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SUBMISSION TO THE COMMISSION ON PLANNING AND DEVELOPMENT REFORM IN ONTARIO

Comments in response to the Commission's proposals to reform the Planning process as set out in the September, 1992 issue of New Planning News

Publication #216
ISBN# 978-1-77189-514-9

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in association with members of the
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November 1992

Submission to the Commission on Planning and Development Reform in Ontario November, 1992

Background on the Land-Use Caucus

The Land-use Caucus of the Ontario Environment Network was formed in June of 1991 in response to a growing need for closer links among environmental organizations concerned about land-use issues. Since it was founded last year, the Land-Use Caucus has held two sessions at Ontario Environment Network general meetings. In March of 1992, with funding from the Laidlaw Foundation, the Caucus held a highly successful founding conference and Annual General Meeting. "Common Ground: Environmental Action for Land-Use in Ontario" drew together about seventy representatives of grassroots environmental and citizens groups involved in land-use issues.

The Caucus mandate covers municipal land-use planning issues, including protection and restoration of ecosystems, urban settlement patterns, and agricultural land preservation. The Caucus also addresses transportation and other infrastructure planning issues. Forests, wilderness, and provincial parks planning issues are dealt with by groups in the OEN's Forests Caucus.

The Land-use Caucus coordinates consultation with government. Meetings have been organized on several occasions between members of the Caucus and the Commission on Planning and Development Reform and the Ministry of Municipal Affairs. To continue its activities, the Caucus recently obtained funding support from the Ministry of Municipal Affairs. A part-time coordinator is being hired to provide administrative support.

The Caucus functions as a network and not as a coalition or umbrella organization. As such, the Caucus does not take positions on issues. Instead, the Caucus enables its members to share their experiences and expertise in order to prepare joint submissions. These positions are endorsed by member organizations at their discretion.

Introduction

This submission is a response to the Commission's proposals for reform of the land-use planning process as outlined in the April and September 1992 issues of New Planning News[1]. As well, it responds to comments made by the Commission at its meeting with members of the Land-Use Caucus held October 24, 1992.

This brief continues the work begun in our first submission dated August 19, 1992. We have stated our support for the overall direction of the Commission's Goals and Policies, while pointing out that greater detail and clarity is needed to refine these

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1 New Planning News, Vol. 2, No. 2. - April, 1992 and Vol.2, No. 4. - September, 1992.

proposals. In particular, we have recommended that the Commission propose amendments to the Planning Act to devise a new purpose section, a paramountcy clause (for environmental protection), and the enforceability of Policy Statements. As well, definitions of terms, in the Act and the Policy Statements, are required. (Appendix A of this brief contains a further refinement of our work on definitions of these terms.) We also proposed what we considered to be the key elements of draft Policy Statements in three areas: Natural Heritage and Ecosystem Protection; Growth Management; and Agricultural Land and suggested the Commission coordinate and assemble draft Policy Statements for Section 3 consultation.

The Commission's basic model - that the province devote itself to setting goals and policies and that municipalities approve plans and development with appeals in cases of dispute to the Ontario Municipal Board - raises serious concerns for citizens groups from across the province who have been involved in diverse aspects of the land-use planning and environmental assessment processes in Ontario.

Members of the Land-Use Caucus are concerned about the environment, broadly defined, as it pertains to land-use matters. Indeed, we believe that land-use planning has been the most neglected among significant environmental issues during the environmental "boom" of recent years. We welcome the opportunity to contribute to long overdue reforms in Ontario's planning and development approvals process.

Our collective experience with innumerable planning disputes has demonstrated to us the widespread and often appalling absence of environmental responsibility on the part of Ontario municipalities. Generally speaking, in any conflict between the health and integrity of the environment and short-term development interests, development interests prevail - even when environmental protection is clearly in the overall best interests of the local economy and the community. Indeed, there are frequently close links between private interests and elected officials that influence local government decision-making, a factor which appears to be largely ignored by the Sewell Commission in its own deliberations on reform.

Given our healthy scepticism of local government responsibility in planning and development matters, we believe there must be detailed, mandatory provincial policies to protect the public interest in land-use. We endorse the Commission's recommendations in this regard, with some qualifications about the content of the policies and their status and use that we have outlined in our recommendations to the Commission.

We also recognize the inadequacy of local government resources to implement progressive land-use policies. Therefore, we endorse the Commission's

recommendations regarding the provincial role in collecting and providing information and support.

On the other hand, we have very strong reservations about the Commission's proposal to end provincial approvals, which we believe will inevitably lead to non-enforcement of Provincial policies and an even greater burden on citizens groups to protect environmental interests. As we consider this aspect of the Commission's "model", our reservations grow deeper. At the time of writing, we urge the Commission to reconsider alternatives to the end of Provincial approvals; at the same time, we make a number of recommendations for reforms regarding transition and the operation of the system under the Commission's model. Many of these reforms need to be implemented regardless of whether provincial approvals are abandoned.

Finally, by way of introductory remarks, we must point out that we have experienced great difficulty coming to grips with the Commission's work. Inadequate resources for meetings, research, and writing has been a big problem for us. But another part of our problem is the Commission's practice of issuing tentative and somewhat disjointed recommendations in a series of newsletters. It is very difficult for us to be sure we have a clear overall picture of the Commission's intent for reform, particularly with respect to the planning and approvals process. Terms are used without definition. Broad generalizations about the current system and options are discussed without substantiating background material. Proposals for sweeping reform are issued without being fully developed.

