Ontario Home Builders' Association

Smart Growth for Our Communities Act

Proposed Bill 73

EBR Registry Number: **012-3651**

BILD
Bluewater
Brantford
Chatham-Kent
Cornwall
Greater Dufferin
Durham Region
Grey-Bruce
Guelph & District
Haldimand-Norfolk
Haliburton County
Hamilton-Halton
Kingston-Frontenac
Lanark-Leeds
London
Niagara
North Bay & District
Greater Ottawa
Oxford County
Peterborough & the Kawarthas
Quinte
Renfrew
Sarnia-Lambton
Saugeen County
Simcoe County
St. Thomas-Elgin
Stratford & Area
Sudbury & District
Thunder Bay
Waterloo Region
Windsor Essex

Submitted to: **Hon Ted McMeekin**
Minister of Municipal Affairs and Housing
June 3, 2015

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About OHBA

The Ontario Home Builders' Association (OHBA) is the voice of the land development, new housing and professional renovation industries in Ontario. OHBA represents over 4,000 member companies, organized through a network of 31 local associations across the province. Our membership is made up of all disciplines involved in land development and residential construction including: builders, professional renovators, trade contractors, manufacturers, consultants and suppliers. Our members have built over 700,000 homes in the last ten years in over 500 Ontario communities. The residential construction industry employed over 313,000 people and contributed over $44 billion to the province's economy in 2013.

OHBA is committed to improving new housing affordability and choice for Ontario's new home purchasers and renovation consumers by positively impacting provincial legislation, regulation and policy that affect the industry. Our comprehensive examination of issues and recommendations are guided by the recognition that choice and affordability must be balanced with broader social, economic and environmental issues.

Background

On March 5, 2015 the Minister of Municipal Affairs and Housing, the Honourable Ted McMeekin, announced new legislation in response to the co-ordinated public consultations on Ontario's Land-Use Planning and Appeals System as well as the Development Charges Act, Parkland Dedication policies and Section 37. The proposed *Smart Growth for our Communities Act*, *Bill 73* marks the next step in a long consultation process than began in 2013. The proposed legislation was posted to the Environmental Registry (EBR**:** 012-3651) for a 90-day period and amends the *Development Charges Act* and the *Planning Act*:

Planning Act

Based on the number of recommendations received from various partners and stakeholders, the government is proposing a number of changes to the *Planning Act*. The Environmental Registry highlights the following aims of the proposed changes:

- Allow for more effective citizen engagement in the planning process;
- Provide more stability for municipal planning documents and increase municipal accountability;
- Strengthen the protection of provincial interests;
- Encourage more up-front planning; and
- Provide enhanced tools at the local level.

More specifically, the Bill, if passed, would make numerous amendments to the *Planning Act*, including:

- Expand the potential use of alternative notification and consultation processes for additional matters;
- Requiring municipalities to include public consultation policies in their Official Plans;
- Require citizen members on planning advisory committees across Ontario, and require planning advisory committees in single-tier and upper-tier municipalities in Southern Ontario (except the Township of Pelee);

- Require local planning authorities to provide an explanation of how they considered citizen input in their notices of decision;
- Enhance the Ontario Municipal Board's obligation to consider citizen input when making decisions;
- Extend municipal official plan update cycles from 5 to 10 years, after a new, comprehensive Official Plan;
- Provide Province with documents earlier to review municipal Official Plans/Official Plan amendments, when those documents are not exempt from provincial approval;
- Allow for suspension of timelines for triggering appeals of Official Plans/Official Plan amendments for up to 90 days to work out issues, including citizen concerns, where agreeable to approval authority and the initiator (i.e. applicant or adopting municipality);
- Remove ability to apply for amendments to an Official Plan for 2 years after new, comprehensive Official Plan comes into effect;
- Remove ability to apply for amendments to a Zoning By-Law for 2 years after comprehensive Zoning By-Law update;
- Provide authority to remove ability to apply for amendments for 5 years after the establishment of a Development Permit System;
- Remove the requirement to revise employment land policies at time of an official plan update;
- Remove remaining ability to appeal second unit policies in Official Plans;
- Remove ability to appeal Official Plans/Official Plan amendments that implement certain provincially approved matters (e.g. source water protection boundaries);
- Remove the ability for one appellant to appeal the entirety of a new Official Plan;
- Establish more rigour in the requirements to make an appeal;
- Modify the maximum alternative parkland dedication rate when giving cash-in-lieu;
- Require municipalities to develop parks plans if they wish to establish the alternative parkland dedication rate and to work with school boards in developing such plans;
- Enable the use of the "Community Planning Permit System" as an alternative name for the system of land-use control, currently known as the Development Permit System;
- Providing authority for the Minister and upper-tier municipalities to require a local municipality to establish a Community Planning Permit System for purposes specified in regulation;
- Allow decision-makers to require a 60-day period for Alternative Dispute Resolution after an appeal is made; and
- Limit minor variance applications for two years after a zoning amendment passed in response to a privately-initiated application; and
- Provide the ability to make a regulation that would clarify what constitutes a minor variance.

Development Charges Act, 1997

As part of the proposed Bill 73, the government is proposing a set of reforms to Ontario's development charges system that, according to the Environmental Registry posting, "seeks to balance municipal and development interests." If passed, the proposed reforms would, among other matters:

- Enhance funding for municipal transit systems;
- Enhance transparency and accountability regarding payment of development charges and additional fees;
- Identify any services which are ineligible for collection of development charges through regulation;
- Require municipalities to examine the application of varying development charges within different areas of a municipality;
- Enhance municipal development charges reporting requirements.

Revisions to the *Development Charges Act, 1997* are proposed to provide increased revenue for municipalities for growth-related infrastructure (e.g. transit and waste management) and to create increased transparency and

accountability regarding the collection and reporting of development charges. The amendments that the Bill proposes to the *Development Charges Act, 1997* as listed on the Environmental Registry include:

A. Proposed changes to provide increased funding for growth-related infrastructure through:

- Removing the mandatory 10 per cent discount required when levying a charge for transit services;
- Creating authority to identify services for which an alternative service level calculation would replace the historic 10-year average service level; and
- Creating authority to identify ineligible services exclusively through regulation.

B. Proposed changes to enhance transparency and accountability through:

- Requiring municipalities to reflect capital projects funded through development charges in a detailed report;
- Requiring municipalities to prepare annual detailed reporting the use of parkland dedication and density bonusing fees;
- Linking development charges to municipal asset management planning;
- Requiring development charges to be set as of the date an initial building permit is issued for buildings requiring multiple permits; and
- Restricting payments outside the development charges regime for the capital costs associated with servicing new development, and as a related matter:
  a) Requiring municipal treasurers to certify that no payments have been received that are in contravention of this restriction;
  b) Creating authority for the Minister of Municipal Affairs and Housing to investigate a municipality in relation to its compliance with the Act; and
  c) Creating authority for the Minister of Municipal Affairs and Housing to require a municipality to pay for the cost of a compliance investigation.

In addition to the proposed legislative changes in Bill 73, the Ministry of Municipal Affairs and Housing has established a stakeholder working group to provide advice on implementing the community planning permit system. This group would also provide recommendations on what makes up a minor variance and when local appeal bodies could be used for land-use planning issues. The Ministry of Municipal Affairs and Housing has also established a Development Charges Steering Committee and a number of technical sub-committees to consider regulations to implement various aspects of the Development Charges Act. OHBA and BILD are represented on the various technical committees to provide advice to the Minstry.

Introduction

The proposed *Smart Growth for our Communities Act* marks the next step in a long consultation process than began with an announcement by (at the time) Hon. Linda Jeffrey, Minister of Municipal Affairs and Housing at the AMO conference in August, 2013. The proposed legislation is an important piece of the puzzle to create a complete picture of how Ontario will grow in the future. OHBA is broadly supportive of the need for accessible, transparent and responsive tools in the *Planning Act* and the *Development Charges Act*. All Ontarians should be able to count on a planning and development charges system that is accountable, fair and predictable.

The OHBA submissions to the consultations in 2014 primary recommendations were to increase municipal accountability and transparency. The Provincial Government has responded by proposing measures to enhance

municipal accountability and transparency with respect to municipal reporting requirements for Development Charges, as well as Section 37 (density bonusing) funds and Parkland Dedication funds through proposed amendments to the *Planning Act*. There would also be more stringent reporting and greater oversight of any funds or municipal charges on new developments that fall outside what is allowed in current legislation. Furthermore, OHBA is supportive of proposed legislative changes to a long-standing concern that the current out-of-date formula for calculating cash-in-lieu of parkland dedication needs to be modernized to support intensification and enhance the affordability of mid-rise and high-rise residential projects. These are clear improvements to the *Planning Act* and *Development Charges Act* that OHBA supports.

OHBA is, however, concerned that some of the proposed legislative amendments will increase taxation on transit oriented development and limit *Planning Act* appeal rights. OHBA is concerned that the proposed two-year moratorium on certain planning applications following the adoption of a "new" Official Plan or comprehensive Zoning By-Law could result in a flood of appeals at the time of enactment. OHBA is also concerned that the proposed two-year moratorium on minor variance application following an owner-initiated Zoning By-Law amendment would create uncertainty, remove a proponents rights to make even minor adjustments, and essentially require the detailed preparation of construction blueprints during the application stage. This is not practical because inches actually matter to ensure compliance with municipal Zoning By-Laws. These proposals attempt to add certainty to the process for all stakeholders, yet will likley lead to more delays and appeals (thus uncertainty) while being unpractical to implement.

