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Official Report of Debates (Hansard)

SP-25

Standing Committee on Social Policy

Building Better Communities and Conserving Watersheds Act, 2017

2nd Session
41st Parliament

Monday 16 October 2017

Chair: Peter Tabuns
Clerk: Jocelyn McCauley

Journal des débats (Hansard)

SP-25

Comité permanent de la politique sociale

Loi de 2017 visant à bâtir de meilleures collectivités et à protéger les bassins hydrographiques

2e session
41e législature

Lundi 16 octobre 2017

Président : Peter Tabuns
Greffière : Jocelyn McCauley

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Monday 16 October 2017

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 16 octobre 2017

The committee met at 1400 in committee room 1.

The Chair (Mr. Peter Tabuns): Good afternoon, everyone. The Standing Committee on Social Policy will now come to order. Before we go any further, I have a ruling that I'm going to put forward.

On October 3, 2017, Mr. Dhillon moved a motion with respect to the method of proceeding on Bill 139, An Act to enact the Local Planning Appeal Tribunal Act, 2017 and the Local Planning Appeal Support Centre Act, 2017 and to amend the Planning Act, the Conservation Authorities Act and various other Acts.

Mr. Hardeman moved an amendment to the motion, asking that the Chair of the Committee write to the three House leaders requesting permission for the committee to travel to Ottawa, Windsor and the north for public hearings on Bill 139 during the week of October 10, 2017. Mr. Hardeman had the floor at the time of adjournment.

At this time, I will not allow further debate on Mr. Hardeman's motion because it has been rendered out of order as it is attempting to amend Mr. Dhillon's main motion which, in my opinion, is also out of order because it contains a number of timelines that have either passed or no longer make sense. However, I am prepared to entertain a new motion.

It's my understanding, Mr. Rinaldi, that you will be moving a motion; is that correct?

Mr. Lou Rinaldi: Correct.

The Chair (Mr. Peter Tabuns): Would you please read your motion?

Mr. Ernie Hardeman: Mr. Chairman, on a point of order: I believe we've had a subcommittee report since the time this was held, and if the motion that we're making is to just enter the subcommittee report into the record, I'm with you on that. If it's further debate, I would just ask for your indulgence. We have all these hearings to do this afternoon. I would hope that we could have the debate on the subcommittee report following the public hearings rather than prior to the public hearings.

The Chair (Mr. Peter Tabuns): Well, Mr. Hardeman, we have a motion that's going to come forward—not quite a point of order, sir, but in any event I have your information. Mr. Rinaldi will be moving the subcommittee report. It will then be open for debate and we will go from there.

SUBCOMMITTEE REPORT

The Chair (Mr. Peter Tabuns): Mr. Rinaldi, if you would please proceed.

Mr. Lou Rinaldi: Chair, just to be clear, did you want me to read the subcommittee report into the record?

The Chair (Mr. Peter Tabuns): Yes, sir.

Mr. Lou Rinaldi: And then, to be clear, I have an amendment to that as well.

The Chair (Mr. Peter Tabuns): And if having read it out you want to put forward an amendment, then that's another discussion.

Mr. Lou Rinaldi: Thank you, Chair. So your subcommittee on committee business met on Wednesday, October 4, 2017, to consider the method of proceeding on Bill 139, An Act to enact the Local Planning Appeal Tribunal Act, 2017 and the Local Planning Appeal Support Centre Act, 2017 and to amend the Planning Act, the Conservation Authorities Act and various other Acts, and recommends the following:

(1) That the committee meet in Toronto on Monday, October 16, 2017, Tuesday, October 17, 2017, Monday, October 23, 2017, and Tuesday, October 24, 2017, during its regular meeting times for the purpose of holding public hearings.

(2) That the Clerk of the Committee, in consultation with the Chair, post information regarding public hearings on the Legislative Assembly website, the Ontario parliamentary channel, Canada NewsWire, the Globe and Mail and the Toronto Star.

(3) That the Clerk of the Committee, in consultation with the Chair, post information regarding public hearings in L'Express, Turtle Island News and Wawatay News, if possible.

(4) That the Clerk of the Committee identify various media outlets or other vehicles of communication that would inform indigenous communities of the hearings and give notice of public hearings to such media outlets.

(5) That interested parties who wish to be considered to make an oral presentation contact the Clerk of the Committee by 12 noon on Wednesday, October 11, 2017.

(6) That presenters be able to appear before the committee in person, via teleconference, or by video conference.

(7) That the Attorney General be invited to appear before the committee on Monday, October 16, 2017, and be offered 15 minutes for a presentation, followed by 45

minutes for questions by committee members, divided equally among the three parties.

(8) That, if all requests to appear can be scheduled, the Clerk of the Committee proceed in scheduling all witnesses on a first-come, first-served basis.

(9) That if not all requests can be scheduled, the Clerk of the Committee provide the subcommittee members and/or their designates with the list of requests to appear; and that the subcommittee members prioritize and return the list to the Clerk of the Committee by 3 p.m. on Wednesday, October 11, 2017.

(10) That presentations be scheduled in 20-minute intervals and that witnesses be offered up to 10 minutes for their presentation, with the remaining time for questions by committee members being divided equally among the three parties.

(11) That the deadline for written submissions be 6 p.m. on Tuesday, October 24, 2017.

(12) That proposed amendments to the bill be filed with the Clerk of the Committee by 12 noon on Thursday, October 26, 2017.

(13) That the committee meet in Toronto for clause-by-clause consideration of the bill on Monday, October 30, 2017, and Tuesday, October 31, 2017, during its regular meeting times.

(14) That the research officer provide the committee a summary of testimonies by 12 noon on Friday, October 27, 2017.

(15) That the Clerk of the Committee, in consultation with the Chair, be authorized to make any preliminary arrangements to facilitate the committee's proceedings prior to the adoption of the report of the subcommittee.

And that's your subcommittee report, Chair.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Rinaldi. Can you move adoption?

Mr. Lou Rinaldi: I will move that report, Chair.

The Chair (Mr. Peter Tabuns): Okay. Any discussion?

Mr. Lou Rinaldi: Chair, I do have some amendments, if I could.

The Chair (Mr. Peter Tabuns): If you would like to bring forward your amendments, please proceed.

Mr. Lou Rinaldi: Sure. I move that the report of the subcommittee on committee business be amended by striking out items 1, 7, 11, 12, 13 and 14 and replacing it with the following:

"(1) That the committee hold public hearings on Bill 139 on Monday, October 16, 2017, from 2 p.m. until 6 p.m. during its regular meeting times, and that the committee request authorization from the House leaders to meet on Tuesday, October 17, 2017, from 3 p.m. until 6 p.m. for the purpose of public hearings on Bill 139.

"(7) That the Attorney General and the Minister of Municipal Affairs appear before the committee on Monday, October 16, 2017, and be offered 15 minutes for their presentation, followed by 45 minutes for questions by committee members, divided equally among the three parties.

"(11) That the deadline for written submissions be 5 p.m. on Wednesday, October 18, 2017.

"(12) That proposed amendments to the bill be filed with the Clerk of the Committee by 12 noon on Thursday, October 19, 2017.

"(13) That the committee meet in Toronto for clause-by-clause consideration of the bill on Monday, October 23, 2017, and Tuesday, October 24, 2017, during its regular meeting times.

"(14) That the research officer provide the committee a summary of oral testimony by 5 p.m. on Wednesday, October 18, 2017."

The Chair (Mr. Peter Tabuns): Thank you, Mr. Rinaldi. So your amendment is before us. Is there discussion of that amendment? Mr. Hardeman.

Interjection.

The Chair (Mr. Peter Tabuns): My apologies. I've been asked to recess for a moment so that it can be distributed to all of you. Five-minute recess.

Mr. Ernie Hardeman: Chair, if we could, just before you do that—I was wondering if, as I mentioned earlier, we could delay the vote on this until after the presentations have been made, because if we can't do that—

The Chair (Mr. Peter Tabuns): Mr. Hardeman, I'm going to hold you down. I'm going to recess while this is distributed, and I'll get back to you.

The committee recessed from 1409 to 1412.

The Chair (Mr. Peter Tabuns): The committee resumes debate of the amendment. Mr. Rinaldi?

Mr. Lou Rinaldi: Chair, I would recommend that we proceed and vote on the amendment.

The Chair (Mr. Peter Tabuns): Okay, thank you. Mr. Hardeman?

Mr. Ernie Hardeman: Thank you very much, Mr. Chair. I do have some comments I want to make. I really wanted to move this to the end of our meeting, but that was ruled out of order, so I guess I'll have to do it now.

I think it's unfair that not only is this motion going to take away two days of public hearings to hear from the public, but now this debate is going to take away from the people who are here listening today or here presenting today. There was no time allotted in the agenda for this item, because when this agenda was circulated to the committee, it wasn't on the agenda. I guess I don't know why it wasn't on the agenda to start with, because this meeting was held for this purpose. You would think that we can't conduct it without that on the agenda. I would have thought it would have been on the agenda.

The other problem I have is that if we listen to the subcommittee report, it had that all of the delegates would be selected on a first-come, first-served basis. If there were more than required, it would then go to each caucus to pick out the numbers, their preferences, and then it would be done. But nowhere does it say that when that was done, all the delegates would not be—all the presenters would not have been notified.

I guess I have to ask the Clerk: Have the people who will be heard on the days we're taking out been notified, and if not, why not?

Interjection.

The Chair (Mr. Peter Tabuns): Mr. Hardeman, until we actually have this committee adopt the framework, that is not a finalized agenda.

When this committee decides on the days it is going to have hearings—and so far, all we have is a subcommittee deciding the days of hearing—there is no point in notifying anyone else. If this committee doesn't adopt this amendment, then we will have the four days of hearings. If it amends that structure, then there will only be two days of hearings. Once the committee has made a decision, those who will put their names forward will be informed.

Mr. Ernie Hardeman: I thank you very much for that. I'm not inferring that the debate right now is inappropriate—that this is being debated—but between the time we are debating this and the time that the subcommittee report, there were no subjective dates. There were all in there—today and tomorrow—exactly the same as the next two. Why were two put in place and not the other two? Who made the decision that this amendment would be coming forward? It wasn't made by the subcommittee. So how did we know this amendment was coming forward to have just two days of hearings for this meeting?

The Chair (Mr. Peter Tabuns): Just to note that the Clerk is always in these situations given preliminary authority to proceed with the directions of the subcommittee. It is unusual for the subcommittee's report not to be adopted by the committee of the whole. We're in an unusual situation.

Mr. Ernie Hardeman: I thank you very much, and I won't dwell on it any further. I just want to say and I want it on the record that when the Clerk started putting them in, the decision that maybe the other two were not going to be dates was inappropriate to be made by the Clerk's office. That would be made by the subcommittee or the committee. Just because someone said that we might have this debate with amendments, we didn't schedule the next two days, which, to me, is inappropriate.

The second thing I just want to point out—and I just want to take a few minutes on the record. My good friend Mr. Miller is going to help me on this because he is critic for the natural resources part of the bill. I just want to go over the people who have not been scheduled who have applied to be heard. Those are the people that, as of this amendment being passed—and we know that's how it works in this committee. The majority rules: The government makes the motion, the government defends the motion and then the government wins the motion.

The Federation of Rental-housing Providers of Ontario will not be heard. The Canadian Environmental Law Association will not be heard. The Greater Ottawa Home Builders' Association will not be heard. The Architectural Conservancy Ontario, Newmarket branch, will not be heard. The Bay Cloverhill Community Association will not be heard. Bloor Street East Neighbourhood Association will not be heard. The Carpenters' District Council of Ontario will not be heard. Cassels Brock lawyers will not be heard. The Church Wellesley Neighbourhood Association will not be heard. There are two different presenters from that one.

The city of Burlington, and the mayor, will not be heard. The city of Mississauga—I'm sure they have an interest—will not be heard. The city of Toronto, and Dave Shiner, will not be heard. ClubLink Corp. will not be heard.

Have we got to any of yours yet, Mr. Miller?

Mr. Norm Miller: No.

Mr. Ernie Hardeman: Davies Howe will not be heard. The downtown Toronto residents' alliance will not be heard. Environmental Defence will not be heard. The Federation of North Toronto Residents' Association will not be heard. The Garden District Residents Association will not be heard. Greater Kitchener Waterloo Chamber of Commerce applied and will not be heard. The Greater Yorkville Residents' Association applied and will not be heard.

Greenspace Alliance of Canada's Capital will not be heard. The Hamilton-Halton Home Builders' Association, Kagan Shastri lawyers, Kingscross Ratepayers Association, the Lakeshore Planning Council, the London Home Builders' Association, the Lower Thames Valley Conservation Authority—and this is the one where Mr. Miller is going to start and do a few.

The Chair (Mr. Peter Tabuns): You have the floor. I have Mr. Hatfield next, then I have Mr. Miller and then I have Mr. Rinaldi.

Mr. Ernie Hardeman: Okay. Sorry about that.

The Ontario Expropriation Association, the North Gwillimbury Forest Alliance and the Ontario Federation of Agriculture will not be heard. The Preservation of Agricultural Lands Society will not be heard. The Real Property Association of Canada, REALpac, will not be heard. The South Eglinton Ratepayers' and Residents' Association will not be heard. The Sudbury and District Home Builders' Association, the Swansea Area Ratepayers' Association, the Teddington Park Residents Association, and the Toronto and Region Conservation Authority will not be heard. The town of Aurora will not be heard. Turkstra Mazza Associates and the whole list of the lawyers will not be heard.

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These are all people, Mr. Chair, that have applied to be heard. Some of them were supposed to be put in for the next two days; none of them were. They will all be notified or have to be notified following this meeting and following this vote that the government does not have an interest in hearing from them; they've already made up their mind how they're going to deal with this bill, and that's why they're doing this. I can see no other reason for that.

With that, I don't want to take any more of the time from the people who are making presentations today. I will stop there and let my colleagues carry on.

The Chair (Mr. Peter Tabuns): Thank you. Mr. Hatfield.

Mr. Percy Hatfield: I won't be long. I want to hear from the people who were lucky enough to have their names put on the list to be hearing delegates here today.

I will say I think this government has hit a new low in limiting debate like this. You've got all of these people here who want to speak, there's an overflow room down the hall—I don't know how many people are in there that wanted to speak. We started out with four days of hearings, and now it's almost like bringing in closure before debate even begins. It's a limited debate.

As I say, it's a new low even for this Liberal government, a Liberal government that says, "We're the most open and transparent in history." Well, they're certainly making history here today. A government that says "no one left behind," are leaving half of the people who wanted to speak to this bill outside, on the curb, in the gutter, because they're not giving them a chance to speak today or next week. That is very upsetting to me.

I don't know why we can't listen to the people who wanted to speak. We were told, and we told the government, "We need the four days because you're going to be overwhelmed by people who want to speak to this bill." We had the lists, and we put them in priority of who we'd like to see. Now we just heard from the member from Oxford of all the delegations, and they're still coming in—people making submissions that won't be heard on this bill.

I don't know why the big rush; I don't get it. Why are we shutting out debate? Why don't we listen to the people who have been affected by the Ontario Municipal Board in the past or will be in the future, people who have stories to tell to help us make decisions? And they want to shut down debate. That's arrogant; their arrogance knows no bounds, and I'm extremely disappointed with them.

The Chair (Mr. Peter Tabuns): Mr. Miller?

Mr. Norm Miller: Yes, I would just like to reiterate that because two days of public hearings are going to be cut out with regard to the Conservations Authorities Act part of the bill, we won't be able to hear from the Lower Thames Valley Conservation Authority, the Ontario Federation of Agriculture, the Ontario Stone, Sand and Gravel Association and the Toronto and Region Conservation Authority. I think it's really unfortunate that, for the sake of two days, those very important groups will not be heard on this bill.

The Chair (Mr. Peter Tabuns): Mr. Rinaldi?

Mr. Lou Rinaldi: I'll make it very, very brief. I would call for a vote on the amendments. Having said that, if that's not agreeable, then we can—

The Chair (Mr. Peter Tabuns): Sorry, Mr. Rinaldi. Can you bring the microphone closer to you?

Mr. Lou Rinaldi: Oh, sorry. Sorry, Chair.

The Chair (Mr. Peter Tabuns): You're a soft-spoken gentleman, or you can be.

Mr. Lou Rinaldi: Well, I don't want to get excited.

I would ask for a vote on the amendments, but in light—if that's not the case, then these folks are waiting here, and I think we need to listen to them. We'll deal with this down the road.

The Chair (Mr. Peter Tabuns): You're ready for the vote?

Interjection: Recorded vote.

The Chair (Mr. Peter Tabuns): A recorded vote is requested.

Ayes

Delaney, Dhillon, Malhi, McMeekin, Rinaldi.

Nays

Hardeman, Hatfield, Norm Miller.

The Chair (Mr. Peter Tabuns): The amendment passes.

We go to the main motion moved by Mr. Rinaldi. Going to the vote.

Mr. Ernie Hardeman: Recorded vote.

The Chair (Mr. Peter Tabuns): Recorded vote requested.

All those in favour of the main motion moved by Mr. Rinaldi?

Mr. Bob Delaney: Chair, the main motion, as amended.

The Chair (Mr. Peter Tabuns): Sorry. Thank you, Mr. Delaney; I appreciate that.

The main motion, as amended.

Ayes

Delaney, Dhillon, Malhi, McMeekin, Rinaldi.

Nays

Hardeman, Norm Miller.

The Chair (Mr. Peter Tabuns): It is passed.

With that, we go on to the hearings themselves.

BUILDING BETTER COMMUNITIES AND CONSERVING WATERSHEDS ACT, 2017

LOI DE 2017 VISANT À BÂTIR DE MEILLEURES COLLECTIVITÉS ET À PROTÉGER LES BASSINS HYDROGRAPHIQUES

Consideration of the following bill:

Bill 139, An Act to enact the Local Planning Appeal Tribunal Act, 2017 and the Local Planning Appeal Support Centre Act, 2017 and to amend the Planning Act, the Conservation Authorities Act and various other Acts / Projet de loi 139, Loi édictant la Loi de 2017 sur le Tribunal d'appel de l'aménagement local et la Loi de 2017 sur le Centre d'assistance pour les appels en matière

d'aménagement local et modifiant la Loi sur l'aménagement du territoire, la Loi sur les offices de protection de la nature et diverses autres lois.

The Chair (Mr. Peter Tabuns): We're meeting this afternoon for public hearings on Bill 139. I want to note to all committee members that written submissions have been distributed to you. Each witness will receive up to 10 minutes for their presentation, followed by 10 minutes of questioning from the committee, divided equally among the parties. Are there questions from members of the committee before we begin? There are none.

ONTARIO PROFESSIONAL PLANNERS INSTITUTE

The Chair (Mr. Peter Tabuns): I will now call the Ontario Professional Planners Institute to please come forward. Good afternoon. You have up to 10 minutes to present.

Mr. Paul Stagl: Thank you very much. Good afternoon, Chair and members of the committee.

The Chair (Mr. Peter Tabuns): If you would give your names for Hansard, that would help.

Mr. Paul Stagl: Absolutely, sir.

The Chair (Mr. Peter Tabuns): Thank you.

Mr. Paul Stagl: My name is Paul Stagl. I am a past president of the Ontario Professional Planners Institute, or OPPI. I have with me today Mr. Mark Dorfman, who is a member of the planning issues strategy group and worked on this submission. I also have with me, from OPPI, Loretta Ryan, the director of public affairs; Mr. Brian Brophey, who is the registrar; and Sarah Snowdon, who is the manager of communications.

We appreciate the opportunity to speak to Bill 139. I'm certain, for most of you who know planners, limiting a planner to about 10 minutes is very ambitious, but we will definitely work with that.

