



Ontario
Home Builders'
Association

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Ken Petersen
Ministry of Municipal Affairs and Housing
777 Bay St., Floor 13
Toronto, ON M5G 2E5

Re: Proposed Regulations Under the Planning Act: EBR 012-6823 / 012-6824 / 012-6825 / 012-6826 / 012-6827

The Ontario Home Builders' Association (OHBA) appreciates the opportunity to comment on the five proposed regulations under the *Planning Act* relating to the *Smart Growth For Our Communities Act* (Bill 73) that received Third Reading and Royal Assent on December 3, 2015. While the changes to the *Development Charges Act* are all now in force, the majority of the *Planning Act* changes remain to come into force on a day to be named by proclamation. Bill 73 amended both the *Development Charges Act* 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 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 (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. OHBA also submitted comments on November 19, 2015 regarding a proposed regulation under the *Development Charge Act*. 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 last 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.

On February 29, 2016, the Provincial Government posted five proposed regulations for comment on the Environmental Registry.

- Enhanced complete application requirements – [EBR Registry Number 012-6823](#)

The proposed amendments in the regulations under the *Planning Act* would add an additional requirement to the list of material that is required for applications for OPAs, ZBAs, plans of subdivision and MZO amendments.

- Enhanced and updated notice requirements – [EBR Registry Number 012-6824](#)

Proposed amendments included in existing regulations under the *Planning Act* regarding: Updating relevant notice requirements in relation to OPs, OPAs, ZBs, ZBAs, plans of subdivision, minor variances and consents. Modernizing, simplifying and updating the content of notices for publishing in newspapers and posting on properties. Identifying the requirements for the content of a new optional notice that approval authorities can give to establish a 20 day period for appealing a non-decision of an official plan.

- Enhanced Ontario Municipal Board record for minor variances – [EBR Registry Number 012-6825](#)

Proposed amendment included in an existing regulation under the *Planning Act* regarding: Adding a requirement to the record that is forwarded to the OMB following an appeal of a minor variance.

- Rename the DPS the “community planning permit system”, and provide for a 5-year timeout for privately-initiated amendments – [EBR Registry Number 012-6826](#)

Proposed revision of an existing regulation under the *Planning Act* regarding: Providing “community planning permit system” as an updated name for the “development permit system”, Putting in place a 5-year timeout for private applications to amend the “community planning permit system” after the system comes into effect, unless the municipality passes a resolution to allow applications during the 5-year period.

- Proposed new regulation to address transition to the *Planning Act* – [EBR Registry Number 012-6827](#)

Proposed new regulation under the *Planning Act* to prescribe transitional provisions for Bill 73.

OHBA Commentary – EBR 012-6823:

Regulations under the *Planning Act* currently set out minimum requirements with respect to the information that must be submitted with each land use planning application. The Ministry proposes that matters included in O. Reg. 543/06 “Official Plans and Plan Amendments”, O. Reg. 545/06 “Zoning By-laws, Holding By-laws and Interim Control By-laws”, O. Reg. 544/06 “Plans of Subdivision” and O. Reg. 546/06 “Requests to Amend or Revoke Minister’s Zoning Orders” be updated to require that public consultation strategies be submitted by applicants as part of complete applications.

OHBA understands that the purpose for updating these existing regulations is to support enhanced citizen engagement. OHBA’s June 3, 2015 Bill 73 submission noted our support for engaging the public earlier in the planning process to reduce conflicts and potential appeals at the back end of the planning process. The regulatory proposal does not provide clarity regarding what standards a public consultation strategy would be reviewed against, nor if there is a process or right of appeal in the event that a disagreement over the proposed strategy arises. OHBA is also concerned that without clarity with respect to standards for public consultation strategy requirements, that there may emerge a lack of consistency between applications of the same type and fairness for all applications engaged in the planning process.

Furthermore, the uncertainty regarding “a public consultation strategy” leaves open the possibility for abuse by a municipality when declaring an application complete. The only mechanism is then a motion to the OMB. OHBA is concerned that leaving this process open-ended would enable a municipality to declare the submitted public consultation strategy to be unsatisfactory and therefore refuse to declare the accompanying *Planning Act* application to be complete.

OHBA Commentary – EBR 012-6824:

Proposed amendments to matters included in the regulations under the *Planning Act* would include enhancements for relevant notices (e.g. notice of public meetings) for proposed OPs, OPAs, ZBs, ZBAs, plans of subdivision, minor variances and consents.

- 1) Enhancing relevant notices for proposed OPs, OPAs, ZBs, ZBAs, plans of subdivision, minor variances & consents
 - a) How Notices May Be Given:
 - b) How Decision Notice for Zoning By-laws May Be Given:
- 2) Modernizing and simplifying notices for OPs, OPAs, ZBs, ZBAs, plans of subdivision, and consents
- 3) Content of Notice Limiting Appeal Period for OPs and OPAs

OHBA is supportive of modernizing how notice provisions may be given to allow for notices to be given by e-mail. OHBA is unclear on how to demonstrate/ensure compliance regarding posting notices in multi-unit buildings in a location visible to all tenants. OHBA questions why this provision would be limited to residential land uses, how it could also apply to other land uses (office, commercial, industrial) where there could be multiple tenants. Our primary concern is how will a municipality require a third party owner of a property (whom is not part of the application) to post notices and ensure/demonstrate compliance.

OHBA is generally supportive of better aligning zoning by-law decision notice requirements to mirror the existing notification requirements for Official Plans. OHBA is also supportive of modernizing and simplifying the required content of notices.

