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Commission on Planning and Development Reform in Ontario
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Dear Commissioners,

As noted in our letter of November 18, 1992, we have additional comments to make about issues raised in the September issue of New Planning News. These opinions represent those of the Canadian Environmental Law Association and have not been circulated and discussed within the Land-Use Caucus. Our comments relate to five areas: the proposals for a "New Policy System"; the province as planner; the role of the commenting agencies; the Environmental Assessment Act; and the discussion of development controls.

A New Policy System

As we noted in our November submission, the "new policy system" proposal raises questions about how the Commission views the status of existing policies, draft policies and other land-use planning guidelines. With respect to the proposal itself, we support the establishment of provincial advisory committees but questions arise as to the relationship between the PPAC and the IPC. For example, who would write the final report to Cabinet? It would appear from the Commission's proposal that the IPC would do so. We therefore ask what guarantee would exist that the IPC would not contradict the findings or recommendations of the PPAC? Joint responsibility for advising government and drafting reports would be preferable.

How will fair representation of stakeholders on PPAC be ensured? The non-governmental sector representation should include more than just environmental organizations. Other organizations or academics with expertise in social justice issues should also be included. In fact, different organizations with special expertise will be appropriate depending on the purpose of the policy in question.

The proposal to establish PPAC also raises questions as to how it will operate in conjunction with the proposed Environmental Bill of Rights. The EBR proposes that new policies under the Planning Act be subject to the public participation regime of Part II of the bill. This matter should be clarified. In addition, the proposal is quite reactive, i.e., the public merely reacts to government-initiated policies.

We suggest that provincial policy-making should ensure that definitive timeframes are

established for public notice and comment periods respecting proposed policies. Such public consultation definitely improved the successive drafts of the Wetlands Policy Statement although that process should not have taken over ten years to complete.

In addition to commenting on proposed policies, any member of the public should be able to write to the Committees to request that a new policy be developed for matters which are not currently subject to provincial policy; and that existing policies be reviewed and/or revised because of environmental inadequacy (or conflict with the notion of environmental paramountcy). Within a specified timeframe (say 30 days), the Committee(s) should acknowledge receipt of the request, and should report back to the requester, with reasons, as to what, if anything, the Committee and/or the government intends to do with the request (i.e., grant it or not); this response normally should be provided in a timely fashion, perhaps in 90 to 120 days.

We further suggest that to address issues of provincial concern where policies do not currently exist, the province should be empowered, under the Planning Act to "freeze" certain situations until a policy can be debated and developed. This could be done by empowering the Minister of Municipal Affairs to issue ministerial orders that are analogous to municipal holding by-laws (i.e., they can be limited in time as effective for one year and renewable only once) and can be either municipality-specific or province-wide in scope.

Finally, it is unclear what the Commission is referring to when it uses the word "policy". Does this mean Policy Statements under Section 3 or all "policies", "policy guidelines", related implementation guidelines, etc., which affect planning?

The Province as Planner

We submit that there is a clear provincial interest in ensuring orderly and environmentally sound development within Ontario. Accordingly, there is a need for the province to "plan" (e.g., provincial infrastructure or intra-regional development). The province's interest in planning should not be limited to "special" areas such as the Niagara Escarpment or the Oak Ridges Moraine. While the Commission recommends that municipalities should undertake some form of "strategic planning", there is little discussion of provincial strategic planning. If strategic planning is important for municipalities, then it is also important for the province.

Role of the Commenting Agencies

We noted in our November submission that the Commission's proposed model for reforming the approvals process appears to remove the current role of the commenting agencies without having investigated means of improving this role.

At present, the three sections of the Planning Act which refer to the role of the commenting agencies are discretionary in nature at two levels. First, a municipality may, at its discretion, circulate planning documents related to a particular undertaking to those commenting agencies it considers have an interest in the matter. Second, the commenting agencies determine, at their discretion, whether to comment or not according to their own decision-

making procedures.

Members of the public have experienced great frustration at this state of affairs and have called for reforms. The central concern is not so much that municipalities have abused their discretion. Rather, the problem tends to rest with the commenting agencies who have, on occasion, displayed a casual disregard for the review process, leaving it to citizens to either force their participation by way of subpoenas at Ontario Municipal Board hearings or to hire private consultants, at great expense, as substitutes for commenting agency personnel in the delivery of evidence before the Board.