We understand that the Commission may have adopted this relatively informal approach in hopes of creating a friendly context for public consultation. However, the complex matters under discussion do not always lend themselves to tabloid newspaper articles. A parallel series of more formal and complete documents would have assisted us in clarifying, digesting, and responding to the Commission's approach.

In the time that remains in the Commission's mandate, we urgently recommend that the Commission supplement the tabloid newspaper format with detailed, comprehensive, and thoroughly documented reports. This work will help to ensure that future debate is based on genuine disagreements about fact and opinion, rather than confusion about the Commission's intent.

REFORMING THE PLANNING PROCESS

1. We recommend: That the Commission reconsider its proposal to eliminate the provincial role in planning and development approvals pending investigation of measures to reform and speed up the provincial approvals process.

We agree with the Commission that the province should play a strong role in planning, policy-making and advice and information provision. However, we are very concerned about abandoning the provincial role in plan and development approvals with appeals to the Ontario Municipal Board (OMB) as the only tool for citizens and government to enforce compliance. Even with clearer policies and plans, and provincial advice, we anticipate less than universal voluntary compliance by municipalities. There is an often justifiable lack of public trust in the accountability of municipal councils to uphold the public interest in land-use planning decisions.

Even where the political will exists to implement new provincial policies, there are also serious concerns with respect to the expertise and resources within municipalities to do the job. Municipalities often lack the technical expertise found in personnel from the various commenting agencies (e.g., the provincial Ministries of Natural Resources, Environment, Agriculture and Food, the Conservation Authorities, the Department of Fisheries and Oceans, etc.). Clear policies do not eliminate the need for expert analysis on a site-by-site basis. In addition, many small municipalities have no permanent planning staff or have recently discharged their planners (e.g., Mara Township, home of the Lagoon City controversy and Grey County).

The result could be much heavier use of the OMB, lack of enforcement of provincial policies (due to the time and expense of going to the OMB) and a heavier burden on citizens groups to enforce policies by appealing bad planning decisions to the OMB. We are dismayed that the Commission appears to have not investigated in any detail the problems surrounding the provincial role in approvals with a view to making recommendations for reforming that process.

2. We recommend: That provincial approvals be maintained at least until coordinated and comprehensive provincial policies and new content requirements for municipal plans (including our recommended additions and amendments to these content

requirements, outlined in recommendations 6, 7, 8, and 9 below) are in place; and until the responsibilities of provincial commenting agencies in upholding provincial policies are confirmed (as per recommendation 12 below).

The Commission states in the September newsletter the various reasons why the province has not exercised its mandate, provided in the 1983 revisions to the Planning Act, to establish formal Policy Statements. We are told that political will is needed. However, the Commission does not then recommend that the province exercise its political will and clearly state provincial planning policy, the "importance [of which] cannot be overstated"[2]. Rather, the Commission suggests devising a system "where it would be very difficult for the province to act without having policy"[3]. The Commission proposes taking the province out of the approval process for municipal plans and developments and then "[hopes] the province recognizes that the only way it can influence municipal decision-making and protect provincial interests is through policy"[4].

This proposal represents a reversal of the Commission's earlier position on this issue. Previous comments by the Commission on this matter both in writing and verbally, have indicated that key provincial policies (regarding ecosystem protection for example) should be in place before the devolution of approval powers occurred[5].

The September newsletter seems to propose instead that the transfer of approval power should occur regardless of the state of provincial policy development[6]. The province would have to play catch-up and devise policy if it wants to have any further influence on municipal decision-making. We are opposed to this approach.

However, we were assured at our October 24th meeting that the Commission strongly

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2 New Planning News, Vol. 2, No.4 - September 1992, p.4.

3 ibid.

4 ibid.

5 see for example, New Planning News Vol.2. No.2 - April, 1992. at p.15.

6 However, the newsletter is unclear since the section concerning Proposed Requirements for Municipal Plans makes the statement, with respect to the content of municipal plans, that "The assumption is that provincial policies will be in place" (page 13).

agrees with our recommendation and the discussion in the September newsletter was intended as a description of the current situation rather than as a recommendation of the Commission. Unfortunately, the September newsletter is very misleading on a point about which the Commission should be crystal clear.

A new set of policies for development of Official Plans must also be accompanied by new content requirements for Official Plans (both at the upper and lower tiers). These content requirements will need to be incorporated directly into the Planning Act. Unless an interim means can be used to specify the content requirements of these new upper-tier Official Plans, such as an interim guideline or policy, then the provincial approval function should remain intact until the legislation is changed.

As well, further detail is needed to clarify the relationship between the upper and lower tiers, including the division of, and boundaries between, responsibilities; and in confirming the role and responsibilities of provincial commenting agencies.

3. We recommend: That provincial approvals of plans and developments be required for an upper-tier municipality at least until the Minister has approved a plan for that municipality that conforms to the new provincial policies and fulfils new content requirements; and that provincial approvals be maintained at least until the upper-tier municipality has ensured that all lower-tier plans are in conformity with the upper-tier plan and provincial policies and content requirements.

At our meeting with the Commission on October 24, Commissioners stated that they had revised their recommendation with respect to the transfer of provincial approval powers. As revised, the proposal is for the first plan of upper-tier municipalities (including counties, Regions, separated cities and (proposed) Planning Regions in the North) to be approved by the province. Two conditions were suggested on this approval: that it be given under provincial planning statements and policies and that if provincial approval is not given within six months the municipality should be able to go to the OMB for plan approval. Lower-tier municipalities would then only go to their respective upper-tier municipality to gain planning approvals.

