



**Ontario**  
Home Builders'  
Association

October 18, 2017

MPP Peter Tabuns  
Chair, Standing Committee on Social Policy  
Room 165, Main Legislative Building, Queen's Park  
Toronto, Ontario M7A 1A5

**Re: *Building Better Communities and Conserving Watersheds Act, 2017 - Bill 139 (Schedule 3)***

On behalf of the the Ontario Home Builders' Association (OHBA), we are pleased to provide the Standing Committee on Social Policy with our comments and proposed legislative amendments to Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*. OHBA previously provided the province with recommendations regarding the OMB in a joint submission with BILD on August 14, 2017 (EBR 013-0590) as well as submissions in August 2016 and December 2016.

Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017* represents the fourth time the Province has proposed substantive amendments to the scope, powers and function of the OMB since 2003. The currently proposed legislative amendments are however the most far reaching and significant set of changes to Ontario's land use planning appeals process that have been brought forward in decades. The proposed legislative changes will have considerable implications for the new home building and land development industry as well as our municipal partners and for communities experiencing growth across Ontario from Windsor to Ottawa and Fort Erie to Thunder Bay. OHBA continues to believe that the stated goals of the provincial government for the proposed legislation will NOT be achieved through Bill 139 and the LPAT, as currently proposed.

OHBA represents over 4,000 member companies, organized through a network of 29 local associations across the Province. In 2016, the residential construction industry employed over 336,000 people, generated \$19.8 billion in wages and contributed over \$56 billion to the provincial economy. OHBA continues to support the essential role of the OMB as an impartial, evidence-based, administrative tribunal that is responsible for handling appeals of land use planning disputes and to ensure the optimization of land and infrastructure. OHBA does however support modernization of the appeals process and we are proposing a number of legislative amendments to the Standing Committee on Social Policy that we believe will improve the legislation and the implementation of a Local Planning Appeals Tribunal (LPAT).

OHBA does not oppose the creation of the LPAT, provided that it is provided with appropriate resources, a broad mandate and sufficient jurisdiction to consider all land use planning matters. It is important to note that decisions made by the OMB have been based on planning evidence, provided by expert witnesses under oath, ensuring that long-term public policy objectives, rather than short-term local political intensions, are upheld. Through this administrative authority the OMB has served to ensure that provincial land use policies and objectives are optimized and achieved, and that municipalities employ consistency in the application and implementation of the *Planning Act* and other related land use policies, including the Provincial Policy Statement and Provincial Plans.

The PPS and Growth Plan focus on optimizing Ontario's economic opportunities and existing infrastructure to create vibrant, livable communities. However, we continue to believe that this proposed appeals framework will challenge the ability to achieve optimization, and result in adverse effects on economic development and the

creation of complete transit oriented communities. OHBA is very concerned that this proposed framework will empower local councils to override conformity with the PPS, Provincial Plans and enable decision-making that is not vested in the long-term public good, but rather re-election. This type of approach to land use planning in Ontario will result in even greater pressures on housing supply and prices.

OHBA is concerned Bill 139's proposed reforms will NOT reduce the length of time or expense for appeals, enhance public participation in the planning process or increase the use of mediation. OHBA is further concerned that Bill 139 does not focus on achieving the "best" planning decisions, but rather "good enough" planning that meets a minimum threshold and that the LPAT will fail to provide a forum where the principles of fairness, quality, consistency and transparency are fundamental, and the provision of natural justice is the first order of business.

OHBA submits the following proposed legislative amendments to the Standing Committee on Social Policy:

## **OHBA PROPOSED REVISIONS TO BILL 139**

### **1. Tribunal Rules Should Not Have Priority Over SPPA**

#### **Schedule 1**

##### **Local Planning Appeal Tribunal Act, 2017**

**31.** (1) The Tribunal shall dispose of proceedings before it in accordance with any practices and procedures that are required under,

...

(b) the *Statutory Powers Procedure Act*, unless that Act conflicts with this Act; or a regulation made under this Act ~~or the Tribunal's rules~~; or

...

(3) Despite section 32 of the *Statutory Powers Procedure Act*, this Act; and regulations made under this Act ~~and the Tribunal's rules~~ prevail over the provisions of that Act with which they conflict.

### **2. Opportunity for Oral Hearing and Evidence**

#### **Schedule 1**

##### **Local Planning Appeal Tribunal Act, 2017**

**32.** (3) Without limiting the generality of subsection (1), the rules may,

...

(g) provide for when and how the Tribunal may hear evidence at a hearing, including how it will be served and filed in advance of the hearing.

**33.** (1) The Tribunal may direct the parties to a proceeding before it to participate in a case management conference prior to a hearing, for the following purposes:

...

7. To determine the length, schedule and location of a hearing, if any, and the evidence that may be adduced or witnesses that may be called or examined at any such hearing.

8. To determine the order of any evidence or presentation of submissions.

...

**42.** (3) At an oral hearing of an appeal described in subsection 38(1) or (2),

(a) each party or person may make an oral submission that does not exceed the time provided under the regulations; and

(b) ~~no~~ each party or person may adduce evidence or call or examine witnesses as may be provided under the regulations or the Tribunal's rules.

43. (1) The Minister may make regulations,  
(a) governing the practices and procedures of the Tribunal, including prescribing the conduct and format of hearings, practices regarding the admission of evidence or the calling of witnesses and the format of decisions;  
...

### **3. Major Transit Station Areas – Maximum Heights and Densities**

#### **Schedule 3**

#### **Amendments to the Planning Act, the City of Toronto Act, 2006 and the Ontario Planning and Development Act, 1994**

##### **6.(6) Section 17 of the Act is amended by adding the following subsections:**

(36.1.4) Despite subsection (36), there is no appeal in respect of the following

...