OHBA is also concerned that the *Smart Growth For Our Communities Act* proposes to increase taxation on transit-oriented development and make complete communities less affordable for new neighbours and new employers. It is critical that the province not undermine its own smart growth planning objectives through a misalignment of tax/fiscal policy. OHBA notes that location-efficient communities are already generally less affordable for people to purchase or rent housing. It is important that the province consider affordability as a public policy objective to ensure our communities make the best use of key infrastructure and align tax/fiscal policy with planning policy. OHBA notes that financial considerations have created in some cases perverse incentives to down-zone properties and in some cases municipalities have even considered addition intensification development charges. The province must take pro-active steps to ensure fiscal policy and land-use planning policy better align to achieve provincial policy goals and objectives.

In 2013, the Metrolinx Investment Strategy included a proposal to create a new development charge to support their transit expansion plans. Instead of making transit-oriented communities more affordable to attract the necessary population and employment to support the long-term viability of transit operations, these transit taxes would have only served to undermine the affordability of new transit-oriented communities. Fortunately, the government recognized that additional Metrolinx development charges would not support provincial plans. It is however becoming more common to see governments and government agencies undermine affordability in their drive for short-term revenue, instead of supporting, long-term community-building objectives, by ensuring that we are building transit-oriented homes and employment centres that people can afford.

OHBA is concerned that the current debate on the proposed *Smart Growth For Our Communities Act* continues to be focused on how municipalities can generate more new neighbour taxes (charges, levies, fees) instead of achieving smart growth objectives. OHBA continues to advocate for fairness and transparency for new neighbours, and **Bill 73 cannot result in a further piling on of taxes on the backs of future new home purchasers and employers**. As Etobicoke-Lakeshore MPP Peter Milczyn articulated during a debate on development charges on June 23, 2013 when he was a Toronto City Councilor and Chair of the city's Planning and Growth Management Committee, "what many people assume is the developers pay. Well, the reality is purchasers pay." The Government of Ontario has a responsibility to ensure that the Provincial Policy Statement and Provincial Plans

are not undermined by taxation and financial burdens. Transit-oriented communities should be the most affordable and attractive communities for Ontario's future residents and employers.

The newly proposed legislation comes at the same time as the Provincial Government is consulting on the Co-ordinated Review of the Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Niagara Escarpment Plan and Growth Plan for the Greater Golden Horseshoe. Through our recommendations to both the Bill 73 and the Co-ordinated Review consultation, OHBA is connecting all the dots to ensure public policy is appropriately implemented and aligned. OHBA notes that the proposed legislation regarding both the *Planning Act* and *Development Charges Act* is an important component of the broader land-use planning and infrastructure financing framework. It is therefore critical that the Provincial Government, through a multi-ministry approach, also ensure that all the dots are connected, not only between the Co-ordinated Reviews and the proposed Bill 73, but also many other provincial initiatives including, but not limited to: the Provincial Policy Statement, the concurrent climate change consultation, the upcoming ten-year review of the Metrolinx *Big Move*, the Environmental Assessment for the GTA West Corridor and the Long-Term Affordable Housing Strategy, etc. Furthermore, it is important to note that Bill 73 is applicable province-wide and it is therefore important for the Ministry to consider implications for varying sizes, circumstances, characteristics, resources and procedures of differing urban and rural municipal governing bodies. As the Minister of Municipal Affairs and Housing stated in the Legislature during Second Reading of Bill 73 on April 21st, "**To manage growth, we had to put all their pieces together and build the framework.**" It is important that the Minister's words are taken seriously and that all the pieces to the puzzle do, in fact, fit and work together.

OHBA Internal Consultation Process – Planning and DC Consultation

The proposed *Smart Growth for our Communities Act* marks the next step in a long consultation process that began with an announcement at the AMO conference in August 2013. Following the announcement, OHBA formed two committees to consult with our local associations and membership during the Ministry consultation process and submitted two comprehensive reports responding to the *Land-Use Planning and Appeals System* as well as the *Development Charges System* consultations as well as detailed appendices citing numerous examples and reports in early 2014 (available at www.ohba.ca).

In an effort to prepare a comprehensive response to the *Land-Use Planning and Appeals System* and the *Development Charges System* consultations, OHBA solicited the feedback of its local associations. Several meetings took place over the course of the consultation period in 2013 to obtain the feedback that is consolidated in our two January 2014 submissions (available at www.ohba.ca), including:

- September 24th - **OHBA** Annual Conference (Niagara Falls) – Fighting for Affordability and Fairness;
- November 8th - **BILD** Land Council meeting;
- November 18th - **Waterloo Region Home Builders' Association** consultation meeting;
- November 19th - **Hamilton-Halton Home Builders' Association** consultation meeting;
- November 29th - **London Home Builders' Association** consultation meeting;
- December 9th - **Greater Ottawa Home Builders' Association** consultation meeting;
- December 12th - **OHBA/BILD** Consultation Steering Committee meeting;
- December 16th - **OHBA/BILD** Consultation Steering Committee meeting.

In addition to these association meetings, a number of working group meetings were held with industry representatives on specific policy themes.

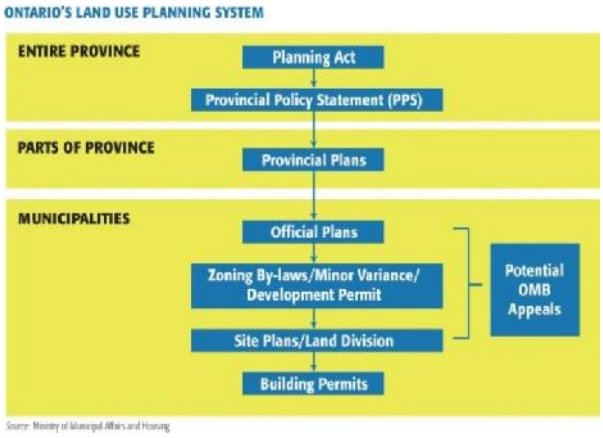
OHBA is grateful for the assistance of Leith Moore and Neil Rodgers, Co-Chairs of the OHBA Committee for the *Land-Use Planning and Appeal System* consultation as well as Lyn Townsend, Chair of the OHBA Committee for the *Development Charges* consultation. OHBA would also like to thank BILD, Hamilton-Halton HBA, London HBA, Greater Ottawa HBA, and the Waterloo Region HBA for hosting industry consultation meetings. Furthermore, OHBA would like to thank the numerous members from across Ontario who shared their extensive knowledge and expertise, and submitted invaluable comments in support of these reports. The Chairs also reached out directly to members across Ontario to solicit comments and recommendations. Lastly, OHBA would also like to thank the BILD Executive and staff for their substantial contributions to the writing and research in support of the two submissions to the government in 2014.

In 2015, since the proposed legislation was formally tabled, OHBA has re-engaged our committee chairs, our broader membership and our network of 31 local home builders' associations across Ontario to solicit feedback on the proposed legislative amendments. The Ministry of Municipal Affairs and Housing also hosted a technical briefing in conjunction with the OHBA Land Development Committee and BILD Land Council on May 4th, which provided an important opportunity for industry input that is reflected in this submission.

Ontario's Current Planning Framework

Ontario's land-use planning framework is critical in supporting provincial goals for healthy, sustainable communities. The responsibility for land-use planning in Ontario is split between the province and municipalities: the province sets the rules and direction for land-use planning; and municipalities are the primary implementers of the policy framework. The *Planning Act* provides the legislative framework for land-use planning in Ontario working together with the *Provincial Policy Statement* (PPS), provincial plans and other legislation.

Implementation of the PPS is set out through the *Planning Act*, which requires that decisions on land-use planning matters made by municipalities, the province, the Ontario Municipal Board (OMB) and other decision-makers "shall be consistent with" the PPS and provincial plans. Municipalities are tasked with implementing the PPS through policies in their Official Plans and through decisions on other planning matters. Ensuring a strong land-use planning framework that properly aligns municipal planning implementation documents to provincial policy will be critical in the province's efforts to promote intensification, protect the environment and to mitigate climate change.