You may recall that our 4,500 members practise across the province in both large and small communities, north and south, in both the public and the private sectors, in very diverse areas of practice. All of these are registered professional planners, who are accountable to the public and to OPPI, who practise ethically and who practise in accordance with a code of practice. OPPI is the voice of the province's planning profession. We're engaged in all levels of land use planning, providing independent advice and opinions.

We've participated in and supported the province's very wide range of legislative changes, all of which have resulted in positive updates in the public interest, and today we're dealing with two more. We continue to support and uphold the principles of good planning and a more efficient and transparent planning regime.

Today I wanted to highlight comments on the submissions that we had made to you on the Local Planning Appeal Tribunal Act and the Conservation Authorities Act. Those are posted on our website for anyone who is interested, and of course there are copies available to you today. You should be aware that those submissions have involved the input from all of our practitioners across the province so we have a very diverse input.

I wanted to start, perhaps, just with a reflection that OPPI certainly supports greater mediation, greater dialogue and greater efforts in the appeal process. It's important that professional planners are an integral part of that process to ensure adherence to the principles of good planning in the public interest. In that theme, I wanted to quickly highlight about a dozen aspects of the proposed reform that we have made a submission on.

Firstly, in terms of the local planning support centre, we support improving equitable access to resolving land use planning conflicts. In terms of providing free and independent advice to the public, our comment to you would be that we would need to look to ensure that that's properly resourced over time. We also support and commend the multi-member panels, where needed, to deal with complex technical data and complicated appeals. We support the limitation on appeals to official plans in respect of major transit station areas, and to approve secondary plans, representing significant resource investments.

In terms of the abolition of the de novo hearings, we support greater efficiencies in the hearing process; however, we did highlight concerns that the abolition combined with the new hearing format and limitations on tests may have unintended consequences. So we simply highlight for you the need to provide some flexibility in terms of the type and nature of hearings to ensure that the best planning decision can be made.

We continue to support the requirement for official plan climate change policies. We've commented on that previously. We're concerned about the broader public interest being ignored in favour of, potentially, the voices of a few people. It's ever-important that the practice of professional planners be guided in that context to ensure independent, balanced discussions at the municipal level. We're also concerned that site-specific related matters may become overlooked in the high-level policy guidance. What we're suggesting is that Bill 139 provide guidance to councils and reiterate the importance of public interest in the role of municipal planning, with staff providing expert advice.

1430

We're also concerned about the status of commenting agencies—that those may now be diminished. Industry guidelines and standards are not typically found in official plans, and the hearing process in the past has typically been a good occasion to vet those requirements. The commenting agencies run a very broad spectrum of influence, and Bill 139 should provide status to these agencies that participate in planning decisions.

We also identified a number of additional opportunities to potentially improve Bill 139 through future regulations—local appeal support centres should have broad-based eligibility criteria, resources and we recommend should also include registered professional planners.

Bill 139 should not limit the introduction of new planning evidence, we've recommended. Decisions

should have the best evidence available, again, depending on the circumstance, type and nature of the hearing. Bill 139 should include criteria and guidance to allow a more comprehensive hearing process, where warranted. Allowing potentially oral testimony in cross-examination evidence—again, not in every circumstance, but we're looking for the best advice and the best planning decision to be made, and there are some circumstances where that might still be required.

Finally, Bill 139 should continue to permit appeals of extraordinary interim control bylaws, not just from the minister, for that extraordinary legislation, and transitional format for the reforms remain unclear today. If planners have any experience, it's that the devil is in the details. We do recommend that the province should include very clear implementation guidance, including about existing appeals, before the effective date.

There's a need to recognize that planning is different outside of the GTA. This is a comment from our colleagues outside of the GTA, who say that life is very different there, and that should be reflected as well. The matters of "consistency," "regard" and "conformity" differ, and there should be an acknowledgement that that circumstance is incumbent.

Mr. Mark Dorfman: Thank you, Mr. Chair and members of the committee. I'm Mark Dorfman. I want to focus on the proposed amendments to the Conservation Authorities Act. OPPI supports the changes that are intended to clarify the conservation authority role and responsibilities with regard to watersheds, and we support the commitment that the ministry will phase in the implementation over a four-year period.

We submit six points for the committee's consideration, with the intent that the responsibilities of the conservation authorities are better integrated into the municipal planning process.

(1) Section 20(1) of the act: We suggest that a new object be added, and that's to protect and restore the ecological health of watersheds. The object is to support the measures of connecting human health with the condition of the watershed. This is similar to three other current statutes in Ontario that include ecological health.

(2) In part I, subsection (1) of Bill 139, it's necessary to clarify that a conservation authority is a local board. We've talked about conservation authorities as commenting agencies to municipalities with regard to planning and building code matters. We believe that this will strengthen the importance of conservation authorities' interest in the municipal planning process.

(3) According to the ministry's commitment to bring forward a regulation to outline roles and responsibilities in reviewing planning documents, we recommend that the future regulation should be extended to include all planning applications and matters and applications under the Ontario building code.

The Chair (Mr. Peter Tabuns): Mr. Dorfman, I'm sorry to say that you're out of time. I apologize.

We'll go first to the Progressive Conservatives. Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much for your presentation. I guess this is the reason why we have a printed document, too—so we'll be sure we read it.

The first question is about the elimination of the Ontario Municipal Board and going to the Local Planning Appeal Tribunal, which only hears two types of appeals: compliance with the official plan and compliance with provincial policy. Those seem like pretty narrow scopes for hearings. They don't have the power to make the decision in the first place. They're not allowed to hear new evidence either—or any evidence, for that matter. It's all written; there's no oral evidence. When it goes there, if the tribunal disagrees, they send it back and they send it back again. Is that going to accomplish efficiency?

Mr. Paul Stagl: Again, there will be a period of time of shakeout, much as we have with the Toronto local planning appeal body. I think, though, in the long run what will come out of this is an increase towards mediation. I think that's favoured by everyone today. We've had great, successful experiences in the last five years with mediation. Hearings have focused or resolved themselves. Going forward, it's very likely that we'd find ourselves being focused to a narrow range of hearings. I can see that as a positive element.

In terms of the bouncing back and forth, that too is something that, with some experience, we'll see work itself out. What we had recommended is, going forward with this—there is now a very significant reliance on your professional planners to advise not just municipal councils, but everyone who's involved in this. We've relied on the professional planners heavily in recent decades. This, going forward, will mean that there's an even greater need to rely on the planners.

Again, I'd be remiss if I didn't add the comment about Bill 122 and updating the registered professional planners' legislation at the same time. That's looking to provide the planners with the legislation they need to carry forward a lot of these changes that have occurred.

I have no doubt that the next few years will be an experience, but I think it is timely that we go forward with something else.

The Chair (Mr. Peter Tabuns): Mr. Hatfield.

Mr. Percy Hatfield: Thank you for coming in.

You have a concern about the abolition of de novo hearings. That may have unintended consequences, such as what?

Mr. Paul Stagl: What we have found with de novo hearings is that it frequently is a good opportunity to ensure that the best and most current information is available to the board member. In my personal experience over the last 30 or 40 years, I've seldom had a hearing that was exactly de novo, starting from scratch. It's usually about whatever the focused issues are. So if there is new information, it's important to ensure that that be made available.

But the manner in which Bill 139 is structured right now would curtail the opportunity for listening to new information. It would discourage it. So what we're rec-

ommending is not necessarily a return to a de novo hearing, but at least an accommodation for those circumstances that warrant it, allowing new information or going back over some of that information, to ensure that everyone fully understands that you're making that decision.

1440

Mr. Percy Hatfield: If a municipal council has spent five or 10 years developing an official plan, holding public hearings, and came up with a plan, and it has been approved by the province and it complies with provincial policy statements, why now would you want to toss that out and start all over?

Mr. Paul Stagl: I don't think that's what we were referring to or what I had intended to suggest—

Mr. Percy Hatfield: Well, you were saying, "Get rid of that. There's new information. Let's start over."

Mr. Paul Stagl: No, no. This is in a circumstance—again, there are provisions particularly about new official plans and, once they are in place, what is appealable and what is not appealable.

What we're saying is that, in going forward, in that scope within Bill 139, if there is an issue that arises that needs new information, there should be an opportunity to hear that, to make the best planning decision.

If that means having to go back to the municipality, then certainly that's something that needs to be considered as well.

Mr. Percy Hatfield: Thank you. The interim control bylaws: Only the minister can appeal interim control bylaws. Who would normally appeal interim control bylaws—developers or the municipality or residents?

Mr. Paul Stagl: Because the interim control bylaw is from the municipality, it would typically be the landowner, whether that's a developer or a resident or a group of residents or whatever. It's an extraordinary power in terms of the Planning Act, in terms of planning rights. The feedback that we've gotten from our practitioners across the province, including municipal planners, was that that's probably a right that should still extend to—to be able to appeal, rather than just the minister.

The Chair (Mr. Peter Tabuns): And I'm sorry to say, with that, you're out of time.

We go the government: Mr. McMeekin.

Mr. Ted McMeekin: Mr. Stagl and Mr. Dorfman, I appreciate you being here. I know a little bit about your group. I'm a big fan of Bill 122. I think that really needs to happen.

When I hear you talk about being in the trenches, and more mediation, and reliance on professional planners, I have to smile, because I'm a former mayor and I can recall making decisions that completely ignored the advice of planners. We ended up getting the nonsense kicked out of us at the OMB, and rightly so—

The Chair (Mr. Peter Tabuns): Mr. McMeekin.

Mr. Ted McMeekin: Yes?

The Chair (Mr. Peter Tabuns): Could you pull your microphone closer to you?

Mr. Ted McMeekin: I sure can. How's that, Mr. Chairman?

The Chair (Mr. Peter Tabuns): I just want to make sure you're in Hansard.

Mr. Ted McMeekin: Good. All right. Well, you could wind the clock back, if you want, to catch everything I just said.

But I want to just comment on that and then the whole issue of mediation. So often, that's pivotal to building strong communities, so I appreciate that very much. It protects everybody's interests.

Two quick questions: You mentioned the local planning support centres. What sort of information and advice do you think these centres need to be able to provide? That's one.

The other is that planning decisions conforming with provincial policies—I have long believed that the province should be far more proactive, when there's a provincial policy, to actually intervene in whatever hearing or process is there, to declare that. I suspect you agree with that. But what are the benefits of that approach, coupled with the question about what information these local support centres should have?

Mr. Paul Stagl: Thank you, sir. On the first question, from my personal experience, usually the information centre requirements fall into two types of resources. One is that it's just a muddy area, and people want to know what's involved: "What's the process, what do I have to do, who do I have talk to, what do I have to submit and when do I have to do it?" It's very much an information and educational element. People can certainly be trained in doing that.

But frequently, particularly in the direction of Bill 139 now, that resource person will be asked, "Well, is this a realistic appeal?" It will now start going more into an area of professional advice and professional opinion. In that regard, what we've recommended is that resource centres really need to be staffed with the appropriate professional resources. That may include RPP members; it may include other people in terms of legal or whatever. If that's to be truly successful in terms of helping people—

The Chair (Mr. Peter Tabuns): I'm sorry to say this, but you're out of time. Sorry, Mr. McMeekin.

Mr. Ted McMeekin: Thanks very much. I enjoyed your presentation. Good for you on Bill 122.

The Chair (Mr. Peter Tabuns): Thank you, gentlemen.

ONTARIO HOME BUILDERS' ASSOCIATION

The Chair (Mr. Peter Tabuns): Our next presenters: the Ontario Home Builders' Association.

As you've heard, you'll have up to 10 minutes to present. If you'd start off by introducing yourselves for Hansard, that would great.

Mr. Joe Vaccaro: Good afternoon. My name is Joe Vaccaro, CEO of the Ontario Home Builders' Associa-

tion. I'm joined by my volunteer president, Pierre Dufresne of the Greater Ottawa Home Builders' Association, and Mike Collins-Williams, director of policy at OHBA and a registered professional planner.

It has become increasingly clear to the members of the OHBA and the industry that the debate regarding new development in our communities has become increasingly emotional and disconnected from the facts.

Let me state that there will be a great deal of emotional information provided to the committee during these shortened hearings but that facts still matter. How emotional? The current comments reported in the media by intelligent neighbours that a potential eight-storey mid-rise condo on a Toronto avenue hovers "close to a brutal and arrogant assault on a community that has been here since the 19th century" is just the most recent public example. Those are emotional comments made because people care about their communities, but the fact is that the provincial planning changes made in the last 15 years are driven by a smart-growth mandate across the province.

In the GTAH, the provincial requirement is that 40% of all new residents move into existing communities, with 60% in the future—some 100,000-plus new residents join the GTAH every year. What does that mean? Existing communities are getting new neighbours and new housing forms that they may not like. There are campaigns such as "Stop Density Creep," "Say No to Double Density," "Stop Lot-Splitting" and even against student housing in Ottawa, Waterloo and Guelph.

Change is hard, and when existing communities are opposed to change they reach out to their locally elected councillor and let them know that their future votes are on the line. At that point, the policy, evidence and planning basis for an application—as OPPI said earlier, "the best planning decision that can be made"—is replaced by the hard politics of re-election.

This comes as no surprise to members of this committee. Many of you have served on council, along with many of your MPP colleagues. We all know the cautionary tale of Anne Johnston, the Toronto councillor who supported a transit-oriented development right next to the subway and was voted out the next year.

This is the reality that our members are often confronted with when an application is within the government's new world of provincial planning policies and makes sense but the existing neighbours simply say no. This leaves councillors looking for a way to represent the community while fulfilling the responsibility of their civic office tied to the official plan.

Democracy is hard. The easy way is to vilify the applicant, the developer, who wants to destroy the community for the profit. OHBA trusts that your political experience will see that as easy politics, avoiding the real conflict where provincial policy demands the optimization of land to better use existing infrastructure.

I'm not going to default and accuse every person who opposes development applications as a NIMBY; that's just easy politics. But they hold the votes.

Here is a fact. In the current system, municipal council can say no to a valid application because they know the OMB will approve it. The councillor can avoid making the planning decision and make the political decision because the OMB will get it right because the OMB takes the politics out of the planning decision.

Christopher Hume back in 2005 made this point in one of his articles in the Toronto Star: "Over and over, people have complained that the OMB is 'undemocratic' and its members unelected. That, of course, is exactly the point. That's why it can make the decisions it does. In theory, at least, it is above the fray and apolitical. It deals with facts, not emotions."

Again, the committee is well aware that council has been using the OMB as a scapegoat. We are all aware of public announcements where a councillor states, "I'm against this, but the OMB will approve it."

Reviewing the legislative debate on this bill, Minister Naqvi makes this point when he states: "The way the system is designed right now is that people, depending on whose interest is at stake, rely on the OMB process, to see that the OMB will get it right, as opposed to working hard from the beginning of the process."

Yes, Minister, we agree. That is what happens today. People, including council, rely on the OMB to get it right and wash their hands of the work and evidence and their own process and live by the politics.

The current process leads to settlements where the professional planning staff report matters in evidence matters and requires a planning decision outside of the politics of council. You all know of cases where council votes against a positive and supportive staff report, leaving the OMB to get it right.

The minister also goes on to say: "These changes also incentivize municipalities to keep their official plans and zoning bylaws more up to date. That is the key. We need to make sure that these very important fundamental documents remain up to date in conformity with the provincial policy statement and the Planning Act, because then it allows for certainty and predictability both for the developers and for the communities. It allows for better decision-making as opposed to trying to correct that later on through the OMB process."

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We support much of what the minister aspires this building and planning process to be. When the OHBA engaged in the consultation, we provided recommendations to improve the current process and to strengthen community resources. We continue to stand by those recommendations. Yes, there needs to be change in the system, but the principle of keeping politics out of those planning decisions needs to be supported. Conceptually, we see it very much as he does, but practically, it is zoning that continues to be outdated and the overwhelming source of community conflict. As he says, the key is keeping the documents up to date.

Here is a fact. Under the Planning Act, subsection 26(9), no later than three years after the OP comes into effect, "the council of the municipality shall amend all

zoning bylaws that are in effect in the municipality to ensure that they conform with the official plan"—not "may," but "shall." In our meetings with the Minister of Municipal Affairs, we have been told that less than 50% of municipalities have complied with this law. OHBA does not see how this bill currently creates an incentive for updating zoning and planning documents.

So how do we make this act incentivize municipalities to keep official plans and zoning bylaws up to date? Here are our recommendations.

(1) We need to establish a higher standard than the current ministerial OP sign-off. The standard needs to include the 2016 PPS in growth plan language. "Efficient development patterns optimize the use of land, resources and public investment in infrastructure and public service facilities." It is the government's own PPS standard. Without it, municipalities can override provincial planning policy.

(2) We need to enforce subsection 26(9) of the Planning Act—"shall" amend zoning bylaws within three years of the OP.

(3) When a municipal decision is determined by the LPAT to not be in conformity with the provincial planning policy of optimization, it will need more than just the moral authority to get a better decision. At that point council has already made a political decision, and the appropriate response is to give the LPAT the legislative power to demand a better decision, or the next decision will be made by the LPAT.

(4) When council fails to make a decision, this is where the LPAT should have the ability to make a decision. The municipality has abdicated their legislative responsibility. This is the sort of scapegoating and avoidance that has triggered the current legislative reforms.

Lastly, on transition: Private and public professional planners, lawyers and industry members will tell you that changes being made to the current appeal system reach beyond the tribunal's structure. If these amendments are made, they will result in a culture shift for everyone involved in the process. That culture shift means that existing OPs and municipal planning documents are incomplete and inappropriate. The current ministerial approval on the OP isn't what it needs to be in this new system. Under the previous changes to the Planning Act with Bill 73, the sheltering of OPs for two years was provided for new plans that came into effect after the bill received royal assent—"after" being the key. In the current system, councillors will get re-elected by voting against developments that they know have planning merits and evidence to be approved. This is not a city hall secret. The media has reported on it, past councillors have openly stated it, and current ministers have referenced that reality. If this is the culture shift the government is seeking, then these are the necessary amendments. Without them, this bill serves to be as political as the very council decisions they attempt to make more accountable.

I have no doubt that those speaking after me will speak to the issue of due process and fairness, as I have no doubt those speaking after me will speak to the way developers always win.

Here is another fact as stated by Minister Mauro in 2014 in Hansard: "Speaker, there has been suggestion that developers always win and that Toronto is always in front of the OMB, but the chief planner for the city of Toronto, Jennifer Keesmaat, doesn't agree.... She also goes on to say the following, Speaker: that only 4% of applications even end up at the OMB, with the city winning about 50% of the appeals that do go to the OMB."

Let me leave this committee with this last public statement by former city of Toronto planner Jennifer Keesmaat on September 29, 2017, as printed in NRU: "It's an incentive to have stronger policy, and better policy. If the OMB is just going to do what the OMB is going to do, that is a disincentive to municipalities taking responsibility for their own future and having strong public policy in place...."

The Chair (Mr. Peter Tabuns): I'm sorry to say you're out of time.

We'll go first to Mr. Hatfield.

Mr. Percy Hatfield: Welcome, gentlemen. I haven't heard so many municipal councillors denigrated in such a fashion in quite a while. You have no respect for elected municipal politicians; no respect for the planning process for an official plan; no respect for the dozens or hundreds of public meetings that go into an official plan and have it revised; no respect that once the plan is submitted, it has to be approved by the provincial government and it has to comply with provincial policy statements and the Places to Grow Act. And after all of that, after all the public has been consulted and a decision is made, you're of the opinion that the OMB takes the politics out of planning decisions.

The politics go into planning decisions; that's what the people want. But you're of the opinion that that means nothing, and that the OMB can do away with 10 years of study and input from the public because it's good for you.

