Ontario Legislature Standing Committee on Social Policy

Bill 73, Smart Growth for *Our Communities Act, 2015*

Association of Municipalities of Ontario Presentation and Recommended Amendments

November 3, 2015

Association of
Municipalities
of Ontario

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AMO President's Presentation:

Thank you, for providing the Association of Municipalities of Ontario (AMO) with the opportunity to contribute to your deliberations. First, there is much to support in this Bill but also concerns.

In our package, you have a copy of my remarks as well as a list of all our recommendations and specific amendments, beginning on page 7. Today, given the available time, we will only be able to highlight some of the requested changes, however I know you will seriously consider them all.

Let me start with the land use planning part of the Bill.

A. Planning Act:

There are several positive changes that create stability in the local planning process, that create efficiencies and which improves predictability. These include:

- Limiting appeals to the OMB where the municipality has amended its planning documents to comply with provincial plan requirements;
- Changes that scope appeal situations;
- Going from a 5 year to 10 year review period for the Provincial Policy Statement;
- Instructing the OMB to have regard for municipal decisions as it considers an appeal;
- Requiring those who appeal to provide greater detail on the basis of their appeal; and
- Providing greater time and means to settle appeals.

We are making eight recommendations for amendments to the planning portion and will highlight four now.

1. Freezing the ability to make official plan amendments for two years after the plan is approved can have positive outcomes in more urban circumstances, where growth is anticipated and for which it is planned. In rural based areas, where there is very low or no growth, it is not seen as a positive approach.

   Rural based municipal governments are largely dependent on single activity or lot based activity applications brought forward by an individual who sees an economic opportunity. Some have suggested the fix to this problem is to make rural councils the proponent. In most cases it will be difficult to rationalize. It is further complicated as there would be no planning fees to support planning

research and reports which often done by consultants in rural areas. This will put even more pressure on the tight financial situations of rural governments.

The Bill's one-size fits all approach will have different impacts and repercussions. An exception is needed for rural no growth/low growth areas and we believe the government must act on this recommendation.

2. Public engagement is integral to the planning process and municipal governments have deep experience in consulting with the public. Notwithstanding all the good consultation practices, some members of the public or applicants can be unhappy with a council's decision. If their desired outcome is not achieved, then the problem must be with the process.

   More process will not necessarily make for different decision-making outcomes but they will require new administrative requirements which will further strain municipal capacity.

   Changes to process also offer a new area for dispute. For example, in order to provide evidence to the OMB on oral submissions, will the Bill be viewed as implying that municipalities are to record all meetings in order to have a record of verbal presentations? What will this mean for Municipal Freedom of Information and Privacy?

   We ask that how oral submissions are to be accomplished should be the prudent choice of the municipality, based on local circumstances and not arbitrarily regulated by the province. Gathering information at public meetings is very helpful and summaries of that information are often included in municipal planning reports.

3. In the same vein, the requirement for an upper tier planning advisory committee (PAC) with at least one member of the public is an overreach. This idea of mandatory planning advisory committees was tried in the past and was abandoned. It created confusion as to the legislative role of councils and to what the accountability framework of public advisors is and again involves another administrative practice.

   If the goal is for the public to understand how their input is used by the municipality, we submit that a member of the public on a planning advisory committee will not achieve this.

The mandatory PAC will create more issues than it resolves and we respectfully ask that it be deleted.

4. A key interest for AMO is to expand the use of planning tools to facilitate the development of affordable housing. An additional optional tool to facilitate affordable housing development is inclusionary zoning but it is not a panacea solution for all new affordable housing development. Inclusionary zoning is typically more effective at helping moderate income households rather than very low income ones.

   A blanket policy approach that says secondary units are permitted throughout a municipality may create impacts notwithstanding the desire to accommodate more units. It could put residents at risk or put municipal governments in a position that means additional levels of service are needed. Fire service is one example, as is water and sewer capacity. And we know who will hold the liability if something goes wrong.

   In planning for the housing system and enacting solutions, the Province should consider that there are different housing markets in Ontario which may require different solutions in different areas. In short, a 'one size fits all' approach is not the appropriate one. The language in Bill 39, Planning Statute Law Amendment Act, 2014, which has been referred to the Standing Committee on General Government, is much more attuned to the reality of intensification through inclusionary zoning.

Let me now turn to development charges.