Recent Reforms to Ontario's Planning and Infrastructure Framework

Since 2001, Ontario's land-use planning framework has evolved significantly and, consequentially, the land development and new housing industry has undergone a fundamental paradigm shift. The legislation, Provincial

Plans and policy, introduced since 2001, with direct impact on the land development, new housing and the professional renovation industry are as follows:

- *Made in Ontario Smart Growth (2001)*
- *Oak Ridges Moraine Protection Act (2001)*
- *The Brownfields Statute Law Amendment Act (*2001)
- *Strong Communities (Planning Amendment) Act, Bill 26 (2004)*
- *Greenbelt Act & Greenbelt Plan (2005)*
- *Provincial Policy Statement (2005)*
- *Planning and Conservation Land Statute Law Amendment Act, Bill 51 (2006)*
- *Places to Grow Act & The Growth Plan for the Greater Golden Horseshoe (2006)*
- *Endangered Species Act (2007)*
- *Metrolinx Act (2006) & The Big Move Regional Transportation Plan (2008)*
- *Lake Simcoe Protection Plan (2009)*
- *Growth Plan for Northern Ontario (2011)*
- *Strong Communities Through Affordable Housing Act (*Schedule 2*) (2011)*
- *Transit Supportive Guidelines (2012)*
- *Growth Plan Amendment 1 (2012) & Growth Plan Amendment 2 (2013)*
- *Greenbelt Amendment 1 (2013)*
- *New Provincial Policy Statement (2014)*

Currently, and in the immediate future, a number of other land-use planning related reforms and reviews are anticipated:

- *Smart Growth for Ontario Communities Act, Bill 73 (2015)*
- *Co-ordinated Review: Growth Plan / Greenbelt / Oak Ridges Moraine / Niagara Escarpment Plan (2015)*
- *Big Move, Regional Transportation Plan Review (2016)*

OHBA is supportive of the provincial leadership role within the planning framework, but remains concerned that many municipalities continue to have outdated Official Plans and Zoning By-Laws in effect that do not conform to Provincial Plans or the new Provincial Policy Statement. The province's lack of oversight in ensuring the planning system is functioning properly and up to modern standards requires immediate attention.

Improving Ontario's Planning Framework

OHBA is supportive of provincial policy objectives to support a diversity of housing and to support higher levels of intensification. OHBA contends that a land-use planning policy disconnect has emerged between the province and many municipalities. This disconnect between provincial policy and municipal planning implementation tools threatens the successful implementation of the *Provincial Policy Statement* and Provincial Plans. The disconnect manifests itself in increasing costs for new residents and businesses, longer and uncertain approvals processes, local decisions that do not align with provincial policy and challenges to housing affordability.

Closing the gap and ensuring a better alignment between provincial land-use planning policy and municipal planning implementation tools were major themes within OHBA's Land-use Planning and Appeals System submission to the Ministry of Municipal Affairs and Housing in 2014 and was also a key recommendation to this

consultation and the Ministry of Municipal Affairs and Housing's Co-ordinated Review Consultation (EBR: 012-3256). OHBA recognizes that the provincial government has made a number of important steps towards streamlining and facilitating intensification, however, the province must provide stronger leadership to better align provincial and local municipal public policy, ensure fiscal/tax policy supports planning policy, recognize differences between urban and rural municipalities, and improve planning certainty to support investment and economic growth.

A disconnect between many municipalities' local planning implementation policies and provincial infrastructure financing plans has emerged over the past decade as the province has made significant reforms to provincial policy. OHBA has consistently advocated for better alignment of public policy through resolutions passed at our AMM and at a number of significant provincial consultations over the past few years, including: review of aspects or amendments to the *Growth Plan for the Greater Golden Horseshoe*, the implementation of the Metrolinx *Big Move*, the review of the *Provincial Policy Statement* and the consultations on the *Land-Use Planning and Appeals System* as well as the *Development Charges System* review. It is critical that the province not undermine its own planning objectives through a misalignment of tax/fiscal policy that increases taxation in the very communities in which the PPS and Provincial Plans (if applicable) are trying to direct growth. The province must also take a much more pro-active and assertive role to ensure municipal Official Plans and Zoning By-Laws are consistent with, and conform to, provincial planning policy as required by the *Planning Act* and/or Provincial Plans where applicable. The opportunity to better align the entire planning framework should be seized upon to ensure that provincial policy is effectively implemented at the local level.

Planning Act

The province leads the land-use planning system through legislation, regulation, policy and plans which are implemented primarily by municipalities through their planning documents. The *Planning Act* sets out the ground rules for land-use planning in Ontario. It defines the approach to planning and assigns, or provides for, roles and responsibilities for decision-makers and applicants. It also sets out consultation and public engagement requirements. It is the legislative basis for processes (e.g. Official Plans, Zoning By-Laws, creation of new lots by consent and plan of subdivision) central to the exercise of land-use planning. In addition, it provides municipal planning tools such as site plan control, community improvement plans, development permit system, etc.

As noted in the previous section, Ontario's planning system has changed significantly in the last 10-years. In 2004 and 2007, the *Planning Act* was the subject of major reforms. These reforms, combined with a new *Provincial Policy Statement* and the establishment of a number of provincial land-use plans (e.g. Greenbelt Plan, Growth Plan for the Greater Golden Horseshoe, etc.) have resulted in significant changes to the planning system.

In fall 2013, the government undertook a review of the *Land-Use Planning and Appeal System* to determine if it was responsive to the changing needs of Ontario's communities. The formal consultation period concluded on January 10, 2014 and the OHBA submission is available at www.ohba.ca. The following section represents OHBA's specific comments and recommendations with respect to specific proposed amendments to the *Planning Act* contained in the *Smart Growth For Our Communities Act.* Furthermore, OHBA is pleased to be represented on the Ministry of Municipal Affairs and Housing's *Planning Act* working committee by Douglas Stewart.

Section 2.1 currently requires approval authorities and the Ontario Municipal Board, when they make decisions relating to planning matters, to "have regard to" decisions of municipal councils and approval authorities relating to the same planning matter, and to any supporting information and material they considered in making those decisions. The section is rewritten to impose a similar requirement when the Ontario Municipal Board deals with appeals resulting from the failure of a municipal council or approval authority to make a decision: the Board is required to "have regard to" the information and material that the municipal council or approval authority received in relation to the matter. Subsection 2.1 (3) clarifies that references to "information and material" include written and oral submissions from the public relating to the planning matter.

OHBA Recommendation:

OHBA does not have an established position on this matter.

OHBA Comments *and Rationale:*

Section 2.1 of the Act is expanded so that when the OMB deals with appeals resulting from the failure of a municipal council or approval authority to make a decision, the Board is required to "have regard to" the information and material that the municipal council or approval authority received in relation to the matter. The amendment clarifies that references to information and material include written and oral submissions relating to the planning matter. Currently, the *Planning Act* requires the Board to only "have regard to" supporting information in the context of a decision made by an approval authority.

Policy statements under subsection 3 (1) are to be reviewed at 10-year rather than five-year intervals (subsection 3 (10)).

OHBA Recommendation:

OHBA supported extending the five-year review of the PPS to a 10-year review period in our November, 2012 PPS submission to the province.

OHBA Comments and Rationale:

Policy statements (i.e. *Provincial Policy Statement*) are to be reviewed at 10-year rather than five-year intervals. The most recent version of the PPS was issued in 2014, and OHBA supported extending the five-year review to a 10-year review cycle during consultations on the most recent update to the PPS.

Section 8, which currently makes planning advisory committees optional for all municipalities, is rewritten to make them mandatory for upper-tier municipalities and for single-tier municipalities in southern Ontario (except the Township of Pelee). All planning advisory committees are required to have at least one member who is neither a councilor nor a municipal employee.

OHBA Recommendation:

OHBA would be opposed to planning advisory committees acting as a "governance body" or "approval authority". OHBA does not have an established position on planning advisory committees as proposed in the legislation.

OHBA Comments and Rationale:

Currently the council of a municipality may appoint a planning advisory committee (optional). The Act is rewritten

to make them mandatory for upper-tier municipalities and single-tier municipalities in Southern Ontario. The Act will continue to give northern municipalities flexibility to meet their local circumstances by allowing planning advisory committees at their discretion. OHBA notes that this optional provision for a planning advisory committee has existed since 1983. OHBA is of the understanding that a Planning Advisory Committee will *not* act as an approval authority, but rather to provide planning related advice to council. This is an important distinction as some of our members and local associations have experienced situations where advisory committees are populated by specific advocate groups and are not necessarily representative of broader general public opinion.

Currently, it is permitted but not mandatory to include, in official plans, descriptions of the measures and procedure for informing and obtaining the views of the public in respect of certain planning documents. Including such descriptions is made mandatory for a broader category of planning documents (subsections 16 (1) and (2)).

OHBA Recommendation:

OHBA is supportive of engaging the public earlier in the planning process, but has not established a specific position on this proposed amendment.

OHBA Comments and Rationale:

Including descriptions of the measures and procedures for informing and obtaining the views of the public will be made mandatory for a broader category of planning documents. OHBA is supportive of engaging the public earlier in the planning process to reduce conflicts and potential appeals at the back end of the process.

Alternative measures for informing and obtaining the views of the public are currently permitted in connection with proposed Official Plan amendments (subsection 17 (19.3)) and Zoning By-Laws (subsection 34 (14.3)). The Bill expands these provisions and also permits alternative measures in connection with plans of subdivision (subsection 51 (19.3.1)) and consents (subsection 53 (4.3)).

OHBA Recommendation:

OHBA has not established a position on this proposed amendment.

OHBA Comments and Rationale:

OHBA is supportive of engaging the public earlier in the planning process to reduce conflicts and potential appeals at the back end of the process. OHBA notes that methods of engaging and informing the public have evolved significantly over the past decade online and through social media.

Various decision-makers are required to explain the effect of written and oral submissions on their decisions (subsections 17 (23.1) and (35.1), 22 (6.7), 34 (10.10) and (18.1), 45 (8.1), 51 (38), 53 (18)).