Joe, seriously, how can you not respect the fact that municipal politicians are there? They vote on principle, not always on politics. They stand up for what their people want but on good planning, or else that plan gets tossed. They know what. They have to vote their conscience on planning issues.

I just can't believe that you don't have any high regard at all for the municipal planning process.

Mr. Joe Vaccaro: My response to that statement is that in the context of this legislation, it has been structured in a conversation that says that the local decision carries the day. What we're saying is that in the current process, as has been reflected in comments made by ministers, MPPs and in the media, it's quite clear that today's system permits a municipal councillor the opportunity to vote against an application, knowing that the OMB will get it right. That's today's system.

My challenge back is, if we want to make this legislation work and create the incentive for updating of zoning, then part of that has to be an understanding that

there are elements of this bill that need to be reinforced and need to be improved.

It's not a question of disrespect for the municipal councillors. They are elected by their constituents. As Ms. Keesmaat goes on to say at the end of her quote here, "The jurisdiction of the council over those decisions should be something that's unquestioned. Why shouldn't the elected officials be able to make decisions about their own city? That's what they're elected to do.... Could it be that"—

Mr. Percy Hatfield: But what happened in Waterloo, Joe? What happened in Waterloo? A 10-year planning process got completely thrown out by the OMB, completely disregarded—a 10-year planning process on an official plan.

The Chair (Mr. Peter Tabuns): Mr. Hatfield, I'm very sorry to say, you're out of time.

I go to the government: Mr. Rinaldi.

Mr. Lou Rinaldi: Welcome, gentlemen. Just a bit of a statement, and then maybe some direction that you could help us with.

I spent 12 years, not on Toronto municipal council but in small, rural—and from my recollection—I don't have statistics in front of me—we've had a pretty good relationship with developers in general. I mean, there were discrepancies, of course. We have discrepancies at home.

In many cases, frankly—at least, I can speak to my tenure as councillor and mayor—things went to the OMB—because we were able to resolve them around the table. I give a lot of credit to the developers within my community.

Maybe more of a direct question to you would be: Assuming after this process and amendments that might happen, and if the legislation is passed, can you give us some advice from your end of things on how we go from the OMB to the LPAT process?

Mr. Joe Vaccaro: Absolutely. What I would say is that the point of the four points that we're making here is to actually reinforce the planning policies that should be at the basis of decision-making at the municipal level. Today's system doesn't actually account for that, because it permits the OMB to be a scapegoat. We've seen that, we're all aware of that, and we've seen examples that have been published in media reports and otherwise. We've all seen staff reports that support the application, and ultimately council votes against it. We've all seen that.

Our recommendations are things like improving the standard that the minister signs off on the OP. Earlier it was said that the minister signs off on the OP, and therefore that OP is good enough. That's in the existing standard, where you can test those policies at the OMB. In the future, if you cannot test those policies at the OMB, the ministerial standard needs to speak to their PPS goals—the government's PPS goals. Optimized land use policies: That's what we're looking for.

Along with that, there needs to be a better legislative framework around what the LPAT can send back to council. It's not enough to simply say, "Come back with a better decision in 90 days." It has to give greater direction, and have the legislative strength to direct it that way. In those ways, I think you will actually have a bill that incentivizes the kind of municipal zoning updates and document updates that Minister Naqvi speaks to when he speaks to the fact that today what we see is the OMB will get it right—as opposed to people working hard—from the beginning of the process.

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Mr. Lou Rinaldi: So, Joe, along those lines, your group has expressed concern about the length of time for even the OMB to come to fruition. Can you give us some sense—

The Chair (Mr. Peter Tabuns): Mr. Rinaldi, I'm sorry. You're out of time.

We go to the official opposition: Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much, Mr. Chair, and thank you very much for your presentation. I guess my first question is short and sweet: Can you tell me what you believe the impact will be of this bill on the development industry in the province?

Mr. Joe Vaccaro: Based on the current legislative structure that we see in front of us and the deference to local decision-making without any of the checks and balances you would expect from a policy standpoint, the local decision-making will hold the day and, in that environment, the reality is that local democracy, if that's the way we can frame it, will carry the discussion on those applications.

It's interesting because in past situations—for example, I have a great quote here from the former NDP member Michael Prue: "I think where this often happens is in terms of public housing, where municipal councils do not want to have to make those difficult decisions of putting public housing into the municipality, into neighbourhoods where people are upset about it, where there is the NIMBY factor, where all the other things happen in political life that get local politicians upset and fearful of their own demise. So very often they will vote no, knowing full well that the project is correct, that it meets all the standards and that it meets the official plan, the zoning. They vote no and send it off to the Ontario Municipal Board, fully confident in their own minds that in a matter of weeks or months or however long it takes, it will be reversed."

So I think that the politics are there, and this current bill doesn't do anything to deal with that.

Mr. Ernie Hardeman: If we could get the government to agree to do one or two amendments, what do you think is the most important amendment we could make in this bill to make it better?

Mr. Joe Vaccaro: The need to establish a new ministerial standard for signing off OPs that includes optimization as per the PPS and updating zoning within three years. Fulfill the work you've already progressively done in your planning documents, roll it into this bill so that municipalities understand what the new standard is and can accordingly prepare themselves for that.

Mr. Ernie Hardeman: Okay, thank you.

Mr. Joe Vaccaro: The only thing I would add is that I think the key here is understanding, as the Keesmaat quote ends, "Could it be that you will, at times, have anti-growth councils, pro-growth councils? You absolutely will. But presumably, that will be the will of the people who have voted in those officials."

Our concern is that politics will trump good planning and just serves to reinforce the current process instead of elevating it to a new process.

Mr. Ernie Hardeman: Thank you.

The Chair (Mr. Peter Tabuns): Thank you very much, Mr. Hardeman.

Gentlemen, thank you for your presentation.

CITY OF TORONTO

The Chair (Mr. Peter Tabuns): Our next presenter is Councillor Josh Matlow from the city of Toronto. Councillor? Welcome back to the building.

Mr. Josh Matlow: It's nice to be back. Thank you.

The Chair (Mr. Peter Tabuns): You have up to 10 minutes to present, and then we'll have 10 minutes of questions. You have to start off, Josh, by introducing yourself for Hansard.

Mr. Josh Matlow: Well, thank you, Chair and committee members for providing me an opportunity to address you regarding Bill 139. My name is Josh Matlow. I'm the city councillor for ward 22, St. Paul's, which is in midtown Toronto.

I submit that these reforms have been a very long time coming. On September 20, 2004, serving as campaign director for an environmental advocacy organization called Earthroots, I made a deputation in this very room about Bill 26, the Strong Communities (Planning Amendment) Act. There were important steps taken at the time, but the act didn't go far enough to level the playing field between communities and developers, or to let professional planners in cities like Toronto make decisions based on their professional expertise rather than simply the looming threat of an OMB hearing.

The result was that Toronto's planning department and city council has lacked the necessary tools to effectively manage growth during an unprecedented decade of development. Over many years, ad hoc OMB decisions on individual sites in the Yonge and Eglinton area, which I represent, have set the narrative, have far too often created precedent for subsequent developments with little regard for wider context or local needs for infrastructure and social services.

The 2009 Yonge-Eglinton Secondary Plan was developed over the course of a year and involved input from residents, business owners, developers and several city divisions before being approved by council and, ultimately, the Minister of Municipal Affairs at the time. The plan called for the highest heights and densities to be located at the major intersection and then gradually decrease the further away where a site is from the junction. This is not only in line with recognized urban design principles, but allowed the city and school boards to better anticipate and plan for the necessary hard and soft infrastructure needed to serve the new and existing residents.

However, in 2013, the OMB approved two 34-storey towers on a small site at the edge of the Yonge and Eglinton urban growth centre. This one development has had a greater impact on Yonge and Eglinton than the city's well-considered and approved plan.

Since that board decision, there has sadly been a rush of very tall towers on very small sites in the vicinity, leading to a more hostile and imposing streetscape, and has put tremendous strain on the area's infrastructure. Residents often wait two or three trains, if not more, to get onto the subway in the morning and afternoon peak hours, and when they're finally on, they're in there like sardines.

There isn't enough room in our public schools. There aren't enough child care spaces. We suspect that the pipes and wires are at capacity, and good luck finding a free swimming lane at our local community centre.

And local residents—yes, as just a moment ago, their local representatives—are often accused of being NIMBYs, defined by what they say no to.

But on that very site that I mentioned at Broadway and Redpath, where the OMB approved two towers in the mid-30s, we would actually have said yes to the city planning department's initial recommendation of one tower in the mid-20-storey range, which would have allowed for green space and trees and proper separation distances. In other words, we would have approved something that was reasonable.

Around the same time that our community was challenging that proposal, we said yes to a two-tower infill project of 26 and 24 storeys a couple of blocks away because the developer agreed to provide affordable daycare in the base of the building, along with setting the building back sufficiently enough to allow for a new park for the neighbourhood.

At the northeast corner of Yonge and Eglinton: I received letters from four local ratepayers' associations saying yes to a 58-storey building at the corner of Yonge and Eglinton. The developer provided a public square and another subway entrance to relieve the pressure on the crowded sidewalks.

And believe it or not, tomorrow we will be saying yes to a 65-storey building at the southeast corner, with letters of support from the same residents' associations, because the applicant is agreeing to provide much-needed office space—office replacement—another subway connection and funding towards our new midtown community centre where we need much-needed recreation space.

Some developers have far too often presented a false choice. They have opposed our attempts to stop building simply as high and as big as they want under the guise of some concern for housing supply. There is certainly a problem in Toronto with regard to housing supply, but it's not due to us simply being resistant to capitulating to anything and everything a developer demands.

The truth is, there is enough room in Toronto to build neighbourhoods at a human scale. Toronto's avenues

have the capacity to house projected population increases in midrise development of six to 10 storeys. And yes, there will also be tower neighbourhoods, but they have to be built with enough green space, transit capacity and social services to provide a great quality of life to residents.

I believe that local residents' initial objections to development proposals that would only leave the neighborhood with more people competing for the same dearth of services, relying on the existing and stressed infrastructure—and then see about two years of lane closures, dust and noise and without a significant improvement to services, infrastructure and the public realm—is understandable. They justifiably feel as though the only one who will benefit from the new construction is the developer.

That's why, while we have a responsibility to work towards resolution and uncross our arms and be open to possibilities, I submit that the development industry also has a responsibility to demonstrate to residents and municipalities how they will leave the community in better shape than they found it. Everybody wins that way.

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Therefore, I want to commend the government for finally eliminating what we know as the Ontario Municipal Board and replacing it with the local appeals tribunal through the Building Better Communities and Conserving Watersheds Act. This act will fundamentally improve our city's ability to more thoughtfully and deliberately plan our neighbourhoods and provide residents with more complete and livable communities.

The elimination of de novo hearings, which adjudicate planning appeals without deference to previous council decisions, will help ensure that elected council decisions can't be challenged without merit. There should be a real appeals body rather than a place to simply have a do-over because you didn't like the first decision.

The establishment of an independent, provincially funded Local Planning Appeal Support Centre will help level the playing field between local residents and developers through the provision of free planning advice and representation at the new tribunal, thereby helping equal the playing field. The increased emphasis on mediation will help focus the decision-making process towards resolution rather than conflict.

The increased planning application time frame for council to make a decision for official plan and zoning bylaw amendments will provide our planning staff with more time to properly assess development proposals. The provision to remove interim control bylaws from appeal, when first passed, will allow the city to require, in some cases, that vital infrastructure be in place before further development takes place.

While I strongly support Bill 139 and I applaud the government's action, I would, respectfully, like to propose a couple of amendments to the act.

I, along with my colleagues on Toronto city council, am concerned that the limit of only two years on secondary plan amendments is too short. Secondary plans can include extensive neighbourhood studies, requiring significant staff time and public input. For example, council requested staff to start a new review of the Yonge and Eglinton secondary plan on June 12, 2015; the final recommendations are expected to come at this November's Planning and Growth Management Committee, almost two and a half years later. It seems unreasonable that a moratorium period for appeals is less than the time it can take to even develop the plan in the first place. These plans should be allowed sufficient time to bear fruit.

I am hopeful that the government will extend the restriction period on applications to amend new secondary plans from two to five years to reflect the significant staff and community resources that go into the development of secondary plans.

I would also request that the government make the act retroactive to the day of first reading to reflect the flood of development proposals received in the wake of Bill 139's introduction by applicants hoping to skirt the new rules.

The Chair (Mr. Peter Tabuns): Councillor, I'm sorry to say that you're out of time.

Mr. Josh Matlow: Thank you for this opportunity to speak with you.

The Chair (Mr. Peter Tabuns): Always a pleasure.

Mr. Josh Matlow: Thank you, Peter.

The Chair (Mr. Peter Tabuns): To the government: Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Councillor Matlow. Good to see you again.

Mr. Josh Matlow: Good to see you too. Thank you.

Mr. Lou Rinaldi: A very, very thoughtful presentation. You're in the trenches when it comes to dealing with these things—so some very, very good insight.

A couple of quick questions. The proposed legislation: When it comes to either supporting or not supporting the consultation piece or compromising, do you think that that has opened the door to be a little bit more open? I'm just asking for your thoughts if this legislation were to go through. The consultation piece: Are we going in the right direction or the wrong direction?

Mr. Josh Matlow: I strongly feel the government is going in the right direction. I believe that people are far less likely to focus on conflict and rather focus on resolution when they feel more empowered themselves. If residents, for example, see that the playing field is more equalized and they have access to resources to better provide representation for themselves when they are challenging a development proposal, then they might feel that they are more able to arrive at a resolution rather than simply to just fight because they feel they need to fight back.

I also believe that if councils have an opportunity to see their secondary plans through to fruition better, residents will see better public realm, child care spaces, social housing etc. be included in the plan, so they will see the benefit. In other words, as I said earlier, if residents only believe that a new construction will benefit the

developer—at a human level, why would you say yes to a development if all you're going to be left with is two years of your lanes being closed and a lot of noise every day? But if they actually see substantive benefits for their community, whether it be public realm or a community centre or what have you, what I've experienced is that in my community, we've fostered a culture where people want to say yes, not just to anything but to the right thing that provides a quality of life.

Mr. Lou Rinaldi: I took part in most of the consultation, as PA to the minister, before the legislation was drafted. That was a very common theme from the public, that we're very limited to the type of input they could have—

The Chair (Mr. Peter Tabuns): Mr. Rinaldi, I'm sorry to say, you're out of time.

Mr. Lou Rinaldi: Oh, no.

The Chair (Mr. Peter Tabuns): I know.

Mr. Lou Rinaldi: It's not true.

The Chair (Mr. Peter Tabuns): It's a bitter thing.

Mr. Lou Rinaldi: Thank you.

The Chair (Mr. Peter Tabuns): I go to the official opposition: Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much, Josh, for your presentation.

The changes that are being made as to what is appealable, and the process—it's going to change, at least in my mind and my involvement, how local government has to deal with the applications. I've heard from the development industry that 15 minutes in front of the committee, or 15 minutes in front of council, is not sufficient to lay it all out and to have a discussion about what is appropriate and what isn't appropriate.

How do you envision that we will change how council works with the applications, recognizing that that very well, in most cases, is the final word on the application?

Mr. Josh Matlow: First of all, much more time goes into this process, both by local councillors and our planning department, than simply a deputation or 15 minutes at a meeting. There can be extensive dialogues over a series of months, back and forth, with the local councillor, the local planner and the community, until we either arrive at a resolution or understand that we have to shake hands and disagree.

But I believe that this act will make it more incumbent upon us as elected officials, along with our planning departments, to be able to—in contrast to what Mr. Vaccaro was submitting to you, I say respectfully that we will have to be incredibly responsible with the substance and the thoughtfulness of our plans, because they're going to have to hold up at a genuine appeals body. In other words, this will no longer simply be de novo hearings and you just kind of do it again and see which way it shakes out. We are actually going to have to be standing by very thoughtfully written plans that will have to be deeply consultative, both with communities and the industry, to get it right. I think the burden of responsibility not only will go onto the industry but certainly onto the municipal councils.

Mr. Ernie Hardeman: But isn't there a challenge here? Like you say, you have to make sure that your application will hold up to an appeals tribunal, but most of them are no longer going to an appeals tribunal, because there are only two conditions. If it meets the official plan and it meets the provincial policy statement, all the rest is irrelevant—

Mr. Josh Matlow: That's my point.

Mr. Ernie Hardeman: —because it's not appealable. Are we sure that you are going to be able to convince your colleagues to thrash it out in the proper way?

Mr. Josh Matlow: I've actually seen a lot of check-and-balance at council. Of course, just like in this House and other Houses, there are some who will be populist, others who will be authentic and others who will argue on facts etc. Some will just court their audience. Ultimately, what I find is that if a councillor does that, the preponderance of the rest of council will vote in a way that reflects what is the reasonable thing to do rather than go along with it, and they will support reasonable arguments from the local councillor. So I believe that our council will do that on development matters.

Mr. Ernie Hardeman: Thank you.

The Chair (Mr. Peter Tabuns): And I'm sorry to say you're out of time.

We go to Mr. Hatfield.

Mr. Percy Hatfield: Thank you for coming in. With my limited seven years' experience on Windsor city council, I feel the same way as you. You'll see people playing ward politics, but at the end of the day, majority rules.

I'm glad you were here for the home builders. My friend Joe said that politics will trump good planning. I always looked at it the other way: Good planning comes at the municipal level.

Mr. Ted McMeekin: And democracy will prevail.

Mr. Percy Hatfield: Thank you, sir. "Democracy will prevail," Mr. McMeekin says. I agree.

I like your comment about the do-over, the de novo hearings, gone if decisions have been made with merit, and you can't challenge them unless they're made without merits.

In your experience, Josh, at Toronto city council—my understanding is that Toronto just can't afford all of the appeals that go to the OMB, so often you don't even send staff to challenge the appeal because you just don't have the time, the money or the staff. Has that been the case?

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Mr. Josh Matlow: Every day that our very few planners are spending the day at the OMB means that they're not going through the pile of applications on their desk, therefore not being able to give them the attention that they deserve and therefore actually not serving the development industry, ironically. Our staff complain about this all the time: that they would rather be working on city-building, thoughtfully going through planning applications and working with communities, than spending an entire day at the OMB.

What I also hear from our planning staff is that they'd like to provide us with advice based on their professional

planning opinion rather than based on what they think we need to do to capitulate at the OMB so that we don't lose our shirts.

Moreover, I would add that our planners want to be able to see our council make decisions that are contextualized. In other words, the OMB rarely considers the local details like, "Is the public school able to accommodate more kids?" We have signs at Yonge and Eglinton in front of condos saying, "Your kids won't be able to go to the local school if you move into the area," which then has an impact on quality of life with your family. It puts more people in their cars, more people on the overcrowded subway etc. I could go on about recreation centres, child care etc., but we want to be able to make contextual decisions that understand what the community's needs are, and our planners want that too.

The Chair (Mr. Peter Tabuns): Councillor, with that, you're out of time.

Mr. Josh Matlow: Thank you very much, everyone. I appreciate your time.

The Chair (Mr. Peter Tabuns): Thank you. Good to see you.

BUILDING INDUSTRY AND LAND DEVELOPMENT ASSOCIATION

The Chair (Mr. Peter Tabuns): Our next presenters are the Building Industry and Land Development Association.

Gentlemen, as you've heard, you have up to 10 minutes to present, and if you'd introduce yourselves for Hansard to begin.

Mr. Darren Steedman: Good afternoon, Chair and members of the committee. My name is Darren Steedman. I am the current chair of the Building Industry and Land Development Association. I have with me Mr. David Bronskill, who has been providing planning and legal advice to BILD on the proposed OMB reform.