Retaining the provincial approval in this manner only partially addresses our concerns. The existence of a deadline is not going to remove the problems of lack of expertise and resources available to do the job in the first place. We remain unconvinced that

the province should not continue to play a role in the approval of plans and developments through a reformed process of circulation, review and comment by relevant government agencies to ensure compliance with provincial policy and law. (see recommendation 12 below).

Provincial approvals for plans, plan amendments and developments, should still be required until an upper-tier municipality, under the Commission's approach, has an approved Official Plan that incorporates the new provincial policies, satisfies new content requirements and therein, adequately addresses new environmental planning requirements.

As well, under this two-tiered approach, safeguards are necessary with respect to the approval of lower-tier plans. Under the Commission's proposal, it would seem possible to have a conforming upper-tier plan and a non-conforming lower-tier plan. Hence, the transfer of approval power should be preceded by upper-tier governments ensuring that all lower-tier plans that are in place conform to the upper-tier plans and provincial policies and requirements. This requirement will be especially important in county goverments since they are made up of lower-tier goverments. County councils could have a tendency to look the other way if member townships are not in accordance with the County plan. New powers for upper-tier governments should be accompanied by responsibility for ensuring the conformity of lower-tier plans.

Further, there should be strong statements of the right of public participation in the development of these new plans. There should be full access to information in a timely manner, no in camera proceedings respecting plan development and adequate notice and comment opportunities.

4. We recommend: That provincial approvals be maintained at least until intervenor funding for citizens groups pursuing Ontario Municipal Board appeals is in place; and that the province put in place an ad hoc program immediately in advance of necessary legislative changes to formalize a funding program.

Citizens groups often lack the time, resources, and expertise to participate equitably in the planning process. The prospect of an OMB hearing generally comes after citizens have spent many exhausting and frustrating months or years in a process that often denies them access to critical information and decision-making. This work is conducted by volunteers and paid for through local fundraising efforts. The issues are often complex and require analysis of competing views of technical experts. Developers are always represented by legal counsel at OMB proceedings and often

municipalities and provincial ministries are as well.

The lack of resources for citizens groups to retain legal counsel and expert witnesses to represent them at OMB hearings can be a serious barrier to citizen involvement in these proceedings. We are very concerned that the Commission's proposals may result in greater recourse to the OMB rather than less. Our suggestions for reform are intended to prevent this outcome. Nevertheless, there is a critical lack of fairness in a system where citizens cannot efectively participate before the final arbiter in a planning dispute.

The package of reforms to the planning system must redress this fundamental lack of fairness by including intervenor funding at the OMB. An ad hoc program, similar to the system in place before passage of the Intervenor Funding Project Act, could be implemented in advance of necessary legislative amendments to formalize funding for OMB intervenors.

5. We recommend: That the Commission develop draft land-use policies at an appropriate level of detail; and that the Commission map out a process in consultation with the provincial government and other stakeholders for timely completion of a review and implementation of these policies.

The September newsletter suggests improvements to the development of Section 3 Policy Statements but is unclear as to what the Commission recommends with respect to the status of existing Policy Statements, draft policy statements and land-use related guidelines proposed or in place in various ministries[7]? The discussion at the October 24th meeting clarified that the Commission considers the set of goals and policies that it has developed will be the subject of Section 3 consultation and that it

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7 For example, we are aware of draft Policy Statements in the areas of Land-Use Planning for Mineral Resources prepared by the Ministry of Northern Development and Mines, a process that has been underway for close to twenty years in the Ministry of Agriculture and Food to develop a provincial policy regarding Agricultural Land Preservation, the recent initiatives of the Ministry of Municipal Affairs regarding Growth and Settlement Guidelines, and Streamlining Guidelines, the Transit-Supportive Land-Use Planning Guidelines issued by the Ministries of Transportation and Municipal Affairs, the amendments to the Planning Act and the Municipal Act proposed by the Ministries of Municipal Affairs and Housing regarding Apartments in Houses, the Implementation Guidelines regarding Provincial Interest on the Oak Ridges Moraine issued by the Ministries of Natural Resources, Environment and Municipal Affairs, etc.

will provide the province with a replacement for all existing policies and related guidelines.

As we noted in our first submission regarding the Commission's proposals for goals and policies, we are supportive of the general direction proposed and have provided input as to further refinement of the set of proposals. However, we remain very concerned about the lack of detail in the Commission's policy proposals. We do not agree, as Mr. Sewell suggested on October 24th, that the essential elements of the Floodplain Policy can be reduced to three or four lines of text. While there is a problem with too much prescriptive detail in some instances (e.g., the Housing Policy Statement), too little detail is of serious concern as well.

In our view, the brevity of the Commission's goals and policies is misguided and counter-productive. If the province is to "speak through policy", then these policies must contain sufficient particulars to provide meaningful direction to municipalities. Detailed Policy Statements are the quid pro quo for any devolution of provincial approval authority. Moreover, we do not support the suggestion that the detail associated with Policy Statements can be addressed in accompanying Implementation Guidelines. At the present time, these guidelines have no legal status under the Planning Act, and they can be amended (or ignored) at will by the relevant ministries. In short, some matters of provincial policy (e.g., wetlands) cannot be reduced to a few terse sentences if we truly expect municipalities to understand and implement them. In this instance, "less" is not "more".

6. We recommend: That the minimum content requirements for municipal plans include a requirement to set measurable standards and targets for key environmental indicators, with dates and/or contingencies, against which plans, approvals, and performances can be measured; and that minimum contents include a requirement to establish targets for environmental restoration as well as protection.

