



Ontario
Home Builders'
Association

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John Ballantine
Ministry of Municipal Affairs and Housing
Municipal Finance Policy Branch
777 Bay St., 13th Floor
Toronto, ON M5G 2E5

Re: Proposed Regulation Under the Development Charges Act, 1997 (15-MAH012)

The Ontario Home Builders' Association (OHBA) appreciates the opportunity to comment on the proposed regulation under the *Development Charges Act, 1997* if the proposed *Smart Growth For Our Communities Act* (Bill 73) is passed by the Legislature and receives Royal Assent. The proposed legislation amends the *Development Charges Act, 1997* and the *Planning Act* with significant impacts on our industry, new neighbours and ultimately how communities are planned for and how growth related infrastructure is financed in new communities large and small right across Ontario.

OHBA is the voice of the land development, new housing and professional renovation industries in Ontario. We represent over 4,000 member companies which are organized into a network of 30 local associations spread out across the province, this includes: builders, developers, professional renovators, trade contractors, manufacturers, consultants and suppliers. Our members - proud and passionate about their work and their contribution to the growth and development of this province - have built over 700,000 homes in the last ten years in over 500 Ontario communities. As an industry, we employed over 300,000 people and contributed over \$45.6 billion to the province's economy in 2014.

OHBA previously submitted comprehensive recommendations to the Ministry of Municipal Affairs and Housing (MMAH) responding to the Environmental Registry posting (EBR Registry Number: 012-3651) on the proposed *Smart Growth for our Communities Act* on June 3, 2015 and also participated extensively in the 2013/14 Land Use Planning and Appeals System consultation and Development Charges System consultation with two comprehensive submissions to the Ministry in January 2014. OHBA also made a deputation to the Standing Committee on Social Policy on November 2, 2015 and submitted written recommendations with respect to the proposed Bill 73 to the Standing Committee on November 9, 2015. Several OHBA members were also appointed by the Ministry to the MMAH Planning Committee, the MMAH Development Charges Steering Committee and three MMAH Development Charges Sub-Committees this summer to consult on and assist in the development of regulations to implement aspects of the proposed *Smart Growth For Our Communities Act*. OHBA appreciates the extensive consultation that the Ministry has engaged directly with OHBA, our members and many of our local home builders' associations across Ontario.

OHBA appreciates the opportunity to comment on the proposed regulation under the *Development Charges Act, 1997*. This issue is of critical importance to the industry and, as you know, during MMAH Charges Steering Committee and various Sub-Committee processes, OHBA, BILD and our member representatives were focused on providing professional technical advice, responding to the requests of your project team and searching for solutions to the issues within the Steering Committee's (and working groups) mandate. OHBA is supportive of the five

principles by which the DC Steering Committee examined the various options: responsiveness to community needs; transparency and accountability; predictability and consistency; cost effectiveness; and equity. OHBA and BILD submitted confidential technical comments and recommendations to the Ministry Finance Policy Branch on July 31st and September 18th including potential regulations as part of the working group process. Our industry representatives brought to the discussions solutions to create good public policy that is in the public interest. Hence, it is critically important that the final regulation accurately captures the detailed technical comments, rationale and evidence presented by the participants of the industry. OHBA and BILD would be pleased to continue working with the Ministry Finance Policy Branch in the development of regulations as we previously did through the DC working groups with Ministry staff.

In general, OHBA is 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, investment-ready 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 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.

OHBA has already provided extensive and detailed recommendations to the MMAH as part of our Environmental Registry 012-3651 submission on June 3, 2015. OHBA provided further written comments to the members of the Standing Committee on Social Policy to simply and briefly highlight our top nine items in the legislation that we either support in their current form or would propose amendments to improve the legislation. Specific to the 15-MAH012 posting on October 15, 2015 with respect to the Proposed Regulation Under the *Development Charges Act, 1997*, OHBA has the following comments and recommendations:

Prescribe services for which costs are not recoverable through development charges. The services would include all those in the list of ineligible services in the existing Development Charges Act except for waste management which would be replaced by an exclusion of landfills and incineration of waste.