As interested and affected stakeholders, we thank you for the opportunity to speak to Bill 139, which introduces profound changes to the land use planning and appeals process.

There are fundamental flaws in this bill which need to be addressed before the province passes final legislation, as well as a host of unintended consequences that will not result in the province achieving the policy objectives that were behind the bill when it was initiated. As such, the appeal process will not be quicker, as the province intended. It will not be more accessible and less expensive for stakeholders, and it will not result in successful mediation. I will let my colleague David take a deeper dive into those, and more in a minute.

What I want to highlight to you is what the new system will become: more politicized. There is a fundamental concept that we all have to understand: We cannot build a community without everybody saying yes. We are in this as a collective together—municipalities, regions, the province, home builders, developers and planners—and we need a level playing field for everyone, because what we do all want is good planning.

We're very concerned that the province hasn't realized that the proposed OMB reform will result in creating an environment where municipal councils will have no incentive to make what can sometimes be the tough, but better, decisions that would support provincial plans and would support good planning.

For example, Bill 139 presents a "standard of review," which is a simple compliance with local official plans, and not our standard of today, which focuses on "best planning use." I can't think of a local official plan that contains specific densities or implementation tools; instead, they generally present as broad visionary documents, where zoning should be updated, but is not, to reflect the progressive provincial plans. This gives local councillors more control over zoning and planning decisions.

A recent example of this would be the discussion around a development on Davenport, where local residents, including Margaret Atwood, publicly fought an eight-storey building proposal, raising the issue that the zoning did not permit this height. As a developer, I'm not surprised by this. This is the reality of municipal zoning. It continues to be out of date and irrelevant. The ratepayers are working under the premise that a two-storey zoning reigns, which has been in place since the beginning of time and doesn't reflect the fact that the OP speaks to intensification along these avenues.

Not having updated zoning creates this conflict and inconsistencies. For any progressive planning work a municipality may have done to abide by the PPS or growth plan in their OP, they really haven't done the heavy lifting necessary to update the zoning to have these policies take effect, requiring people like me to go in with a rezoning application, because the municipality simply has not done that work. This bill does not in any way incentivize, require or compel municipalities to do that work, and until they do, we will always have these conflicts.

I will pass the torch to David to explain to you why the bill won't do what you thought it would and some recommendations on how to get us to where we all want to be. Thank you.

Mr. David Bronskill: Thanks very much. I'm going to walk through some specific proposals for revisions to Bill 139, but I did want to frame my comments to you with two introductory themes. First, I'm not here to tell you that Bill 139 should be scrapped. I'm here to try to improve it, and that's building on some of the comments that Darren just made to you.

The creation of the LPAT can work if it is given sufficient resources, but it does need some refinement to work and those are some of the comments I'm going to make to you.

Secondly, my specific proposals for revisions, in fact, are based on the goals for this bill as announced by the government: a desire to place greater weight on the decisions of local communities; increased accessibility for the public; and the provision of a faster, fairer and more affordable planning appeal process. But I will tell

you this: Absent some revisions, Bill 139 will not deliver on those three goals.

I'm going to review five potential areas for reform, and I welcome the opportunity to discuss those areas with legislative counsel in terms of refining revisions to the bill.

The first area is the incentive for municipalities to make decisions. It seems there is alignment in the desire of councillors, staff, developers and the public to update and modernize municipal zoning bylaws, but various aspects of Bill 139 work against this shared goal. In particular, the two-hearing structure, as proposed, is going to be a disincentive to update zoning bylaws, but this can be remedied through a very simple change to the legislation.

First, allow municipalities a meaningful opportunity to make a decision. Right now, 120 days for a rezoning bylaw, or 150 days, as in the legislation, is not enough; I will tell you that as a counsel for applicants. Make it 270 days. Give them a chance to make a decision. But here's the second part of that quid pro quo: If you don't make a decision, it goes to the tribunal for a full and fair and binding hearing. Make municipalities step up to the plate within a longer period of time. They want to make these decisions, so let them, but if they don't, have a stick in place that ensures fairness for somebody.

On the theory of fairness, then, here's my second: Limitations on oral hearings at the tribunal run contrary to the duty of procedural fairness and natural justice. There need to be changes to this bill. Right now, the tribunal's rules would have priority over the Statutory Powers Procedure Act. This, to me, is an extraordinary and potentially unlawful remedy. A simple change to the legislation would ensure that the rules must comply with the SPPA, which codifies centuries of common law jurisprudence regarding fairness. It's a simple change and we propose it.

While hearings can be made more efficient, a hearing must still be a hearing. Whether it's an appellate hearing or something different, we need to have cross-examination. Every lawyer who will come in front of this committee can tell you an example of a planning opinion being tested under cross-examination and changing. Bill 139 would eliminate that possibility. With all due respect, that's wrong. That's a fundamental flaw and needs to be remedied. We have suggested ways in our package to do this.

Third, major transit station areas: Everybody loves major transit station areas. Let's have height and density around subways and GO stations, areas where we are investing in transit. It is a great idea. What the bill would propose is limitations on appeals. But why are there limitations on appeals from maximum heights and densities? That also makes no sense to me.

I see my time is up, sir. The only thing I would say—I have two topics on standard review and transition; they're in our materials. I will skip over them in the interest of time. Thank you, sir.

1530

The Chair (Mr. Peter Tabuns): Thank you; I appreciate that.

Questions go to the official opposition: Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much for your presentation. Most of the things that I was going to ask you, you spoke to, so we'll let you answer them again for my benefit.

Mr. David Bronskill: I may do it better the second time around.

Mr. Ernie Hardeman: I do think they're rather important because I do think what we're talking about is a major piece of legislation. We've tried to reform the OMB four times since this government was first elected. This is the final one to say, "We can't fix it, so we're going to throw it out." I think it's very important that we hear from all the players in the game as to what impact they think it will have on housing development and development in general if we put this bill through without amendments.

Mr. David Bronskill: Thank you for the comment. I think one of the biggest impacts is the length of time that applications are going to take to go through. I mentioned earlier in my comments the notion of the two-hearing process that's set up in Bill 139.

Let's assume a municipality does not make a decision. You file an appeal for their failure to make a decision. You then have to go through an initial hearing. You then have to have the results of that hearing come back to the municipality. The municipality then undertakes another review of that tribunal decision, and guess what happens at the end of that review? There's another appeal to the tribunal. Two hearings: Lawyers like me love that. Any planning reform that makes lawyers more involved in the planning process cannot be a good reform.

What will happen is that the length of time to have housing go through the approval pipelines at municipalities will get longer. What it will mean is that the supply will get shorter. And then the simple law of supply and demand, in terms of economics, means housing prices will go up. There will be a negative impact on affordability. Eliminate one of those hearing processes through Bill 139—and we proposed that.

Mr. Ernie Hardeman: Can I ask just one quick question? Most people when, I meet them on the street, like the idea of reforming or getting rid of the Ontario Municipal Board. We hear that from a lot of municipalities. We hear that from a lot of people on the street. From your industry, how do I explain to them the benefit of the OMB?

Mr. David Bronskill: I think one of the benefits is an adage that I often say, which is this: The local interest is not always the public interest. Once I am convinced that the local interest is always the public interest, I will be the first one to say that there is no need for an appeal tribunal. But the truth is, there are larger public benefits like optimizing the use of land and infrastructure that are real public benefits that come out in the award-winning growth plan. If we can't implement that, that's not in the public interest.

The Chair (Mr. Peter Tabuns): I'm sorry to say you've hit the limit again.

Mr. Ernie Hardeman: Thank you very much.

The Chair (Mr. Peter Tabuns): Mr. Hatfield.

Mr. Percy Hatfield: Thank you for coming in. I guess if I'll borrow a phrase from Councillor Matlow, who was just here, you're looking for a do-over. You don't like it; you want to scrap it and start all over. Is that fair?

Mr. David Bronskill: Actually, it's not. What we've proposed—and I say this with all due respect, sir—in our system is allowing municipalities to make a decision. If they make that decision, we're leaving the structure of Bill 139 in place that would give some degree of deference to that municipal decision.

What we're actually doing, I think, is building on what Councillor Matlow said: Give municipalities a reasonable time to make that decision. That's why we've suggested the 270-day mark. If they make a reasonable planning decision within that period of time, all of the structure of Bill 139 would still be there for them to rely upon in defending that decision.

What we're saying, sir, is this: If you don't make that decision within 270 days, you lose the benefit of Bill 139's new protection. It's a bit of a refinement. We're not asking for a do-over. What we're saying is, if you haven't done it in the first place, the tribunal is now going to do it for you, but if you do it in the first place, then the structures that are in Bill 139 would kick in and come into place. I hope that helps clarify what I'm proposing.

Mr. Percy Hatfield: I was interested in your clauses on building heights.

Mr. David Bronskill: Yes, sir.

Mr. Percy Hatfield: You see nothing wrong with going up, and I was thinking of Mr. Trump for some reason, but the heights in Washington, DC, a very fine city—what are they, 110, 130 feet? That's it; you can't build higher than that in Washington, DC. What's wrong? If it works in Washington, why do you want to go so high here?

Mr. David Bronskill: Two things in response to you: I don't think it's a question of wanting to go high. First of all, Toronto, as an example—because we're often here in Toronto and we talk about it—is never going to be that city. Why? Because we have huge areas of the city where we're low-rise: two storeys, maybe three. So we're not seeking to take those neighbourhoods and make them eight- to 10-storey neighbourhoods. There would be a riot if we did. I live in one of those neighbourhoods, and I know Cabbagetown would riot.

But what we're talking about, and this is the second response, is around major transit station areas, which are so important. Bill 139 says that where a municipality sets a minimum height and density, there won't be an appeal. What we fear, though, is, in setting that minimum density, that is also the maximum density. We need to explore, for certain major transit station areas, on appeals, whether that maximum density in fact should be taller; maybe it should be higher; maybe it should be denser. I'm not saying it necessarily will be, but we think that right needs to be preserved.

The Chair (Mr. Peter Tabuns): And with that, gentlemen, we move to the government.

Mr. Vic Dhillon: Thank you very much for your presentation. We don't have any questions. So once again, thanks for appearing before the committee.

Mr. David Bronskill: Thank you very much.

The Chair (Mr. Peter Tabuns): Okay. Gentlemen, thank you very much.

Mr. David Bronskill: Thank you, sir. As always, sir, we did make suggestions, and we are happy to discuss them with legislative counsel, if it would find its way into the bill. We thank the committee.

The Chair (Mr. Peter Tabuns): Thank you. A pleasure.

ADVOCATES FOR EFFECTIVE OMB REFORM

The Chair (Mr. Peter Tabuns): Our next presenter: Advocates for Effective OMB Reform.

As you've heard, you have up to 10 minutes to present, and if you'd start by introducing yourselves for Hansard.

Mr. Scott Snider: Thank you, Mr. Chair. My name is Scott Snider. I'm a land use planner and a lawyer with Turkstra Mazza in Hamilton. I've also been an adjunct associate professor at the University of Waterloo's school of planning for the past 25 years. I've taught planning law to many of the land use planners in the province. In my practice, I act for landowners, developers, municipalities, charities, ratepayer groups and individuals.

Ms. Signe Leisk: Good afternoon. My name is Signe Leisk, and I'm a municipal and planning lawyer at Cassels Brock in Toronto. In my practice, I represent a broad spectrum of interests, from municipalities, post-secondary institutions, provincial agencies and public agencies, as well as landowners and developers. I'm also certified in advanced alternative dispute resolution. I raise that because a lot of my practice results and involves mediated settlement and mediation will form a large part of my submission before you today.

Mr. Scott Snider: Collectively, members of our group, the Advocates for Effective OMB Reform, have over 400 years of experience appearing before the OMB. The committee may understandably be concerned that that means we have 400 years of reasons to simply defend the current system, but that's not why we're here. As our name highlights, we believe that reform of the current system is necessary. We live this process every day, and we're intimately familiar with where it works and where it doesn't. We want to see the system reformed in a way that will make it more effective.

Ms. Signe Leisk: This is fundamentally why this group came together. To be clear, we're not participating on behalf of or acting on behalf of any clients. Land use planning affects every individual: where they live, where they work, find necessary services and affordable housing options. It's where government policy and regulation and individual property rights intersect, which can be complex, passionate and, at times, contested.

The role and function of the OMB has been studied and debated by all sides for decades with no readily apparent solution. We all agree that hearings are too long, too contested and too expensive. We commend this government for trying to tackle this fundamental problem. However, it is our group's belief that Bill 139, as drafted, will do more harm than good and needs significant amendment before it moves to third reading. Unless changes are made, the process will take longer, be more costly and make mediation less likely.

Mr. Scott Snider: The bottom line for us is that we don't think the bill, as drafted, will achieve its objectives, and secondly, it will—inadvertently, I think—cause harm to other essential policy goals. The appeal process will make it worse.

You know what? My role is to give you an example today. Lynwood Charlton is an accredited children's mental health centre in the Hamilton area. Among other things, it runs residential care facilities for adolescent girls with mental health challenges. For decades, it operated a facility in one downtown Hamilton neighbourhood in a rented home, but the girls needed a new home. Lynwood Charlton owned a property in another downtown Hamilton neighbourhood that could be renovated, but they needed a rezoning to do it. The neighbours rallied against it. Lynwood Charlton did everything it could to reassure the residents, but the neighbours simply did not want those girls in their neighbourhood. The local councillor was adamantly opposed, and council turned it down.

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The facility exists today. It has been serving those vulnerable girls, without incident or complaint from the neighbours, for several years now, and the only reason it's there is because we had an effective appeal process available to my client, Lynwood Charlton. In my view, if we faced the appeal regime proposed under Bill 139, it is unlikely that that facility would ever have been approved, and Lynwood Charlton and those girls were not about to win the next municipal election.

Your staff will tell you that the PPS specifically directs that municipalities permit and facilitate housing for those with special needs, so wouldn't I still win the appeal under Bill 139? The answer is "probably not," and there are two reasons why.

First, it's unlikely we would be able to meet the new two-part test, which not only requires that we prove that what we're proposing is consistent with the PPS and conforms to the official plan, but that the existing zoning doesn't. But the fact is that the Planning Act deems zoning to conform to an official plan, so I don't know how I can prove that something doesn't comply when it's deemed to conform by the act itself.

But just as important, the new tribunal will be expressly prohibited from calling or examining any witnesses. And here's the thing: There was a lot of pressure on staff. In the end, planning staff recommended against the Lynwood application. Fortunately, at the board hearing, Lynwood was able to confront and challenge those opinions, cross-examining those experts and introducing its own. This furnished the board member with enough evidence to make the right decision.

Everyone has an interest in reducing the complexity, length and cost of hearings, but no one asked this government to deny parties procedural fairness and natural justice. And no one suggested that a board member can possibly scrutinize and weigh the expert opinions so crucial to modern planning without ever hearing from and questioning those experts.

If I was refused a permit for a $500 deck based on the opinion of a planner or engineer, I could challenge that opinion before the Building Code Commission or the courts under the Building Code Act. But if that same planner or engineer gets in the way of a home for adolescent girls, Bill 139 would deny that same right. That's not right. You can reduce the cost and length of hearings without abrogating procedural fairness.

Ms. Signe Leisk: Successful mediation or resolution of a dispute requires that all sides have the opportunity to be heard in a meaningful way, and all sides need to be equally motivated to reach a resolution. Taking away rights of appeal does not lead to consensus. Taking away rights of appeal does not lead to better decisions. Taking away rights of appeal cannot be remedied at the ballot box. When I refer to taking away rights of appeal, I'm referring to everyone: residents' associations, landowners—it's not about developers; local municipalities have also lost rights of appeal under this bill.

The support centre holds great promise, but it serves absolutely no purpose if there's no appeal in the first place. It serves no purpose if a participant cannot raise all of their legitimate planning concerns because the grounds of appeal have been made so narrow. And it serves no purpose if, at this stage in the proceedings, that person can no longer call witnesses or submit evidence. It's simply too late in the process.

Mandatory case conferences to encourage early resolution and mediated outcomes hold great promise, but again, it serves no purpose if there's no appeal in the first place, it serves no purpose if everyone cannot raise their legitimate planning concerns, and it serves no purpose if all appropriate evidence can't be heard.

In the spirit of collaboration and our group's desire to ensure a well-functioning land use planning system, the advocates have proposed minimum amendments to Bill 139 that are necessary to achieve the policy goals identified by this government. We are not contesting the policy goals; we are simply suggesting amendments that are required to make it work. These are contained in the submissions that have been circulated to everyone today.

We're not going to go through the technical amendments in detail; they have been handed out to you. My colleague has already referred to procedural justice, the need to hear evidence and the need to hear from witnesses.

The province has also greatly expanded upon the number of matters where there will be no right of appeal, despite the real likelihood that provincial policy will not

be met. Where appeals have nevertheless been retained in Bill 139, the test is so restrictive that it has created an impossibility, except for the rarest of cases. You've already heard the example: If an applicant for a zoning bylaw must demonstrate why the existing zoning does not conform to the official plan or provincial policy and plans, while at the same time the Planning Act says it does, it has created a test that cannot be met. Provincial plans and policy do not provide direction on a site-by-site basis. However, the cumulative impact of each site-specific decision will have a profound impact on our communities, resulting in the failure of the province to achieve the vision and goals of the growth plan and other provincial policy.

Further, after all parties have passed these hurdles—the limited appeals, the inability to provide evidence—and obtained a decision or reached a resolution, there is still no finality, as Bill 139 requires a tribunal to refer matters back to municipal council for a second decision, which will increase costs and delay. And while the government has identified mediation as a goal, no such outcome has been accommodated. If there has been a mediated settlement, the new tribunal still has to send it back to council.

The Chair (Mr. Peter Tabuns): I'm sorry to say, with that, you're out of time.

Ms. Signe Leisk: Thank you very much.

The Chair (Mr. Peter Tabuns): Thank you. Our first question goes to Mr. Hatfield.

Mr. Percy Hatfield: Thank you for coming in. When was the group Advocates for Effective OMB Reform established?

Mr. Scott Snider: I would say it has been around for a couple of years, sir. Once the proposed legislation and the consultation document was out, the lawyers, who do a lot of the work—as I said, all of us are basically in the autumns of our careers—said that we need to get together to try and give the best advice we can to the government as to something we live with every day.

Mr. Percy Hatfield: So until the documents were circulated, there was nothing wrong with the OMB and the practices that were unfolding?

Ms. Signe Leisk: I think we all agree that the OMB needs reform.

In our submission that is before you, we are not disputing the policy goals of this government. What we are saying is that you need to make the right changes, and you need to make sure it's effective for everyone.

Mr. Percy Hatfield: When I look over those who have signed at the back—is it fair to say that most of the people that have signed who are members of the group represent the development industry as opposed to neighbourhood associations?

Ms. Signe Leisk: No, it's a mix, actually. We've consulted significantly with other lawyers who act exclusively for residents' associations, and a number do work for municipalities, as do I.

Mr. Percy Hatfield: If you had to pick the top 1, 2, 3 of amendments that you would like to see the majority government accept, what would they be?

Mr. Scott Snider: First and foremost, there has to be some ability to call evidence. The board needs the discretion to hear some evidence.

Secondly, we think it's important that the two-part test be revisited, because it's impossible to satisfy in certain cases.

And the third?

Ms. Signe Leisk: The third, I would say, is the duplicative sending back to council. I think that needs to be thought about—when that is appropriate, and when it's not—because there are many instances where that would just cause delay and not lead to finality, and at greater cost. I think that needs to be reconsidered as well.

Mr. Percy Hatfield: Thank you.

The Chair (Mr. Peter Tabuns): We'll go to the government: Ms. Malhi.