~~4. Policies that identify the maximum densities that are authorized with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16(15).~~

~~5. Policies that identify the maximum densities that are authorized with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16(16).~~

6. Policies that identify the minimum ~~or maximum~~ heights that are authorized with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16(15).

7. Policies that identify minimum ~~or maximum~~ heights that are authorized with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16(16).

##### **10.(7) Section 34 of the Act is amended by adding the following subsections:**

(19.5) Despite subsections (19) and (19.3.1), and subject to subsections (19.6) to (19.8), there is no appeal in respect of,

(a) the parts of a by-law that establish permitted uses or the minimum ~~or maximum~~ densities with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16(15) or

(16); or

(b) the parts of a by-law that establish permitted minimum ~~or maximum~~ heights with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16(15) or (16).

### **4. Potential to Broaden the Standard of Review**

Amend the power to make regulations to include the ability to prescribe other criteria for the Tribunal to consider when hearing appeals.

Add the words “or other criteria provided under the regulations” to the following sections, subsections and clauses:

17(37)(b)

17(45)

17(49.3)

17(49.5)

22(7.0.0.1)(a)

22(7.0.0.1)(b)

22(8)(a.1)

22(8)(a.2)

22(11.0.4)1.i.

22(11.0.4)1.ii.  
22(11.0.9)(a)  
22(11.0.9)(b)  
22(11.0.13)(a)  
22(11.0.13)(b)  
34(11.0.0.0.2)(a)  
34(11.0.0.0.2)(b)  
34(11.0.0.0.4)(a)  
34(11.0.0.0.4)(b)  
34(19.0.1)  
34(19.0.2)  
34(25)1.i.  
34(25)1.ii.  
34(25)2.  
34(26.1)(a)  
34(26.1)(b)  
34(26.4)(a)  
34(26.4)(b)  
34(26.6)

## **5. Encourage Municipal Planning Decisions**

(a) Official Plan Amendment Applications (Section 22)

- Revise heading for proposed subsection 22(11.0.9) to read:

### **Notice re opportunity to make new decision – appeal under subs. (7), refusal**

- Revise proposed subsection 22(11.0.9) to read:

(11.0.9) On an appeal under paragraphs 3 or 4 of subsection (7) and except...

- Revise proposed subsection 22(11.0.11) to read:

(11.0.11) Subsections (11.0.12) and ~~(11.0.13)~~ apply applies with respect to an appeal...

- Delete proposed subsection 22(11.0.12) and renumber proposed 22(11.0.13) as subsection 22(11.0.12)
- Add new subsection 22(11.0.13)

### **Appeal – subs. (7), failure to make decision**

(11.0.13) In the case of an appeal brought in accordance with paragraph 1 or 2 of subsection (7.0.02), the Tribunal may approve all or part of the requested amendment as an official plan amendment, make modifications to all or part of the requested amendment and approve all or part of the requested amendment as modified as an official plan amendment or refuse to approve all or part of the requested amendment.

(b)

Rezoning Applications (Section 34)

- Revise heading for proposed subsection 34(26.1) to read:

### **Notice re opportunity to make new decision – appeal under subs. (11), refusal**

- Revise proposed subsection 34(26.1) to read:

(26.1) On an appeal under subsection (11) that concerns the refusal of an application and except as provided in subsections (26.4) and ~~(26.5)~~, the Tribunal shall...

- Delete proposed subsection 34(26.5) and renumber proposed subsection 34(26.6) as subsection 34(26.5)
- Add new subsection 34(26.6):

**Appeal – subs. (11), failure to make decision**

(26.6) On an appeal under subsection (11) that concerns the failure to make a decision on an application, the Tribunal may amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal’s order.

**Standard or Review**

A new standard of appeal that provides greater deference to municipal decision making requires a new standard of review for Ministerial approval of Official Plans. Such a standard should ensure conformity with the PPS and Provincial Plans to require municipalities to optimize the use of existing infrastructure and public service facilities. The standard of review must also require municipalities to fulfill their responsibilities under the *Planning Act* section 26 subsection 9, no later than 3 years after the OP comes into effect the council of the municipality SHALL AMEND all zoning by-laws that are in effect in the municipality to ensure that they conform with the official plan. OHBA is very concerned that many municipalities do not have up-to-date zoning – the province must take a stronger role to ensure the requirements of the *Planning Act* are being adhered to.

**Transition**

Despite the potential significance of the reforms being proposed under Bill 139, the government has provided no meaningful details regarding transition. Instead, transition will be provided by regulation at some point in the future, meaning there is no information currently available to stakeholders and no certainty for existing applications, proceedings and orders. OHBA therefore further recommends that the government immediately engage with the industry and our municipal partners to consult on appropriate transition that at the bare minimum will not disrupt matters before the board or complete applications that were filed with municipalities prior to the introduction of the Legislation. OHBA further suggests that if the province wants to incentivize municipalities to modernize their zoning, that the province could utilize transition policies to achieve this goal. OHBA recommends that in order to access the new proposed appeals process, municipalities should have to complete a Municipal Comprehensive Review of their Official Plans to bring them into conformity with the PPS and new Growth Plan; and further abide by Section 26 (9) of the *Planning Act* to complete a comprehensive review of their zoning to bring it into conformity with their Official Plan and provincial policy as a fair transition to a new appeals regime.

OHBA strongly recommends that the provincial government adopt our recommendations prior to the enactment of Bill 139. OHBA appreciates the opportunity for consultation and looks forward to continued dialogue with the government to amend the proposed legislation to improve Ontario’s land use planning and appeals system.

Sincerely,



Joe Vaccaro

CEO

Ontario Home Builders’ Association