land Act, as set out in subsection 29(3) of the bill, be struck out and the following substituted:

"(d) providing for and respecting one consolidated registry of easements and covenants under this act, the Agricultural Research Institute of Ontario Act and the Ontario Heritage Act."

The rationale for this: There were three deputants who came forward from three specific sources requesting that this be done. The one who comes to mind best was a gentleman from Peterborough who was talking about trying to amass land for conservation and how he would go to various farmers' groups, try to get the land available and then have a covenant with them so that it could be used for other purposes.

Over the past week, I had an opportunity to read a very excellent article—I think it was in the Star but it could have been in the Globe and Mail—

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Mr. Hardeman: Do you read the Star?

Mr. Prue: I read it every day. There was an excellent article about land being amassed in eastern Ontario by Ducks Unlimited and how they had convinced a farmer to return some of the land to its natural marshy state instead of trying to drain it, and how the farmer's revenues had actually gone up since he had agreed to this, because he learned to live with the land rather than trying to control it.

It seems to me that if we look at the conservation of some of our wetlands, some of the marsh properties and others that these groups are trying to do, making it easier for them to do so by consolidating it all under one registry of easements would be a good thing. As I said, we had three groups, but the man who I think made the most cogent argument came from Peterborough. Sorry, I meant to bring in part of his statement but I did not do so. But I think most of you will remember his deputation.

The Chair: It was the Toronto Star.

Mr. Prue: Okay, there you go.

Mr. Hardeman: A question to the mover: If I look at the act and the amendment that's proposed, the act presently says "one or more registries of easements and covenants under this act," and the only difference is that you're just naming the other two—

Mr. Prue: No, I'm suggesting that there be one consolidated registry, not one or more; that they all be brought together under one consolidated registry, so you don't have to run around and go to the agricultural institute or to the Ontario Heritage Act or to what other places where you now have to register it. It makes it onerous and time-consuming, particularly for groups who are trying to save wetlands in Ontario. As I said, we had three deputations on this. It seems to be very simple to have one consolidated registry of easements.

Ms. MacLeod: Could I ask the legal counsel to say how simple this is. Additionally, what would be the impact—which we don't have—to private property or land rights protection?

Mr. Shachter: I actually have the happy task of a colleague from legal services branch from the Ministry of Natural Resources who can speak to this matter, Krystine Linttell.

The Chair: Who just happens to be here. How helpful.

Ms. Krystine Linttell: I'm sorry, could you repeat your question? Are you asking about the impact of a registry on—

Ms. MacLeod: My two questions are essentially, how simple is this, because my colleague has just indicated that this should be simple. That's one: How simple is his motion? The other issue I have is, what does this do for land rights protection and property rights, or the lack thereof, for rural landowners?

Ms. Linttell: To address your first question, in terms of how simple it is to provide for the consolidation of registries, right now we're at a very initial stage of even turning our minds to what the registry will look like. We haven't moved to that step yet in terms of design. My understanding, though, is that there is nothing to preclude the consolidation administratively of registries in an electronic form regardless, once you've made the preliminary step. I don't profess to know anything about technology, but a consolidation is something that—you'd be looking at a website electronic registry. That's the information I've been provided.

Your second question, in terms of how this will serve to protect—

Ms. MacLeod: No. In fact, what concerns me about this is that in my riding I have a very large agricultural and rural land base, and while sometimes it might be easy to say in theory, when you're in Toronto, that this looks like it will simplify, I don't know how I could go back and say I've supported this without consulting the landowners in Nepean-Carleton and the rest of the city of Ottawa, without knowing what the practical implications of this would be and without their—what would this do to land rights and private property rights?

Ms. Linttell: It wouldn't affect it.

Ms. MacLeod: It wouldn't affect it?

Ms. Linttell: Again, are you talking about the registry or are you talking about the legislation?

Ms. MacLeod: The registry and the legislation. I'm asking you, will it do anything to private property rights or land rights?

Ms. Linttell: Nothing can be done without the consent of the owner. So, basically, no, it won't affect it in that manner. It has to be completely voluntary.

Ms. MacLeod: Okay, thank you.

The Chair: Mr. Hardeman?

Mr. Hardeman: A question to the legal branch. We're a roomful of lawyers, so it can be anyone.

The Chair: Whoever has the shortest answer is my pick.