In plan formulation, environmental policies generally should take precedence. The notion of "paramountcy" of environmental concerns in planning decision-making does not preclude all development. Rather, it should ensure that certain areas (e.g., significant wetlands) are never developed as determined by outright prohibitions from policy statements and other protective instruments; it may also mean that only environmentally compatible development will be permitted in other areas. As well, the "paramountcy" notion should ensure that where development does occur, that it be in accordance with an Official Plan that clearly establishes how development will fit within

the natural heritage system.

To accomplish this task, we propose that municipalities be required, through the minimum content requirements for Official Plans, to devise very clear, measurable standards and targets for environmental indicators linked to dates and/or contingencies in the plan. Targets must include not only environmental protection but also restoration. Within the framework of provincial policy and plan content requirements, municipalities would be required to develop their own targets, suited to local conditions, and linked to contingencies (e.g., population, number of units, area to be developed, etc.).

Clear limits should be put on where and how development will occur thereby removing the ad hoc nature of case-by-case development decisions. The Commission's proposals with respect to content requirements mention the need to identify and select key environmental (and other) indicators to identify procedures for monitoring them, including comprehensive state of the environment reporting. Our suggestion is for a more proactive approach to protect against incremental erosion of planning policies and principles due to the cumulative impacts of ad hoc decisions in favour of individual development proposals. Without this proactive approach, the best policies will be constantly undermined if municipalities have neither clear targets nor a means of holding decision-makers accountable to plans and policies.

7. We recommend: That the minimum content requirements for municipal plans be expanded to include key strategic elements, such as basic principals and goals for the municipality, and a long-term vision of the essential characteristics of municipal land-use.

We are not convinced of the value of the Commission's proposal for voluntary preparation of stand-alone Strategic Plans that are not part of the municipal plan, and hence not appealable to the OMB. In the past, a similar approach has led to considerable public concerns about the Ministry of Natural Resources Strategic Land-Use Plans and District Land-Use Guidelines which purportedly govern land use planning on Crown Lands. These documents were prepared voluntarily but they have no legal status and were not subject to environmental assessment or the scrutiny of an independent decision-maker when they were developed after questionable public consultation.

While we recognize that many elements of a municipal strategic plan are not appropriately the subject of appeals to the OMB, we are concerned that the proposal

has the potential for encouraging municipalities to engage in meaningless public relations exercises that are unrelated to the actual planning and development that takes place.

If the Strategic Plan has no necessary connection to the municipal plan, then we do not see the point of it, nor should the province be asked to spend money on matching grants.

We propose a minimum requirement for certain strategic elements to be incorporated into the municipal (Official) plan, including basic values and principles of land-use and long-range objectives (i.e., in the 20 to 50 year range and beyond). The formal requirement to include strategic elements could be spelled out in the content requirements for municipal plans and reiterated in all provincial policy statements. A requirement to identify strategic principles and objectives, combined with requirements for public involvement (and provincial financial incentives), would encourage municipalities to engage in non-trivial strategic planning exercises.

8. We recommend: That minimum content requirements for municipal plans and each provincial land-use policy include a requirement for municipalities to coordinate studies and plans with other municipalities in a manner that befits the policy (e.g., watershed and significant landform planning for ecosystem concerns; commutershed planning for settlement patterns and transportation, etc.).

It will be necessary to establish (in policy statements and content requirements) that part of the responsibility of individual municipalities (upper and lower tiers) is a requirement to plan "in context". That is, plans must consider the regional context with respect to settlement patterns, infrastructure, ecosystems, landforms, etc. These requirements are needed to drive joint planning among upper-tier governments (for example, those that exist along the Oak Ridges Moraine) and between counties and separated cities. For example, a citizens group should be able to challenge a county plan if it has not been coordinated with the plan of a separated city on the grounds that urban development should be concentrated in the existing urban area and not as splatter development in adjacent rural townships.

By including a requirement for joint planning in all Policy Statements and in the content requirements for Official Plans, with clear criteria as to how it should proceed, a municipality would not have fulfilled its requirements unless and until it demonstrated that its planning had been co-ordinated with other affected municipalities. "Joint planning" should become part of the definition of "planning".

9. We recommend: That the minimum content requirements of environmental assessment documentation for plans and plan amendments, adopt the content requirements for environmental assessment documents contained in Section 5(3) of the Environmental Assessment Act; that the minimum content requirements include documentation of all studies, public consultation, and decision-making history for the plan or plan amendment (including pre-submission consultation by the proponent); and that the Commission coordinate, with the Environmental Assessment Branch of the Ministry of the Environment, an implementation guideline for the application of environmental assessment content requirements to plans and plan amendments.

The Commission has proposed an "environmentally oriented planning process" to ensure that municipal plans (and amendments) are fairly assessed for their environmental impact. The September newsletter states that before preparing the substance of a plan or amendment, a "proposal" should be prepared and submitted to Council and the public containing a number of features regarding the plan description, scope, consultation and timetable. As well, the Commission proposes that the plan preparation should include six steps which amount to a process very similar to the preparation of an environmental assessment under the EA Act.

We are very supportive of the Commission's intention of submitting plans and plan amendments to a form of environmental assessment. The six steps outlined by the Commission are essentially content requirements for plan preparation and embody the content requirements for environmental assessment documents contained in Section 5(3) of the EA Act. We suggest therefore that incorporating Section 5(3) of the EA Act into Official Plan content requirements will accomplish this goal.

