Bill 139 - *Building Better Communities and Conserving Watersheds Act, 2017*

Submission to the Standing Committee on Social Policy

October 17, 2017

AMO President's Presentation:

The Association of Municipalities of Ontario (AMO) appreciates the opportunity to contribute to your deliberations about the reform of Ontario's Ontario Municipal Board appeal process and the role and service delivery by Conservation Authorities. This Bill addresses many municipal government concerns in ways that we can support. None the less, there are several recommended amendments.

You have a copy of my remarks as well as our specific amendment requests, beginning on page 6.

Let me start with the Local Planning Appeals Tribunal part of the Bill.

A. Local Planning Appeals Tribunal:

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

- A Tribunal which will focus on the conformity of a municipal planning decision with a provincial policy statement, a provincial plan or an applicable official plan;
- The Tribunal is to focus on provincial interest where a notice from the Minister responsible for the *Planning Act,* considers its interest may be adversely affected.
- It will not hear the application for the land use change as if the application had not been previously made.
- Certain types of planning amendments would be sheltered from appeals;
- Case management conferences are to be used to scope issues at the Tribunal;
- A Local Planning Appeal Support Centre would help citizens through the appeal process. We support the province paying for this Centre.

The new process will continue to focus on complete applications from developers, public input, professional planning advice, reflection of relevant provincial interests and municipal council decisions, and scoping of appeals to official plan conformity and provincial policies. The Bill's changes continue to build on previous changes to the process. They should lead to significant savings in time and legal fees.

This approach will also require upfront effort from provincial staff - to offer complete comments and ensure proper understanding of local conditions and ambitions within the framework of provincial policy and plans.

AMO is aware that some developer stakeholders feel that the changes in this Bill will alter a council's role, from that of a policy (legislative) one to a judicial one.

We note that Section 61 of the *Planning Act* currently says the role of council is a legislative one. It would be unfortunate that an emerging contrary view might attempt to sideline the role of the new Tribunal.

The question of legislative versus judicial arose in 1983 when public meetings were introduced and was resolved by Section 61. Let me quote from Hansard and the Waterloo North MPP of the day, Mr. Epp.

> [Public Meetings] … "was addressed by a number of municipalities coming before the committee, and had to do with making the councils perform what they feared was going to be a judicial function.
>
> They were going to have hearings. The way the legislation was originally interpreted was that if they had a hearing on a planning matter or a zoning change, they would not be able to even leave the hearing at any time -- to have a coffee, go to the washroom or anything. If they did, they would not hear the full extent of the testimony before the committee. The minister will recall, having read a lot of the briefs that came before the committee and letters that I am sure came to his office, that the councils felt they would be performing a more judicial function than a legislative function.
>
> I was glad to see, during the course of those hearings, that matter was clarified. The councils, under the new Planning Act, will be performing essentially a legitimate legislative function rather than a judicial function."

We ask this Committee to ascertain whether this Bill, which shelters land use changes from appeal to the LPAT, brings into any doubt a council's current legislative role. The Ministry of Municipal Affairs should be available to provide information on this. At the end of the day, this Committee has a responsibility to recommend to the Legislature a Bill that is clear and achieves the policy intent.

AMO is asking for two amendments:

1. Some years ago, the province intentionally consolidated all of its land use policy into the Provincial Policy Statement so that everyone involved would have all the policies in one place. This Bill, Schedule 3, Section 3 reverses that. Any participant in the planning process will have to hunt through other legislation to find provincial policy. We recommend that the Bill be amended to remove references to other legislation and instead, the Provincial Policy Statement be written to include these other policies and plans.

2. Where a decision is returned to a council by the Local Planning Appeal Tribunal for a second decision, 90 days is not sufficient to undertake all the processes required by Bill 139. A municipal government would have to organize and provide notice for a public meeting; perhaps have planning committee review and then a council decision. A 120-day period is recommended.

