



October 30, 2017

Honourable Yasir Naqvi
Attorney General
McMurtry-Scott Bldg 11th Flr, 720 Bay St.
Toronto, ON M7A 2S9

Honourable Bill Mauro
Minister of Municipal Affairs
777 Bay Street, 17th Floor
Toronto, ON M5G 2E5

Re: Bill 139 – Transition Regulations

After attending the Standing Committee of Social Policy hearings on Bill 139: *Building Better Communities and Conserving Watersheds Act, 2017*, and prior to finalizing clause-by-clause amendments, the Building Industry and Land Development Association (BILD) and the Ontario Home Builders' Association (OHBA) are providing the provincial government with the attached proposed transition regulation. Bill 139 will have considerable implications for the new home building and land development industry, our municipal partners and for Ontarians looking for new communities across the province from Windsor to Ottawa and Fort Erie to Thunder Bay. The attached regulation was prepared by BILD and OHBA solicitor David Bronskill, Goodmans LLP.

Reasonable and fair transition is essential given the government's decision not to amend the proposed legislation to include a new Ministerial standard for signing off on Municipal Official Plans (OP) to include the current language in the Provincial Policy Statement and Provincial Plans that requires municipalities to **optimize the use of existing infrastructure** and public service facilities. There should be a new Ministerial standard of review to re-enforce the current requirement in subsection 26(9) of the *Planning Act*, that requires all municipalities to amend their zoning by-law to ensure conformity with their OPs no later than 3-years after the OP comes into effect. OHBA and BILD are disappointed and frustrated that the government did not accept this recommendation to the standard of review, or any of our recommendations on other matters, so that Bill will respect and be consistent with the government's updated PPS, Growth Plan and *Planning Act*.

OHBA and BILD's assessment of the proposed government amendments to Bill 139 is that the government has ignored the necessary recommendations that would actually align and empower the new Local Planning Appeals Tribunal (LPAT) with the provincial planning law that the municipalities are required to implement. As we stated in committee, we recognize changes are moving forward and we also supported some of them publicly, in our August 14, 2017 submission to the province (EBR 013-0590), which also stated that amendments were required to Bill 139 to achieve the government's intensification objectives and to protect procedural fairness.

As noted above, absent significant revisions in committee, it is critical that the government provide an appropriate, legal and fair transition provision from the current legislative and regulatory framework. OHBA and BILD recommend that the government immediately engage with the industry to consult on fair and appropriate transition that, at the absolute minimum, will not disrupt any related municipal processes or appeals commenced before the effective date of Bill 139. The proposed legislation requires a great degree of regulatory work, along with LPAT establishing new operational procedures, before anyone can understand the full implications of Bill 139. A fair and balanced transition to the new legislative framework is contingent on all other regulations and procedural aspects of the LPAT being approved and in place. Otherwise, the resulting disruption will put thousands of proposed new housing units at risk, further undermining the ability of the industry to bring much needed housing supply to the Ontarians.

Ministers, you have both clearly expressed publicly that these changes to the land use planning appeals system reach beyond the tribunal structure, further necessitating a need for an appropriate, legal and fair transition.

OHBA and BILD believe Bill 139, as drafted, may compound or exacerbate existing issues in the system, and we have previously outlined a number of consequences that will result from implementing the appeal framework set out in Bill 139.

As we have informed government representatives and MPPs, we are also hearing from our members that some municipalities are not advancing planning applications through the system and are essentially “running out the clock” because some in the municipal sector believe that the province will pass a retroactive transition that will capture existing applications within the new appeals regime. A retroactive transition – affecting any municipal process starting before the legislation’s effective date and before completion of the necessary regulatory and operational procedures of LPAT - would clearly be a punitive measure against applications that our members filed in good faith under the rules that existed at the time. If this government believes in procedural fairness and respecting due process, a transition regulation must respect all applications started under the current planning system.

There is a great opportunity for the government to establish a transition policy that will incentivize municipalities to modernize their zoning by creating a transition regulation that requires municipalities to complete a Municipal Comprehensive Review of their Official Plans. This would bring municipalities into conformity with provincial policy to optimize land use decisions. Such a transition should also require municipalities to abide by Section 26 (9) of the *Planning Act* and complete a comprehensive review and amend their zoning to bring it into conformity with their Official Plan and provincial policy to activate the LPAT regime. However, at minimum, the attached draft regulation would achieve fair transition that is consistent with past approaches of this government to amendments to the *Planning Act*.

OHBA and BILD strongly recommend that the provincial government adopt our recommendations prior to the enactment of Bill 139. We believe these recommendations can alleviate the current uncertainty that all stakeholders in the planning process including both our members and our municipal partners are experiencing.

Sincerely,



Joe Vaccaro
CEO, OHBA



Paula J. Tenuta, MCIP, RPP
Vice President, Policy & Government Relations, BILD

Enclosure – Proposed Transition - Bill 139

- c. Premier, Kathleen Wynne
- c. Ontario Cabinet
- c. Secretary of Cabinet, Steve Orsini
- c. Deputy Minister of Municipal Affairs, Laurie LeBlanc

PROPOSED TRANSITION FOR BILL 139

Deemed day of commencement

1. (1) A matter or proceeding that is mentioned in subsection (2) and commenced before **[insert effective date of Bill 139]** shall be continued and disposed of under the Act as it read on **[insert day before effective date of Bill 139]**.

(2) For the purposes of subsection (1), a matter or proceeding shall be deemed to have been commenced,

- (a) in the case of a request for an official plan amendment, on the day the request is received;
- (b) in the case of an official plan, an amendment to it or a repeal of it, on the day the by-law adopting the plan, amendment or repeal is passed;
- (c) in the case of a zoning by-law or an amendment to it, on the day the by-law is passed;
- (d) in the case of an application for an amendment to a zoning by-law, on the day the application is made;
- (e) in the case of an application for an approval of development in a site plan control area under subsection 41 (4) of the *Planning Act* or subsection 114 (4) of the *City of Toronto Act*, on the day the application is made;
- (f) in the case of an application for a minor variance under section 45 of the Act, on the day the application is made;
- (g) in the case of an application to amend or revoke an order under section 47 of the Act, on the day the application is made;
- (h) in the case of an application for the approval of a plan of subdivision under section 51 of the Act or an application for the approval of, or an exemption from an approval of, a condominium under section 9 of the *Condominium Act, 1998*, on the day the application is made; and
- (i) in the case of an application for a consent under section 53 of the Act, on the day the application is made.