OHBA Commentary – EBR 012-6825:

The *Planning Act* sets out certain information and material that is required to be forwarded to the OMB as a result of an appeal of a minor variance. It is proposed that O. Reg. 200/96 “Minor Variance Applications” be amended to add a requirement that minutes of the public hearing be included in the record forwarded to the OMB following an appeal of a minor variance. The purpose as stated by the Ministry for updating this existing regulation is to support enhanced citizen engagement.

OHBA has no specific comments on this regulatory proposal.

OHBA Commentary – EBR 012-6826:

The proposed regulation proposes that O. Reg. 608/06 “Development Permits” be revised to rename the “development permit system” to the “community planning permit system” and proposes that no person or public body shall apply to amend the relevant official plan policies or the by-law establishing a “community planning permit system” within 5-years of the establishment of the system in a municipality, unless the municipality passes a resolution to allow applications during the 5-year period.

OHBA supports renaming the “development permit system” to the “community planning permit system”. OHBA is opposed to a five-year moratorium for privately-initiated amendments to the system that limits flexibility or the ability to make minor adjustments when there is a strong planning rationale to do so. OHBA is further concerned that the lack of flexibility will create a restricting atmosphere which will inhibit creativity when determining what will best benefit the community and result in great city building. OHBA understands and is supportive of the

planning certainty that a community planning permit system is intended to provide, but is concerned that a five-year period is too long to make potentially needed adjustments based on something that was simply missed, a strong planning rationale or changing local economic circumstances.

OHBA Commentary – EBR 012-6827:

It is proposed that the application of the Bill 73 changes identified below be transitioned as follows:

- Restricting applications after certain planning documents come into force (i.e. 2-year timeout for new official plans and comprehensive zoning by-laws; 5-year timeout for development permit system; 2-year timeout for minor variances of site specific zoning by-laws;) – these provisions would apply to applications in respect of new planning documents that come into force after the Bill comes into force
- The enhanced reasons as part of an appeal letter would be required for appeals made during appeal periods that begin after the Bill comes into force
- The prohibition on global appeals of new official plans would apply to appeals made during appeal periods that begin after the Bill comes into force
- The prohibition on appeals of certain provincially approved matters would apply to appeals made during appeal periods that begin after the Bill comes into force
- The removal of the appeal right in respect of second unit policies prepared under section 26 (i.e. official plan update) would apply to appeals made during appeal periods beginning after the Bill comes into force
- The authority to extend time period for sending record to OMB to allow for Alternative Dispute Resolution after a decision is made would apply for appeals made during appeal periods that begin after the Bill comes into force
- The enhanced requirement for approval authorities and the OMB to have regard to information and material, including written and oral submissions from the public, would apply to matters that came before them after the Bill comes into force
- The enhanced requirement for municipalities and approval authorities to explain how public input was considered would apply for decisions made after the Bill comes into force

OHBA notes that planning applications take an enormous amount of time to prepare, review and approve. Planning applications involve years of research and resources through a public process. Complete applications require significant supporting documentation to be prepared and produced, often years in advance of a decision being made. Therefore how transition is managed is critical.

OHBA is specifically concerned by the proposed language that “these provisions would apply to applications in respect of new planning documents that come into force after the Bill comes into force”. This suggests that the various moratoria on applications based on changes to the Planning Act made through the *Smart Growth For Our Communities Act* (including OPAs, ZBAs and Minor Variance provisions) would apply to in-process applications if the planning document comes into force after the Bill comes into force. This is manifestly unfair and has significant impacts on many property owners. OHBA notes that people who have commented (or considered appeals) on proposed documents, many of which are substantial in size, have done so on the basis that an amendment application could be made upon approval. The lack of transition provisions related to the moratorium on amendments of Official Plan Amendments, Zoning By-Law Amendments and Minor Variances will have a significant impact on applications that are underway.

This proposed change appears to overrule the long-standing common approach, which generally is to apply the policies and plans in effect on the date of the application or commencement of reviews of new planning documents. The result it is that an applicant can proceed, with the best-laid plans keeping entirely within the policy framework in effect, only to see a provincial policy change. All applications should continue to be assessed against the policies of the day of application and commencement of reviews of new municipal planning documents without new restrictions being applied after new planning documents come into force.

OHBA submits the following recommendations for a more fulsome transition that would allow for application processes that are already in process to be completed under the current provisions: (a) a firm date for the new provisions to take effect to enable the submission of new applications and be grand-parented. If the Ministry does not adopt recommendation (a), OHBA recommends: (b) exempt all applications that are currently in-process – including related applications. For example a Zoning By-Law could be approved, but then the implementing Site Plan may identify a variance for an issue that was not contemplated during the zoning process.

OHBA Commentary – Official Plan Reviews – Employment Lands

OHBA notes that despite the five proposed regulations that were posted to the Environmental Registry, there is no proposed regulation which addresses the review of employment lands. The mandatory five-year review of employment lands was removed from the *Planning Act* by Bill 73 but no regulations were released which provide direction on what process will replace the former mandatory five-year review or how municipalities may address employment lands once the new Legislation comes into full force. OHBA requests that the Ministry review this deletion and provide direction on the way in which employment lands are processed once the Legislation comes into force.

Concluding Remarks:

OHBA appreciates the opportunity to submit our recommendations with respect to a proposed regulation under the *Planning Act*. 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: Honourable Ted McMeekin