The Bill does rest on some regulatory authority, such as transitional rules and LPAT procedural rules and we believe the Ministries will continue their outreach to us on their development.

Let me now turn to Conservation Authorities, Schedule 4 of the Bill.

B. Conservation Authorities Act

Schedule 4, which amends the *Conservation Authorities Act,* is also largely supported by municipal governments. We appreciate that the purpose of the Conservation Authority is clearly stated. The Bill clarifies that there are regulated, mandatory activities of a Conservation Authority and that discretionary activities are to be by local memo of understanding with municipal governments on services and their costs. The Bill also adds clarity to the permit process.

The Bill wisely harmonizes the language used in Conservation Authority budgets and accounts to similar language used by other public sector organizations such as capital and operating expenses. This will increase transparency and the ability for the Board to understand financial information in terms they already use.

We also appreciate that the processes for enlargements, amalgamations or dissolutions are clearer and easier.

It also brings Conservation Authority meeting procedures in line with municipal government procedures, such as notice of meetings, open and closed meetings, certain staff roles, and freedom of information. Procedural by-laws that provide greater clarity around the appeals processes for fees apportioned by the Conservation Authority for capital costs and operational costs are all welcome changes

Clearer articulation of enforcement procedures and authority is also better harmonized with other legislation. Specifically, the power to issue stop work orders is added. Without this tool, Conservation Authorities have been prevented from enforcing policies.

There are some areas where greater clarity is needed. For example, Advisory Boards appointed by the province are introduced in this Bill. The circumstances under which the Minister would exercise this power are unknown. It is not clear how the outcomes of such committees would be used by the Conservation Authority or how this would impact local service agreements and costs. Providing such broad authority seems less transparent than desired.

The Minister may also intervene on the amount of fees and how they are calculated. The conditions under which a minister may choose to exercise these powers need more clarity. They impact municipal costs as lower fee revenues most often mean higher levies to municipal governments.

Part IV Section 12 of the Bill states that municipal councils continue to have the authority to appoint Conservation Authority Board members. This makes sense. Municipal councillors are

representative of all walks of life in an area, and it is the council that pays the greatest proportion of the conservation authorities funding. However, Section 40 (1) (a) of the Bill indicates that the Lieutenant Governor in Council "may make regulations governing the composition of conservation authorities and prescribing additional requirements regarding the appointment and qualifications of members of conservation authorities". AMO has consistently maintained that until the province reinstates significant funding to Conservation Authorities that municipal government, as the majority funder, should have sole right to appoint board members.

AMO will not support appointees to the Conservation Authority Board from the Province. We understand that several Conservation Authorities have not been functioning well. The power to improve the functionality of any board is unlikely to rest with an "outside" appointment. Perhaps the threat of provincial oversight, as with the *Municipal Affairs Act,* might be a better route.

Summary:

In summary, we support much of what is contained in Bill 139, both for the reform of the OMB into the Local Planning Appeal Tribunal and for improving conservation authorities. We are asking for three amendments:

Regarding the Planning Act,

- keep all provincial land use policy in the Provincial Policy Statement, and
- provide 120 days for the second decisions of council where a matter is returned

Regarding the Conservation Authority Act,

- Delete the reference to regulating the composition of conservation authority board members.

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AMO's Specific Recommendation for Amendments

AMO is requesting the following amendments to this Bill.

A) Planning Act:

1. **Bill 139 Schedule 3, Section 3**. The section is amended to deem policy statements issued under the *Metrolinx Act, 2006*, the Resource Recovery and *Circular Economy Act, 2016* and other prescribed policies or statements to be policy statements issued under section 3 of the *Planning Act*. The purpose of the Provincial Policy Statement is to consolidate provincial interests and articulate them in one place such that planning practitioners and developers do not overlook a provincial interest. It is recommended that the Bill be amended to remove references to other legislation and instead, the Provincial Policy Statement be amended to include these policies.