Ms. Harinder Malhi: Thank you so much for your presentation. Seeing as we're a little bit behind today, I think I'm going to pass on any questions, but thank you so much.

Mr. Scott Snider: Thank you.

The Chair (Mr. Peter Tabuns): The official opposition: Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much for your presentation. My questions are similar to Mr. Hatfield's. In your presentation, you agree that the OMB needs reforming because it is cumbersome, and it is sometimes somewhat overbearing over the municipal decisions. Do you think that, with amendments, we can make the tribunal effective, so that would be the reform of the Ontario Municipal Board?

Mr. Scott Snider: Absolutely. Actually, the changes we've proposed would make substantial improvements to the bill. It's not a rewrite; it's not a complete "throw it out the window." They are important reforms that have to be made to the details of this legislation.

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Mr. Ernie Hardeman: If we don't make those changes, what do you envision about some of these decisions? Do you expect that they would end up in court as opposed to people just accepting that the answer was no?

Mr. Scott Snider: Conflict doesn't go away. Conflict is endemic to land use planning decisions. The value of the board currently is that there is a place for that to be resolved. We know it needs improvements, but if you take it away, the conflict remains and people will find some other way to have it resolved, and that will certainly be increasing litigation in the courts.

Ms. Signe Leisk: I would like to add as well that the board provides a venue that is less costly than the courts, where participants—ratepayers and residents—often appear unrepresented and are unable to be heard, which would not occur in the court system.

Mr. Ernie Hardeman: On the same topic: Going through the process, what would provide me with the ability to get it to court? What's the avenue? The process is quite clear. Municipalities make the decision. If it fits that narrow band, it goes to the board, then it goes back and then it comes back. What would precipitate the ability of me to take it to the court?

Mr. Scott Snider: Currently, as drafted, you're entitled to challenge the opinions that are so important. So if that doesn't happen there, then you're going to demand it at the council level, which councils cannot do because they don't have the time. If you're denied procedural fairness, you'll bring an application to court. Right now, the courts have been very deferential to what the municipalities and board do; they won't be when there's no longer an effective appeal route.

The Chair (Mr. Peter Tabuns): With that, I'm sorry to say you're out of time. Thank you very much for your presentation.

Ms. Signe Leisk: Thank you.

CITY OF OTTAWA

The Chair (Mr. Peter Tabuns): We're going next to Councillor Jeff Leiper from the city of Ottawa.

Councillor Leiper, can you hear me? It's a teleconference. Councillor Leiper, are you on the line?

Mr. Jeff Leiper: Hi. Are you able to hear me?

The Chair (Mr. Peter Tabuns): We're having a little difficulty with volume here. Councillor Leiper, can you hear me?

Mr. Jeff Leiper: I can. Are you able to hear me?

The Chair (Mr. Peter Tabuns): You're very faint, unfortunately. I'll see if technicians can boost your voice at this end. While we're waiting for our line to be fixed, I'll just introduce you to the committee. Here on behalf of the government are MPPs Delaney, Malhi, McMeekin and Rinaldi; from the official opposition, Mr. Hardeman and Mr. Miller; and on behalf of the third party, Mr. Hatfield.

Councillor Leiper, you will have up to 10 minutes to present, and then we'll have up to 10 minutes of questions split between the three parties. Would you like to start and we'll see if the sound levels are where they need to be?

Mr. Jeff Leiper: Absolutely. I'm going to start out at this volume. Is that okay?

The Chair (Mr. Peter Tabuns): That's not bad. We're going to try and get our people to boost it a bit more at this end. But, yes, please proceed.

Mr. Jeff Leiper: Fantastic. Thank you very much and good afternoon, Chair and members of the committee. My name is Jeff Leiper. I'm the councillor for ward 15, Kitchissippi, in Ottawa. As it happens, I'm joined today by my colleague Councillor Tobi Nussbaum, councillor for ward 13, Rideau-Rockcliffe. Together, over the past months, we have been collaborating closely on our approach to reforming the OMB. I am pleased that he is able to share this time.

First, I would like to thank my member of provincial Parliament, Minister Naqvi, for his leadership on this file. He has been collaborating closely with residents in my and other wards in his riding for several years to bring this day to fruition.

By way of a very brief background, I have a long history prior to this term of council with the Hintonburg Community Association as one of its planning and community leads. Hintonburg is one of several communities in Kitchissippi ward being transformed by the policies and thinking behind the provincial policy statement and Ottawa's official plan that has flowed from that. I'm no stranger to the OMB and know well the cost to communities of appealing a council decision.

Our neighbourhoods are in the process of rapid intensification. As the city grows up and not out, there are inevitable tensions that sometimes lead to conflict over the appropriate level of infill and tower development in our ward. When the second phase of light rail is complete, in partnership with the federal and provincial governments, Kitchissippi ward will have five new LRT stations. We are a bikeable, walkable neighbourhood, clustered around a traditional main street in close proximity to downtown, and intensification is going to occur here before most quarters of the city.

The reforms announced in May of this year will help residents hold their elected officials accountable for the shape of that intensification. By instituting a new standard of review, the proverbial "second kick at the can" enjoyed by developers through de novo hearings will be ended. Where councils approve controversial developments, they will no longer be able to fall back on the justification that the board would have approved them anyway.

I and others in the community are particularly pleased to see the Local Planning Appeal Support Centre provide support services to eligible persons. The cost of a complex appeal, for example, to a large, multi-residential unit, can easily reach $40,000. That is too many cupcakes for the local community association to bake. The time requirement is also onerous on volunteers, particularly for complex appeals requiring mediation, prehearing discussions etc. The reforms that have been suggested will, where appeals are legitimate, ensure that the planning process is fairer.

I would like to inject one further note of optimism but also one note of caution. On the optimistic side, we have seen in Kitchissippi recently the overturning of a council decision that rejected an application in the context of the letter and spirit of a new secondary plan. Bill 139, as proposed, with its new standard of review and non-appealability of official plan amendments for two years, would address this.

A note of caution: Where the secondary planning for a neighbourhood near transit is out of date, a "sky is the limit" interpretation of the official plan without recent and well-consulted neighbourhood context can have negative impacts in a community.

In our Westboro neighbourhood, the secondary plan, in effect, predates the anticipation of light rail. There is a legitimate tension between residents and developers, as well as the city, over the shape of transit-oriented development that has not yet been resolved. Residents have been clear that they expect to see a plan in place that accounts for intensification and the hard and soft services necessary to support it.

While the new rules governing non-appealability are understandable, I would ask that the committee consider requiring that, in transit areas, appealability be maintained where the secondary plan is older than, say, five years. The particular mechanism is less of a concern to me and other residents than ensuring that planning in areas slated for intensification, particularly in response to new transit options, is modern and defensible.

My caution to residents is that the proposed reforms will not be a panacea to development woes. Ottawa's official plan directs intensification to transit areas. It will be critical in neighbourhoods such as Kitchissippi to plan for that growth. Secondary plans will always be a compromise. However, once that compromise is achieved, Bill 139, if passed, would provide greater certainty to residents that councils can defend those plans without the risk in place today that the unelected OMB will impose its own arbitrary view on how cities should develop.

My colleague Councillor Nussbaum will take it from here.

Mr. Tobi Nussbaum: Thank you, Councillor Leiper, and good afternoon, Chair and members of the committee. I know we're keeping track of the time here and that I only have about four minutes, but let me just quickly add a couple of additional factors from what Councillor Leiper has just spoken of. As he said, we've both been working very hard here in the city of Ottawa to encourage the type of reform that is now before you in Bill 139. As he said, we were particularly keen and encouraged to see a change in the standard of review that any appeals body applies to decisions of democratically elected municipal councils—that change, I think, is really important.

1600

As many members will know, the current Planning Act provisions talk about the OMB having jurisdiction whenever it deems that a decision taken was not the best one, and we're substituting that for something I think a lot tighter and a lot more respectful of the democratically elected process.

One quick word on that and perhaps a message to the drafters: In looking at the various schedules of the bill, particularly schedule 3, and looking at how it repeals and replaces section 2.1 of the Planning Act, it is very, very complex. I have a legal background, and I still struggled with figuring out what was repealed, what was replaced and how the various subsections worked together.

If one of the objectives of this exercise is helping to democratize the planning process—and I think that ought to be one of the objectives—having clarity and simplicity in the legislative language is really important. I would urge, in a friendly fashion, the drafters to take a look to see how they can make sure that the Planning Act reads very simply, and, obviously, the main act as well. Given the intricate relationship between the Planning Act and the new main act, it's going to be really important, I think, to make sure that citizens can read it easily.

My second observation is with relation to schedule 2 of the bill, that talks about the local Planning Act support centre. I think it's going to be really important that the regulations that come after the act—are you still able to hear me?

Mr. Percy Hatfield: Yes.

Mr. Tobi Nussbaum: Okay. I'm getting a bit of static on the line.

What I wanted to say here was: It's clear that the fleshed-out version of the centre is going to be through regulation, but one of the provisions in the part of schedule 2 talks about that regulations can govern "the eligibility of persons to receive support services from the centre." I think in most statutory interpretations, "persons" does not include community associations or organizations or other groups; it usually refers to either individuals or corporations.

The Chair (Mr. Peter Tabuns): And with that, I'm very sorry to say that you're out of time.

We'll go to our first round of questions from the government. Mr. McMeekin will be putting the questions. Mr. McMeekin?

Mr. Ted McMeekin: Gentlemen, I have just one question for you. You've suggested, as some others have—and I've asked a similar question of them—that the Local Planning Appeal Support Centre to help people navigate the appeals system is a great idea. I'm wondering what kind of information or advice you think citizens should have access to through this organization.

Mr. Tobi Nussbaum: I think that's a great question. What I would say is that it's going to be very important for information about the legislation, information about the process, to be readily available. I know this isn't stated yet in the bill, but having some satellite centres in other parts of the province, I think, is going to be very important, wherever the main headquarters of the centre is. Eastern Ontario, northern Ontario: These are areas of the province that I think would benefit from having in-person capability of meeting with staff of the centre.

I encourage the government to look at ways to ensure that all areas of the province are well served to have in-person assistance to citizens who, as the member asked, may have lots of questions about information. Sometimes a phone call is not nearly the same as being able to go in and speak to someone.

Mr. Jeff Leiper: Mr. McMeekin, this is Councillor Leiper.

I would just add on to Councillor Nussbaum's point: I think that there is an escalating role that the new service can provide. There are clearly a number of appeals that go to the OMB that should be dealt with fairly quickly and early in the process that are simply not going to result in the outcome that those appealing would like to see, but there are legitimate appeals that are being made by the community that sometimes turn over council decisions. The more handholding—the fewer financial resources that community associations particularly need to spend, would be good. We often see, for example, that the case for a legitimate appeal is made early in the process by planners who are on some kind of a retainer to associations. They may charge the association $5,000 to put out a preliminary case.

I do see that if there is a role for the planning service to replace some of those services that cost associations and citizens money, that would be ideal.

The Chair (Mr. Peter Tabuns): And with that, I'm—

Mr. Ted McMeekin: Thank you very much.

The Chair (Mr. Peter Tabuns): Thank you, Mr. McMeekin.

We now go to the official opposition: Mr. Hardeman.

Mr. Ernie Hardeman: Thank you, gentlemen, for your presentation. I noticed in your presentation that you talked about transit and the ability for the appeals. The current bill gives municipalities the ability to put policies in place that would restrict appeals around transit stations. It's not mandatory, but Ottawa could do that. Do you see Ottawa council recommending against restricting appeals?

Mr. Jeff Leiper: We cannot speak for council, obviously, and there will hopefully be some further input coming in that would be on behalf of council. I would imagine, as we are making the case for light rail and we need to get people living near transit stations in order to support the transit business case, that the city presumably would put in place some limits on the appealability of planning decisions in the vicinity of transit stations.

My particular caution to the committee, however, is that this should only be done where there is up-to-date, defensible secondary planning that has been done.

Mr. Ernie Hardeman: I appreciate that. I guess my concern was that the bill actually gives that ability to decide when the appeal should be allowed in transit. That is given to the municipality, as opposed to the province, in this bill. I'm just wondering about that.

Going on with that, do you think there's anything in this bill that would address the fact that there is no appeal, other than the courts, when it comes to an issue like this? Because it would not necessarily be for or against the official plan or provincial policy, so it would have to go to the courts. Do you see anything in this bill that would help that or address that issue? I think, Jeff, you mentioned that you had considerable concern about the transit stops, and so forth, going in your ward. Do you feel that this bill protects your interests in how development happens around those stops?

Mr. Jeff Leiper: As long as we have defensible secondary planning in place, yes, it does.

The dynamic that I think we tend to see is that secondary plans put limits on development. Then developers will come in and seek greater-than-anticipated heights that council is often unwilling to defend, because the assumption has been, in many cases, that the OMB will simply overturn it anyway.

I think what this bill does is put significant responsibility for planning—particularly secondary planning—and then good decision-making in the hands of the elected officials, where it should reside.

Mr. Ernie Hardeman: Thank you.

The Chair (Mr. Peter Tabuns): With that, we go to Mr. Hatfield.

Mr. Percy Hatfield: Good afternoon, gentlemen. Thank you for phoning in.

I want you to help me solve a mystery, if you can, this afternoon. I know that Councillor Leiper is a former journalist, and Councillor Nussbaum is a former diplomat. You both speak in favour of the bill and say it's overdue—that's what I get, in between the lines—but when we heard from the other delegations so far this afternoon, be they developers, planners or lawyers, the bill is flawed, terribly flawed. I want to know, and my mystery that I need a solution for is this: Why such a discrepancy?

Mr. Tobi Nussbaum: This is Tobi Nussbaum speaking. I guess that's a question that you're better placed to determine, in some ways.

There's no question that the current OMB system has benefited some and disadvantaged others. It's just an idea, but those who have benefited from the system are perhaps fearful of what change can bring.

From the point of view of municipally elected officials, we see in this bill the opportunity to make sure that the very extensive and democratic consultation process that usually, if not always, precedes an application and a council decision, deliberation, planning committee, public delegations and public meetings—I think our interest is making sure that at the end of that process we have very rigorous appeal process from the decision of a democratically elected council.

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I think our fear up until now is that it was frankly too easy for a single adjudicator of the OMB to say, "You know what? I'm going to replace my judgment for that of a democratically elected council and opine on this application differently." I think the key issue in this bill is that it says, "No; we're going to raise the standard of deference to democratically elected councils."

The bill isn't perfect yet, but I think it's very much on the right path. Obviously the types of hearings which you're conducting now are going to give you an opportunity to give some advice on how the bill can be improved. Jeff and I have given you a couple this afternoon, but we do want to make sure that you're left with the impression that our fundamental feeling towards this bill is extremely positive.

Mr. Percy Hatfield: Thank you very much.

The Chair (Mr. Peter Tabuns): Thank you, Councillors.

TOWN OF INGERSOLL

The Chair (Mr. Peter Tabuns): We're going on to the next presenter: Ted Comiskey from the town of Ingersoll.

Mayor Comiskey, as you've probably heard, you have up to 10 minutes. If you'd introduce yourself for Hansard, that would be great.

Mr. Ted Comiskey: It's very nice to see some familiar faces here.

My name is Ted Comiskey and I am the mayor of the town of Ingersoll, county of Oxford. I would like to begin by thanking members of the committee for the opportunity to appear before you today.

My comments this afternoon will cover two areas: (1) our support for the principles contained in Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017; and (2) improvement to the bill in one specific area.

Let me begin by stating plainly that Oxford county is generally supportive of the direction taken in Bill 139. Indeed, I was the one who introduced the motion at county council in favour of the proposed legislation, which was passed and is reflected in two submissions by county staff that were shared with the ministry.

As a municipality, we are not alone. The board of the Association of Municipalities of Ontario has also declared that it is generally in favour of the proposed legislation.

The reason we are supportive of the bill is that, at its core, Bill 139 attempts to rebalance planning decisions by ensuring that local communities have a greater say in local planning decisions and that greater deference is paid to local communities if these decisions are appealed.

In particular, the bill proposes to:

(a) Give more weight to local and provincial decisions by changing the standard of review for appeals. For example, the grounds for appeal on major planning matters would be limited to their failure to demonstrate conformity/consistency with provincial and local policies.

(b) Give municipalities greater control over local planning by exempting a broader range of municipal land use decisions from appeal.

(c) Support clearer and more timely decision-making.

When the OMB was first created in 1906, Ontario was a very different place. We did not have highways, cars were a luxury, and municipalities were very limited in their ability to exercise authority in planning decisions and in the shape and form of their communities. Much has changed in the 100-plus years since the board was first created. Despite tweaks here and there, there has never been a major overhaul or restructuring of this body.

I accept that an appeal body for municipal decisions in some areas is necessary today and in the future. However, the OMB has become a den for lawyers and planning consultants that enrich themselves with endless debate over what municipalities should or should not do. The secret world and the inner workings of the OMB and its cabal have become so distant and remote from legitimate decisions and concerns of real citizens and communities that overhaul is long overdue. After all, it is 2017. The proposed limitations on the scope and jurisdictions of the new Local Planning Appeal Tribunal, which will replace the OMB, would give higher regard to decisions of local councils.

Another proposed change would be to remove the right of appeal of new official plans and official plan amendments/updates adopted in accordance with section 26 of the Planning Act. This measure has been used repeatedly by some special interests to effectively limit the ability of municipalities to appropriately plan their communities, subjecting municipalities to what seems like endless and senseless appeals at the OMB that seem to have no end. While our community remains interested in obtaining further details with respect to the proposed regulation, I am here today to say that I lend my voice in support of Bill 139.

Number 2: improvements to the bill. We do have a recommendation that we feel should be enshrined in legislation, whether in this bill or another, which recognizes what we believe is an important and foundational principle. What we suggest is an inalienable right for any city, township, town or community. While we may debate about subdivisions, building heights, the shape and form of communities, the mix of retail and residences, we should acknowledge and affirm in legislation that for certain types of developments, municipalities must be granted the ability to choose whether they will approve them or not.

Let me be specific. Ontario legislation has currently granted municipalities the authority to make decisions on whether or not they are willing to host gaming facilities. That policy essentially grants municipalities the authority to choose. While many have not, several municipalities have said yes to gaming, all across the province. The policy recognizes that in this area, municipalities must have the ability to choose what is right for their community.

Here is another example. Experts have determined that a nuclear waste storage facility for the province is necessary. Provincial entities have engaged municipalities in a review process to determine sites and the communities that would be willing to host the facility. Again, the policy grants municipalities the authority to choose whether or not they wish to host such a facility. A facility would not be imposed on a community that chooses no. And while some municipalities have clearly determined that they will not host this facility, 11 communities have expressed interest and said yes. Again, the policy recognizes that municipalities should have the final authority in this area to determine what is best for their community.

Here is a final example: hosting of a landfill project. While this is not news yet, Toronto and its surrounding GTA have a serious garbage problem, particularly as it pertains to something called industrial, commercial and institutional waste. Unless real efforts are made by ICI generators—the owners of office towers in downtown Toronto and across the GTA—to increase recycling rates, a new home for this Toronto garbage will need to be found. And space is quickly running out. Just look at the Ontario Environmental Commissioner's report that was recently released.

The fact is, too much Toronto and GTA waste is going to the landfill, particularly from the ICI sector, where diversion is a paltry 15%. That means a municipality, wherever in Ontario, is going to be the host of this Toronto garbage.

Right now across Ontario, private waste companies are scrambling across the province and exploring sites for hosting Toronto's ICI waste. That effort is not in the

news, and they hope to keep it that way. But across the province and particularly in southwestern Ontario, municipalities are being identified and targeted as potential host sites for Toronto's garbage.

When it comes to hosting a landfill, we believe municipalities should have the right to choose whether or not they will host such a facility. Let me explain why.