However, given the complexity and diversity of the issues involved, an implementation guideline or regulation is required.
Preparation of sectoral guidelines is underway in the Environmental Assessment Branch of the Ministry of the Environment in a number of private sector areas. Such guidelines will be tailored to the different private sectors in order to implement Section 5(3) requirements.

We have recommended that these content requirements and the process associated

with them, should apply to all plans and plan amendments. We state this specifically because the Commission's proposal for environmental assessment of, on the one hand, plans and plan amendments and, on the other, individual development proposals is confusing and contradictory. The Commission is proposing a different level of environmental impact assessment - the impact statement - for individual development proposals. However, when a development proposal requires a plan amendment to proceed, the proposals appear to say that the as-yet undefined "impact statement" procedure would apply and broader questions of need and alternative would be addressed by Council. If a plan amendment is required, the full environmental assessment procedure should apply.

In addition, no details are provided as to who will decide which development proposals are significant enough to warrant the preparation of an impact statement, what criteria will be used to guide that decision, or what content requirements will govern the impact statement preparation.

It is not sufficient to suggest simply that developers produce an environmental impact statement. Past practice reveals that, without clear content requirements for the assessment, developers will put forward self-serving and entirely deficient impact statements. As well, councils generally do not have the ability (or willingness) to critically review these documents.

10. We recommend: That where a plan amendment is proposed, prior to the scheduled five year review, the municipality and/or developer should be required to show a public need (not merely a developer's need) for the amendment.

The Niagara Escarpment Plan contains a good model for this need/justification of in-term amendments to an approved plan. In addition, although we refer to the existing five-year review, it may be appropriate for the Commission to investigate the adequacy of this timeframe. Since the issues are so complex and the five year deadline is so often neglected, it may be worth considering a longer period between reviews, perhaps seven years, but ensure strict adherence.

11. We recommend: That the Planning Act require municipalities to adopt Official Plans.

We strongly support the notion that the Planning Act should, as the Commission states, "identify specific principles and minimum content requirements to guide the preparation of municipal plans and land-use policy documents"[8]. We suggest however, that inclusion of such a principle in the legislation should be part of an explicit requirement to plan including the formulation of an Official Plan and ongoing planning responsibilities. For lower-tier municipalities, this requirement could be met simply by a decision to adopt the plan of the upper-tier.

Such a requirement must also be enforced. The Commission has proposed a number of financial penalties where regional municipalities fail to adopt a plan. We support these proposals but note that these tools appear to be available only to the province and only if it chooses to use them. In our view, the public should also be empowered to ensure that municipalities plan by building into the Planning Act an explicit duty on municipalities (including separated cities) to plan. If they fail to do so within a specified timeframe, any person should be able to go to court for an order of mandamus requiring the municipality to plan. Surely the threat of such an action (or contempt of court proceedings) should be enough to prod even the most reluctant municipality (and its councillors) to plan.

12. We recommend: That provincial government Ministries be required under the Planning Act, consistent with their mandate, to act to ensure that all planning instruments conform to provincial plans and policies and the Act by reviewing materials, offering comment and advice, and appealing to the Ontario Municipal Board where necessary.

A positive duty must be placed on provincial and municipal practitioners in the planning process to implement provincial policy. Under the current situation, such a duty to participate in the planning process does not exist and the result is a very uneven application of provincial policy and expertise. The Commission's suggestion to remove the provincial role in approvals will make the situation even worse. We submit that such devolution of approval powers should be accompanied by an increase in the provincial responsibility to ensure adherence to policies as a counterbalance to the

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8 New Planning News, Vol. 2, No. 4. - September, 1992. p.12.

granting of approval powers to the municipalities.

With the removal of the provincial role in approvals, the Commission has suggested, in the April newsletter, that "To ensure that plans conform to provincial policy, ministries, upper-tier governments, agencies and the public should be provided with copies of municipal planning documents"[9]. This proposal is inadequate. Without a clear responsibility to review such documents and comment on their conformity with provincial policy, the public servants in question will not have any reason or mandate to do so. Members of the public, assuming they can be watching each and every situation, will be left with the job. In addition, if they take on this role, they would then have to interact with bureaucrats who have no clear responsibility to see that the plans conform to provincial policy. The Commission should revise its proposals accordingly to codify the role currently played by commenting agencies.

The removal of the provincial role in approvals also removes potentially important assistance which the public receives from the commenting agencies when participating in plan formulation or challenging plan amendments or specific development proposals. While we recognize that provincial ministries may initiate appeals to the OMB under the Commission's proposals, it is unlikely that they will, in fact, initiate more appeals than under current practice. Indeed, under the general thrust of the Commission's proposals, it is reasonable to anticipate less, not more, government-initiated appeals to the OMB, thereby placing an increased burden on ratepayers and public interest groups to go to the OMB at their own risk and expense. Traditionally, citizens groups rely on the technical expertise that the commenting agencies bring to OMB hearings. If the commenting agencies are no longer involved, the burden will, in most cases, be completely on the citizens to carry the appeal.

13. We recommend: That the Ontario Municipal Board be required to uphold the Planning Act and its policies by ensuring that all relevant evidence is brought to bear on cases before it.

We make this recommendation to provide a further safeguard to ensure that provincial policy is upheld. Hence, if the commenting agencies or municipalities do not adequately ensure that planning instruments conform with policies, the OMB should have the authority to do so by ensuring that all relevant information is brought before it in planning disputes.

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9 New Planning News, Vol. 2, No. 2. - April, 1992. p.15.

In addition to these issues of enforcement, three related areas require immediate attention from the province to address serious shortcomings of the planning process. In our first submission we discussed issues surrounding the identification of environmental resources. Recommendations from that discussion are formulated below.