OHBA Recommendation:

OHBA recommends that additional language be added to provide greater accountability and transparency so that decision makers also be required to explain the effect of other relevant materials submitted and considered during the planning process.

OHBA Comments and Rationale:

Proposed amendments to the *Planning* Act will require various decision makers to explain the effect of written and oral submissions on their decisions, including any written and oral submissions relating to the plan that were made to the council before its decision and that were made at a public meeting. OHBA requests additional clarity and guidance for how this provision would be implemented and operationalized. Furthermore, OHBA notes that decision makers should also be required to explain the effect of other relevant materials submitted and considered during the planning process (i.e. traffic studies, wind studies etc.)

Remove appeals of second unit residential polices at five-year reviews (subsections 17 (24.2) and (36.2)).

OHBA Recommendation:

OHBA supports the legislative proposal to remove appeals of second unit policies at five-year reviews. OHBA further recommends that the province amend the *Planning Act* to allow for as-of-right secondary suites across Ontario.

OHBA Comments and Rationale:

The legislation proposes to remove appeal of second unit residential polices at five-year Official Plan Reviews. OHBA, through our 2009 submission to the Long-Term Affordable Housing Strategy Consultation, and our previous submission to the Poverty Reduction Strategy, has consistently advocated for as-of-right secondary suites across all municipalities in Ontario. Amendments to the *Planning Act* through the *Strong Communities Through Affordable Housing Act, 2011* required councils to pass Zoning By-Laws to give effect to the second unit policies (35.1) and made amendments to section 34 so there cannot be an appeal in respect of a by-law to give effect to the second unit policies. While these were positive actions to support affordable secondary suites, OHBA continues to advocate that the province take the next step and allow for as-of-right secondary suites across Ontario.

Appeals of official plans in connection with specified matters are likewise not permitted (subsections 17 (24.4), (24.5) and (36.4)).

OHBA Recommendation:

OHBA requests clarity to ensure that while the forecasting population and employment numbers themselves are not appealable, that the method in which the numbers are utilized/implemented remains appealable. OHBA recommends the Ministry consider stronger language to provide legislative clarity regarding this issue.

OHBA Comments and Rationale:

Appeals of entire new Official Plans (sometimes called "global appeals") will not be permitted. Appeals of Official Plans in connection with some specified matters are likewise proposed to not be permitted. The OHBA Land-Use Planning and Appeals submission to the province in 2014 opposed limiting rights to appeal entire Official Plans and Zoning By-laws; however, OHBA was prepared to consider improvements to the current system that would require appellants to scope appeals at the time of filing a notice of appeal. Appeal limitations proposed in the Smart Growth for Our Communities Act include:

- Part of an Official Plan that identifies an area within the boundary of a vulnerable area under the *Clean Water Act*, the Lake Simcoe watershed, the Greenbelt Area or Protected Countryside or the Oak Ridge Moraine Conservation Plan Area;
- Part of an Official Plan that identifies forecasting population and employment growth as set out in a

Growth Plan under the *Places to Grow Act* or that applies to the Greater Golden Horseshoe;

- Part of an Official Plan that, for lower-tier municipalities in the Greater Golden Horseshoe, identifies forecasted population and employment growth as allocated to lower-tier municipalities in an upper-tier municipality's Official Plan, provided the upper-tier plan has Ministerial approvals; and
- Part of an Official Plan that identifies the boundary of a settlement area in a lower-tier municipality's Official Plan, as set out in an upper-tier municipality's Official Plan, provided that the upper-tier has Ministerial approval.

Appellants who intend to argue that appealed decisions are inconsistent with provincial policy statements, provincial plans or upper-tier official plans must identify the issues in their notices of appeal (subsections 17 (25.1) and (37.1) and 34 (19.0.1)). If an appellant fails to do so, the Ontario Municipal Board may dismiss all or part of the appeal without a hearing (subsections 17 (45) and 34 (25)).

OHBA Recommendation:

OHBA is generally supportive of this proposed measure as it would potentially limit frivolous appeals. OHBA requests clarity and guidance materials of the degree/threshold in the amount of information and content required to meet with satisfaction the requirement to identify issues in notices of appeal as well as the ability to expand on issues should new items come forward.

OHBA Comments and Rationale:

Appellants who intend to argue that appeals on decisions are inconsistent with the PPS, provincial plans or upper-tier Official Plans must identify and explain the issues in their notices of appeal otherwise the OMB could dismiss all or part of the appeal. OHBA is supportive of measures to identify issues and reasons in notice of appeals to scope issues and most importantly to potentially limit frivolous appeals simply designed to delay applications from proceeding. OHBA does however request guidance materials to ensure appellants have the necessary information and ability to address new issues in order to adequately satisfy this proposed requirement.

Decision-makers are permitted to use mediation, conciliation and other dispute resolution techniques in certain appeals. When a decision-maker gives notice of an intention to use dispute resolution techniques, the time for submitting the record to the Ontario Municipal Board is extended by 60 days (subsections 17 (26.1) to (26.4), 17 (37.2) to (37.5), 22 (8.1) to (8.4), 34 (11.0.0.1) to (11.0.0.4), 34 (20.1) to (20.4), 51 (49.1) to (49.4) and 53 (27.1) to (27.4)).

OHBA Recommendation:

OHBA recommends that to support the implementation of these proposed provisions and to ensure consistency in the application of these proposed provisions, that the Ministry provide municipalities a standard for how Alternative Dispute Resolution should be structured. Furthermore, OHBA requests Ministry guidance materials for how an Alternative Dispute Resolution settlement would be implemented (i.e. through the Board or Council).

OHBA Comments and Rationale:

Decision-makers are proposed to be permitted to use mediation, conciliation and other dispute resolution techniques in certain appeals. OHBA supported the use of other dispute resolution techniques including additional use of mediation in our January 2014 *Land-Use Planning and Appeals System* submission to the province. OHBA notes that some municipalities don't have the experience, nor the expertise, to conduct meaningful dispute resolution. It is important that this proposed legislative amendment not grant the ability to delay without merit an appeal, but rather this tool be utilized as a real opportunity to resolve issues at the local

level. The tool must be utilized in good faith to meet an intended objective and there should be a penalty if a municipality invokes the tool in bad faith. Alternative Dispute Resolution would also potentially allow for an opportunity to further scope an appeal to the OMB.

Currently, subsection 17 (40) allows any person or public body to appeal an approval authority's failure to give notice of a decision in respect of an Official Plan within 180 days after receiving the plan. New subsection 17 (40.1) deals with extensions of the 180-day period.

OHBA Recommendation:

The OHBA Land-Use Planning and Appeals submission to the province in 2014 strongly recommended maintaining existing decision timelines and the proposed legislative amendment supports the OHBA recommendation by maintaining existing timelines; but allows for an optional mutually agreed upon extension. OHBA is generally supportive of this proposed legislative amendment if it is mutually agreed upon.

OHBA Comments and Rationale:

If an approval authority fails to give notice of a decision, in respect of all or part of a plan, within 180 days after the plan is received, the 180-day period is proposed to be extended as an option if both sides agree to a 90-day extension. The intent of the extension is to allow both parties the opportunity to scope, and potentially resolve, issues locally. The person, public body, municipality or approval authority that gave or received a notice extending the period may terminate the extension at any time by another written notice. OHBA has some concerns regarding "termination by written notice", and the perception that such a clause in the proposed measure may not accurately reflect a "mutually agreed upon" timeline extension.

During the two-year period following the adoption of a new official plan or the global replacement of a municipality's Zoning By-Laws, no applications for amendment are permitted (subsections 22 (2.1) and 34 (10.0.0.1)).

OHBA Recommendation - New Official Plan:

OHBA recommends greater clarity and guidance regarding the definition of what constitutes a "new" Official Plan and that the approval authority give greater scrutiny during their review to ensure a full comprehensive Official Plan review was, in fact, undertaken.

OHBA Recommendation - Global replacement of municipal Zoning By-Laws:

Given that the proposed legislative amendments would result in a freeze on zoning by-law amendments following the global replacement of a municipality's Zoning By-Law, OHBA strongly recommends the Ministry establish clear requirements for what a comprehensive Zoning By-Law update actually means [i.e. a higher standard than currently exists in Section 26(9) of the *Planning Act*]. OHBA believes that *if* a comprehensive Zoning By-Law update is not clearly defined, than the proposed legislative amendments would be too restrictive and that the province should provide flexibility to allow for reasonable site-specific applications to amend municipal Zoning By-Laws.

OHBA Comments and Rationale:

OHBA is very concerned by the potential for serious unintended negative consequences of these proposed legislative amendments. OHBA is concerned that the proposed two-year moratorium on certain planning applications following the implementation of a "new" Official Plan or comprehensive zoning by-law update would potentially increase the volume of site-specific appeals at the time of enactment. OHBA notes that neither Official

Plan, nor Zoning By-Laws are intended to be static documents. The effect of these proposals would be to encourage land owners to appeal to protect their interests. Furthermore, the limitation for minor variances following an owner-initiate site-specific rezoning has significant implications which may not have been the intended results of such a legislative proposal.

