



Ontario
Home Builders'
Association

Discussion Paper

on

***Planning Reform in Ontario
Planning Act Reform
and Implementation Tools***

by

Ontario Home Builders' Association

August 30, 2004



Ontario
Home Builders'
Association

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Honourable John Gerretsen
Minister of Municipal Affairs and Housing
Ministry of Municipal Affairs and Housing – Planning Reform initiative
Provincial Planning and Environmental Services Branch
777 Bay Street, 14th Floor
Toronto, Ontario, M5G 2E5

August 30, 2004

Re: Planning Reform in Ontario - Planning Act Reform and Implementation Tools

Dear Minister

We are pleased to be given an opportunity to present our views on Planning Reform in Ontario and the suggested Planning Act Reform.

We applaud this initiative of the government which is timely considering the anticipated growth in Ontario. We feel that issues raised need to be discussed and debated by the stakeholders in the housing and development industry as well as the citizens of Ontario.

We are pleased to provide you with our comments and recommendations and we would be willing to meet with you, if required, to discuss our recommendations in detail.

Thank you for the opportunity to present our views.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Peter Saturno', with a long horizontal flourish extending to the right.

Peter Saturno
President, OHBA



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About OHBA

The Ontario Home Builders' Association was formed in 1962 with 10 locals to give residential builders a voice in the provincial government, facilitate changes in the industry, and provide links among home-building businesses, suppliers and services.

Now, it is comprised of an Executive Committee, Board of Directors, and nine different standing committees. We have 30 locals and 3600 members. Member companies include builders, developers, trades, suppliers and service professionals who create employment for approximately 300,000 persons in the private sector. We represent the majority of the builders and developers in Ontario and we are the voice of the residential construction industry in Ontario.

Our members live, work and play in the municipalities that make up their community, and therefore, our comments should be taken in balance with the fact that we not only do business in the cities, towns and villages in Ontario, we also live and raise our families there.



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Planning Act Reform and Implementation Tools

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Planning Reform in Ontario

Planning Act Reform and Implementation Tools

Executive Summary

The Ontario Government's goal is to provide long term benefits to Ontarians – new economic growth, more liveable communities, enhanced transportation choices, clean and safe water and improvements to the environment. Ontario also has to plan for the 4 million new residents who will reside in Ontario over the next 30 years.

This OHBA discussion paper is in response to the Government's request for comments on their Consultation Discussion Paper #1.

In general, OHBA supports the principle behind the Planning Act Reform subject to the comments provided in this paper. We recommend that:

1. any decisions made by the government on the various planning reform initiatives currently underway be done in a consolidated manner so that a decision on one legislation does not preclude the implementation of another;
2. municipalities take advantage of the pre-consultation process to informally review a development application to determine the requirements of a "*complete application*". Municipal staff should make an effort to determine what previous studies are available and whether the conclusions and recommendations of the previous studies are sufficient to make an evaluation of the proposal without the need of any further studies until the final approval and design stage.
3. if approval is granted then the development application should be subject to detailed final studies as may be required by the municipality;
4. redevelopment and intensification policies be flexible to adapt to individual situations. What Ontario's communities need is not necessarily the same as what the residents of the communities want. Redevelopment and infilling based on the principles of intensification and compact form need special status within the Planning Act in order to overcome opposition to such projects from existing residents;