B. Development Charges Act

For there to be any hope of moving to municipal fiscal sustainability, growth must pay for growth. There needs to be an end to the ineligible services list, an end to the discounts on certain services and an end to any service level calculation that looks 10 years back instead of forward looking.

I wish to cover four areas for this portion of the Bill.

Transit should not be a discounted service nor should the development charge be calculated on a rolling average of the previous 10 years. Only a formula that covers 100% of costs and future service levels will fulfill the objectives of smart growth. And to be very clear, the only DCA model that gets us to where we need to be on transit is

the one the province used for the Toronto-York Spadina Subway Extension. The TYSSE approach was the right approach in 2006 and it is the right approach now, for all municipal governments providing transit service.

Developers know that they need this change too. The housing market is looking for transit. Families look for less time commuting. Experts speak to the loss of productivity as a result of congestion. Let's get on with the future today.

1. Section 8 of the Bill is of critical concern. It refers to agreements not only under the *Development Charges Act*, but any other Act. Let me break this down a bit.

   First, there are agreements related to services that are contained within the *Development Charges Act*, but which may have a mandatory discount or are ineligible. However, there are agreements, mutually negotiated and entered into that deal with these matters. It must be clear that any current agreements are continued and without any uncertainty. There must be a clear grandfathering clause.

   Second, we strongly suggest that negating any new related agreements may not be helpful to developers who wish to accelerate their interests. You will no doubt have submissions from municipal governments that speak to this matter.

   Finally, there other types of agreements between municipal governments and people who want to utilize land and build where there may or may not be development charge bylaws. For example, there are agreements for the maintenance and improvements related to solar and wind development. Are these types of agreements, generally done under the *Municipal Act* also invalid now or in the future? The province gave municipal governments natural person powers to enter into agreements and this Bill seems to take it away. The province not only must make this section absolutely clear, it must leave all existing agreement intact and not impinge the future ability to enter into agreements under the DCA and even more so other Acts, including the *Municipal Act*.

   As legislators, your job is to ensure the law is clear, that it makes sense in practice and anticipates and avoids unintended consequences. At this point, much greater analysis of this section and clarity is needed.

2. With respect to other municipal services that are on the discounted list in the current Act or listed as ineligible, we understand that they are to be moved to regulations.

   With respect to the discounted services, we look forward to reviewing the regulation that will remove the 10% discount on recreation facilities, libraries and childcare to support fiscally sustainable community hubs. We were pleased, in August, and remain so with the government acceptance of Karen Pitre's Community Hubs report and its implementation.

3. Section 6 of the Bill is problematic. It makes charges payable upon the first building permit being issued. It should be deleted. Our concern is that if this section is not amended, it may lock in lower DC rates and permit developers to not follow through on their building time lines to avoid increased charges.

There are a couple of additional requests of a technical nature related to area specific charges and asset management in the Specific Amendments portion of the document.

Summary:

In summary, we support much of what is contained in Bill 73. At the same time, there is need for some critically important amendments. We ask that the Committee give them serious consideration.

At the end of the day, long after the shovels have left the ground and the sod laid and the keys have been turned over, municipalities are called upon to deliver the services and keep them running well and also financially plan for their on-going maintenance and eventual future replacement. Over time, it is municipal governments which have to respond to their community needs.

Bill 73 – Smart Growth for Our Communities Act, 2015

AMO's Specific Recommendations and Amendments

AMO is requesting the following amendments to this Bill.

***A) Planning Act*:** There are a number of critical issues which will create confusion, frustration and greater costs if not addressed. The following amendments to the Bill would resolve these impacts:

1. Two Year Freeze in Plan Amendments (Bill 73 Section 20, Section 25 and Section 28 re: Sections 22, Section 34 and Section 45 of the *Planning Act*)

This change can have positive outcomes in more urban circumstances. However, in rural and northern Ontario, there is low or no growth and this is not seen as a positive approach. Rural municipal governments are dependent on applicant initiated/plan amendment process to deal with new economic activity. Typically these are small in scale, brought forward by an individual who sees an economic opportunity. Conversely, urban areas have a planned growth pattern where growth can be anticipated and the two year freeze is not a hardship but needed to maintain stability in the planning process. Some have suggested that the rural councils should be made the proponent. However, in most cases it will be difficult to rationalize. Further, it would be complicated as there would be no planning fees to support planning reports. This lack of income will put even more pressure on municipal financial situations. A one-size fits all approach will have different impacts and repercussions.