14. We recommend: That the Province develop common or standardized definitions of specific environmental features and functions and environmentally significant land uses and infrastructure; that standardized definitions of environmental indicators be developed; and that the province, in cooperation with municipalities, immediately begin to identify, evaluate and map environmental features and functions.

Significant environmental resources are at considerable risk where such resources are unknown to planning authorities and commenting agencies, or improperly identified by them. Many examples exist where such resources have been degraded or lost due to lack of information. A uniform system is necessary so that information can be centrally stored. It will need to begin with common or standardized definitions to ensure consistency, certainty and predictability within the planning process. (See Appendix A for our continued work on such definitions.)

As we stated in our first submission, it cannot be emphasized enough that this information gathering and compilation for the entire province must get underway in a swift and coordinated fashion. It is the first critical step and, while it should be a requirement under the Planning Act, it cannot await the legislative amendment process. It should begin immediately. The province should coordinate the effort by providing technical and financial assistance as well as helping find the creative means of doing the work at the least possible cost.

15. We recommend: That retraining and/or upgrading programs be provided in a consistent manner across the province for municipal and provincial planning staff and the Ontario Municipal Board in ecological principles and processes, baseline information collection, environmental planning, cumulative effects assessment, etc.

Complementary to the recommendation for information-gathering and analysis is the

need for the province to facilitate retraining programs for provincial and municipal employees. A variety of measures should be used to increase skills and knowledge including reorganization of provincial university planning programs, refresher courses, technical seminars, clear implementation guidelines, etc.

16. We recommend: That the Province immediately require, in each policy statement, that pre-approval site alteration be prohibited; and that Planning Act amendments to this effect be implemented as soon as possible, with appropriate penalties.

The issue of pre-approval site alteration is closely related to the need for a uniform system to accurately gather and compile baseline date on environmental conditions across the province. In order to protect (and restore) our natural heritage, we need to be much more informed about what exists in the first place, including the potential for restoration. By the time an applicant applies for a planning approval, any significant environmental resources upon the subject-property or adjoining lands should be well-known to planning authorities and, ultimately, with the process reforms being contemplated, well-protected in law.

The Commission has made a number of good suggestions in the September newsletter regarding site alteration areas that municipalities should be able to regulate. We consider it inadequate to leave the matter of when to regulate pre-approval site alteration to a municipality's discretion.

17. We recommend: That the Planning Act require full disclosure of all relevant information to all interested parties in a planning matter.

Citizens' groups regularly face problems with gaining access to critical information either at all or in a timely fashion. The legislation should guarantee that these problems never occur.

18. We recommend: That the approval of all municipal infrastructure remain under the Environmental Assessment Act.

The Commission is proposing that the Class EA process for municipal infrastructure be transferred to the Planning Act so that infrastructure planning and approvals can be more closely integrated into the municipal planning process. The new Infrastructure

Design and Mitigation Process (IDMP) would assess those projects that currently fall within Class EAs while the larger, controversial infrastructure projects, such as large sewage treatment plants, would still be assessed under the EA Act process. In addition, the question was raised at the Caucus' October 24th meeting with the Commission as to whether or not assessment and approval of all municipal infrastructure, regardless of scale, should not be transferred to the Planning Act regime. It was pointed out that the new regime should assess need and alternatives and be as good a process for assessing environmental impacts as the EA process. More detailed comments on the Commission's EA proposals will be forwarded to the Commission. Those regarding municipal infrastructure are summarized here.

We have spent a good deal of time grappling with the proposal, both as it is framed in the September newsletter, and as suggested at the October meeting. We cannot support it. The proposal, in either form, raises too many questions and concerns. Nor does it address the fact that the EA process and the relevant Class EAs have been under detailed review for several years with significant reforms contemplated.

It is unclear from the Commission's proposals what becomes of the existing Class EA documents or the outcome of their reviews. Nor is it clear how subsequent reviews would be conducted.

It is also unclear how the IDMP will be administered. Under the current regime, individual projects and activities may proceed under approved Class EAs without formal aproval by the Minister of the Environment so long as municipalities satisfy the requirements set out in the Class EA. Under the proposed regime, the IDMP would assess infrastructure projects that fall within each of the classes. Who would be responsible for approvals? And, what becomes of the role of the Environmental Assessment Branch in assessing, on the request of citizens groups for example, whether municipalities are satisfying the requirments of the Class EA? What will replace this provincial commenting role?

Under the current regime, citizens can ask the EA Branch whether the requirements of a Class EA have been satisfied for individual proposals. For example, if a municipality does not adequately assess alternatives when implementing the Class EA process for an individual project, watchful citizens groups can, for the most part, ensure that the provincial office responsible for administration of the EA Act, comments on whether more work is required. The involvement of the EA Branch generally ensures that the work is done. What similar safeguard or check on municipal activity would exist under the proposed IDMP?

The above example refers only to those types of projects for which citizens groups are

willing to rely upon the Class EA process, if applied properly, to address their environmental concerns. Where citizens groups are not convinced that the Class EA process is adequate to address environmental concerns, usually becaause the project is very large and/or controversial, they can ask for a "bump-up" to a full environmental assessment to obtain a broader review of the proposal and perhaps a public hearing as well. Under the Commission's proposal, both the classification of projects within classes and the ability to bump-up controversial projects raise concerns. The Commission does not say who would decide when projects fall into either category or the criteria on which this decision would be based. Nor is the issue resolved, either under the current EA regime, or by the Commission, as to what rights the public has to have projects bumped-up or what criteria guide the decision on bump-up requests.