While the province's environmental assessment process is designed to identify risks and risk mitigation efforts, landfills are not risk-free. Moreover, municipalities do not have a role in this process other than as a bystander. We are not asked whether we approve these projects, or where they should be, or how they should be operated, yet they can have a permanent scar on the face of our communities. That's the absolute truth. This isn't NIMBY. This is literally people's backyards.

Municipalities clearly should be given the authority to say yes or no. As it stands now, we have very little say in the process and no influence, whereas we are afforded the opportunity to make these decisions in other areas. Why not here?

For committee members, recognizing that municipalities have this inalienable right to be able to choose does not mean landfills will never be approved in Ontario, but what it will do is give municipalities the power to choose and to say yes or no. For those that say yes, it will give them the ability to negotiate agreements with these private waste companies that suit the municipality's needs, or to say no and move in different directions.

1620

Right now, landfill developments and approvals are the domain of private developers, environmental consultants and lawyers, with communities on the sideline. What is missing in the equation is asking whether the municipality chooses to have this type of development in their community or not. These decisions are not about whether condos should be built, or wind farms, retail outlets, small malls or a new secondary road. Landfills, by nature, are very sensitive forms of development that are in a different class, like the other two examples I have highlighted.

In the three examples I have given, we believe that municipalities should be formally granted the authority to choose whether or not they will have these types of developments. This authority should be clearly stated in legislation. It is 2017 and it is the appropriate thing to do.

Thank you for the opportunity to speak to the committee.

I will note that whether it is town councils, whether it is county councils or whether it is some MPPs, some truly believe that you must be a willing host for a landfill. You have the opportunity here, within Bill 139 or other legislation, to make that happen.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Mayor.

We go to the official opposition: Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much, Mr. Mayor, for your presence here today and the great presentation you made.

I want to say that I totally agree with you on the second half of your presentation as it deals with landfill sites. I do have some other concerns in the other part of the OMB and I want to get to that in a minute, but I just want to say that as an individual I have said for years that if the municipality can decide where the Tim Hortons is built, they should also have the right to decide where the wind farm is going to be built. I think that now extrapolates to: If they can decide where the waste nuclear product has to be buried, we should have the right to say whether we want garbage in our community. I totally support that initiative. I'm not sure how we would put it in here.

Having said that and supporting that 100%, my question really comes down to: When you look at taking the Ontario Municipal Board appeal away, and if you don't have the right to exclude it in your official plan, then if you vote against it, it's not even appealable to the Ontario Municipal Board. Do you see this as a plus or a minus, going from the Ontario Municipal Board to the provincial tribunal that is not going to hear it on the evidence but just hears it on the right or wrong of the official plan?

Mr. Ted Comiskey: The landfill proposals coming forward bypass the municipality in itself. It falls down to the environmental assessment program that actually gives it a yea or a nay before it goes back to the ministry itself. We aren't approached on that, so we have no right at this point in time to challenge anything at the OMB on the issues that are being put forward because we don't have any answers. We don't have any information or have been given the opportunity to challenge these records of the environmental assessments because they take so long to process.

But they don't need to take long to process. If you ask a community whether they are willing to host the landfill to begin with, the challenge to the OMB wouldn't be recognized in this case at all. It would be accepted and we wouldn't challenge it.

The Chair (Mr. Peter Tabuns): Mr. Mayor, I'm very sorry; you're out of time.

Mr. Hatfield.

Mr. Percy Hatfield: Isn't it great to hear a calm and reasonable voice from Oxford county?

Interjections.

Mr. Percy Hatfield: Thank you for being here, Mayor Comiskey.

Let me just ask you this: If this committee could work with you on an amendment, what would you like to see in here to address your concern about the proposed landfill in Oxford county?

Mr. Ted Comiskey: Stating that this is our community, and how our air, how our water right beside the Thames River, how our land use, being phenomenally agricultural; how all those affected by the situation—I would like to see it, like I stated first, somehow incorporate within this and mention the fact that it does talk about nuclear waste sites. It should talk about all waste sites. It should recognize waste sites as potential leachate-damaging to the full community.

When you present that to a community and say, "You don't have a choice," then that is not right, not in this day

and age, when you recognize so many other areas. Gambling: What would it do for your community? Well, allow the community to say how it would be affected. Allow them to analyze it and say no. Allow them to analyze that we don't want nuclear waste. Allow them to analyze that we don't want waste at all, especially to the tune of 18 million tonnes, brought from greater Toronto, to be deposited over the next 20 years. What would it do down the road—not to my generation, but to my kids and their generations—and what are we prepared to have happen?

There isn't a liner today that doesn't leak, and I'll tell you that the potential is there for something to happen to our community. The community has the right to stand up today and say, "We do not wish this." But it doesn't stop other communities from saying, "Hey, we'll take it." Are they asked? Are they being asked? Allow them to be asked. Allow that process to take place, to have the landfills if you want them.

The ministry itself says they want to get rid of landfills over the next short period of time, and we, as Zero Waste Oxford, are planning to eliminate ours, hopefully, in 2025, so that we take all our processes and all our waste and come up with another means. That's the direction we put upon ourselves to do. That's what we could do within this bill: Direct that influence to make that happen.

The Chair (Mr. Peter Tabuns): Mr. Mayor, Mr. Hatfield, I'm sorry, but I have to go on to the next. Thank you.

Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Your Worship. And just to make your day, I agree with everything you said, on both fronts.

Mr. Ted Comiskey: Then let's do something about it.

Mr. Lou Rinaldi: My comment to you is: First of all, I have a landfill in the community that I was mayor of, and I went through the tribulations of expansions and expansions and expansions, and I know the feeling that you bring forward to the table.

On that piece—although I don't know how to do it here—I commit to you that I will have those discussions with the Ministry of the Environment to see where we can go. I'm not here to make any commitments, but, certainly, I appreciate where you're coming from.

Before I forget, a few years ago I had the opportunity to visit your youth centre because someone in my community wanted to replicate it. Congratulations; I hope it's still going—

Mr. Ted Comiskey: It is still going strong.

Mr. Lou Rinaldi: Fantastic. I was so impressed.

I'm just going to ask you a quick question on the legislation that is proposed. Putting a piece in place that would allow no appeal period for municipal official plans for a certain length of time: How beneficial do you think it is to your community—or not?

Mr. Ted Comiskey: Official plans in the community are phenomenally needed to have direction for the future. Haphazardly putting shops here, there and around, or residential here right next to industrial, only opens up for troubles down the road etc.

The appeal basis for it is to be able to make sure that official plan is introduced. If we designed the official plan—if we did our own official plan for Oxford county, for Ingersoll etc., and designed it and laid it out—there is a direction it should be going in and there should be reasons placed behind that. We shouldn't be able to appeal that, unless the council itself in the town of Ingersoll or the county of Oxford are convinced of that.

Mr. Lou Rinaldi: Thank you. Do I still have time?

The Chair (Mr. Peter Tabuns): You have a minute.

Mr. Lou Rinaldi: Oh, fantastic. This is a question—I think you've heard it today here—that a lot of community folks were really interested in even doing away totally with the OMB or some kind of reform. Do you, as mayor and as head of council in your community, have any feedback from any ratepayers or developers on the proposed legislation? What kind of feedback?

Mr. Ted Comiskey: The feedback we got was certainly from a couple of developers that did indicate the fact that they would like to make some things happen. Sometimes it's a profit line that they're looking at, and I understand. The fact is that we as a community see that some of the developments in some of the areas are not—again, with the site plan—laid out where they're supposed to be as far as whether it's industrial around residential or trying to put residential into an industrial-commercial area.

The feedback we're getting from them is that they want to be able to fully understand—if we're going to be a community and we're going to have site plans, they have to be precise. The builder coming into the area has to know what areas he can build here, and what the rules and regulations are around it. And so—

The Chair (Mr. Peter Tabuns): Mr. Mayor?

Mr. Ted Comiskey: —those being developed and promoted should be—yes, we have had feedback, some good and bad.

The Chair (Mr. Peter Tabuns): Mr. Rinaldi, you're out of time.

Mr. Mayor, thank you very much for your presentation today. We appreciate it.

Mr. Ted Comiskey: Thank you for allowing me this moment.

The Chair (Mr. Peter Tabuns): It's a pleasure.

We are going now to the presentations by Minister Mauro and Minister Naqvi. I don't know—

Interjection.

The Chair (Mr. Peter Tabuns): Just to set up, then, we'll have a five-minute recess and then we'll return with the two ministers to present and answer questions.

The committee recessed from 1631 to 1635.

MINISTRY OF THE ATTORNEY GENERAL

MINISTRY OF MUNICIPAL AFFAIRS

The Chair (Mr. Peter Tabuns): The committee is back in session. Welcome back. Welcome, Ministers Naqvi and Mauro.

Colleagues, the ministers have up to 15 minutes to present, and then we have 15 minutes of questions for each caucus, starting with the third party.

I turn it over to you, Ministers. Divide your time as you see fit.

Hon. Bill Mauro: Good afternoon, committee members. I'm very pleased to be here this afternoon, along with my colleague the Minister of the Attorney General, Yasir Naqvi. We're very pleased to be here with you this afternoon to have this opportunity to discuss Bill 139, the Building Better Communities and Conserving Watersheds Act. I want to thank all members for their support of this legislation at second reading.

If passed, the proposed legislation would bring significant changes to the land use planning appeal system in Ontario as we plan for an anticipated four million more people by 2041 in the greater Golden Horseshoe.

In my travels as Minister of Municipal Affairs, there's one thing that I can't and I'm sure most of us can't help but notice, and that is that construction is blooming in many parts of our province. In Toronto alone, 180 buildings are under construction and another 445 are planned. In Ottawa, 81 buildings are in the planning stages. Development is taking place in communities throughout the province in many forms: condominiums, stacked towns, row housing, single detached homes, commercial developments, industrial developments and more. Against this backdrop, good land use planning is crucial in every Ontario municipality.

The Ontario we build today will determine what kinds of communities we live in tomorrow and for years to come. We need to do our best to get this right. We all want healthy, sustainable, livable and complete communities—communities that accommodate people at all stages of life, that are affordable and have a diverse range of housing options. We need to grow Ontario's communities in a way that attracts jobs and investments. We need to create vibrant urban centres while also preserving and protecting green spaces, farmland and ecologically sensitive land and waters.

Since 2003, we have had many conversations about the land use planning system with Ontarians and we have taken numerous steps to reform Ontario's land use planning system to achieve better results, to ensure that the communities we're creating meet the needs of Ontarians now and long into the future.

The land use planning appeal system is a critical component of the larger land use planning system. We have made improvements to the system, but we recognize that we have not moved the marker far enough. That's why, when I became Minister of Municipal Affairs, the Premier tasked me with leading a review of the scope and effectiveness of the Ontario Municipal Board. We were to engage municipalities, the public and interested stakeholders in order to recommend reforms to improve the OMB's role within the broader land use planning system.

Starting in 2016, my ministry, in partnership with the Ministry of the Attorney General, conducted this review. There were 12 public consultations that were held: Newmarket, Clarington, Hamilton, Windsor, London, Guelph, Oakville, Sudbury, Ottawa, Toronto, Mississauga and in my hometown of Thunder Bay. There were several more local ones in the Toronto area, I know, by my Liberal colleagues. Many of them, as individual MPPs, held their own sessions in their own ridings. That resulted in this proposed legislation, the Building Better Communities and Conserving Watersheds Act. If passed, Bill 139 would transform the land use planning appeal system, replacing the OMB with the Local Planning Appeal Tribunal.

The reforms we are proposing would result in fundamental change. If our reforms pass, there would be fewer and shorter hearings and a more efficient decision-making process. There would be more deference to local land use planning decisions, and there would be a more level playing field for residents wanting to participate.

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The changes we are proposing follow an extensive consultation, and were informed by what we heard. The voices of Ontarians from Thunder Bay to Windsor, from Ottawa and all across the GTHA were heard. The review generated about 1,100 written submissions, and more than 700 people participated in our town hall meetings organized around the province.

There were a lot of different views, but there were also some recurring themes that we heard loud and clear from a wide array of stakeholders and the broader public: the need for more community involvement, a more meaningful voice for residents in the process, more local control over planning decisions, fewer hearings and a more transparent process.

We have been clear since the beginning of the process that we need an independent public body where people can challenge or defend land use decisions that affect their properties and communities. This tribunal has an important role to play in our land use planning process. People don't always agree on how their community should develop or change. The Local Planning Appeal Tribunal would give them a place to voice their concerns on planning decisions that affect where they live and where they work, and it would provide a better alternative to resolving disputes through the courts, but it's important that this process is appropriate, open and fair.

The proposed changes would give communities a stronger voice in the land use planning process. Local and provincial decisions would be given more weight. The most important planning matters could only be overturned by the new tribunal if the municipal decision is not consistent with or does not conform with provincial and local plans and policies.

We also propose to bring fewer municipal and provincial decisions before the tribunal. If passed, our changes would make the appeals process shorter and less costly by setting deadlines throughout the appeals process. Taken together, we believe these changes, if passed, could help bring development, including new housing, to market faster, creating communities that better reflect

local concerns. Provincial and local policies that support the creation of complete communities offering a range of housing types would also become reality faster.

The feedback from municipal leaders across Ontario has been encouraging. Toronto mayor Tory said, "I believe these reforms move us in the direction that we want to go, which is more local responsibility for local planning decisions."

Barrie mayor Jeff Lehman said, "I think it reinforces the democratic legitimacy of councils and reflects the basic premise that the residents of a community should shape its future through their elected officials...."

Kitchener mayor Berry Vrbanovic said that "this proposal is going to return the determination of our community's destiny back to the community."

Those are just a few examples, and I think it suggests that we're on the right track.

All Ontarians should be able to count on a land use planning and appeals system that's efficient, transparent and predictable and one that gives residents a say in what is built in their neighbourhoods.

The proposed legislation responds to these needs which are at the core of building strong communities. I've been working with Minister Naqvi on this. As an MPP and as Ontario's Attorney General, he has been very active in the conversation about improving our land use planning system. Together, we have developed proposed legislation that would give residents the tools to more effectively participate in land use planning and appeals.

I thank you for your attention, and I will now turn it over to Minister Naqvi to say a few words.

Hon. Yasir Naqvi: Thank you very much, Minister Mauro, and thank you to the members of the committee for asking us to come and speak to you today.

Today, I want to take this opportunity to speak about a few of the key components of this legislation which will transform Ontario's land use planning appeals system by replacing the Ontario Municipal Board with the Local Planning Appeal Tribunal.

The government is proposing a number of reforms that will help build a stronger planning process for municipalities across Ontario. The changes we are proposing centre around four pillars: (1) creating greater predictability for residents, communities and developers by sheltering certain major planning decisions from appeal; (2) giving greater deference to the decisions of local communities while ensuring that development and growth occur in a way that is good for Ontario and its future; (3) ensuring faster, fairer and more affordable land use planning appeals; and (4) providing access to free legal and planning support for Ontarians.

Strong communities take careful planning and careful development, so it only makes sense that our appeal process supports those plans by giving communities and developers more predictability. That is why the proposed measures to transform Ontario's land use planning appeal system include exempting a broad range of major land use planning decisions from appeal, including new official plans, major official plan updates, and detailed plans to support growth in major transit areas. These exemptions will help provide greater predictability in the planning system and will go a long way in helping developers and communities prepare to build stronger and more prosperous municipalities.

To help ensure that the voices of local communities in particular are heard, the proposed legislation would require that the tribunal give greater weight to the decisions of the local communities. This would be achieved by eliminating lengthy and costly hearings for the majority of planning appeals and ensuring that some matters could only be appealed on the grounds that they don't conform or are not consistent with provincial and municipal plans and policies. What this means is that the new tribunal could only overturn the municipal decision if it does not follow provincial and local plans or policies. If the tribunal finds the municipality's decision does not conform to an official plan, then the matter would be sent back to the municipality for reconsideration, which will help keep planning decisions local.

The government will also now be requiring parties in major land use planning appeals to participate in a mandatory case management conference prior to a hearing to identify, define and narrow the scope of the appeal and discuss opportunities for settlement, including mediation, which could ultimately avoid the hearing process altogether, which, in my opinion—and I'm sure many would agree—is a far better option.

We are also taking a number of steps to make the appeals process more efficient; for example, by establishing clear timelines for the hearing processes. Our proposed changes would not only result in more effective hearings, but would also support a culture shift to a less adversarial system.

The tribunal will also have the power to ensure hearings are effective and fair by requiring parties to produce evidence or witnesses for examination by the tribunal, where appropriate.

In addition, under the new act, we are proposing to give the government the ability to make regulations that govern the practices and procedures of the tribunal, provide for the use and composition of multi-member panels, and prescribe timelines for proceedings before the tribunal under the Planning Act. These are important tools that will go a long way to improving the procedures at the tribunal.

Finally, I would like to talk about how we're helping citizens to access the appeal process through the proposed creation of the new Local Planning Appeal Support Centre. We appreciate that people don't always agree with local land use planning decisions that affect them, and we have heard the concern that people do not have access to information about the appeal process and planning or legal advice. That is why we are proposing changes that will empower and support people who want to participate in the appeal process. This will be done by establishing a new independent agency called the Local Planning Appeal Support Centre. This centre will help

ensure that the views of local communities are taken into account when major decisions are made, by providing free legal and planning advice to Ontarians throughout the appeal process, including representation in certain cases. The centre will help Ontarians understand and participate more effectively in the appeal process by providing general information about land use planning, offering guidance on the tribunal process, and providing legal and planning advice at various stages of the appeal process, which may include representation in some cases.

Land use planning directly impacts Ontarians, so it is critical that they feel supported in the decision-making process. As such, we are also proposing that the tribunal build a new, revamped, user-friendly website. Once an appeal process is complete, tribunal decisions would be posted for all to see, and that includes new summaries of decisions that will be explained in plain language. The new website will also make it easier for the public to access information in different formats, such as videos.

Chair, I'm confident that these proposed changes would be successful in bringing effective change to the appeal process within the land use planning system. These are changes that, to me and my colleagues, continue to help represent the interests of developers while also giving residents a real voice when it comes to land use planning decisions. Most importantly, these changes will help ensure that cities and towns reflect the best interests of the people living in them today, as well as future generations. Thank you.

The Chair (Mr. Peter Tabuns): Thank you, Minister. Right on the button. Congratulations, you two.

I go now to the third party: Mr. Hatfield.

1650

Mr. Percy Hatfield: Thank you, Ministers, for coming in. I hope this becomes part of the delegation process as we go forward when we hear bills. I think it'll short-circuit a lot of the questions.

First, thank you for changing the Conservation Authorities Act, but we're hearing from people, especially in the Niagara Peninsula where there's a rogue conservation authority board, as we hear in the House from all sides. Would you consider amendments to allow for the appointment of a supervisor when a conservation authority fails to fulfill its duty with respect to sustainability and conservation?

Hon. Bill Mauro: We'll get Jason from the ministry to respond to your question.

Mr. Jason Travers: Good afternoon. I'm Jason Travers, director of the natural resource conservation policy branch from the Ministry of Natural Resources and Forestry. Thank you very much for the question.

The bill does not, as drafted, talk about the introduction of or have the power to put in place anybody—

Mr. Percy Hatfield: Jason, my question was, would you work with us to put that into the bill?

Mr. Jason Travers: As per the committee deliberations, if the committee puts forward ideas for consideration, we'll provide advice to the government as to whether or not that's an appropriate response.

Mr. Percy Hatfield: Thank you.

Ministers, can you guarantee that these reforms will actually be in place before the next election?

