Ontario
Home Builders'
Association

20 Upjohn Rd., Suite 101
North York, Ontario
M3B 2V9
www.ohba.ca

(416) 443-1545
Toll Free 1-800-387-0109
Fax: (416) 443-9982
info@ohba.ca

November 9, 2015

Standing Committee on Social Policy
MPP Peter Tabuns (Chair) / Valerie Quioc Lim (Clerk)
99 Wellesley Street West Room 1405,
Whitney Block, Queen's Park
Toronto, ON M7A 1A2

Re: Bill 73, Smart Growth For Our Communities Act

The Ontario Home Builders' Association (OHBA) appreciates the opportunity to comment on the proposed *Smart Growth For Our Communities Act* (Bill 73) as well as the opportunity that OHBA CEO Joe Vaccaro and First Vice-President Neil Rodgers had to address the Standing Committee on November 2nd. 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.

The Ontario Home Builders' Association is the voice of the land development, new housing and professional renovation industries in Ontario. We represents 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 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 of Municipal Affairs and Housing in January 2014. Several OHBA members were also appointed by the Ministry of Municipal Affairs and Housing to the Ministry Planning Committee, the Ministry Development Charges Steering Committee and three Ministry 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.

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 Ministry of Municipal Affairs and Housing as part of our Environmental Registry 012-3651 submission on June 3, 2015. Rather than restating all of our recommendations to improve the proposed legislation again, OHBA would like to take the opportunity in this letter 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 in the legislation or would propose amendments to improve the legislation. OHBA's top recommendations are as follows:

1. Voluntary Agreements
[DC Act - Sec 59.1]

OHBA has been advocating for several years for restrictions to be imposed to ensure that municipalities shall not impose a charge related to a development or service unless it is permitted under the DC Act. We are therefore supportive of the new Section 59.1 that proposes to impose restrictions on the use of "voluntary" charges related to development. This new section will serve to support greater transparency and accountability to the new neighbours, who have ultimately absorbed, what have historically been payments outside of the legislation.

This new section gives the Minister power to investigate whether a municipalities has complied with the restrictions and authorizes the Minister to require the municipality to pay the costs of the investigation. 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" payments (that are often anything but voluntary) with no accountability or transparency taking place outside of any legislative framework. OHBA therefore supports the proposed legislative amendment (Sec 59.1). It is important that existing agreements are protected under the newly amendment legislation.

2. Transit Development Charges
[DC Act – Sec 5.2]

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. These charges are ultimately absorbed and paid for by the new neighbour and paid-off through their long-term mortgages. New residents deserve to know that the taxes they are paying to local governments are fair, accountable, transparent, and affordable. Bill 73 proposes to change the way a transit DC is calculated, allowing municipalities to look forward at their future plans for transit to determine the charge. This will effectively increase the amount of transit related capital costs which can be included in the transit DC, and reinforces our longstanding recommendation for fairness and accountability measures.

OHBA recognizes that the changes to the transit development charge 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 and equitable.

This section in 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.

These legislative proposals 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.

While OHBA acknowledges the government priority to make a forward looking 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.

3. Asset Management Plans

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 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 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.

Asset management plans are critical to the success of any of the proposed changes to the Development Charges Act. OHBA and BILD made a joint submission to the Ministry that uses the details outlined in the province's own asset management plan guidelines and put them in to a draft regulation which has been given to MAH finance staff. Our proposal reinforces the principles of transparency and accountability.

4. Parkland Dedication Formula
[Planning Act – Sec 42 (6.0.1)]

OHBA has been advocating for nearly a decade that parkland dedication policies are negatively impacting housing affordability and contradicting provincial policy to support intensification. 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. found in Toronto, Vaughan and Ottawa or similar to the OMB Jan 15, 2015 decision in Richmond Hill – Case #PL110189) 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. Despite the lack of a cap, 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.

Parks will still be developed and provided as part of this Acts master parks plans requirements, and as Ministry of Municipal Affairs has reported, with almost $800 million in municipal reserves for recreational land, and having collected over $220 million in cash-in-lieu of parkland in 2013 alone, the funds are available for municipalities to make those investments in parks.

5. Transparency and Accountability – Parkland Dedication and Density Bonusing [Planning Act – Sec 42 and Sec 37]

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. The proposed legislation amends Section 37 of the *Planning Act* to require that money collected be kept in a special account, about which the treasurer is required to make an annual financial statement. This proposed legislative amendment reflects OHBA's recommendations to create more transparent reporting requirements for municipalities to detail how funds are collected and spent. OHBA is therefore supportive of the proposed amendments with respect to enhancing municipal accountability and transparency for Section 37.

