F O R C E

Friends of Rural Communities and the Environment

FRIENDS OF RURAL COMMUNITIES & THE ENVIRONMENT (FORCE)

SUBMISSION TO THE STANDING COMMITTEE ON GENERAL GOVERNMENT RE: *PLANNING AND CONSERVATION LAND STATUTUE LAW AMENDMENT ACT (BILL 51)*

AUGUST 28, 2006

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F O R C E - Lawson Park Ltd., Box 15, RR # 1, Freelton, ON L0R 1K0

INTRODUCTION

Friends of Rural Communities and the Environment (FORCE) thank the Standing Committee on General Government for the opportunity to input to the reforms proposed as the *Planning and Conservation Land Statute Amendment Law Act* (known as Bill 51)and for Ontario Municipal Board reform. We have also welcomed the government's corollary initiatives – and the companion Ontario Legislative Standing Committee work - to establish and protect a permanent Greenbelt in the Golden Horseshoe, the establishment of improved policies and procedures through the *Strong Communities Act* and its Provincial Policy Statement, the *Clean Water* legislation, and the Growth Management Plan for the Greater Golden Horseshoe as part of the *Places to Grow Act* initiative to promote more compact urban growth in order to protect and conserve our drinking water and natural heritage features. We believe that many of the land use planning changes proposed will result in significant quality improvements to land use planning in Ontario.

FRIENDS OF RURAL COMMUNITIES AND THE ENVIRONMENT (FORCE)

Friends of Rural Communities and the Environment (FORCE) is a federally registered not for profit corporation. It is a citizen-based advocacy group with hundreds of supporters in Campbellville, Kilbride, Mountsberg, Freelton, and Carlisle. FORCE was formed in June 2004 to protect our natural and built environments in the face of a proposed large-scale, below the established groundwater table, aggregate development in the Northeast Flamborough portion of the amalgamated City of Hamilton. We note upfront that our organization is neither anti-aggregate nor anti-road; indeed, our area is home to some of Ontario and Canada's largest aggregate operations. We do, however, have significant issues with the pending application in its proposed location for substantive reasons; reasons that relate to ground water protection, active and productive agricultural operations, acknowledged fragile natural systems, and existing rural communities. We also believe that our organization has a responsibility to promote good government in the municipal and provincial arenas and therefore, we have a responsibility to input into the broader planning reform processes which bear upon the application processes for development proposals such as the one before our communities.

Further, FORCE is a member of the Ontario Greenbelt Alliance. We support its general directions in response to this issue and notably those of lead groups like Ontario Nature, Environmental Defence, the Canadian Environmental Law Association and the Pembina Institute. We also find consistency with the staff reports of the Niagara Escarpment Commission. Our submission focuses specifically on our experience in the Hamilton and western Halton regions and builds upon our submissions made during August 2004, when the Ministry had issued three discussion papers on the topics of planning reform, the PPS, and OMB reform, and during February 2006 with respect to Bill 51 itself.

COMMENTS ON BILL 51

General Comments

In general, FORCE supports the proposed reforms to Ontario's planning system and believes that they will make the municipal decision-making process more transparent, effective and accountable.

We also believe these steps will begin to make the OMB process more user-friendly and more reflective of local decisions while still protecting broader provincial interests.

FORCE notes two significant omissions in terms of making the OMB more accessible, at least one of which is relevant to Bill 51 and could be addressed by legislative amendment. They are first, the absence of any form of intervenor funding for community groups and second, the lack of reform to appointment of OMB members. These latter administrative changes should be made forthwith by the Public Appointments Secretariat. More detail will be provided on these omissions in subsequent sections.

FORCE is also concerned about the commencement provisions of the legislation and the proposed transition regulation – notably with respect to OMB reform. We understand the preferred direction of the government to have the Act come into effect upon Royal Assent and that some provisions, which involve regulatory companions, may come into effect later upon proclamation of the LGIC. This go-forward approach is common in order to ensure simplicity, a "clean" forward path, and to avoid retroactive application. We are concerned, however, that this approach means that OMB reforms will not be realized for many years. There are many applications before municipal councils, such as the one before our communities, which are at very preliminary stages and are still years in the making. There are certain applications, again, such as the one before our communities, which will undoubtedly end up before the OMB or Joint Board. It seems pointless to move forward with reforms to the administrative tribunals which will not come into effect for some 5 – 10 years, depending on application timing. We recommend amendments to either the Act or the transition regulation that apply the sections specific to the OMB reforms immediately - to not only applications submitted to and received by municipalities after the Act is passed - but to applications which have been submitted but have not yet been decided by a municipal council. There are also many ways to scope this provision. Again, more detail will be provided in a later section.

We encourage the government as well to resist suggestions to dilute the reforms from the development community and encourage it to proceed with the legislation and companion administrative reforms for the OMB in a timely fashion. We look forward to early passage during the fall 2006 session of the Legislature.