- The proposed legislation has removed any services that were ineligible. OHBA believes that it is inappropriate for ineligible services to be removed from the legislation and replaced by an ineligible services list through regulation. OHBA recommends the ineligible services list remain in the legislation.
- OHBA and BILD engaged with the Ministry to discuss potential frameworks for a package of amendments to the *Development Charges Act* and enabling regulations (specifically with respect to transit) on the understanding that services that are currently ineligible in the Act would now become ineligible in the regulation with the exception of waste diversion.
- OHBA and BILD understood that waste diversion would be removed from the ineligible services list and support the 15-MAH012 posting for an exclusion of landfills and incineration of waste from becoming eligible for development charges in the regulation.
- OHBA opposes any further changes to the list of ineligible and discounted services other than what has been set out in the proposed 15-MAH012 regulatory posting.
- OHBA expects, based on this posting, that the ineligible services removed from the legislation will all be included in the new regulation, they are: The provision of cultural or entertainment facilities, including museums, theatres and art galleries (but not including public libraries); the provision of tourism facilities, including convention centres; the acquisition of land for parks; the provision of a hospital as defined in the *Public Hospitals Act*; the provision of headquarters for the general administration of municipalities and local boards.

Prescribe transit as a service for which a forward looking level of service would be used in calculating development charges.

- Transit development charges are an important financing tool, but it is important to recognize that they are built into the cost of new homes along with an extensive series of other taxes, fees and charges that governments place on new housing (i.e. GST/HST, Land Transfer Taxes, planning fees, conservation authority fees etc). These charges are ultimately absorbed and paid for by the new neighbour and infrastructure built to last a generation is paid-off through their individual long-term mortgages.
- New residents deserve to know that the taxes they are paying to local governments are fair, accountable, transparent, and affordable.
- OHBA recognizes that the changes to the transit development charges are based on the 2014 Liberal Election Campaign commitment. 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 processes be established in a transparent manner to ensure costs to new neighbours remain fair, accountable and transparent.
- While OHBA acknowledges and is supportive of modernizing the transit development charges formula, 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. Ultimately, public policy should ensure that transit-oriented communities be the most affordable and attractive communities for Ontario's future residents and employers.
- It is important that the regulation recognize that investment in new transit infrastructure benefits everyone living and working in our communities. People who live in new housing and businesses that invest in new facilities should not be required to carry the financial burden caused by the failure of past governments to invest in transit. They should not be required to pay for transit infrastructure that will benefit growth beyond the 10 year planning horizon.

Prescribe a methodology for the calculation of a forward looking service level for transit over a ten year planning period based on the level of service council intends to provide as a result of increased need arising from development.

- A new section in the *Development Charges Act* is proposed in Bill 73 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. OHBA and BILD previously submitted comments to the Ministry on July 31 and September 18 through the Development Charges Act Steering Committee for consideration regarding the method of estimating the planned level of service for a prescribed service and the criteria to be used in doing so.
- OHBA notes the regulatory proposal will significantly increase taxation on new residents and new businesses. Therefore we recommend that the province look at, and test, the public policy effect of these transit DC changes by instituting a mechanism that 'ground-truths' the charge and impact. This will serve as a much needed reality check related to the figures that go into the transit DC calculation as a sustainable cost-control measure. We also need a reality check related to the potential tax burden on the new homeowner. Future residents should not have to face paying for transit intended to last upwards of 75-years on the back of their new mortgage. No policy should be adopted without this needed reality check.
- OHBA continues to support the "Replacement Cost Model" – a model which uses a planned level of service over a period of 10-years following the background study. The model is designed to estimate the planned level of service using a methodology consistent with the method used to estimate the level of service for the calculation of development charges for other services.
- The replacement cost of municipal capital assets would be used to determine the planned level of service (exclusive of any allowances for depreciation). The level of service is to be included in municipal asset management plans.