5. the concept of bonusing be encouraged as being beneficial for all stakeholders if it is carried out with caution to bring about the desired result;
6. transfer of development rights should not be a mechanism to achieve density increases in appropriate locations. We believe that if a higher density was appropriate for the suggested location, then it should be permitted as-of-right without the need to make trade-offs and transfer development rights from another site;
7. if bonusing and transfer of development rights are included in the Planning Act, then criteria and limits of implementation should be established such that it is easily and clearly understood;
8. the current system which permits municipalities to create an Official Plan and then a Neighbourhood Plan and allows the public to provide input in the planning process at two stages, be continued;
9. the current standard of updating Official Plans every five years be maintained. Municipalities should be mandated to keep their Official Plans current;
10. zoning by-laws be reviewed once every ten years;
11. the development of official plan policies be done in conjunction with an integrated planning process that reviews the capacities of existing infrastructure and plans the need for new infrastructure to accommodate the anticipated growth and with the planning for related matters such as community facilities;
12. the Province leave enough flexibility in the system for the municipalities to review their Official Plans and dictate their own future growth;
13. provide clarification regarding the use and harmonization of Master Planning and the Official Plan process with the goal of eliminating duplication of processes and approvals;
14. applications already in the system or new complete applications submitted up to three months after the passing of Bill 26 should be subject to the current requirements. New applications after three months should be subject to any new requirements of Bill 26;

15. the current standard of “shall have regard for” Provincial Policy Statements be continued. We are strongly opposed to the concept of “shall be consistent with” Provincial Policy Statement;
16. the accepted practice of reviewing a development application based on the policies in place when the application was made be continued;
17. performance monitoring of land-use planning interests and conditions be undertaken with caution. Monitoring of conditions should be carried out in order to obtain information that would be of assistance in making future decisions rather than with the intention of reversing past decisions;
18. the Province assess the effectiveness of the Development Permit System based on the pilot projects before expanding the process; and
19. existing Provincial standards such as minimum distance separation between different land uses be evaluated in the context of redevelopment and intensification to determine the need to be flexible in order to encourage urban redevelopment.

OHBA is committed to working with the government to create the right balance and to ensure that Ontario is prosperous and healthy. We are committed in our resolve to ensure that Ontario communities prosper and grow and are prepared to work with competing factions within the stakeholders to arrive at a workable solution that will enhance the quality of life for all Ontarians.



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OHBA Discussion Paper

on

Planning Reform in Ontario

Planning Act Reform and Implementation Tools

1. About this Paper

The Government of Ontario released a Consultation Discussion Paper #1 on “Planning Act Reform and Implementation Tools”, in June 2004, in conjunction with the announcement by the Minister of Municipal Affairs and Housing that the Government of Ontario intends to amend the *Planning Act* and provide an enhanced framework for planning in Ontario.

The Ontario Government’s goal is to provide long term benefits to Ontarians – new economic growth, more liveable communities, enhanced transportation choices, clean and safe water and improvements to the environment. Ontario also has to plan for the 4 million new residents who will reside in Ontario over the next 30 years.

This OHBA discussion paper is in response to the Government’s request for comments on their Consultation Discussion Paper #1.

2. Our Vision

OHBA has a vision for a clean, green Ontario with a robust and healthy economy that consists of:

- strong and prosperous communities with a high quality of life;
- acceptance by all members of the communities to work together towards having strong economic growth;
- acceptance of regional and local identities within a larger social and economic community;
- an efficient, streamlined government with cost-effective delivery of services, using a rational and consistent set of policies for planning; and
- a level playing field with clearly defined rules allowing the private sector to provide safe, affordable, healthy and quality housing.

OHBA stresses that the builders and developers who make up its membership, must be part of the solution to achieve these significant goals and is committed to working together with the Government to ensure that the end result meets the objectives of OHBA and the Ministry so as to benefit the citizens of Ontario.

The Housing Industry plays a significant role in the economics of Ontario. Housing starts in Ontario reached 85,180 in 2003 (of which 50,208 were in the GTA). Our members contribute approximately 3.3 direct and indirect person-years of employment per housing start and in 2003, the housing industry provided employment for approximately 268,000 persons. The total economic activity generated by the residential housing industry in Ontario was approximately \$19 billion in 2003.

The government has recognized that the home-building industry is an important part of the economic engine that makes Ontario a desirable place to live. It is important because it contributes to a prosperous economy, creates jobs and makes the dream of home ownership a reality to the people of this province.