Hon. Yasir Naqvi: Obviously, we're in your hands in terms of the legislative process. We've done an extensive amount of work between both ministries, municipal affairs and housing and the Attorney General's office, in terms of having meaningful reforms in place. In my other role, as government House leader, I'm hoping to have this bill passed before the end of the year. Obviously I will need co-operation of all three political parties and all members for that to happen. I do not want to infringe on members' privileges in that regard.

Also, there's a sufficient amount of regulatory work that needs to be done in order to bring certain changes into effect. We are very much committed to working on that in an expeditious manner so these changes could come into place as soon as possible.

Mr. Percy Hatfield: Thank you. What possible reason is there to delay the enactment of schedules 1 and 2 until proclamation instead of having the bill come into force upon royal assent?

Hon. Yasir Naqvi: Sorry; say that again?

Mr. Percy Hatfield: Right now, as I understand it, schedule 1 and schedule 2 don't come into effect until proclamation, instead of having the bill come into force upon royal assent.

Hon. Yasir Naqvi: I think one of the things you have to be mindful of—so, two reasons. One is the regulatory piece. We have to develop certain regulations, so you need time to do that.

The second piece is very important. When it comes to matters of planning and OMB in the current context, there are cases going on right now, and there may be applications that may come forward. So we have to be very mindful as to the transition. How do we move from the old system to the new system? It has to be orderly. It has to be done in a manner that respects everybody's rights and the rule of law. We're quite mindful of that, and the two ministries are working very closely to develop a transition plan that doesn't impact a process that may be at the tribunal as we speak. There's deliberation that is taking place right now as it relates to those transitions. Hence you would see royal assent versus proclamation.

Mr. Percy Hatfield: Why is there no reference in the bill to the duty to consult First Nations? There's nothing in here on the duty to consult First Nations, or a requirement to obtain the free and informed consent of First Nations before approving a project that could adversely affect the territory of First Nations.

Hon. Bill Mauro: There was, I'm quite certain, special consultation held last year with First Nations specifically.

Mr. Percy Hatfield: But there's nothing in here that says this is what's going to happen.

Hon. Yasir Naqvi: For any future other development? Is that what you're referring to?

Mr. Percy Hatfield: Yes.

Hon. Yasir Naqvi: I think we have to be mindful—and I'll seek guidance from our staff on this—that the duty to consult is a constitutional right within section 35 of the Constitution. That exists. All our relative ministries work very closely with First Nations communities and through the Ministry of Indigenous Relations and Reconciliation in terms of having that consultation. Of course, municipalities are required, through the Constitution, to engage and have appropriate consultations with First Nations as well. That is something that is enshrined in the Constitution and affirmed by the Supreme Court of Canada. I would think, unless I'm told otherwise, that for constitutional matters like this, you don't have to restate that in the legislation.

Mr. Percy Hatfield: Why are aggregate pits exempt from conservation authority regulation under Bill 139, especially when Bill 39 to reform the Aggregate Resources Act included virtually no statutory environmental protections, leaving pretty much everything up to regulations written by the government of the day?

Mr. Jason Travers: Similar to the Aggregate Resources Act, which we just amended in terms as you identified, similar to the point that Minister Naqvi mentioned about making sure that we have the regulations in place before we change things, we want to finish the process of updating the Aggregate Resources Act. There is no need to necessarily update the Conservation Authorities Act. There is an act that is already responsible for aggregate resources, so there's no need to reference it in the Conservation Authorities Act. I'm not sure—if I misunderstood your question, I apologize.

Mr. Percy Hatfield: Well, okay.

The mayor of Ingersoll was just here. He was worried about the municipality having no say in the establishment of a landfill in Oxford county to handle industrial and commercial—ICI—waste from Toronto. He thinks there should be something in this act that would give municipalities the authority to accept it if they want, or to reject it if they want, the same as they can with nuclear waste. He wants to know if you would accept an amendment to put landfills in there as another sensitive form of development that municipalities would have the yea-or-nay vote on before one was put in there by the provincial government.

Hon. Bill Mauro: Sorry; what is put in there by the provincial government?

Mr. Percy Hatfield: He's afraid, in Oxford county, that an ICI landfill will be dumped on his municipality without approval from anybody in Oxford county—that the province would just say, "Yeah, Toronto needs it. Put it here."

Hon. Bill Mauro: Well, it's not really an MNR—I don't know if it's MNR. It sounds to me like it would just fall under normal planning processes. Right now, the municipalities will conduct and review their official plans once and if this legislation is passed. They will go through an MCR exercise that will bring their existing OPs into conformity with the new land use plans that are in place, and then the new process, should the legislation pass, will take hold.

I don't see how the example that you've raised impacts on anything that occurs already in terms of planning at the municipal level. I'm not sure how anybody could simply dump something into the municipality, which is the language that you're using.

Mr. Percy Hatfield: Well, as I understand it, and I stand to be corrected by anyone over there, the deputy warden was here—he's the mayor of Ingersoll—and he said that "across the province, and particularly in southwestern Ontario, municipalities are being identified and targeted as potential host sites for Toronto's garbage.

"When it comes to hosting a landfill, we believe municipalities should have the right to choose whether or not they will host such a facility."

He says, "While the ... environmental assessment process is designed to identify risk, and risk mitigation efforts, landfills are not risk-free. Moreover, municipalities do not have a role in this process, other than as a bystander. We are not asked whether we approve these projects, where they should be or how they should operate, yet they can have a permanent scar on the face of our communities."

That was his position, stated to the committee just 20 minutes ago.

Hon. Bill Mauro: Okay. We'll take that back.

Mr. Percy Hatfield: Thank you.

Thank you, Chair.

The Chair (Mr. Peter Tabuns): To the government: Ms. Malhi.

1700

Ms. Harinder Malhi: This question is for Minister Naqvi. We wanted to ask, would you be able to describe the consultation process for the proposed OMB reform?

Hon. Yasir Naqvi: Absolutely. Minister Mauro, in his remarks, talked a little bit about the process and the consultation that was taking place.

I would like to go back a little further, to a few years ago, when we did, I think it was, Bill 179 at that time, the smart growth act, where we made some substantive changes to the Planning Act. I go back just to highlight that this process of evolving our land use planning system has been going on for some time in a step-wise process.

In that piece of legislation we made some very important changes in terms of the nature of consultations that need to take place when a proponent comes forward with a proposal to develop: how communities have to be consulted, how community feedback has to be worked through the entire process, be it at the application process, then deliberation by a planning committee and a municipal council. There were some other things, such as community design, permit systems etc. The purpose behind that legislation was very much, again, to empower local communities and to make sure that there is a more deliberative process in place.

There were actually substantive consultations done for that bill. One of the things that became very clear through the consultation process at that time was that there was a strong desire on the part of everyone that we need to look

at the appeals system as well. An appeals system, i.e. the OMB process, was sort of carved out at that time. That was not within the scope of the work that we did a few years ago.

As a result of the feedback we received this time around, as per the Premier's mandate both to the Minister of Municipal Affairs and to the Attorney General, we looked at the land use planning appeals system, and engaged in very thorough consultations across the province to hear people around that particular piece. I think Minister Mauro went through the list of communities that we travelled. I attended a few of those consultations. I know Mr. Rinaldi, as the parliamentary assistant, attended a lot of those consultations. We were really able to get down in those consultations around, in light of the work that has been done in modernizing the land use planning system in the province, how do we evolve the appeals system, the dispute resolution process?

Besides consultations, we also had released a consultation document, so we received a fair bit of written submissions to that as well. As a result, we received about 1,100 written submissions because of the document that we had put out, which was quite significant. We got very thoughtful and thorough responses to that.

Furthermore, we did a 93-day public comment period on the bill itself, from May 31, when we tabled the bill, up to September, when the bill was called for hearings.

So we feel that there has been a significant amount of consultation taking place on this bill. That's just going back a few years with the work that was done with the previous bill.

Ms. Harinder Malhi: So—

The Chair (Mr. Peter Tabuns): Mr. Rinaldi—oh, I'm sorry. Ms. Malhi.

Ms. Harinder Malhi: Minister Naqvi, will the proposed reforms limit procedural fairness?

Hon. Yasir Naqvi: That's a very important question. I've heard some concerns about whether these proposed reforms limit procedural fairness. In our view, the proposed reforms require the tribunal to adopt practices and procedures that would provide for the best opportunity for a fair, just and expeditious resolution of proceedings before the tribunal. My ministry, of course, paid particular attention to make sure that any dispute resolution process we put in place protects procedural fairness, and natural justice is obviously part and parcel of our responsibility.

We feel that these proposed reforms would empower the tribunal to actively guide the proceedings in order to level the playing field and make it less adversarial for parties and participants. For example, the proposed reforms would empower the tribunal to test the evidence. They would give the tribunal the power to examine parties, participants and witnesses who appear before it. The tribunal will also have the power to require parties to provide information and documentary evidence, to testify before the tribunal and to produce witnesses for examination by the tribunal.

In addition, the proposed reforms would require the tribunal to hold a case management conference, as I mentioned earlier, in all major land use planning appeals. The purpose of the case management conference would be to identify, define and narrow the issues; identify facts or evidence that may be agreed upon by the parties; and identify evidence that should be obtained and witnesses who should be examined. At the case management conference, parties may also be given an opportunity to propose questions for the tribunal to ask witnesses.

We've looked at every aspect around this. The function of appeals and reviews of decisions of our public decision-makers is not new to our system. We've got our Statutory Powers Procedure Act—SPPA—that outlines requirements around natural justice and fairness. We have paid very deliberate attention to make sure that all those requirements are met, and we feel comfortable that this legislation provides for this so that not only do we have procedural fairness requirements met, but we also have effective and expeditious decision-making that communities and businesses, like developers, desire, because it doesn't serve anybody when these hearings take sometimes in excess of a year or two. That holds back development in communities.

Ms. Harinder Malhi: Thank you so much.

The Chair (Mr. Peter Tabuns): Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you to both ministers for being here today.

I guess my question is more geared to Minister Mauro. I know you highlighted in your opening remarks some of the highlights of the proposed legislation. I wonder if you could highlight—I shouldn't say "the more important," but what's in the bill that people are not used to today but that the new bill will propose down the road, if passed.

Hon. Bill Mauro: Thank you for the question. As I mentioned in my opening remarks, the goal and the mandate for Minister Naqvi and me was basically a two-pronged approach. My ministry's piece of this was what we refer to as a bit of a scoping exercise in terms of dealing with issues that currently could be appealed to the OMB that, should the legislation pass, no longer would be appealable. Minister Naqvi's ministry was dealing with the effect of this, and he has just referred to and spoken about how we see that this new tribunal, should the legislation pass, would provide the effect.

By way of example, the legislation, if passed, would shelter from appeal a variety of measures that are currently appealable: a provincial approval of an official plan; an appeal of major official plan updates; a one-year limit on appealing an interim control bylaw; no ability to appeal the conformity exercise of the municipal comprehensive review that they all will undertake, should this legislation pass; and ministers' zoning orders.

There are a number of things that we have put in place that we think make sense, that speak—as Minister Naqvi has referenced—to providing something that we feel is absolutely appropriate, and that is more deference for local decision-making, so that people who live in these communities and who have their elected officials in place will be speaking to them about how they plan their communities. This seems to make eminent sense to us.

As well, I think it's important to remind people here today about the existence legislatively of the ability for municipalities to have local appeal bodies in their own communities since 2007.

By way of example, about 70% of Toronto issues that have ended up at the OMB have been matters—and I'm not sure if there is a one-year time frame for the metric that I'm giving you, but about 70% of what has appeared before the OMB within the city of Toronto are issues that could have been dealt with by their local appeal body and did not have to go to the OMB at all.

The city of Toronto—and we congratulate them for that—has very recently put in place—it's the first municipality in the province to actually constitute a local appeal body. I think it began in May of this year. So fully 70% of what was going to the OMB no longer will have to.

We are also, in this legislation, should it pass, expanding what a local appeal body can hear. Historically, it has only been consents and variances. We're now proposing that we would expand that local appeal authority to include site plans as well.

So we're moving to a place where, by scoping out a significant number of issues and files that currently can be appealed to the OMB, we will put in place a more efficient system that shows deference to local decision-making and that will expedite getting these projects into the community sooner.

1710

Mr. Lou Rinaldi: Thank you.

If I may, to Minister Naqvi: the number of consultations I attended—it was about three quarters of them. There was one common theme from Mr. and Mrs. Public, that whenever they wanted to go through an appeal process or question, they really found it hard to understand or navigate the system. I know, as part of the proposed legislation, that we're creating a support centre. Can you give us a little bit of insight into what that might look like and what kind of results it might have?

Hon. Yasir Naqvi: Absolutely. I think that's a very important point because I think we all probably can share stories and experiences of working with our local community in issues that relate to development. I often say jokingly, but I think it's serious, how many of us have been to how many bake sales that are supporting local community associations who are mounting an OMB challenge or are participating in OMB issues?

These are local members of the community. They are volunteers. They just want to live in good neighbourhoods. They're looking for some good information and support if they can get it. We heard that in the consultations again and again. There was this strong desire to better understand a very complex system—land use planning is not simple—and a strong desire to have an effective voice, because it's their neighbourhood and it is their quality of life that is impacted by it.

There was a clear message from the consultations that people felt that there should be resources put in place to allow for a better relay of information, to better understand the process, and, if there is a capacity challenge and resource challenge, then perhaps assistance as well. The kind of system that we're proposing through the Local Planning Appeal Support Centre is not unique. You see something very similar in the human rights sphere as well. We have the Human Rights Legal Support Centre, which was created through the auspices of my ministry.

Our thinking is very similar in terms of the format in place: an independent agency with their own board, but having the resources to have information tools available, to have guidance available to local communities and, in some instances, to be able to assist as well in terms of planners or lawyers if a matter goes to the local planning appeal tribunal, if the legislation is passed.

You hear often—and I can only use examples from Ottawa because I have first-hand knowledge—that community associations have difficulty even retaining planners or lawyers because most of the planners or lawyers in Ottawa will be conflicted out, because there is such a large developing community and so much work is happening that you may not be able to find somebody. They may have to go to Kingston or beyond to have somebody help them to participate in the process.

Those types of challenges could be easily resolved through a local support centre as provided for—and better information. That's the impetus, and I think it speaks quite directly to what we heard in the consultation in terms of empowering local communities and giving the resources that they need to participate effectively in the land use planning appeal system.

Mr. Lou Rinaldi: Thank you.

Chair, I still have some time?

The Chair (Mr. Peter Tabuns): You're now out, Mr. Rinaldi.

Mr. Lou Rinaldi: Oh, I shouldn't have asked.

The Chair (Mr. Peter Tabuns): I would have been telling you in 10 seconds, so you haven't lost much, sir.

We go to the official opposition: Mr. Miller.

Mr. Norm Miller: Thank you, Chair, and thank you to both ministers for presenting today. Both of you focused on one section of the bill, and it really reinforces my thought that it should be two separate bills, because I didn't hear any mention of the amendments to the Conservation Authorities Act, which, as our MNRF critic, is what I'm interested in.

I specifically have one question with regard to entry without warrant. The existing act gave a conservation authority or its officers the right to enter private property without a warrant if they had reason to believe there was a contravention of a permit that was causing environmental damage. This bill proposes to change that to say that an officer appointed by an authority may enter any land situated in the authority's area of jurisdiction "to determine compliance," but it does not say anything about requiring a reason to believe there is contravention. It will allow the officer to take samples and photos and bring other experts with him or her. So I guess my question, then—and I can give you a bit of the existing act, because it seems quite reasonable. My question is,

why would conservation authority officers need expanded rights to enter a property without a warrant? As I say, the existing act—and I can read it to you:

"An authority or an officer appointed under a regulation made under clause (1)(d) or (e) may enter private property, other than a dwelling or building, without the consent of the owner or occupier and without a warrant, if,

"(a) the entry is for the purpose of considering a request related to the property for permission that is required by a regulation made under clause (1)(b) or (c); or

"(b) the entry is for the purpose of enforcing a regulation made under clause (1)(a), (b) or (c) and the authority or officer has reasonable grounds to believe that a contravention of the regulation is causing or is likely to cause significant environmental damage and that the entry is required to prevent or reduce the damage."

That seems like quite a reasonable clause that we have right now: You can enter without a warrant, with a few conditions. I'm just wondering why that needs to be loosened up so basically you can enter without a warrant, with no reason.

Hon. Yasir Naqvi: I appreciate the question. We're going to ask Jason from the ministry to answer.

I just want to say that when we were making arrangements for the ministers to come, it was indicated to us that OMB would be the focus, and therefore you got the two OMB guys to come here. I just wanted to say that for the record. That's why you see the two of us and not Minister McGarry present today.

Jason?

Mr. Jason Travers: Thank you, Minister.

Yes, you're right: There is an update proposed in the bill, and this is to be more consistent with other legislation that recently has passed in terms of similar powers that you also identified in your introductory statement, as well as the idea that it would be a modern compliance framework.

Mr. Norm Miller: As I say, I just read you the existing authority, and you do have authority to go on property without a warrant, but you just have to give a reason. You seem to be removing any reason for being able to go on the property.

Mr. Jason Travers: As I said, the idea is that we would be updating it to be consistent with other legislation that has already passed. That would be obviously within the responsibilities of officers who have to exercise their powers before entering.

Mr. Norm Miller: Okay. I'll pass it on to my—

The Chair (Mr. Peter Tabuns): Yes, Mr. Hardeman.

Mr. Ernie Hardeman: I too want to thank you both, Ministers, for being here today. It's kind of a landmark decision to have ministers appearing at a committee. We really appreciate that, because I think it really helps the committee to understand what is going on in the bill.

The Chair (Mr. Peter Tabuns): Mr. Hardeman, if you could use your microphone more directly. We're having a bit of trouble with the Hansard.

Mr. Ernie Hardeman: First of all, I just wanted to go back to the Oxford county situation with the landfill sites. I think the mayor made a very appropriate presentation about how the municipalities can decide that they don't want a casino, and no casino can be built. They can decide if they want nuclear waste deposited in their municipality; if they decide they're not a willing host, it doesn't happen. Both of these have gone through. Some municipalities accept it; some don't.

He has suggested that in this bill, we could do something about doing the same thing, that if someone wants to bring waste from elsewhere into a municipality, municipalities can decide whether they will or will not accept it. That way, of course, would prevent unwilling hosts; it would create only willing hosts. It's not part of amending this bill, but it is part of the issue that governments deal with and there's not necessarily a bill that says "I don't have to" and "a willing host." You have to be a willing host to get a casino, because the province decided so. Why can't we have that for this?

Mr. Ken Petersen: It's Ken Petersen. I'm the manager with the provincial planning policy branch of municipal affairs.

I think the issue is sort of a complicated one because it's tied into an environmental assessment process as well. Throughout those processes, there are opportunities for public input. Through the environmental assessment process, there is that robust process of identifying where the best site for a landfill would be.

I think with the changes that we're proposing, the new test for rejecting an application, or what have you, would be consistency and conformity with not only provincial policies but local policies. There's going to be a process involved, but it's a little more complicated because of the intersection with the environmental assessment process.

1720

Mr. Ernie Hardeman: I guess the question would become, if Oxford county has an official plan that says that we don't allow landfill sites, it's not appealable?

Hon. Bill Mauro: If the official plan had been approved.

Mr. Ernie Hardeman: If we have an approved official plan. If it says—

Hon. Bill Mauro: No, but they still have the site-specific. They can still appeal site-specific—

Mr. Ernie Hardeman: The requirement for landfill—you're suggesting that in this new regime, that will not be appealable.

Mr. Ken Petersen: I think the issue is that when a municipality takes forward their new official plan process, they need to conform to or be consistent with provincial policies, right? So with respect to Oxford's official plan, the ministry is going to be the approval authority for that plan, and so the ministry would obviously have a role in that process.