OHBA is also supportive of the proposed requirement for municipalities to put in place a parks plan (Sec 42 (4.1 and 4.2)) 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. 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*.

Again, as reported by the Ministry, municipalities have $800 million in municipal reserves for recreational land and have collected over $220 million in cash-in-lieu of parkland in 2013 alone. Based on this financial information, municipalities have the resources to fund the creation and improvement of parks, what is necessary if for them to proactively plan for parks to build complete communities.

OHBA is also supportive of the proposed new *Planning A*ct section 42(17) and 42 (18) 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).

6. Minor Variance – Freeze for two-year period following owner-initiated site-specific rezoning [Planning Act – Sec 45 (1.3)]

OHBA strongly opposes the two-year moratorium on owner-initiated site-specific applications for minor variances following rezoning. 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, OHBA believes that proposed legislative amendments may be unpractical to implement and result in unnecessary municipal administrative processes.

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.

As an example, OHBA notes that minimum parking requirements are often an issue addressed through minor variances to the Committee of Adjustment. Intensification projects typically go through a rezoning process and must include, as part of the Zoning By-Law, a minimum number of parking spaces. 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 other “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. OHBA is opposed to the proposed legislative amendment.

7. Restoration of Requirement for Municipalities to Review Employment Lands
[Planning Act – Sec 26]

OHBA recommends that the province restore the requirement for municipalities to **review** employment lands as part of an Official Plan review. Bill 73 proposes to remove the requirement to confirm or amend policies dealing with areas of employment, including the designation of areas of employment in an official plan.

At a time where our municipalities across Ontario are constantly changing and evolving, municipalities should be required to look at employment lands as they are reviewing their OP policies. OHBA does not want to take away the opportunity to have good planning for employment areas at a time where it is becoming more dynamic.

Section 23 of Bill 73 would revise the matters to be considered as part of an Official Plan review pursuant to Section 26 of the *Planning Act*. These revisions would delete existing subsection 26(1)(b) and thereby remove the requirement to confirm or amend policies dealing with areas of employment, including the designation of areas of employment in the Official Plan. OHBA recommends that Section 23 of Bill 73 should be amended to include language similar to subsection 26(1)(b) of the existing *Planning Act* in the list of mandatory items to be reviewed as part of updating an Official Plan so that it is ensured that a revised Official Plan deals with areas of employment.

8. Clearly defining what constitutes a "new" Official Plan and/or Comprehensive Zoning By-Law
[Planning Act Sec 22 (2.1) and Sec 34 (10.0.0.1)]

Bill 73 proposes that no applications or appeals would be permitted for a two-year period after a new comprehensive zoning by-law is updated or new Official Plan is brought in. This puts a moratorium on applications to amend a new OP or comprehensive zoning by-law for two years from the date the OP or by-law comes in to effect. OHBA notes that neither Official Plan, nor Zoning By-Laws are intended to be static documents. 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 therefore recommends greater clarity and guidance regarding the definition of what constitutes a "new" Official Plan and that the approval authority gives greater scrutiny during their review to ensure a full comprehensive Official Plan review was, in fact, undertaken. Given that the proposed legislative amendments would also 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*].

9. Pre-Zoning Transit Corridors and Growth Centres

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 smart growth oriented provincial policy and challenges to housing affordability.

OHBA recommends that the province 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 province also needs to step up to ensure intensification occurs in the right places along transit lines to support the long-term operational viability of transit. That means a stronger pro-active approach to ensure municipal conformity with provincial policy and the declaration of a provincial interest in achieving enhanced levels of intensification through a Transportation Planning Policy Statement (TPPS) via Section 31.1 the *Metrolinx Act*. Declaring a provincial interest in achieving higher levels of intensification on transit corridors through a TPPS and requiring pre-zoning or a Development Permit System should be a component of the master-servicing agreements with municipalities such as Mississauga, Hamilton or Toronto on the Hurontario, Hamilton, Sheppard and Finch LRT corridors.

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. Bill 73 does not propose any legislative amendments that would support pre-zoning.

OHBA appreciates the opportunity to submit our recommendations with respect to the *Smart Growth For Our Communities Act* for consideration by the Standing Committee on Social Policy. We also appreciated to opportunity for OHBA, our largest local association BILD and the Waterloo Region Home Builders Association to address the committee directly at Queen's Park. OHBA appreciates the commitment by this government and the support of the opposition parties 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