When our members build a house, they help to build the economy of their communities. They create jobs in the building trades, suppliers, professionals and other spin-off industries. People need to furnish their new homes, they redecorate, and they buy appliances. This helps the communities around the province to prosper.

3. Proposed Planning Act Reform

The Ontario government has acknowledged that the population of Ontario will increase by approximately 4 million persons within the next 30 years. These new residents will have to be provided with housing and job opportunities, education and recreation facilities.

The government has already proposed planning reforms with the introduction of Bill 26 – the Strong Communities Act, 2004. Bill 26 received second reading in May 2004 and has been referred to the Standing Committee on General Government.

The Consultation Discussion Paper #1 on Planning Reform is one of several consultation papers the government has introduced since December 2003. Consultation on all the proposals is ongoing and we feel that any decisions made by the government should be done in a consolidated manner so that a decision on one legislation does not preclude the implementation of another.

5. Complete Application

The issue of a complete application has always been a difficult one. While the municipality would like to have answers to all their questions before they give approval, it is unreasonable to expect the proponent to invest in expensive in-depth studies before there is any assurance that approval will be granted.

What information do municipalities require to make well-informed decisions within the expanded time-lines proposed by Bill 26?

Does the Act and the accompanying regulations regarding "complete applications" already require adequate information to be provided with land use planning applications?

We would suggest that the municipalities take advantage of the pre-consultation process where they informally review an application and determine whether studies are required or not. Some studies are mandated, such as the need for an Environmental Impact Statement for a development adjacent to an Environmentally Sensitive Areas (ESA) or an Area of Natural and Scientific Interest (ANSI). However, other studies may not be required if previous studies could suffice.

We believe that there can be two levels of studies required. If a proposed development is implementing an approved Secondary Plan, and municipal servicing is available, then the municipality should depend on the studies conducted during the Secondary Plan to review the application. Depending on the complexity of the development proposal, assessment studies may be required at the application stage to satisfy the municipality that a concept of the proposal is possible within development (e.g. size of stormwater management ponds, buffers from ESAs).

If approval is granted then the development application should be subject to detailed final studies as may be required by the municipality.

We caution that during the pre-consultation stage municipal staff should make an effort to determine what previous studies are available and whether the conclusions and recommendations of the previous studies are sufficient to make an evaluation of the proposal without the need of any further studies until the final approval and design stage.

6. Redevelopment, Infilling, Intensification, and Compact Form

The compact urban form of redevelopment usually provides conflicts within existing neighbourhoods which must be mitigated against using special techniques. What may work in one neighbourhood may not necessarily work in another, and therefore redevelopment and intensification policies should be flexible to adapt to individual situations.

Would changes to the Planning Act address these issues and make the planning system more responsive to the needs of Ontario's communities and support a healthy economy?

What Ontario's communities need is not necessarily the same as what the residents of the communities want. Redevelopment and infilling based on the principles of intensification and compact form need special status within the Planning Act in order to overcome opposition to such projects from existing residents. The NIMBY syndrome is a threat to the implementation of "good planning" and the goals of the Province.

7. Bonusing

The concept of bonusing has been around for a long time. It suggests that the municipality was prepared to make some form of concessions to the development industry in exchange for the fulfillment of its goals. Bonusing was used in exchange for protection of natural features, i.e. a part of the unit yield from the land to be protected would be transferred to the other lands of the development application in exchange for preservation of the natural feature such that the total allowed density for the overall property remained the same.

It has been suggested that this concept be expanded to include other specific public objectives such as daycare facilities, community centers, and recreational facilities.

Does the ability to bonus support the objective of compact urban form and provide for community amenities?

We believe that this concept of bonusing can be successful for all stakeholders if it is carried out with caution to bring about the desired result.

8. Transfer of Development Rights

While this principle is “*not to be confused with bonusing*”, it is very similar in concept and would work in an identical fashion. The only difference suggested is that the development rights could be transferred to other development sites in exchange for loss of development opportunity on a particular site because of the requirement to preserve or protect a specific feature.