- For this method, the following options for planned service level were considered by the DC Working Group for calculating the maximum development charge funding envelope:
 - Average planned level of service over 10-year planning period;
 - Planned level of service at the end of planned period;
 - Alternative options could include:
 - Peak Planned level of service over 10-year planning period;
 - One of the above options with capping.
- OHBA believed that the “Replacement Cost Model” would ensure transparency and accountability and provide consistency between the Asset Management Plan (required under Bill 73 for any development charge by-law) and the methodology used to calculate a transit development charge.
- OHBA remains opposed to the “TYSSE Model” and notes that the Scarborough Subway is an example of why effective restrictions are needed in the regulation to prevent the ‘gold plated’ services far beyond what is needed to provide transit services to the community. In fact, over the course of the summer, news reports confirmed senior municipal officials had expressed concerns and issues with respect to ridership projections and the decision to choose the much more expensive subway option over the LRT. Accountability, transparency and the relationship to Asset Management Plans all must work together to build the appropriate transit needed to serve the community. New homeowners and employers should not have to pay disproportionately for unsustainable transit, both from the capital and operating perspective.
- OHBA remains opposed to the “TYSSE Model” due to the lack of effective restrictions on the ability of municipalities to increase charges to unsustainable levels and lack of sufficient details to ensure transparency and accountability.
- OHBA believes that the “Replacement Cost Model” satisfies the government’s campaign commitment to increase development charges for growth-related transit infrastructure; provides increased flexibility for addressing transit system growth and evolution; enhances accountability and transparency; while maintaining a degree fairness and equity for new neighbours.

Prescribe requirements for development charge background studies, including requirements for asset management plans, to, among other matters, identify post-period benefits and benefits to existing residents in relation to transit services.

- The language in the 15-MAH012 regulatory posting confirms key OHBA and BILD principles that our members articulated at the DC Steering Committee and working groups to ensure that development charges be equitable, fair, transparent and include municipal accountability mechanisms.
- OHBA is broadly supportive of measures to establish mechanisms to encourage evidence-based and strategic long-term infrastructure planning that supports job creation, economic growth and the protection of the environment. This is why OHBA supported the *Infrastructure for Jobs and Prosperity Act* (Bill 6), which offered an important function through Asset Management Planning 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.
- OHBA is therefore pleased to see that Bill 73 proposes to require municipalities to integrate their use of development charges with their long-term funding strategies through an asset management plan.
- It is essential from an accountability perspective that both a DC background study and municipal asset management plan must be completed and enacted at the same time.
- Background studies associated to a new DC by-law will now be expanded to include preparing these types of asset management plans which will help define what is needed versus what is wanted. This integrated system will ensure that municipalities will look at all of their funding sources to build critical infrastructure and the plans will help to make sure that they are financially sustainable over their full life cycle.
- OHBA notes that municipal asset management plans must enhance accountability to demonstrate that the transit assets to be funded under a development charge by-law are financially sustainable over their full life cycle.

- Asset management plans are critical to the success of any of the proposed changes to the *Development Charges Act* and prescribed requirement for development charges background studies. OHBA and BILD made a joint submission to the Ministry that used the details outlined in the province's own asset management plan guidelines and put them into a draft regulation. Our proposal reinforced the principles of transparency and accountability.
- OHBA is supportive of the language in the 15-MAH012 proposed regulatory posting on October 15, 2015 that proposes to “prescribe requirements for development charge background studies, including requirements for asset management plans, to, among other matters, identify post-period benefits and benefits to existing residents in relation to transit services.”
- OHBA reiterates the rationale for maintaining benefits to existing residents - according to a 1996 Technical Information Bulletin prepared by the Municipal Affairs and Housing: *“The new legislation introduces a new feature in an effort to contain the costs which are imposed through development charges. Thus, growth-related capital costs for all eligible services will be funded from a combination of development charge revenues and other general municipal revenues. The requirement for a municipal contribution reflects the concern that new residents should not be expected to pay for the entire cost of new facilities as well as contributing, through their property taxes, toward the cost of existing facilities and/or their renewal.”*

OHBA appreciates the opportunity to submit our recommendations with respect to a proposed regulation under the *Development Charges Act, 1997* if the proposed *Smart Growth For Our Communities Act, 2015* is passed by the Legislature and receives Royal Assent. OHBA appreciates the commitment by this government to improve the public policy framework and we look forward to continuing the ongoing constructive dialogue and the opportunity to work together.

Sincerely,



Joe Vaccaro

CEO

Ontario Home Builders' Association

c. Minister of Municipal Affairs and Housing: Hon. Ted McMeekin