Proposed Amendment: *It is recommended that language be added to allow proponents to bring forward amendments during the two year freeze time only in low or no growth areas of the province. AMO is willing to assist with identifying indicators, some of which are part of the annual municipal Financial Information Returns and current grant programs (OMPF). This language should also provide that in these situations, if the rural council rejects the proposal, there is no opportunity to appeal during that two year period of time.*

2. Inclusionary Zoning for Second Units "as of Right" (New Clause)

Municipal governments recognize there is an affordable housing shortage and have a shared interest in facilitating affordable housing. However, there needs to be some local discretion on how this approach is implemented given the variance in servicing conditions, the impact on infrastructure and asset management. Likewise, intensification generates health and safety considerations which must be addressed. A growing number of urban municipal governments have worked within their

communities to identify where second units make sense. The mandatory, heavy handed approach would not be in keeping with seeking public engagement on planning issues. Lastly, a more profound issue is perhaps incenting homeowners to welcome tenants and finding financing for a second unit conversion.

Proposed Amendment: *It is recommended that language, such as that found in Bill 39, would achieve added supply but would also do it in a manner that provides flexibility as to how different municipal governments can implement this type of use and zoning.*

3. Cash in Lieu of Parkland (Bill 73 Section 27 and Section 31 re: Subsection 42 (6) and Section 51.1of the *Planning Act*)

This section proposes changes to the "cash in lieu of parkland" clause. Lowering the requirement for parkland per capita and the impacts on "cash in lieu" will have a negative impact on the ability for municipal governments to purchase parkland; which plays a key role for outdoor exercise and community interaction. It is unclear how on one hand, there is a provincial interest in positively influencing wellness and reduce obesity, yet on the other, there is a new financial limitation that will make parkland more difficult to achieve. This could also impact how community hubs evolve and seems counterintuitive to that Panel's advice.

Proposed Amendment*: It is recommended that the clause proposing this change be deleted to leave "cash in lieu of parkland" calculation as it currently reads.*

4. Harmonizing Timelines (Bill 73 Section 30 re: Section 51 of the *Planning Act*)

The timeframe to appeal conditions of plan of subdivision is longer than the appeal of the subdivision plan itself which creates difficulties.

Proposed Amendment*: It is recommended that the timelines pertaining to plans of subdivision and conditions to plans of subdivisions be harmonized to resolve this issue.*

5. Public Engagement – Administration (Bill 73 Section16 re: Subsections 17 (23.1) and (35.1), 22 (6.7), 34 (10.10) and (18.1), 45 (8.1), 51 (38), 53 (18) of the *Planning Act*)

Municipal governments have a long standing experience with engaging public input. Currently many municipal governments seek public involvement which often goes beyond the minimum requirements. Added changes to public involvement in the planning process may unnecessarily raise the expectations of all participants. While the proposed requirement for greater detail in Official Plans can be helpful in shaping expectations, experience has shown that attacks on the process often derive from

disappointment with the decision. Furthermore, additional involvement is no indicator that the outcome changes. The Bill also adds new requirements around recording public input. In order to provide evidence to the OMB on oral presentations the Bill appears to suggest that municipalities record all meetings in order to have a record such as Hansard at the Ontario Legislature. The municipal sector is very concerned that new administrative requirements to report on public meetings will become another new avenue for challenge at the OMB or to the courts and will create an administrative burden due to mandated formats.

***Proposed amendment**: Clarify that the various reports' formats are at municipal discretion and that these reports are not an appealable matter or for judicial review.*

6. Public Engagement – Mandatory Planning Advisory Committees (Bill 73 Section 15 re: Section 8 of the *Planning Act*)

Making Planning Advisory Committees (with at least one non-council member) mandatory at the upper tier in southern Ontario will likely add to frustration and confusion. This proposal would be highly disruptive to the roles of upper and lower tiers in planning as well as the role of the professional planner. It would add a new level of administration in most cases.

***Proposed amendment**: It is recommended that the change be deleted. Leave the current legislation as is with the option to have a planning advisory committee. The more transparent records of public participation required by the Bill should address concerns of the public that they do not have opportunity for input.*

7. Defining Minor Variance (Bill 73 Section 28 re: Section 45 of the *Planning Act*)

Defining "minor variance" is challenging and is based on the circumstances of each property in the context of surrounding land uses. Municipal governments support the flexibility and judgement conferred on committees of adjustment to exercise their role. The reason minor variance tool was created in the first place was to deal with the lot scale matters that could not be anticipated at the Official Plan or zoning level.