Specific Comments

Planning Act Amendments – Part I

Complete Applications – sections 10(5), 14(4) and 21

FORCE strongly supports enhancing the minimum prescribed information and material required to constitute a "complete application" for planning applications that involve Official Plan amendments, Zoning By-law amendments, subdivisions and consents. We understand that these requirements would be prescribed in regulation and look forward to reviewing this content. We equally strongly support allowing municipalities through Official Plan policies to establish additional information requirements (i.e. subwatershed studies, site servicing analysis, etc.) in support of planning applications.

The complete application provisions will hopefully prevent the practice of filing skeletal applications in order to by-pass or minimize the municipal decision-making process. We know from our own situation opposing an aggregate application – where the application had no "thud" factor and contained information substandard even for a pre-submission consultation - that the municipality felt that it could not "reject" the application as incomplete, even when it clearly was "thin" and deficient. This reality has been confirmed through the results of the City of Hamilton's Peer Review process, to date, and through validation with adjacent municipalities, conservation authorities, school boards, and provincial agencies on a Combined Aggregate Review Team. Municipal staff and Councillors have historically felt pressure to make a decision about OPA and Zoning amendments when there were still numerous unanswered questions about some of the environmental and other effects but they had little latitude to request more information. These changes will go some way to rectifying these situations.

We note that there may be some circumstances where municipalities require incremental information in addition to the requirements outlined in their Official Plans in order to understand the implications of specific planning applications. The provisions for additional information should contemplate this scenario and not be too restrictive. Such information requests should be made as early as possible in the approvals process. The "reasonableness" of such information requests could be subject to OMB resolution.

In order to prevent incomplete applications from being referred to the OMB or the Joint Board, Bill 51 should be amended to clearly establish that the application cannot be appealed to any tribunal until the application is considered complete by the municipality, including any requests for additional information. It is also preferable that such applications cannot be considered by any tribunal until the application has been considered and a decision taken by the municipality.

Early Consultation and Enhanced Public Notice, Information and Consultation

In light of the preceding, FORCE endorses a requirement that applicants consult with municipalities prior to submitting planning applications – "pre-submission consultation".

Many sections of the Bill are proposed to provide clearer notice, information, and consultation processes. We recommend that Bill 51 be amended to include a provision that complete applications be made available for review by the public at the time the application is declared to be "complete" and through a variety of forums. The latter should not be restricted to public open houses but should also include on-line access, hard copies in public libraries, etc. Under current provisions, the public and other agencies are often provided with notice but with no supporting documentation. Failure to circulate documents can slow down review and comment on applications and may present a substantial access hurdle for some.

Official Plan Contents - section 7

Section 7 outlines the basic requirements for the content of Official Plans and provides authority for the provincial government to prescribe other matters to be addressed. Just as there should be a minimum and clear specification of required content for development applications, generally

applicable to the private sector, it is reasonable and equitable that the statute provides municipalities with minimum prescribed directions on the types of matters that must be addressed in Official Plans. We look forward to commenting on the regulatory provisions that will elaborate on these elements as per 7(1)(b).

Up-to-date Planning Documents – section 12

FORCE also supports the new Official Plan 5 year review requirements, conformity with the PPS 2005, and time limits on Zoning by-law updates after an Official Plan review. The Zoning by-law updating is appealing. The reality is that a time limit even of up to 3 years could be onerous in practice and must be considered in light of other important priorities, such as the completion of source protection plans under Bill 43. There is also the reality that leaving by-laws for 3 years may defeat the conformity intention if development could continue to be permitted in conformity with the existing by-law. What may be required is that by-laws be deemed to be concurrent with the OP conformity exercise and addressed with an approved OP on an as-needed basis as specific development proposals are brought forward until the by-law is amended in practice. Currently participating in the Hamilton Official Plan review for Rural Areas, we do appreciate the importance of timely incorporation of updated provincial interests and associated cross-government initiatives and measures.

As noted above in the section on consultation, we are definitely in favour of enhanced opportunities for the public to become informed and participate in the process. Increased public information forums and increased timelines can only assist residents to access, understand, and contribute meaningfully to these complex processes. As an example of problems with the current provisions for public participation, community groups and other stakeholders in Hamilton were asked to comment on detailed materials related to the OP review with an informal deadline of only 2 weeks after a recent public information session. This happened on more than one occasion in the last eight months. This contrasts with a longer process, involving discussion papers, draft OP sections and 4 month windows for submissions after public information sessions in neighbouring Burlington.

Up-to-date Decisions – section 4

Requiring municipal decisions on planning applications to be based on provincial plans and policies in place at the time of their decision only makes sense and can only be seen as positive. This should apply to both municipal council decisions and OMB decisions. Considering the number of years it can take from when an aggregate licence application and/or OPA/Zoning by-law application is submitted to MNR and the local municipality and when a decision is made by the OMB or Joint Board, this reform should theoretically provide improved protection for community quality of life and the natural environment.