OHBA Comments and Rationale - New Official Plan:

OHBA respects the intent to provide community residents and land owners a period of certainty following the adoption of a new Official Plan. Ideally this would result in higher levels of engagement and involvement earlier in the planning process. OHBA could support the moratorium on Official Plan amendments following the implementation of a new Official Plan, *if* the province sets a higher standard for what constitutes a "new" Official Plan. A two-year moratorium on appeals assumes perfection in municipal planning documents, that local economic circumstances won't change, and that all policies can be implemented without any unintended consequences.

OHBA Comments and Rationale - Global replacement of municipal Zoning By-Laws:

OHBA recommends that the province ensure that a very clear definition of what the threshold and standard for what will be considered a "comprehensive" Zoning By-Law review. Should Bill 73 be proclaimed, and the 'carrot' of planning certainty is provided to municipalities through a moratorium on owner-initiated Zoning By-Law amendments, then certainty must also be provided as to the standard that must be reached to qualify for such a moratorium on zoning by-law amendment applications. The *Planning Act* currently does not have very strong language to clearly define what constitutes a comprehensive zoning update, only through Section 26(9), that "no later than three years after an Official Plan update, that the council of the municipality shall amend all zoning by-laws to conform with the Official Plan".

If stronger language to better define a comprehensive Zoning update is not included in the legislation, then OHBA would be opposed to restrictions with respect to Zoning By-Law amendments. As previously noted, neither Official Plan, nor Zoning By-Laws are intended to be static documents, and there is almost always an opportunity within a municipality that a local Zoning By-Law has not yet considered. Such a proposed moratorium on owner-initiated Zoning By-Law amendments are especially problematic in mixed use areas as Zoning By-Laws are not able to contemplate all potential mixed-use opportunities that may be appropriate and that these types of opportunities would be captured in a two-year freeze.

During the two-year period following an owner-initiated site-specific rezoning, applications for minor variances are permitted only with council approval subsection 45(1.3)).

OHBA Recommendation:

OHBA strongly opposes the two-year moratorium on owner-initiated site-specific applications for minor variances following rezoning. In the event that the Ministry does not remove this provision from the proposed legislative package, OHBA strongly recommends that this section not be proclaimed until the planning technical working group has completed its work to consider a new definition for minor variances. This proposed section of the legislation should be considered with the package that the working group is considering and not proclaimed until the regulation defining a minor variance is in place.

OHBA Comments and Rationale:

The limitation for minor variances following an owner-initiated site-specific rezoning has significant implications which may have not have been the intended results/target of such a legislative proposal. While the intent of the

Ministry may be to increase planning certainty to the process for all stakeholders, OHBA believes that proposed legislative amendments may be unpractical to implement and result in unnecessary municipal administrative processes and numerous appeals.

OHBA is concerned that the proposed two-year moratorium on minor variance applications following an owner-initiated Zoning By-Law amendment would capture items that may have not been intended and cause significant negative repercussions, which add uncertainty, confusion and delays to the planning approvals process. The proposed amendments would capture minor instances where something may have simply been missed or was measured slightly differently and essentially require the detailed preparation of construction blueprints prior to the enactment of the proposed amendment (because a few inches difference actually matters) to ensure compliance.

OHBA is concerned that the proposed two-year moratorium on minor variances, following site specific rezoning, places severe constraints on the owner. While the proponent could request council approval there is no certainty it would be granted, and furthermore, months of delays between council meetings, or even getting on the council agenda is also a concern. Otherwise the only avenue to address such minor issues is through a full rezoning process.

As an example, OHBA notes that minimum parking requirements are often an issue addressed through minor variances to the Committee of Adjustment. High-rise and mid-rise intensification projects typically go through a rezoning process and must include, as part of the Zoning By-Law, a minimum number of parking spaces. Unfortunately, as highlighted in the joint OHBA-Pembina "Make Way For Mid-rise" report, current parking requirements in many municipalities are out-of-date and do not align either with the characteristics of many evolving neighbourhoods, nor with provincial policy. The result is often an over-supply of parking that is unsold after the residential units are sold, thus requiring an owner initiated minor variance within two-years of a Zoning By-Law amendment.

Many "minor" issues arise during detailed design and construction which require the option to apply for a minor variance. Simple issues, such as a cooling tower or other HVAC system components requiring a few extra inches beyond the maximum permitted in a recently amended Zoning By-Law, are real issues in the construction sector when large complex buildings and facilities are constructed. Other issues may arise in which a survey was off by a couple of inches, which again is a common occurrence that would be impacted by this proposed legislative amendment. While the Ministry has proposed an option to rectify the issue by applying for a minor variance only with council approval, this creates new unnecessary administrative processes, tremendous uncertainty and the windows of opportunity to bring an issue to council could extend timelines causing further uncertainty. In other instances, the council may not approve such an application for political reasons, even if the application has merits as a simple and minor technical matter.

The minor variance owner-initiated appeal limitations appear to target a few isolated cases in Toronto in which a number of floors were added to recently approved residential projects. This limitation however takes a sledgehammer approach to an isolated issue and will impact all zoning applications. The *Planning Act* sets the planning framework for *all* of Ontario and Toronto-based issues must not create negative implications for the rest of the province. OHBA is opposed to the proposed legislative amendment.

Currently, subsection 26 (1) requires a municipality to revise its Official Plan at five-year intervals, to ensure that it aligns with provincial plans and policy statements and has regard to matters of provincial interest. The revision schedule is adjusted to require revision 10 years after the plan comes into force and at five-year intervals thereafter. An existing requirement to revise the plan in relation to policies dealing with areas of employment is removed.

OHBA Recommendation:

OHBA recommends that *if* the province grants longer-term certainty for municipalities over Official Plan amendments for two-years and urban boundary expansion and employment lands for 10-years, that the Ministry has an obligation to provide clarity and to define the appropriate standard and threshold to be met to qualify as a "new" Official Plan.

OHBA is concerned by the proposal to adjust the revision cycle, which would have the effect of limiting opportunities to review urban boundaries and employment lands to a 10-year review cycle.

OHBA Comments and Rationale:

Currently, a municipality is required to revise its Official Plan at five-year intervals, to ensure that it aligns with provincial plans and policy statements. The revision schedule is proposed to be adjusted to 10-years after a "new" plan comes into effect and at five-year intervals thereafter. OHBA recommends additional clarity to clearly define the procedure and necessary threshold of comprehensive review that will be required for an Official Plan to be considered "new" vs. a revision. While OHBA is generally supportive of measures to increase certainty and avoid situations of "perpetual" review, we are concerned that a 10-year review cycle would limit certain opportunities and thus potentially generating a significant number of appeals. As noted in the previous section, if, as a result of a "new" Official Plan being adopted, a two-year time-out for owner-initiated appeals occurs, it will be necessary to ensure that a higher standard be established as to what constitutes a comprehensive review.

OHBA is also concerned that opportunities to consider urban boundary expansions and employment land conversions would be limited for 10-years. Comprehensive review may therefore generate significant volumes of appeals since employment conversions and settlement boundary expansions would not be considered for a 10-year period. A decade long gap for consideration may even result in appeals from landowners that do not even have interim plans so as to protect their long-term interests. If the provincial intent is to limit such opportunities for such a long-time period, it is critical that a comprehensive Official Plan review have clarity, not just in words, but in substance to be considered a "new" Official Plan. Furthermore, the province should consider opportunities to provide for some flexibility with respect to conversions and urban boundaries outside of a 10-year review cycle. OHBA could be supportive of the proposed 10-year cycle if these two important considerations were addressed separately.

Section 37 is amended to require that money collected under the section be kept in a special account, about which the treasurer is required to make an annual financial statement.

OHBA Recommendation:

This proposed legislative amendment reflects OHBA's recommendations in 2014 to create more transparent reporting requirements for municipalities to detail how funds are collected and spent. OHBA is therefore supportive of the proposed legislative amendment.

OHBA Comments and Rationale:

As described in the Ministry of Municipal Affairs and Housing's 2011 *Building Blocks For Sustainable Planning*, Section 37 is a "process to allow buildings to exceed height and density of development otherwise permitted," and that a benefit of the tool is that it "may support intensification, growth management, transit supportiveness, and other community building objectives." OHBA has expressed significant concerns over the past decade regarding the lack of transparency in the collection of Section 37 funds, the method in which municipalities determine the quantum to be collected and the lack of accountability for where and when funds are actually distributed for capital works. OHBA has also consistently expressed concern over the past decade (OHBA *Tools To Support Intensification* Report, 2005) that some municipalities are in fact intentionally under-zoning properties in downtowns, town centres and on transit corridors to extract financial benefits through Section 37 when properties go through a re-zoning process.

OHBA is also concerned by numerous media articles over the past few years focusing on large quantities of Section 37 funds obtained through rezoning, in which journalists and members of the public have questioned the integrity of the planning process. Transit-oriented development and planning objectives outlined in the Provincial Policy Statement could be undermined by under-zoning, questionable Section 37 benefits and the negative public perception that planning approvals are "for sale." Therefore it is critical that the province ensure and strengthen the integrity of the land-use planning and appeals system not only by enhancing municipal accountability and transparency, but also by providing better guidance on appropriate zoning to ensure modernized zoning height and density permissions actually reflect infrastructure capacity and provincial policy.