***Proposed Amendment**: It is recommended that the government not proceed with a regulatory approach. Instead, the government is asked to provide greater information and increase the knowledge and understanding about the evaluation process and considerations for these decisions. Guidance should highlight case law that relates to the minor variance tool.*

8. Once a Severance, Always a Severance (Section 53 of the *Planning Act*)

While there is no related provision in this Bill, we want to point out that in some circumstances the principle of "once a severance always a severance" has been

frustrated. Properties have been merged when coming under one ownership since the introduction of this principle in the Planning Act many years ago.

Proposed Action: *It is recommended this issue be referred to the Ministry of Municipal Affairs and Housing or other appropriate body to assess the legal barriers and amend the Act accordingly.*

B) Development Charges Act Proposed Amendments And Regulatory Commentary:

9. Status of Existing Agreements (Section 8 of the Bill).
This section which amends Section 59.1(4) of the DCA must be amended to preserve existing agreements under this or any other Act. Such agreements have been negotiated in good faith, often initiated by developers and are a key part of the development process. In fact, agreements under other Acts should not be put into question either. Agreements under other Acts may include provisions to maintain or support other assets that would not be part of DCA in the first place. For example, would municipal agreements with solar and wind farm developers be null and void?

If the government's intent for Section 8 is to prevent agreements related to discounted or ineligible services with the DCA, then the section needs to say this clearly. We don't agree with that goal, however, as worded now, the section has a very broad and negative reach. This section demands much greater scrutiny to ensure unintended consequences do not occur. While we have put forward some proposed wording, we offer for further review by the Committee.

Proposed amendment*: A proposed revision to Section 8 of the Bill which amends Section 59.1 (4) of the Act 8 follows:*

59.1(4) Subsection (1) does not affect an agreement as relates to Section 2.2 (2) of the Act and entered into before the day Section 8 of the Smart Growth for Our Communities Act, 2015 comes into force that provides for:

(a) the making of a payment;

(b) the provision of land or any other thing of value; or

(c) the construction of a service, related to a development.

10. When charges are payable (Section 6)
The Bill proposes to make charges payable upon the first building permit being issued. However, flexibility is needed to respond to circumstance. If not amended, it may lock

in lower DC rates and permit developers to not follow through on their building time lines to avoid increased charges.

***Proposed Amendment**: This proposed approach should be deleted*.

11. Area Specific Charges (Section 2 (3) of the Bill).
Specific area rates should remain a local decision. Section 2 (3) unnecessarily limits local authority and vests that responsibility with the Minister. Municipalities should have flexibility in determining their use.

***Proposed amendment:** This proposed section should be deleted.*

12. Ineligible services and service standard (Regulatory Authority)
This section of the current Act is proposed to be moved to regulations. As a principle, municipalities object to having legitimate municipal services deemed ineligible, either by legislation or regulation. We encourage the government to not declare any service ineligible or at the very least, reduce the list of ineligible services. In addition, we recommend:

i. We support the government's acceptance and commitment to implement Karen Pitre's recommendations related to ensuring fiscally sustainable hubs contained in her recent report, "*Community Hubs in Ontario: A Strategic Framework and Action Plan*." AMO urges adoption of Pitre's recommendation which in practice would speak to the removal of the 10% discount on recreation facilities, libraries and childcare.

ii. Eliminate the mandatory ten-year historic service standard to the remaining eligible costs would further broaden the application of development charges.

iii. We support changes that would see transit as a fully eligible DCA cost, where service level is a forward looking calculation rather than the current previous10 year approach. Only the Toronto-York Spadina Subway Extension calculation approach covers 100% of costs. It's an approach that has been used and it works. Anything less says that it was the wrong approach.

Transit is a clear priority of the provincial government and municipal governments. As much as developers might publicly protest, they also know that people are going to turn more and more to transit as part of their locational needs. Transit supports intensification. It supports employment areas. It is the right approach for all concerned.

iv. Permitting development charge recoveries for waste diversion is supported by the municipal sector. If the intention is to turn this from an ineligible service to an eligible one, it needs to be done in a way that meets current service challenges. This should include costs for integrated waste management, not just diversion. It should also support energy from waste costs.