As the process currently operates, there is no public right to bump-up regardless of public concern or potential for significant environmental impacts. We consider that this public right should exist, the determination of which should be guided by clear criteria. There is also a history of excessive delay on the part of successive Ministers of the Environment to make a decision regarding these requests. Nor, until fairly recently, have any criteria existed to guide the EA Branch of the Ministry in assessing bump-up requests although the Environmental Assessment Advisory Committee has advised the Minister on bump-up requests on occasion. However, delay and controversy still exist.

The Commission's proposal to transfer the bulk of the Class EA projects over to the Planning Act regime and leave the large projects under the EA Act regime will not alleviate the problem. The potential for "bump-up" requests will remain. But, under the Commission's proposal, if the public disputes the placing of a project in the class process, they will have recourse to the OMB where, unlike the Environmental Assessment Board, intervenor funding is not available. Worse, under the Commission's proposal, the public will not be able to appeal for a bump-up to assess need and alternatives at the project proposal stage - which is generally when they become involved and because they wish to raise such issues - but only earlier at the overall planning stage. While it is appropriate to aim for public involvement in early planning stages, the public should be able to engage the democratic process at the point where a major project, (the early planning of which they may not have been apprised of), is staring them in the face and which raises significant environmental concerns including those related to need and alternatives.

Finally, under the revised proposal to transfer all municipal infrastructure, regardless of scale, it is unclear how the bump-up procedure would work, what level of assessment would come into play, and what rights, if any, would the public have to a public hearing on the matter.

A further concern with the transfer of infrastructure approvals is a transitional one. For the new planning regime envisioned by the Commission to adequately assess need and alternatives with respect to infrastructure, all new infrastructure projects would have to be determined by the new planning process and not by old plans that had not gone through the new environmental assessment procedures for Official Plans.

We have a number of recommendations to make in response to the Commission's proposals for development control and encouraging intensification.

19. We recommend: That the public be involved in the setting of site plan controls.

We disagree with the Commission's statement that the public should not generally be involved in site plan controls. We find this statement ignores a key ingredient of public involvement. People are often much more interested in site plan details than general and ephemeral matters of broad planning. "Pre-submission consultation" between proponents and neighbouring residents is key to negotiating mutually acceptable terms, particularly for infill intensification projects. All manner of site plan details are on the table, and must be for this process to be successful. If public input to site planning does not occur, then this useful, even essential process will be squelched.

If free negotiation between proponents and neighbours about the real issues does not occur, then neighbours may latch onto all sorts of secondary issues to try to block the development. For example, an agreement was reached between a Calgary developer and neighbours to exclude an arcade from a strip mall. The strip mall would not have proceeded without this agreement, which was not based on a stated municipal policy.

We also disagree that architectural details should not be subject to site plan approvals. Architectural details are legitimate concerns. The world's great cities are great only because such details were very closely regulated. The public has an interest, for example, in ensuring that new development in heritage areas is designed in harmony with heritage buildings.

This recommendation is also made to underline the need for public involvement in both site plan control and the formulation of general design guidelines. The Commission proposes that "urban design guidelines should not be a prerequisite to

applying site plan controls"[10]. However, the Commission later proposes that the public should not be involved in site plan controls but only in formulating urban design guidelines. But if the guidelines are not required for site plan control, then there is no public involvement. This is unacceptable.

We also suggest expanding the list of matters that can be subject to site plan control to include 3R facilities.

In addition, public notice/comment rules for such matters should be the rule not the exception.

20. We recommend: That municipalities be required to adopt site plan control guidelines.

Since site planning is very important in fulfilling many planning objectives, e.g., stormwater runoff, pedestrian friendliness, wheelchair access, etc., citizens should be able to see how their municipality is implementing provincial policies in local site planning policies, rather than leaving it to the planning staff to use their own judgement on a case-by-case basis.

21. We recommend: That the public should have the right to appeal sewer and water capacity allocations to the Ontario Municipal Board.

While we fully support the Commission's proposals for applicants to appeal sewer and water capacity allocations to the OMB, we consider capacity to be a public commodity. Members of the public have an interest in ensuring optimal and efficient use of this capacity and should be able to appeal these allocations to the OMB as well.

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10 New Planning News, Vol. 2, No. 4. - September, 1992. p.17.

Conclusion

The Commission's proposed model for reforming the planning process raises many concerns with members of the Land-use Caucus. Our concerns with the Commission's model centre on the proposal to transfer approval powers from the province to municipalities. It has been the experience of members of the Caucus (and confirmed by detailed investigations of the planning process[11]) that the democratic process at the municipal level in Ontario is often distorted and manipulated. The influence of the development industry and individuals and companies associated with the development industry is apparent both through election financing and at the time individual decisions are made at Council and in the municipal bureaucracy. 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.

For citizens groups interacting directly with the municipal planning process, there is a very strong and justifable 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 group. The Commission's proposals therefore, to increase the decision-making power at the level where known and suspected corruption has never been adequately investigated, is cause for concern. It is supportable only if it is accompanied by adequate safeguards that do not currently exist in the planning process. Indeed, we consider all of our recommendations to be essential regardless of whether this transfer of approval powers occurs.

For example, the provincial approval function should be reformed and streamlined so that it can be maintained at least until coordinated and comprehensive provincial policies and new content requirements for Official Plans are in place. The provincial role in approvals should also be maintained at least until new Official Plans that adhere to the new policies and plan content requirements are in place and until intervenor funding is available to citizens groups at the Ontario Municipal Board.