We caution that if this practice is used without controls, the municipality would be faced with conflicting requirements for transfer of development rights and bonusing (e.g. NIMBYism would be prevalent if a neighbourhood group was successful in influencing a municipal council to transfer a development proposal to another site for the preservation of a marginally important feature.

Should transfer of development rights be a mechanism to achieve density increases in appropriate locations?

No, we don't believe that transfer of development rights should be a mechanism to achieve density increases in appropriate locations. This would lead to a mis-use of the concept of why development rights were being transferred in the first place.

We believe that if a higher density was appropriate for the suggested location, then it should be permitted as-of-right without the need to make trade-offs and transfer development rights from another site.

If appropriate, should limits and conditions governing the use of this mechanism be established in the Act?

Yes, we recommend that if bonusing and transfer of development rights are included in the Planning Act, then criteria and limits of implementation should be established such that it is easily and clearly understood.

9. Content of Municipal Official Plans

We believe that municipal Official Plans should concentrate on the big picture issues, the vision and goals for the community, rather than include the details of regulations that tend to put restrictions on the proposed development.

However, most Neighbourhood Plans are carried out in the form of an Official Plan Amendment that contains policies for density, height, transportation corridors, natural areas and other specific land uses. This forms the blue-print for development in that Neighbourhood.

Should the Act more specifically set out and broaden the content of official plans? Would this help balance the strategic vision for community building and the specific policies needed for achieving that vision?

It is our experience that the public only really gets involved with the planning of the municipality at the detailed stage rather than at the vision stage of Official Plans. To expect public input on broader matters at the Official Plan stage when there are no specific proposals to comment to is unrealistic.

The current system allows municipalities to provide the vision and goals for the community as a whole as well as provide more detailed planning goals for Neighbourhoods. This allows the public to provide input in the process at two stages of the process – at the visionary stage when the Official Plan for the entire community is reviewed and then again when the detailed plan for the Neighbourhood that may affect them is proposed. We believe that this process works well and should be continued.

10. Up-to-date Land-use Planning Documents

Should the Planning Act require that land use planning documents such as official plans and zoning by-laws be kept more up-to-date?

Keeping an up-to-date Official Plan and Zoning By-Law is an onerous task for any municipality.

A medium-sized municipality needs at least two years to carry out the required background studies to incorporate the policies in a community wide Official Plan. For larger municipalities the up-dating of the Official Plan and its policies is an ongoing process.

All this comes at a cost. Most Official Plans are updated using funds collected from Development Charges which is paid for by the development industry on behalf of the new home purchaser. We believe that the

current standard of updating Official Plans every five years should be maintained. Municipalities should be mandated to keep their Official Plans current.

Creating a comprehensive Zoning By-law for a municipality is an even more onerous and expensive task, which is why some municipalities have elected to up-date their zoning by-laws on a piece-meal basis. There is no easy answer as to when a zoning by-law should be up-dated. Unless the by-law contains antiquated policies and requirements, most by-laws are relatively up-to-date. We would suggest that a review of the by-law once every ten years would be sufficient.

11. Review of Official Plans

Bill 26 has been termed the Strong Communities Act and implied that the local public should have a strong voice in the decision making process of growth in their communities. It suggests that the province would provide overall direction but would leave flexibility in the process for the community to decide its future.

Does the Planning Act provide sufficient direction for the review of official plans and official plan amendments?

We believe that the Province should leave enough flexibility in the system for the municipalities to dictate their own future growth.

Should the Planning Act require a more comprehensive examination of matters such as local planning issues, changing local conditions, adequacy of designated land (and opportunities) for growth and matters that cross municipal boundaries?

The Official Plan of a municipality is a higher level document that will shape the policies and the growth of the municipality over a long period of time. It only makes sense that the development of official plan policies be done in conjunction with an integrated planning process that reviews the capacities of existing infrastructure and plans the need for new infrastructure to accommodate the anticipated growth and with the planning for related matters such as community facilities.