Mr. Ernie Hardeman: Okay. Thank you. Now we'll get to the questions that I prepared, because I was really happy that you were going to be here.

Concerns have been expressed by the committee we've heard today about the second hearing through the

tribunal as opposed to going directly to the OMB. When council makes a decision, we go to the tribunal. The tribunal says, "No, it is not in compliance with the official plan or with the provincial policy statement," it goes back and it comes back again.

People are suggesting that that really is lengthening the process. It might be better to make the first one longer, but not to have to do the same thing twice. I think they called it insanity—doing exactly the same thing over and over again, hoping to come up with a different result. There doesn't seem to be any place—because it's pre-defined, what the right to appeal is. It has to be out of compliance with one of the two. So there was concern expressed as to why you would have two.

Hon. Bill Mauro: If the municipality has ruled and it has been returned by the LPAT back to the municipality, is your question. Then you're asking—you want to skip the step. Is that what I'm hearing? The suggestion would be that you skip the first step?

Mr. Ernie Hardeman: I think if it has been decided that it can be appealed because it doesn't meet one of the two, shouldn't the municipality know that the board is going to kick it right back anyway?

Hon. Yasir Naqvi: Again, I think it's important to remember the principle here. The principle here is to give greater deference to the decision-maker, which is the municipal council. Obviously, they've gone through the entire planning process under the Planning Act, from the moment the proponent walks into city hall to start having informal conversations about a project, to the public consultations that are required under the Planning Act, the detailed submissions that are made to the planning staff, the recommendations by the planning staff, the planning committee process, council etc. There's a lot of work that gets done.

What we are saying through this legislation is that the decision that should be made by the municipal council at the end of the day should be consistent with or conform to the official planning documents. That's not new; that's something that everybody expects them to do.

If somebody feels that that is not the case, then they can appeal that decision to the Local Planning Appeal Tribunal. The standard of review, the test that the Local Planning Appeal Tribunal will use, is exactly that: Does it conform to or is this consistent with the official plan? If the answer is yes, end of story. If the answer is no, then they will refer the matter back, with reasons, to the municipal council, saying, "You are not consistent with the planning documents. Reconsider."

Again, that's not new in our system. That's exactly how reviews of public decisions are done. There is a review of whether there's conformity. If not, then the matter is sent back to the original decision-maker to reconsider the decision, and there will be reasons guiding the council as to why the tribunal felt that their decision was not in conformity or consistent. Then they will have another opportunity to make the decision.

That could be the end of the story, unless somebody says, "No, they still have not complied with—they still have not followed the guidance or the ruling of the tribunal." Only in that instance that the matter comes again to the tribunal can the tribunal, based on the evidence before them, make a final decision.

There's a very fundamental difference between how planning decisions are considered by OMB today versus what we are proposing to do. How it's done today is that the OMB can basically decide what is a good planning decision. That's where the concern comes in: that they sometimes override the municipal council's decisions, as opposed to, based on the rules in place, whether the decision is consistent or in compliance. We're saying the decision around what kind of planning should take place should happen at the municipal level, the local level. Of course, it's not happening in abstract. It has to happen in line with the policy planning documents, which we know is a robust process with the Planning Act, the provincial policy statement, the official plans and the amendments to official plans etc.

Mr. Ernie Hardeman: The other one we've been hearing about is the concept of natural justice and the fact that natural justice requires a fair, objective hearing. Many people have raised the concern that this bill doesn't do that. I guess part of it is the fact that it is no longer part of the Attorney General's department; it's now a municipal function with the ministry of Municipal Affairs. They don't believe that a five-minute or a 15-minute presentation in front of a whole council is in fact giving a fair, open hearing on the matters that are before. And then, all of a sudden, it—there's no further discussion at the tribunal because they're not going to hear any information. There's no cross-examination, and it comes back for another 10-minute hearing in the council chamber. There were people here presenting this afternoon who didn't believe that that was natural justice, and we would see those cases in the courts instead of at the OMB.

I guess the question really is, what is the benefit of taking the tribunal out of the jurisdiction of the Attorney General and putting it with municipal affairs? Could the tribunal not be part of your ministry, to make sure that we are getting justice as opposed to just a planning matter?

Hon. Yasir Naqvi: We're not changing any of those aspects. That's why I'm sitting here. As the Attorney General, I'm responsible for the tribunal and the whole design work around the tribunal. The appointments process, the rules that will be created, that's all within the scope of the Ministry of the Attorney General.

That question was asked earlier by MPP Malhi, and I want to address this question again because I think it's an important one. We're not undermining procedural fairness, and I've spoken with the same friends as well on this particular issue in our deliberations. What we are doing is, we're changing the scope of the new tribunal. The OMB right now acts as the court of first instance. That's why it's called a de novo hearing, as if the matter never took place. We're saying that that is not appropriate, because there has been a lot of shelf life to that issue.

As I said to you earlier, the process is an extensive process under the Planning Act. A proponent comes with

an idea, they usually have informal conversations with municipalities, and municipalities usually have some sort of a system in place where they start talking about these issues. Then there's an official application. There's public consultation. There's a more detailed plan that's put forward. There's a report by the planning department, planning committee deliberations—and on and on it goes. And there's a public role and different interested stakeholders all throughout the process.

What happens in today's system is that when you get to the OMB, it's like you hit the reset button and you didn't have to go through all that process. We're saying let's redefine the system, where all that happens at the municipal level is legitimate. There's a record that gets developed. There's deliberation that takes place that should have meaning. And, at the end of the day, in order to have predictability, the municipal council really should make a decision based on everything they have received and what's being recommended by the planning committee, who are the experts.

The role of the tribunal really should be to then review whether that process and the decision that came out of that process were consistent with the planning documents. In order for that to happen in a robust manner, the only thing you really need is the documentary evidence from that whole process. Otherwise that whole process is for naught, and that's the biggest concern that we hear again and again.

1730

Mr. Ernie Hardeman: Excuse me; we don't want to stay on the same one. I have a number of questions that—

The Chair (Mr. Peter Tabuns): You've got about a minute left, Mr. Hardeman.

Mr. Ernie Hardeman: Oh. I would like to know a little bit more about the transition. I have a lot of people who want to know whether they should fundraise when they're doing an objection to something for the OMB hearing, or whether it should be for a tribunal hearing.

Furthermore, we have municipal leaders who are not making decisions because they're so ready—they like this one a whole lot better, so they're going to wait with making decisions and so forth.

I think we need to very quickly move forward in setting up the framework for getting that transition in place, so everybody knows when it's coming and which one they will be in. But the minister doesn't get to make that decision of one person gets in the old system, and the other one gets in a new system.

The Chair (Mr. Peter Tabuns): Mr. Hardeman, you're now out of time.

Mr. Ernie Hardeman: I thought that maybe I might be.

The Chair (Mr. Peter Tabuns): Ministers, thank you for spending your time here with us. We appreciate it.

CITY OF TORONTO

The Chair (Mr. Peter Tabuns): Now we go on to our last presenter, city of Toronto and Mr. Gregg Lintern, chief planner.

Good afternoon. Welcome. As you've probably observed, you have up to 10 minutes to present, and then there will be 10 minutes of questions, rotated between the three parties. If you'd start by stating your name for Hansard.

Mr. Gregg Lintern: My name is Gregg Lintern. I'm the acting chief planner at the city of Toronto. With me I have Kerri Voumvakis, who is the director of strategic initiatives with the city; and Kelly Matsumoto, who is our practice lead in our planning law group.

The Chair (Mr. Peter Tabuns): Please.

Mr. Gregg Lintern: Good afternoon. My name is Gregg Lintern. As I indicated, I am the acting chief planner and executive director of the city's planning division for the city of Toronto. I have practised planning for more than 30 years and over the course of my career, I'm one of the lucky fellows who have been at the OMB a few times in many hearings and mediations. I would like to thank the committee, on behalf of the city of Toronto, for the opportunity to appear before you this afternoon.

Through Bill 139, we believe the province is introducing a number of positive amendments that will bolster local democracy by lending greater weight to municipal decisions, providing more confidence in the planning process and increased transparency in the land use planning process. I am here today to express the city's very strong support for Bill 139. I am also here to request that the committee consider adding some further amendments to the bill to further enhance its impact on municipal planning practice and the proposed land use appeal system.

A point I want to stress is that the changes proposed by the bill will enable municipalities to focus on adopting planning frameworks, what we call "proactive planning," to address growth and change, in contrast to actually spending time at the Ontario Municipal Board adjudicating policies that have been approved by the province of Ontario but whose decisions have been appealed. Planning is really about shaping development; it's not about stopping development. That's the experience in the city of Toronto.

Currently, a large amount of municipal time is spent at the OMB defending council-adopted policies approved by the province but which are appealed by parties who may not support the decisions of the locally elected officials. A case in point is the city's employment policies which were adopted by our council in December 2013. They were approved by the minister in July 2014 and remain in large part under appeal. These are very important policies that underpin the city's economy and the economic growth of the city.

Removing the ability to appeal policies which reflect stakeholder input, which were the subject of broad and inclusive consultation and which are consistent with or conform to provincial plans and policies, should not be allowed to remain unapproved and subject to adjudication for more than three years. The time spent by parties involved in such matters would be better spent on

the development of new policy frameworks to provide direction and certainty for development and the community at large.

The changes proposed by the bill will enable municipalities to focus, again, on proactive planning frameworks, getting out in front of change, whether it be the development of new official plan policies to reflect the growth plan in the GTA or provincial policy statements or, indeed, the vision of city council. It will also enable municipalities to better direct resources. whether it be resources that we use to go out and work with communities to build the capacity for change that we know is necessary or coming, or to simply advancing implementing zoning.

The changes proposed in the bill will also provide for increased confidence, we believe, in the whole development approvals process. We do not see the reforms as a vehicle to halt development but, rather, to provide greater certainty and transparency in the planning system.

Over the last five years, Toronto city council has approved approximately 92,500 residential units, and we will continue to process and approve development in an efficient and effective manner if Bill 139 is enacted. It won't affect the way we process, review and consider development. I'll get into that a bit more later.

Among the positive changes in the bill are the elimination of de novo hearings, further restrictions on the types of planning matters that can be appealed to the OMB, and a scoped and streamlined appeals process. They have been our council's key requests in terms of important steps to be taken to reform Ontario's land use appeal process.

The city of Toronto strongly supports:

—establishing a scoped and more transparent appeal process for official plans, official plan amendments and zoning bylaws;

—requiring mandatory case management for most appeals;

—sheltering municipally initiated official plans and official plan amendments that require the minister's approval from appeal;

—placing a two-year moratorium on privately initiated amendments to newly approved secondary plans, which are local plans that guide growth in local growth areas;

—sheltering interim control bylaws from appeal;

—establishing longer timelines for council to make informed decisions on planning applications; and

—establishing a Local Planning Appeal Support Centre to assist Ontarians with navigating the land use planning appeal process.

Notwithstanding the city's strong support for the bill, we also believe that additional opportunities exist to enhance the bill in order to give municipalities an even stronger voice and ensure that the new planning appeals system will work even more effectively and efficiently.

We would ask you to consider examining the following couple of matters.

First, clarify the intent of second-stage appeals within the context of the new appeal process. What we mean by this is, expand procedural control over second-stage appeal hearing formats, practices and timelines, including practices regarding the admission of evidence, to better ensure that the second hearing, when it is required, does not become a hearing de novo.

We would also like you to consider increasing the length of time council has to make a new decision, when the new tribunal sends a matter back to council for reconsideration, from the proposed 90 days to 120 days.

The bill proposes to create a two-step appeal process, where required, that would apply to appeals of official plans and zoning bylaws and also appeals of non-decisions of council with respect to plans of subdivision. Council will have a second opportunity to make a decision if the tribunal determines that council's first decision failed to conform to provincial plans or policies: the so-called conformity tests. This second new decision is appealable. It is not clear what rules or restrictions the tribunal will be governed by if there is a second hearing. We respectfully request that the language in the bill be redrafted to make it clear to eliminate de novo hearings for each of the hearings that comprise the proposed two-step appeal process.

Secondly, the proposed 90-day timeline is a very tight one for councils to make new decisions with regard to OP amendments and zoning bylaws that have been sent back for review by the tribunal for a second decision. We request—and this is a very practical matter—that an additional 30 days, for 120 in total, be considered by the committee to ensure that councils have an adequate opportunity to make properly informed decisions and to take into account the outcomes of stakeholder and community collaboration and input, because that will happen when these come back for a second decision.

A second matter for your consideration is to increase the use of moratoriums in the bill as a way to give further weight to local decision-making and recognition to community involvement that has taken place in the decision-making process.

1740

We ask the committee to view moratoriums as an effective tool in assisting municipal land use policy application in helping to create a more stable development approval environment. Under the bill, moratoriums would still allow councils to consider exceptions by way of council resolution. We would ask the committee to consider amending the bill by establishing moratoriums for implementing zoning bylaws and to consider extending proposed moratorium periods from two to five years.

These changes would allow key official plan policies and their implementing zoning bylaws to better germinate, to better take root, and create a more stable and predictable planning approval environment that acknowledges the community input that went into giving land use policy formulation a chance, and potentially reduce the number of applications under appeal.

The Chair (Mr. Peter Tabuns): With that, I'm sorry to say you're out of time.

We'll go first to the government: Mr. Dhillon.

Mr. Vic Dhillon: Thank you for your presentation. What effect do you think the proposed changes will have on the planning resources for the city of Toronto and the city of Toronto's ability to plan effectively for growth and for its residents?

Mr. Gregg Lintern: I would generally comment that the resources will be reoriented. We have a large planning department and it's a very busy planning department. It will allow us to devote more resources, as I indicated in my submission, to building the capacity for change and working with communities.

We spend a lot of time covering the geography of the city, laying down planning frameworks, whether it be on a main street in an area that is going from two to five storeys, or in an area like Yonge and Eglinton or North York Centre or Scarborough Centre, where we are encouraging more intensification. We work with those communities and the landowners to develop a framework for growth. We would rather spend our time and our resources doing that work, what I call plan-making, than fighting a plan at the Ontario Municipal Board in a kind of winner-takes-all adversarial situation, which we feel is not the right way to build a city. We would rather do it in a collaborative, plan-making process with the community.

Mr. Vic Dhillon: Developers have suggested that the proposed reforms could effectively halt development in the cities. How do you think the proposed changes will impact the level of development in the city of Toronto?

Mr. Gregg Lintern: The plan-making that we're doing now at Yonge and Eglinton and in downtown Toronto is conceiving of development densities that would support significant increases in population and employment in those two areas. For example, in downtown Toronto, our work is revealing the potential to almost double the existing population in downtown Toronto in the planning period to 2041. I would rather spend my resources, as a planning division, figuring out how that's going to happen. I don't think that that represents, in any way, shape or form, a halt to development.

I made the comment that planning is about shaping how development will happen. That's going to be the focus. I think the debate that we have with developers is often not about whether it will happen, but about the shape of development: how big, how tall, what community services and facilities are needed to support the new population coming into that area. That's where the planning focus should be.

Mr. Vic Dhillon: How would you characterize the level of provincial consultations on the proposed OMB changes?

Mr. Gregg Lintern: I think they've been robust. We engaged the community fully and extensively at the city, and I think the province has been very involved in this issue for a very long time, with hearing from our communities about the concerns that they have, the way the planning appeal process works, so it has been quite extensive.

The Chair (Mr. Peter Tabuns): I'm sorry to say, Mr. Dhillon, you're out of time.

We go to the official opposition: Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much for your presentation. I was interested in two things in your presentation. One was the issue of the second hearing and the need to have it broadened in terms of what they're going to do. The minister was here just before your presentation. You may have been here while he was here. They seem to think that the second hearing was just an opportunity for council to make changes so that we could come back—and if they made the changes, that was fine; if they didn't, then the tribunal would just kind of pass it on. It seems to me that if the tribunal then has to make the decision the second time, they have to have some parameters of what information they're going to use to do that. The information that's available from the previous hearing is not going to do it, because that's what got us in the mess in the first place. So I'd like a little more explanation on that.

The other one I was interested in: You talked about, as we move into this regime, that you would be able to spend more time developing the growth areas and so forth, that you want to change the rules and set a plan in place that would achieve the goals that the city has for that certain area. How do you see that in timing? Obviously, as soon as this act goes into place and if that isn't already done, then none of the applications would be appealable, because they would be in line with the official plan as it exists.

And so I have some concern as to how we're going to do that transition, if we need to put the act in place to get the resources to create the official plan that we need in place before the act can go into place. Maybe you can enlighten me on that.

Mr. Gregg Lintern: Through the Chair, on your first question, there are two aspects to it. Implementing the conformity test, which it will be an assessment of—in our area we look at the growth plan and we look at the provincial policy statement and our official plan and the Planning Act. There are really four areas that we would look for in terms of alignment with provincial policies. So we would look at those areas of consistency and conformity to determine, in our view, and ultimately council will make a decision, as to whether or not it conforms, and we would have to be as clear as we possibly can about that.

What I was raising in my deputation was what happens, exactly, at that second hearing. Our concern is that we have a lack of clarity about what happens, what is the procedure at that second hearing. We have eliminated de novo in the first round. We understand that. Are we having de novo, though, in the second round? Because if we are, then we're going back to where we are today. So we are expressing a concern about that.

Your second question about just managing the legislation and conformity overall—I would submit that the city's official plan currently largely conforms to the growth plan. We've been through a conformity exercise.

We have a new growth plan, a 2017 growth plan, and we will now embark on a process of—

The Chair (Mr. Peter Tabuns): I'm sorry to say you're out of time with this questioner.

We go to the last questioner: Mr. Hatfield.

Mr. Percy Hatfield: Thank you for coming here. I have great respect for municipal planners. I think you are the unsung heroes of municipal government. You're the visionaries who help shape our neighbourhoods and make our communities better and safer. Thank you for being here.

What we're wrestling with: You come in and you say this bill will bolster local democracy, provide more confidence in the planning process—and planning is about shaping development, not stopping development. Then, on the other hand, we're hearing from people who say the OMB takes the politics out of the planning process, politics will trump good planning and the bill will do more harm than good. There are those who love the OMB—that's been their ace up their sleeve—and there are those who have wanted it reformed for a long time. I know Toronto has been looking for reform for a long time.

I hear that the de novo hearing is going, and people are applauding that, for the most part—not the developers, necessarily. They want to start over.

If you had your top three amendments you would like to see so that this bill could be improved, what would be your—very succinctly, because I know we're running out of time—top three ways to improve the bill from what you already like?

Mr. Gregg Lintern: I would begin with greater clarity on second appeal, whether or not it's de novo, or what the rules of that second appeal are. Our preference clearly would be not to go back to a de novo situation.

Secondly, I would like greater clarity on the transition policies, the applicability of the bill dating back to the year 2017. We have had an increase in the number of appeals at the city of Toronto. I don't know where that's going to go ultimately, but we could be at the OMB dealing with appeals for many years to come. So we would like the government to consider that issue as well.

Those would be two that I could answer your question with.

Mr. Percy Hatfield: Chair, I really like the need for more clarity because—my youngest granddaughter's name is Clarity. So I like to see her all I can. I thought I'd throw that in there as we end the day.

The Chair (Mr. Peter Tabuns): You're very kind. Thank you.

Thank you very much for your presentation.

Members of the committee, the deadline to send a written submission to the Clerk of the Committee is 5 p.m. on Wednesday, October 18, 2017. The deadline for filing amendments to Bill 139 with the Clerk of the Committee is 12 noon on Thursday, October 19, 2017.

We stand adjourned until 3 p.m. on Tuesday, October 17, when we will meet for the purpose of public hearings on Bill 139.

The committee adjourned at 1750.

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