In addition, regardless of whether the transfer of approval occurs, minimum content

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11 See for example the series of nine articles about planning issues in York Region done by investigative reporters at the Globe and Mail, October 26, 27, 28, 29, 30, 31, November 1, 2, 3, 1988; a similar series of articles about planning issues in the City of York, August 16, 1990, March 25, 1991, May 15, 17, 1991, October 31, 1991 and November 1, 1991; and a review of rezoning issues on Bay Street in Toronto, December 12, 1987.

requirements for Official Plans are urgently needed and should include requirements to set targets for environmental indicators, key strategic elements, requirements for joint planning, and an environmental assessment component.

Further reforms that are essential regardless of whether approval powers are transferred include: a requirement to show public need when amending a plan; a clear requirement for municipalities to plan; a requirement for provincial ministries to ensure that policies within their mandate are upheld in the planning process; and for the OMB to similarly ensure that policies are upheld.

In the area of information, urgent reforms are needed. Again, regardless of whether approval powers are transferred, the Province must develop definitions of terms and indicators and immediately begin, with the municipalities, to evaluate and map environmental features and functions. In addition, key retraining programs are required at all levels to adapt to the new environmental planning reality; and pre-approval site alteration must be prohibited.

Finally, we cannot support the Commission's proposal to transfer the Class EA process for municipal infrastructure approvals to the planning process. As it currently stands, the proposal raises many more questions than it answers.

SUMMARY OF RECOMMENDATIONS

We recommend:

1. That the Commission reconsider its proposal to eliminate the provincial role in planning and development approvals pending investigation of measures to reform and speed up the provincial approvals process.

2. That provincial approvals be maintained at least until coordinated and comprehensive provincial policies and new content requirements for municipal plans (including our recommended additions and amendments to these content requirements, outlined in recommendations 6, 7, 8, and 9 below) are in place; and until the responsibilities of provincial commenting agencies in upholding provincial policies are confirmed (as per recommendation 12 below).

3. That provincial approvals of plans and developments be required for an upper-tier municipality at least until the Minister has approved a plan for that municipality that conforms to the new provincial policies and fulfils new content requirements; and that provincial approvals be maintained at least until the upper-tier municipality has ensured that all lower-tier plans are in conformity with the upper-tier plan and provincial policies and content requirements.

4. That provincial approvals be maintained at least until intervenor funding for citizens groups pursuing Ontario Municipal Board appeals is in place; and that the province put in place an ad hoc program immediately in advance of necessary legislative changes to formalize a funding program.

5. That the Commission develop draft land-use policies at an appropriate level of detail; and that the Commission map out a process in consultation with the provincial government and other stakeholders for timely completion of a review and implementation of these policies.

6. That the minimum content requirements for municipal plans include a requirement to set measurable standards and targets for key environmental indicators, with dates and/or contingencies, against which plans, approvals, and performances can be measured; and that minimum contents include a requirement to establish targets for environmental restoration as well as protection.

7. That the minimum content requirements for municipal plans be expanded to include key strategic elements, such as basic principals and goals for the municipality, and a long-term vision of the essential characteristics of municipal land-use.

8. That minimum content requirements for municipal plans and each provincial land-use policy include a requirement for municipalities to coordinate studies and plans with other municipalities in a manner that befits the policy (e.g., watershed and significant landform planning for ecosystem concerns; commutershed planning for settlement patterns and transportation, etc.).

9. That the minimum content requirements of environmental assessment documentation for plans and plan amendments, adopt the content requirements for environmental assessment documents contained in Section 5(3) of the Environmental Assessment Act; that the minimum content requirements include documentation of all studies, public consultation, and decision-making history for the plan or plan amendment (including pre-submission consultation by the proponent); and that the Commission coordinate, with the Environmental Assessment Branch of the Ministry of the Environment, an implementation guideline for the application of environmental assessment content requirements to plans and plan amendments.

10. That where a plan amendment is proposed, prior to the scheduled five year review, the municipality and/or developer should be required to show a public need (not merely a developer's need) for the amendment.

11. That the Planning Act require municipalities to adopt Official Plans.

12. That provincial government Ministries be required under the Planning Act, consistent with their mandate, to act to ensure that all planning instruments conform to provincial plans and policies and the Act by reviewing materials, offering comment and advice, and appealing to the Ontario Municipal Board where necessary.

13. That the Ontario Municipal Board be required to uphold the Planning Act and its policies by ensuring that all relevant evidence is brought to bear on cases before it.

14. That the Province develop common or standardized definitions of specific environmental features and functions and environmentally significant land uses and infrastructure; that standardized definitions of environmental indicators be developed; and that the province, in cooperation with municipalities, immediately begin to identify, evaluate and map environmental features and functions.

15. That retraining and/or upgrading programs be provided in a consistent manner across the province for municipal and provincial planning staff and the Ontario Municipal Board in ecological principles and processes, baseline information collection, environmental planning, cumulative effects assessment, etc.

16. That the Province immediately require, in each policy statement, that pre-approval site alteration be prohibited; and that Planning Act amendments to this effect be implemented as soon as possible, with appropriate penalties.

17. That the Planning Act require full disclosure of all relevant information to all interested parties in a planning matter.

18. That the approval of all municipal infrastructure remain under the Environmental Assessment Act.

19. That the public be involved in the setting of site plan controls.

20. That municipalities be required to adopt site plan control guidelines.

21. That the public should have the right to appeal sewer and water capacity allocations to the Ontario Municipal Board.