Section 37 of the *Planning Act* (Density Bonusing) is proposed by the *Smart Growth For Our Communities Act* to be amended to require that money collected under the section be kept in a special account, about which the treasurer is required to make an annual financial statement. The OHBA *Development Charges System* submission to the province in 2014 strongly supported enhanced reporting requirements to improve municipal accountability and transparency with respect to Section 37 of the *Planning Act.* OHBA is therefore supportive of the proposed amendments to the *Planning Act* with respect to enhancing municipal accountability and transparency for Section 37.

19. Before a municipality adopts Official Plan policies allowing it to pass bylaws under subsection 42 (3) (parkland, alternative requirement), it must have a parks plan that examines the need for parkland in the municipality. Cash-in-lieu collected under the alternative requirement is currently limited to the value of one hectare of land for each 300 dwelling units proposed; the new limit is one hectare per 500 dwelling units (subsection 42 (6.0.1)). New subsections 42 (17) and (18) require the treasurer to make an annual financial statement about the special account established under subsection 42 (15).

OHBA Recommendation:

OHBA is supportive of the proposed legislative amendment to limit cash-in-lieu of parkland dedication to one hectare per 500 dwelling units. OHBA is disappointed that a cap on the formula (i.e. similar to the City of Toronto) was not proposed as well to provide greater certainty and put a ceiling on the maximum amount of parkland requirements obtained from a development, based on its size along a graduated threshold. This additional step would support more fairness for new residents of mid-rise and high-rise development while facilitating higher levels of intensification and transit-oriented development.

OHBA requests greater clarity regarding the proposed requirement for municipalities to put in place a parks plan to inform where resources are directed as well as Ministry guideline materials for municipalities to clearly define what standards would be required in a parks plan. OHBA further notes that municipal parks plans should include inventories from Conservation Authority lands, school board sites as well as provincial and federal parks located

within municipal boundaries. Parks plans could be defined by regulation to ensure high standards of accountability and transparency. OHBA is supportive of this proposed element of enhanced transparency and accountability within the *Planning Act*.

OHBA is supportive of the proposed new *Planning A*ct section 42(17) Treasurers Statement requiring that the treasurer of the municipality shall each year, on or before a date specified by the council, give council a statement relating to the special account (parkland dedication). OHBA recommends section 42 (17) be further amended to include stronger language to further enhance accountability and transparency. The treasurer should not just disclose a financial statement, but also how much money was spent the previous year and articulate the specific projects and land acquisitions financed from the special account. OHBA further recommends this statement be published publicly and linked back to the new municipal parks plans requirement to ensure great municipal transparency and accountability with respect to parkland dedication.

OHBA Comments and Rationale:

The proposed *Smart Growth for our Communities Act*, proposes amendments to the *Planning A*ct that before a municipality adopts Official Plan policies allowing it to pass by-laws for alternative requirements for parkland dedication, it is proposed that a municipality must have a parks plan that examines the need for parkland in the municipality before adopting an alternative rate. Cash-in-lieu of parkland dedication collected under the alternative requirement is currently limited to the value of one hectare of land for each 300 dwelling units. The new proposed limit is one hectare per 500 dwelling units. New subsections are proposed that would require the treasurer to make an annual financial statement about the special account established under Sec 42. Similar changes are made to Sec 51.1 of the *Planning Act* which deals with parkland conveyances and cash-in-lieu in the context of subdivision approval.

OHBA has been advocating for nearly a decade that parkland dedication policies are negatively impacting housing affordability and contradicting provincial policy to support intensification. Specifically, alternative Parkland Dedication provisions in the *Planning Act* (cash-in-lieu) that require 1 hectare for 300 dwelling units have not been updated in nearly three decades. Municipalities have had the ability to create local parkland by-laws to support intensification, however very few have undertaken this initiative despite provincial encouragement. This lack of municipal initiative has resulted in situations like Richmond Hill where cash-in-lieu of parkland fees reached astronomical levels of $37,600 per unit (OMB Case #PL110189). The OMB recognized that the maximum alternative parkland rate in the *Planning Act* "creates significant negative impacts on affordability and intensification," resulting in a January 15, 2015 decision requiring the municipality to set an alternative rate less that what is prescribed as a maximum in that *Planning Act.*

OHBA is therefore supportive of the proposed legislative amendments. OHBA had previously recommend that the province act to reduce cash-in-lieu (CIL) of parkland fees in urban growth centres and intensification corridors to promote intensification. Previous association recommendations also stated that municipalities should consider a 'cap' on the formula to put a ceiling on the maximum amount of parkland requirements obtained from a development, based on its size along a graduated threshold. Furthermore, where higher density developments provide facilities, (such as play facilities, passive recreational space, green roof, bicycle racks, interior courtyard areas with public easements, easements over open space in condominium lands for public through fare, dry storm water management ponds, publically accessible private spaces etc.) a discount on parkland requirements or levies should be provided. It is critical that the province not undermine its own planning objectives through a misalignment of tax/fiscal policy.

The OHBA *Development Charges System* submission in January, 2014 recommended modernizing parkland dedication requirements while also enhancing municipal reporting requirements to improve transparency and

accountability. Fiscal transparency and accountability for municipalities with respect to parkland dedication is critical as the Ministry of Municipal Affairs and Housing has reported that as of December 31, 2013, municipalities had $794,482,315 in "recreation land (*Planning* Act)" in reserve funds. Furthermore, according to the government's *Financial Information Return*, municipalities collected over $220 million in cash-in-lieu of parkland dedication alone in 2013. The proposed legislative amendments reflect OHBA recommendations to create more transparent reporting requirements for municipalities and to detail how funds are collected and spent.

OHBA is pleased that the provincial government has made a positive first step to recognize that the Parkland Dedication policies in the *Planning Act* need to be modernized to reflect provincial policy supporting smart growth, intensification and transit-oriented development. This is about ensuring fairness and balance between what new residents are charged for parkland dedication, as the current regime can result in parkland taxes several times higher for someone buying a condo versus a low-rise home. The current formula is a barrier to the intensification goals for the *Provincial Policy Statement* and the Growth Plan and negatively affects the mix of housing options, affordability and customer choice. And residents deserve all of these.

When committees of adjustment make decisions about minor variances, they are required to apply prescribed criteria (subsection 45 (1.0.1)) as well as the matters set out in subsection 45 (1).

OHBA Recommendation:

OHBA has not established a position on this proposed legislative amendment.

OHBA Comments and Rationale:

When Committees of Adjustment make decisions about minor variances, they are required to apply prescribed criteria and are proposed to be required to include a brief explanation of the effect that written and oral submissions made to the committee had on the decision. OHBA notes that the Ministry of Municipal Affairs and Housing should provide guidance materials to municipal committees of adjustment to ensure consistency in the implementation of the proposed legislative amendment.

Changes similar to the ones affecting section 42 are made to section 51.1, which deals with parkland conveyances and cash-in-lieu in the context of subdivision approval.

OHBA Recommendation:

Refer to previous OHBA recommendations on Parkland Dedication.

OHBA Comments and Rationale:

Refer to previous OHBA recommendations on Parkland Dedication.

Subsection 70.2 (1) currently authorizes the Lieutenant Governor in Council to make regulations establishing a "development permit system" that local municipalities may adopt, or delegating to local municipalities the power to establish such a system. New subsection 70.2 (2.1) authorizes the Lieutenant Governor in Council to make regulations preventing applications for amendments to new development permit by-laws, and to the related Official Plan provisions, during an initial five-year period.

OHBA Recommendation:

OHBA is supportive of the establishment of DPS's to involve communities and developers earlier in the planning process. This would improve predictability in the planning process and set a clear framework for how communities will grow in the future. OHBA does *not* support the five-year freeze on amendment applications and recommends this proposed five-year component of the legislative amendment be removed.

OHBA Comments and Rationale:

Newly proposed subsections would allow the Lieutenant Governor in Council to make regulations preventing applications for amendments to new development permit by-laws, and to the related Official Plan provisions, during an initial five-year period. Development Permits are proposed to be referred to as "Community Planning Permits", without changing the legal effect. The same is true of combined expressions such as "Development Permit System" and "Development Permit By-Law". OHBA recognizes that community planning permits would implement a comprehensive community planning process which would streamline a number of processes and that the five-year time period in which no appeals would be permitted would be considered an incentive for municipalities to consider implementing this planning tool. OHBA notes that to effectively implement provincial policy (PPS and Provincial Plans if applicable) the Community Planning Permit Systems must link and align the potential infrastructure capacity in the community to the height and density permissions in the communities for which it is proposed. Furthermore, Community Planning Permits Systems must work towards a goal of achieving bold intensification goals to support Official Plans and the PPS (and Provincial Plans if applicable), support transit-oriented development on transit corridors as well as work towards a goal of incenting and kick-starting development opportunities in growth areas that have not seen considerable intensification. Community Planning Permits offer an opportunity to streamline planning to meet provincial planning objectives *if* appropriately implemented to reflect provincial planning objectives.

New section 70.2.1 provides that regulations made under section 70.2, orders made under section 70.2.2 and municipal by-laws made under both sections may refer to development Permits as "community planning permits", without changing the legal effect. The same is true of combined expressions such as "development permit system" and "development permit by-law".