Mr. Hardeman: In order to combine the registries, do we have the legal ability to do that in this bill, to tell another ministry that they should have their registry consolidated with the municipal affairs registry?

Ms. Linttell: It wouldn't be a municipal affairs registry. Technically, a statute can mandate anything, in-

cluding cross-referencing or having a provision that impacts another statute. It's not a terrific idea, because it makes it more difficult to search and ascertain what the applicable law is. But technically, yes.

Mr. Hardeman: I've been told a number of times that there are certain things one can't do when generating new legislation if it opens up other legislation that isn't opened up at the present time. Do we have the ability through this act to go into the act that sets up the Agricultural Research Institute of Ontario and tell them that their registry has to be put in with someone else's?

Ms. Linttell: Again, yes, you can. Whether it's a good idea to do that without their complete buy-in is a different story.

The Chair: No more questions that I can see.

Ms. MacLeod: A recorded vote, please.

Ayes

Prue.

Nays

Brownell, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Ruprecht.

The Chair: That's failed. Shall section 29, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 30, 31 and 32. Shall they carry? All those in favour? All those opposed? That's carried.

We're at section 33, a government motion. Mr. Brownell.

Mr. Brownell: I move that the bill be amended by striking out subsection 33(2).

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That carries.

Next motion, Mr. Rinaldi.

Mr. Rinaldi: I move that the bill be amended by striking out subsection 33(3).

The Chair: Comments or questions? Seeing none, all—sorry, Mr. Prue. Did you say something?

Interjection.

The Chair: It's 103.

Mr. Flynn: It's the same as the preceding motion. The existing provisions of the Municipal Act are deemed to be sufficient to protect these easements and there's no need to specifically cross-reference statutes under which easements may be granted.

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 33, as amended, carry? All those in favour? All those opposed? That's carried.

We're in part III. Sections 34, 35 and 36 have no changes. Shall they carry? All in favour? All opposed? That's carried.

We're in section 37, the short title. Shall section 37 carry? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed?

Interjection.

The Chair: They're afraid to put their hands up now. That's carried.

Shall Bill 51, as amended, carry? All those in favour?

Mr. Prue: A recorded vote, please.

Ayes

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

Shall I report the bill, as amended, to the House? All in favour? All opposed? That's carried.

This concludes the committee's consideration of Bill 51. I'd like to thank all the colleagues on the committee for their hard work on the bill, especially when I wasn't around. I appreciate it. I'd like to thank the committee, ministry staff and members of the public.

Yes, Mr. Lalonde.

Mr. Lalonde: I'd like to say that we just completed the clause-by-clause of one of the most important pieces of legislation, and of the 103 amendments that were submitted by the three parties, 66 were submitted by the government. It shows that the government has been consulting and we have been listening to the people, and I'm glad that we have done that.

The Chair: Thank you, Mr. Lalonde.

Mr. Prue: Having said that, I must point out—

The Chair: Mr. Lalonde, you've opened a can of worms.

Mr. Prue: —that of the 40 submitted by the opposition, the government saw fit not to pass a single one, and you didn't listen to anything we had to say.

The Chair: Thank you. Mr. Hardeman?

Mr. Hardeman: Madam Chair, I do want to commend the Chair for a job well done. Yesterday, as great as the Chair was, there was some concern on behalf of the government members that we would not finish the clause-by-clause in two days, and here we are only halfway through the second day and we're finished. So that's obviously the stern hand of the Chair.

The Chair: That's because of the good work of Mr. Brownell. I'm absolutely certain of that.

Mr. Hardeman: I do want to comment just quickly on the comments made by the government member concerning how well the government had listened to and acted on what they heard at the committee hearings. I want to point out that—and I did it during one of the debates this morning—I don't believe I have in my 11 years at Queen's Park ever been involved in a process

where as many complete sections were removed and replaced by something completely different, up to and including the point that I don't believe that you could take the act that we started with yesterday morning and make anyone realize that it's the same act that we finished with today. So as much as we've had public consultations, I believe in the next six months we're going to hear from and see a lot of people who say, "Yes, but the bill we consulted on is not the bill the government passed." Are we sure that all the people who were involved appreciate that the changes were made because of what they said, or the changes were made because the government realized that in the first case they had done it wrong and they have completely rewritten the bill without any public consultations?

With that, thank you very much for indulging my prolonged yammering about the issues in the bill.

The Chair: Thank you so much, committee. We stand adjourned.

The committee adjourned at 1441.

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