The proposals (and broad support) for new policy statements to protect the environment must be accompanied by changes to these discretionary provisions. Without such changes, there would be little to compel commenting agencies to ensure that such policies are indeed observed in the processing of development approvals.

As a general rule, provincial agencies are not required to uphold the law in every instance where it is breached. However, there is no reason to suppose that any form of duty (e.g., a reporting requirement) directed at commenting agencies is prima facie unworkable. There are instances where such duties are legislated. For example, Section 7 of the Environmental Assessment Act provides that the Minister of the Environment shall take certain steps including ensuring that a review of environmental assessment documents is conducted when these documents are submitted under the Act. Hence, a legislated reporting requirement for commenting agencies is feasible.

The Environmental Assessment Act

Background

We are very concerned about the background discussion provided by the Commission regarding the challenge of incorporating environmental considerations into the planning process. This discussion perpetuates a number of myths about the EA process that are unjustified. Although this discussion comprises only a few paragraphs of the September newsletter, it provides a misleading introduction to the issues surrounding the two planning statutes - the Environmental Assessment Act and the Planning Act.

The charges of "duplication, delay and confusion" levied at the existence of two planning systems deserve closer attention. First, EA does not "duplicate" the Planning Act. To say that environmental concerns have been treated as an "add-on" in the planning process is, in some cases, extremely charitable. Environmental concerns have been frequently completely ignored. Hence the public has turned to the only environmental planning process available, EA.

The strategy employed by citizens groups concerned about the deficiencies in the planning process to address the environmental impacts of development proposals has been to request some form of EA Act involvement. EA is seen as the only process that offers a meaningful opportunity to rigorously address environmental concerns. In addition, the EA process is

seen as generally more accessible since intervenor funding is available at hearings where the EA Board is involved.

For example, groups have requested EA Act designation of environmentally significant private sector developments requiring Official Plan amendment, zoning changes or subdivision approval. While there may be 60 outstanding requests for designation of private sector activities under the EA Act, it is worth noting that not a single development proposal, subject to Planning Act approval such as those noted above, has ever been designated. Surely this track record effectively rebuts any suggestion that there has been actual or extensive duplication of such planning matters under the two Acts.

Additional motivation for public requests for designation has arisen from the potential to obtain, if not a designation, at least a Ministerial referral to the Environmental Assessment Advisory Committee (EAAC) for a public forum and report. Involvement of the EAAC has provided opportunities that would otherwise be unavailable to air concerns about problems arising from deficiencies in the Planning Act process and the lack of integration of the EA Act and Planning Act processes. In two extremely important cases, the Ganaraska Watershed and Grey County, the EAAC provided, in our opinion, some of the best critiques of the planning process available. The delay in the preparation and release of these reports was a political issue and not a reflection of the inability of the EA process, as governed by the EA Act, to assess planning proposals.

The public also views a request for designation of development proposals under the EA process as a means of assessing the overall impact of many developments for which Planning Act approval is sought in small, fragmented portions with no consideration for the overall cumulative impact of the entire development.

For example, development approvals for the Lagoon City development within and adjacent to a Class 2 wetland beside Lake Simcoe have been sought and granted in a fragmented, multi-staged fashion. The private developer is seeking approval for separate parcels of development under different applications. The municipality is seeking approval for expansion of sewage and water facilities for an unspecified - and as yet unapproved - amount of increased development. Under the planning process, it is exceptionally difficult for local citizens, ratepayers groups and reviewing agencies to address the overall cumulative impacts of the entire development. Hence, the citizen's groups request for designation was for an environmental assessment of all developments associated with the Lagoon City expansion.

The Minister of the Environment has recently decided not to designate the development, and suggested that the new Wetlands Policy Statement will adequately protect the wetlands. However, the developer has vowed to fight the perceived "retroactive" application of the Policy Statement, and it must be recalled that the municipality is only required to "have regard to" the Policy Statement. Therefore, the matter will still end up before the OMB as the citizens continue to file appeals against piecemeal approvals.

The delay that such designation requests engender is not due to the application of the EA process to these proposals. Rather, it is a reflection of the refusal of successive Ministers of

the Environment to make timely decisions on whether to apply the process at all.