OHBA Recommendation:

OHBA does not have an established position on this proposed legislative amendment.

OHBA Comments and Rationale:

Creating additional certainty through the Community Planning Permit System (also known as Development Permit System) is generally supported by OHBA if the base densities accurately and appropriately reflect higher levels of intensification and transit-oriented development articulated as public policy in the PPS and in Provincial Plans (if applicable).

New section 70.2.2 authorizes the Minister to make an order requiring a local municipality to adopt a Development Permit System For prescribed purposes. It also authorizes upper-tier municipalities to make by-laws imposing similar requirements on their lower-tier municipalities, and authorizes the Minister to make an order requiring an upper-tier municipality to make such a bylaw.

OHBA Recommendation:

OHBA recommends this proposed provision be considered in tandem with provincial funding commitments for higher order transit lines.

OHBA Comments and Rationale:

A new subsection is proposed to authorize the Minister to make an order requiring a local municipality to adopt a Development Permit System for prescribed purposes. OHBA suggests that this authorization be considered in the context of major provincial infrastructure investments to ensure alignment between transportation and land-use planning. For example, the City of Toronto is considering potential corridors for the Scarborough Subway for which the provincial government has dedicated nearly $1.5 billion. Some of the corridors, (i.e. Bellamy Road) feature predominantly low-density suburban communities that will not adequately support the level of transit operations that a subway provides for. Should the city not pre-zone for appropriate high transit-oriented densities along the transit corridor due to local political pressure ("NIMBYism" or "Density Creep", as a recent May 2015 Toronto Star article reported), this newly proposed section of the *Planning Act* should be implemented to ensure that land-use planning policy is appropriately aligned with transit infrastructure and investment. This proposed provision should also be considered and implemented in other communities receiving provincial transit funding *if* the municipality does not appropriately pre-zone or implement a Community Planning Permit System for transit oriented development (i.e. Hamilton, Mississauga, Brampton, Vaughan, Ottawa, Waterloo Region).

New section 70.6 authorizes the Minister to make regulations providing for transitional matters

OHBA Recommendation:

Transition policies should ensure that applications continue to be assessed against the policies of the day of application and upon which it is deemed to be complete.

OHBA Comments and Rationale:

New amendments to the *Planning Act* as proposed by the *Smart Growth for Our Communities Act* should not affect planning applications that have been submitted and are in process and are deemed to be complete prior to the date on which the legislative amendments take effect. Applications should therefore continue to be assessed against the policies of the day of application and upon which it is deemed to be complete.

Development Charges Act Amendments

The *Development Charges Act, 1997*, provides the authority and the rules for municipalities to levy a development charge. Development charges are a revenue tool designed to assist municipalities in paying for a portion of growth-related capital costs incurred to provide services to new residents and businesses. Development charges are charges imposed by municipalities on developers to pay for increased capital costs related to growth. These costs are typically passed on to new neighbours. Development charges do not pay for operating costs or the future repair and rehabilitation of infrastructure. The Act is also designed to try to ensure that a municipality's existing taxpayers are not required to pay the capital cost of services and facilities required to serve new development.

The current legislation requires municipalities to consider a number of factors and restrictions when deriving a local, municipal development charge. The legislative requirements attempt to address the capital costs for services necessary for development to occur. The *Development Charges Act, 1997* sets out a standardized framework for calculating and applying development charges. A municipality is required to undertake a detailed background study before passing a development charge by-law. A development charge by-law expires in five years, unless repealed or replaced earlier. When a by-law expires, a new background study must be completed prior to passing a new by-law.

The proposed Bill 73 proposes to remove ineligible services from the *Development Charges* Act. Comments of the removal of these services are provided later in this submission. Under the currently in force legislation, some eligible services currently (until the new Act comes into effect) are subject to a mandatory 10 per cent reduction in eligible capital costs. According to the Ministry of Municipal Affairs and Housing, as of December 31, 2013, municipalities across Ontario had $810,617,130 in *Development Charges* Act discounted services in reserves. All other services could be fully recovered. According to the Ministry of Municipal Affairs and Housing, as of December 31, 2013, municipalities across Ontario had $2,348,343,822 in *Development Charges* Act non-discounted services in reserves. OHBA supports these funds being allocated to reserves provided that it is transparent and that these funds are being allocated in a timely fashion to the projects in which they are collected for. OHBA notes that these are significant sums of money being collected from new neighbours and new employers that impact affordability to fund municipal growth related infrastructure.

OHBA continues to see governments and government agencies undermine affordability in their drive for short-term revenue instead of supporting long-term community-building objectives by ensuring that we are building transit-oriented homes and employment centres that people can afford. The current debate on the proposed *Smart Growth For Our Communities Act* continues to be focused on how municipalities can generate more new neighbour taxes (taxes, levies, fees) instead of achieving smart growth objectives. OHBA continues to advocate for fairness and transparency for new neighbours, and **Bill 73 cannot result in a further piling on of taxes on the backs of future new home purchasers and employers.** The Government of Ontario has a responsibility to ensure that Growth Plans are not undermined by taxation and financial burdens. Transit-oriented communities should be the most affordable and attractive communities for Ontario's future residents and employers.

In fall 2013, the government undertook a review of the development charges system in tandem with a review of the land-use planning and appeal system to determine if it was responsive to the changing needs of Ontario's communities. The formal consultation period concluded on January 10, 2014 and the OHBA submission to the

consultation is available at www.ohba.ca. The last major reforms to the development charges system were in 1997 and represented a careful balance between municipal and development interests.

Based on the number of recommendations received from various partners and stakeholders, the Ministry of Municipal Affairs and Housing, through the proposed *Smart Growth for our Communities Act* is proposing a number of changes to the *Development Charges Act, 1997*. OHBA is responding to each of the proposed amendments with our position and specific recommendations in the sub-sections outlined below. OHBA is also providing some general commentary on issues to be addressed by the technical working groups.

New section 5.2 provides that services prescribed by the regulations would use a planned level of service rather than being subject to paragraph 4 of subsection 5 (1).

Ministry Working Group: Planned Level of Services

A new section to the *Development Charges Act* is proposed that provides that services prescribed by the regulations would use a *planned* level of service rather than being subject to the 10-year period immediately *preceding* the preparation of the background study. The method of estimating the planned level of service for a prescribed service and the criteria to be used in doing so will be prescribed in regulations. The province is consulting with stakeholders through the establishment of a technical advisory committee that includes both OHBA and BILD members. The planned level of services technical working group will study options to establish a new formula for a 10-year forward level of services to be utilized for development charges. For the purposes of this submission, OHBA is not providing specific recommendations at this time that may prejudice Ministry appointed technical working groups.

However, OHBA is broadly concerned that this legislative proposal will significantly increase taxation on new residents and new businesses. OHBA continues to advocate for fairness and transparency for new neighbours, and **Bill 73 cannot result in a further piling on of taxes on the backs of future new home purchasers and employers**. The Government of Ontario has a responsibility to ensure that the *Provincial Policy Statement* and Provincial Plans are not undermined by taxation and financial burdens. Ultimately, public policy should ensure that transit-oriented communities be the most affordable and attractive communities for Ontario's future residents and employers.

Subsection 2 (4), which deals with ineligible services, is rewritten to identify these in the regulations (rather than partly in the Act and partly in regulations, the current approach).

Ministry Working Group: Eligible / Ineligible Services and 10 Per Cent Reduction in Soft Services

The newly proposed legislation has removed any services that were ineligible. The Ministry technical working group, which has both OHBA and BILD representation, will discuss this measure and whether or not the 10 per cent reduction for soft service payments could be replaced by another mechanism such as municipal asset management plans. OHBA believes that it is inappropriate for ineligible services to be removed from the legislation. Furthermore, OHBA notes that strong submissions were made in 1997 and more recently as part of the OHBA 2014 Development Charges submission (available at www.ohba.ca) to ensure that hospitals remain as an ineligible service. OHBA reiterates our opposition to hospital development charges again in this submission. For the purposes of this submission, OHBA is not providing additional specific recommendations that may prejudice Ministry appointed technical working groups.

Regarding infrastructure asset management planning, OHBA notes that in a May 27th letter to the Minister of Economic Development, Employment and Infrastructure as well as the Minister of Municipal Affairs and Housing, OHBA wrote in support of greater municipal accountability and transparency through municipal infrastructure asset management plans. OHBA notes that as defined is subsection 2 and as proposed in subsection 3 in the

proposed *Infrastructure For Jobs and Prosperity Act, Bill 6,* that the government, and every broader public sector entity, must consider a specified list of infrastructure planning principles when making decisions respecting infrastructure.

However, OHBA notes that, where the OMB has determined a formula or a service is ineligible through adjudication, too many times these items re-emerge and are brought back by other municipalities into development charges and generating new OMB appeals. These OMB cases should no longer stand as "one-offs" and decisions with respect to either formulas or ineligible services should apply to all municipalities. OHBA notes two examples, the inflationary Hemson methodology for calculating charges appeal by BILD in Orangeville was allowed by the OMB on September 3, 2010 but generated additional appeals of the same methodology; and the recent case in which the OMB ruled in favour of the Hamilton Halton Home Builders' Association appeal of the 2012 Halton Region DC By-Law No. 48 that determined a municipality cannot collect development charges on behalf of Conservation Authorities.