12. Official Plan and Environmental Assessment Processes

Should the province prepare a regulation or take other action to further harmonize these processes?

The process of Master Planning is already in place and has been well accepted by the development industry. Any clarification regarding the use and harmonization of Master Planning and the Official Plan process would be welcome. The goal should be that duplication of processes and approvals should be eliminated.

13. Transition Provisions for Implementing Bill 26

How should the transition provisions deal with applications in process?

We believe that all applications that have been submitted at the time Bill 26 comes into effect should continue on the basis of the rules established prior to Bill 26.

We also believe that a three month grace period should apply for new applications submitted after Bill 26 comes into effect. This would allow development proposals that are already works-in-progress to make it through the system without requiring studies to be changed to conform to new regulations. It usually takes a significant amount of time to carry out the studies and assessments required to submit a complete application and therefore a three month grace period is not unrealistic.

We recommend that applications in the works or new complete applications submitted up to three months after the passing of Bill 26 should be subject to the current requirements. New applications after three months should be subject to any new requirements of Bill 26.

When should the “shall be consistent with” standard come into effect?

We are strongly opposed to the concept of “shall be consistent with” Provincial Policy Statement and have made comments regarding this issue in our response to the Consultation Discussion Paper #2 on Provincial Policy Statement: draft policies.

14. Effective Date of Policies

Should the Planning Act be amended to state that the most up-to-date policies should apply if new policies are approved before a decision has been made on an application?

No. This provides a moving target for planning policies. It is unfair for a proponent to invest in studies in support of an application and then have to revise the studies and the application mid-stream because new policies have been approved. There should always be a transition period for new policies so that work-in-progress is not subject to change.

Our members need a level of certainty when they invest in a community and to provide a statement that requires a change in process if a new policy is approved as you are going through the process does not allow for good fiscal planning.

We recommend that the accepted practice of reviewing a development application based on the policies in place when the application was made be continued.

15. Performance Monitoring

Should key planning interests and conditions be monitored on a regular basis so trends can be identified and planning policies adjusted to respond to changing circumstances and conditions? Should official plans be required to include policies requiring monitoring of key local conditions? Should monitoring on a provincial scale be undertaken to support the PPS?

We feel that performance monitoring of land-use planning interests and conditions should be undertaken with caution. The objective of the monitoring program should be clarified at the start of the process. Monitoring of conditions should be carried out in order to obtain information that would be of assistance in making future decisions rather than with the intention of reversing past decisions.

16. Implementation Tools

The suggested tools of utilizing Community Improvement Plans and the Development Permit System are useful tools in implementing the goals of Planning Reform. They have been in place for a few years now and the results of the pilot testing of the Development Permit System will determine its effectiveness as an implementation tool for new policies.

We recommend that the Province assess the effectiveness of the Development Permit System based on the pilot projects before expanding the process.

Existing Provincial standards such as minimum distance separation between different land uses is sometimes in conflict with the Provincial goal of redevelopment and intensification. Brownfield redevelopment in urban settings requires special considerations and standards need to be flexible in order to encourage urban redevelopment.

17. Conclusions

In conclusion, OHBA feels that the initiative by the government to reform the Planning Act is timely and we applaud the leadership being provided to guide Ontario through the anticipated growth era.

It is our belief that a workable balance is required to make the system work. We feel that the environmental, social and economic goals of Ontario should be a balance and in order to create and maintain that balance, the economic future of Ontario plays a very significant role. Without investments in job creation and employment opportunities, Ontarians will see a decline in their quality of life.

OHBA is committed to working with the government to create the right balance and to ensure that Ontario is prosperous and healthy. We are committed in our resolve to ensure that Ontario communities prosper and grow and are prepared to work with competing factions within the stakeholders to arrive at a workable solution that will enhance the quality of life for all Ontarians.