The Commission's reference to many people worrying about "an even more cumbersome and lengthy decision-making process" is based largely on an impression of the EA process that reflects the circumstances surrounding only one percent of the projects that have flowed through the process - those which have resulted in lengthy hearings. According to statistics compiled by the Environmental Assessment Branch, over 76% of the projects that have obtained EA Act approval have been under Class EAs. Only 6% of all EA projects have been individual EAs while of all EA undertakings, only 1% have gone to a full hearing. Average hearing completion time is one year and this number is reduced to nine months when the two largest hearings are not included (the Ontario Hydro Demand-Supply Plan and the MNR Timber Management hearings).

Many reforms in the EA process are clearly needed. However, it would be more useful for the Commission to look at actual statistical data on the EA process to provide background information rather than convey general impressions that are based on only a limited set of projects that have gone through the process.

Municipal Infrastructure

The one area where overlap between the two processes can become a serious problem is approvals for classes of municipal infrastructure projects - for roads, water and sewers. Generally, this overlap is not a problem since the majority of projects fit within the definition of a class - small, recurring and relatively low impact projects - and approval occurs at the municipal level as municipalities administer the relevant Class EAs.

The problem arises for those projects which are controversial, often very large and that have the potential for causing significant environmental impacts. In such cases, the public often requests a bump-up to a full EA in order to obtain a broader review of the proposal than would be provided by the Class EA and perhaps a public hearing as well. In such cases where there is considerable controversy, it is entirely appropriate that these projects be the subject of full public debate. Indeed, this public right to fully assess controversial projects is one of the central objectives and strengths of the EA Act.

We have provided further comments in our most recent (November) submission in response to the Commission's proposal to transfer some or all of the Class EA approvals to the Planning Act process. As the proposal is currently drafted, we find it raises far too many questions and is unsupportable.

Development Control

We find the Commission's introductory discussion (in the September newsletter) about development control to be similarly neglectful of the historical situation as its introductory remarks about the EA Act. We consider the Commission's first term of reference to be central to its consideration of development controls. The first term of reference states that the Commission is:

to examine the relationship between the public and private interests in land use and development.

In our view, such an examination ought to consider the excessive influence of the development industry and individuals and companies associated with the development industry over municipal councils across the province. This influence is apparent both through election financing and at the time individual decisions are made at council and in the municipal bureaucracy. Extensive work conducted by investigative reporters at the Globe and Mail looking into the development boom in York Region north of Toronto, found evidence of conflicts of interest, breach of trust, campaign financing irregularities, cash payoffs and outright corruption involving politicians and several people in the development and building industries. The investigation found evidence of similar problems with the conduct of municipal bureaucrats. Experts, citizens' groups, and concerned politicians and developers conclude that the situation undermines the integrity of the entire planning process in Ontario.

As we noted in the conclusion to our November submission, from the public's perspective, these findings confirm what is often suspected: that the democratic process at the municipal level in Ontario is often distorted and manipulated. The public role in planning the community is trivialized as the hidden relationship between developers and municipal officials arrives at decisions behind closed doors in advance of or in spite of any public involvement into community planning. The major conclusion of the Globe and Mail investigation was to point to the failure of successive provincial governments to deal with the problem of "let's make a deal" planning. The province has over the years refused to thoroughly investigate allegations of corruption; refused until after the 1988 elections to begin to more effectively regulate municipal election financing; refused to implement comprehensive urban planning policy and instead allowed the private sector to dictate community shape and direction; and refused to effectively implement the Municipal Conflict of Interest Act.

Planning experts consulted during the Globe and Mail investigation stated that the influence of large developers has significantly distorted the urban planning process at municipal, regional, and provincial levels, creating communities which are profitable to build, but which will breed future social and transportation problems including traffic problems and a lack of recreational facilities, public transport and social services such as group homes and shelters and assisted housing.

For members of the public and particularly those involved in citizens groups interacting with the municipal planning process, there is a very strong and justifiable lack of trust in municipal councils whose election finances are excessively dominated by one special interest group and whose decision-making during their tenure on Council is so frequently favourable to that one special interest. The Commission's proposals therefore, to increase the decision-making power at the level where known and suspected corruption has never been thoroughly investigated, is cause for concern. While it may well be beyond the scope of the Commission's work to undertake such a task, the reality of the situation cannot be ignored and it speaks directly to the Commission's first term of reference. At the very least, the

Commission should make recommendations to the province that further investigations are warranted.

Yours very truly,

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