Lastly, OHBA is concerned that ultimately, the proposed legislative amendments and upcoming regulations will increase the level of taxation on new neighbours. **Bill 73 cannot result in a further piling on of taxes on the backs of future new home purchasers and employers**.

Regulations may be made to require municipal councils to use development charge by-laws only with respect to prescribed services and areas (new subsection 2 (9)) or to use different development charge by-laws for different parts of the municipality (new subsection 2 (11)).

Ministry Working Group: Area Rating / Area Specific Development Charges

Regulations may be made to require municipal councils to use development charge by-laws only with respect to prescribed services and areas or to use different development charge by-laws for different parts of the municipality. The province has not proposed any draft regulations yet and the Ministry of Municipal Affairs and Housing working group, which includes both OHBA and BILD members, will examine the use of area specific development charges to incentivize development in areas targeted for intensification. Furthermore, the proposed legislation allows for the province to implement an area specific development charge in situations where a municipality has not brought forward their own area-specific development charge. Broadly speaking, OHBA supports measures to make transit-oriented communities more affordable and attractive for Ontario's future residents and employers. However, for the purposes of this submission, OHBA is not providing specific recommendations that may prejudice Ministry appointed technical working groups.

Transit services are added to the list of services for which no reduction of capital costs is required in determining development charges (subsection 5 (5)).

No working group has been established - OHBA Recommendation:

OHBA accepts that transit is being added to the list of services for which there will be no reduction of capital costs for determining development charges. This directive is based on the 2014 Liberal Election Campaign Platform. However, OHBA notes that this will increase the level of taxation on new neighbours, therefore it is critical that asset management planning be strengthened and that through the "Transit Level of Services Working Group", processes be established in a transparent manner to ensure costs to new neighbours remain fair and equitable.

OHBA Comments and Rationale:

Transit services are proposed to be added to the list of services for which no reduction of capital costs is required in determining development charges. This proposed legislative amendment would eliminate the 10 per cent

municipal contribution and thus significantly increase taxation on transit-oriented development. OHBA believes that fairness and balance is required to ensure that charges for transit expansion will not disproportionately increase housing costs for residents or the cost of setting up new businesses in transit-connected communities. OHBA also notes that the housing market is cyclical, that economic circumstances change and that even if no development happens, many of these transit plans will be have to happen to effectively combat already existing congestion. Through the "Transit Level of Services Working Group", OHBA and BILD members will demonstrate that financial impact of this proposed legislative amendment. OHBA is supportive of municipal asset management planning to ensure rigour, accountability and transparency to ensure development charges funds for transit are allocated in a financially prudent manner.

The requirements for development charge background studies are expanded to include consideration of the use of multiple development charge by-laws and preparation of an asset management plan (subsection 10 (2)).

No working group has been established - OHBA Recommendation:

OHBA strongly supports the use of asset management plans provided that they are prepared with rigour and that there is provincial accountability and oversight as well as a full public engagement process at the municipal level.

OHBA Comments and Rationale:

The legislation proposes to require municipalities to reflect capital projects funded through development charges in more detail to improve transparency. Furthermore, if passed, the proposed legislation will link development charges to municipal asset management plans. OHBA recently submitted comments to the Minister of Economic Development, Employment and Infrastructure regarding the proposed *Infrastructure for Jobs and Prosperity Act*, *Bill 6,* in which OHBA stated broad support of measures to establish mechanisms to encourage evidence-based and strategic long-term infrastructure planning. The proposed legislation, Bill 6, offers an important function to ensure that the government, and every broader public sector entity, must consider a specified list of infrastructure planning principles when making decisions respecting infrastructure. Furthermore, OHBA recommended that Bill 6 be strengthened to ensure greater accountability and transparency in the preparation of municipal infrastructure asset management plans and that there be provincial oversight as well as a full public engagement process at the municipal level.

If a development project requires more than one building permit, the development charge is payable when the first permit is issued (new subsection 26 (1.1)).

OHBA Recommendation:

OHBA is encouraged by the provincial government's approach to create cost certainty for new neighbours and new employers. OHBA is however concerned that the current proposed mechanism is not practical, therefore we recommend that government and stakeholders continue to work together to establish a mechanism that will protect consumers from unanticipated increases in taxation.

OHBA Comments and Rationale:

The legislation proposed to require development charges to be set and payable as of the date of an initial building permit. The government proposal captures the spirit of cost certainty for builders and most important for consumers by altering the timing of the payment of DCs to the first building permit. Under the current provisions of the *Development Charges Act*, consumers are put at risk of additional unforeseen costs for development charges increases to be paid on closing. For example, 97 units in a Brampton project in 2014

suffered from a severe case of "sticker shock" after they found out the homes they purchased would cost an extra $30,000 in closing costs due to development charges increases which were passed by council as the project was proceeding. This is a significant "surprise" cost burden for new neighbours to be faced with and requires a solution to provide for cost certainty as a consumer protection mechanism.

While the current proposed amendment reflects the intent to achieve cost certainty, there remain implementation challenges which are not practical; therefore further stakeholder discussion is required to achieve cost certainty for new neighbours and new employers.

The contents of the treasurer's financial statement under section 43 are expanded to include additional details on the use of funds as well as a statement as to compliance with new section 59.1.

OHBA Recommendation:

OHBA is supportive of the proposed legislative amendments to enhance transparency and accountability in the development charges system.

OHBA Comments and Rationale:

The contents of the treasurer's financial statement under section 43 of the act (Statement of the Treasurer) are proposed to be expanded to include additional details on the use of funds as well as a statement to compliance with a new section 59.1 (New Section 59.1 "No Additional Levies"). A municipality shall not impose, directly or indirectly, a charge related to a development or a requirement to construct a service related to a development, except as permitted by this Act or another Act. The new Section 59.1 is proposed to impose restrictions on the use of charges related to development, gives the Minister power to investigate whether a municipalities has complied with the restrictions and authorized the Minister to require the municipality to pay the costs of the investigation. These proposed amendments to the *Development Charges Act* directly reflect the OHBA submission to enhance municipal accountability and transparency.

The proposed legislative amendments will restrict payments outside the development charges regime for capital costs associated with serving new development and require municipal treasurers to certify that no payments have been received that are in contravention of this restriction. There are numerous examples of so called "voluntary" payment with no accountability or transparency taking place outside of any legislative framework. OHBA has previously expressed serious concerns with so called "voluntary" payments that are anything but voluntary, and supports the proposed legislative amendment.

New section 59.1 imposes restrictions on the use of charges related to development, gives the Minister power to investigate whether a municipality has complied with the restrictions and authorizes the Minister to require the municipality to pay the costs of the investigation.

OHBA Recommendation:

OHBA is supportive of this measure to enhance municipal accountability and transparency with respect to development charges and ensure compliance with the legislative framework that they must operate in.

OHBA Comments and Rationale:

The proposed legislation also gives the Minister of Municipal Affairs and Housing the authority to investigate a municipality in relation to compliance with this legislation. Through the creation of this authority it also means that the municipality would have to cover the costs of such an investigation. This proposal is a critical tool to ensure municipal compliance with the Development Charges Act.

OHBA notes that the Ministry of Municipal Affairs and Housing has established a Development Charges Steering Committee with sub-committees to recommend to government a formula that would better reflect the needs of growing communities, increase eligible capital costs for municipal services beyond transit and advise which services should be eligible for the collection of development charges. OHBA is pleased to be represented on the committee by Lyn Townsend, Larry Masseo, Kevin Fergin and Pierre Dufresne. As the work of the committees is not yet complete, OHBA does not intend to presume or prejudice the outcome of the multi-stakeholder committees and therefore has not commented or made specific recommendations in this submission on the ongoing work of the Development Charges Steering Committee and various technical sub-groups.

Conclusion

OHBA appreciates the opportunity to submit our recommendations with respect to the *Smart Growth For Our Communities Act* for consideration by the Ministry of Municipal Affairs and Housing. OHBA also appreciates the opportunity for our members to be represented and participate directly on both *Planning Act* and *Development Charges Act* technical stakeholder committees to provide recommendations to the government on regulations. OHBA expects this consultation will result in improvements to the legislation for the province and municipalities to demonstrate stronger leadership to ensure effective implementation of provincial policy. The proposed *Smart Growth For Our Communities Act* is an important piece to the complex puzzle of land-use planning and infrastructure financing in Ontario and it is important to "get it right" to support building strong communities across Ontario. OHBA strongly believes that the Government of Ontario has a responsibility to ensure that transit-oriented communities should be the most affordable and attractive communities for Ontario's future residents and employers.

OHBA members from across Ontario from Windsor to Cornwall and from Niagara to Thunder Bay will continue to be engaged with both the government and their provincial association with respect to the *Planning Act* and the *Development Charges Act*. OHBA appreciates the steps that have been taken to increase certainty of process and improve municipal transparency and accountability. We remain very concerned regarding potentially significant increases in taxation related to the *Development Charges Act*, limiting appeal rights under the *Planning Act* and potential unintended negative consequences with respect to Minor Variances. OHBA continues to support balanced public policy initiatives that do not compromise the ability of Ontarians to be able to afford to purchase or rent housing in Ontario.