Proposed Amendment:

> *Schedule 3 (3), Section 3 of the (Planning) Act is amended by adding the following ~~subsections:~~*
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> *Approval of Minister, etc.*
>
> *(1.1) A policy statement may require an approval or determination by the Minister, any other minister of the Crown or multiple ministers of the Crown for any of the matters provided for in the policy statement.* ***Each policy statement shall be added to the Provincial Policy Statement as amended.***
>
> ~~*Deemed policy statements*~~
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> ~~*(8) Each of the following is deemed to be a policy statement issued under subsection (1):*~~
>
> ~~*1. A policy statement issued under section 31.1 of the Metrolinx Act, 2006.*~~
>
> ~~*2. A policy statement issued under section 11 of the Resource Recovery and Circular Economy Act, 2016.*~~
>
> ~~*3. A policy or statement that is prescribed for the purpose of this subsection.*~~

2. **The Bill amends the *Planning Act***, Sections 17, Section 22, Section 34, Section 38, Section 41, Section 51 and Section 53 to allow appeals to the Local Planning Appeals Tribunal. In turn if the Local Planning Appeals Tribunal finds the decision to be in conflict with Provincial Plans and policy or an applicable Official Plan, it can provide the municipality a second opportunity to make a decision. The second decision must be made within 90 days. However, this also includes the requirement for notice, holding a public meeting, in many cases going to planning committee and finally to council for a decision. To accomplish this in three months (90 days) is not feasible for most municipalities. It is recommended that the timeline be extended to 120 days.

Proposed Amendment:

Rules that apply if notice is received

(49.4) If the clerk has received notice under clause (49.3) (b), the following rules apply:

1. The council of the municipality may prepare and adopt another plan in accordance with this section, subject to the following:

i. Subsections (16) and (17.1) do not apply.

ii. If the plan is not exempt from approval,

*A. the reference to "within 210 days" in subsection (40) shall be read as "within **120** days",*

B. subsection (40.1) does not apply,

*C. references to "210 days" and "210th day" in subsection (40.2) shall be read as "**120 days" and "120th** day", respectively, and*

*D. the reference to "210-day period" in subsection (40.4) shall be read as "**120**-day period".*

*2. If the decision referred to in subsection (49.3) was in respect of an amendment adopted in response to a request under subsection 22 (1) or (2), the references to "within 210 days after the day the request is received" in paragraphs 1 and 2 of subsection 22 (7.0.2) shall be read as "within **120** days after the day notice under clause (49.3) (b) was received".*

3. Conservation Authorities Act

40 (1) The Lieutenant Governor in Council may make regulations,

~~(a) governing the composition of conservation authorities and prescribing additional requirements regarding the appointment and qualifications of members of conservation authorities;~~

(b) governing advisory boards established under subsection 18 (2), including requiring authorities to establish one or more advisory boards and prescribing requirements with respect to the composition, functions, powers, duties, activities and procedures of any advisory board that is established;

(c) governing programs and services provided by authorities under paragraph 1 of subsection 21.1 (1), requiring authorities to provide those programs and services and respecting standards and requirements applicable to those programs and services;

(d) governing the apportionment of an authority's capital costs in connection with a project for the purposes of section 25;

(e) governing reviews under sections 26 and 27.1, including prescribing a body that may conduct such reviews instead of the Ontario Municipal Board or the Mining and Lands Commissioner, as the case may be;

(f) governing the apportionment of an authority's operating expenses for the purposes of section 27, prescribing expenses as operating expenses for the purposes of section 27, governing the amount that participating municipalities are required to pay under section 27, including the fixed amount that a participating municipality may be required to pay under subsection 27 (2), and restricting and prohibiting the apportionment of certain types of operating expenses;

(g) defining any term that is used in this Act and that is not defined in this Act;

(h) respecting anything that is necessary or advisable for the proper administration of this Act.