We further recommend an amendment that decisions by the approval authority and the OMB or Joint Board also reflect the most up to date official plan approved at the time of the decision. This would be consistent with later submissions requiring timely conformity of Official Plans with provincial plans and policies.

Having regard to municipal decisions – section 3

The importance of the local level of government, at least theoretically, and often in practice, is sensitivity to local priorities and concerns. With elected Councillors and open Council meetings close at hand, access and responsiveness are possible. Supporting local democracy by requiring approval authorities such as the OMB to "have regard to" decisions made by a local council is an important step and we are generally supportive of such changes. We state this on the assumption that the intent is to attempt to give more weight to the municipal position. "Having regard to" still permits protection of broader public interests when they have not been addressed or insufficiently addressed by the local Council.

New information and New Parties at OMB hearings – sections 8(6) and (9); 14(5), (12) and (13); and 21

FORCE strongly supports the provisions that hearings before the OMB would be limited to the information and material or "evidence" that had been before municipal Council. This requirement is consistent with requirements for a complete application from the proponent and our support is predicated on that basis. We believe that this reduces the opportunity for the proponent to "save" the full case for the OMB or Joint Board and to by-pass the municipal decision-makers. We believe that there is sufficient flexibility provided to the OMB to consider additional information, from the proponent, municipality or community groups, if the new information could not have been reasonably provided to the municipality before Council's decision or if the new information is introduced by a public body. We also support making explicit the ability of the OMB to refer a matter back to Council, such as if the new information could have caused a different decision and Council might reasonably want to reconsider the matter and either affirm or alter its original decision.

Similar treatment in limiting party status at the OMB stage also makes sense. Again, there is sufficient flexibility, through leave of the OMB, to admit new parties who for whatever reasons might not have participated at the Council level. . It would be advisable to define reasonability in either the legislation or regulations – i.e. the specific criteria should include examination of whether the person represents a clearly ascertainable interest in the matter under appeal, has an established record of concern for and commitment to the matter, or is directly affected by the matter under appeal.

We also support enhanced authority for the OMB in sections 17 and 18 to dismiss appeals in specified instances, such as repeat applications and appeals.

Public Participation in the OMB Process

Public access to the OMB process can be improved through administrative changes such as the creation of a citizen liaison or advisor type function. Real improvement, however, will require addressing the issue of resources for community groups (see Omission section below) and through other administrative changes related to membership and operations. These include first and foremost a cultural shift at the OMB – specifically moving it away from an adversarial approach. Improved and more frequent dispute settlement and alternative dispute resolution methods will assist. Access can

also be improved through written documents at early stages as opposed to public presentation approaches. Recording of evidence and its availability on-line, such as was done during the Walkerton Inquiry, can assist groups who cannot attend all day and every day.

OMB Membership

In general, FORCE supports the proposed changes outlined in discussion papers and other documents to ensure the most qualified people are hearing appeals on planning decisions that affect Ontario's communities. Prescribed employment descriptions, improved recruitment and retention methods, increased tenure, compensation review, and formal training all make sense and should have been in place long ago. We note the absence of performance monitoring and an emphasis, for at least some members, to have experience with running hearings, hearing and weighing evidence, and writing decisions.

We are concerned that Bill 51 and its companion materials do not significantly advance these issues. July 2006 announcements from the Public Appointments Secretariat to strengthen key administrative tribunals and agencies were not very detailed.

Conservation Easements – Part II

In light of recent circumstances in the Duffins-Rouge Agricultural Preserve and other challenges to conservation easements, FORCE strongly supports the provisions advanced to ensure that easements are and remain a valid and protected tool for conservation.

Commencement and Transition – section 36

FORCE supports the Act coming into force on the day it receives Royal Assent. We understand that some sections have been specified to come into force on a day to be named by the Lieutenant Governor (specifically sections 1-19, 20(3), 21-28, 31 and 33(1)) in order to address the future development of companion regulations and related issues. While we understand this sequencing, we encourage the government to work in a parallel fashion and to publicly share these materials as soon as possible such that the full spectrum of the legislation is brought into effect as quickly as possible. We do believe, however, that some transition provisions would better reflect the government's reform agenda.

We respectfully submit that the specific sections that relate to OMB reform should be addressed in the transition regulation. It makes sense to move as quickly as possible to a uniform approach before the Board as opposed to stretching out two different appellate regimes for a longer period of time. Specifically, applications which have been submitted to a municipality but have not yet been decided upon by a council should be subject to the new OMB provisions. While other provisions such as "complete applications" will apply to future applications only, the new OMB provisions will drive that reform as proponents seek to fully inform a council prior to any OMB appeal. Further, community

groups and other parties will still have the opportunity to appear before council. Under both party status and evidence, the OMB is being provided with leave judgement and reasonability tests.

Should the government feel that this transition direction is too broad in terms of the number of applications that would be included, it is possible to consider scoping based on applications which are more likely to reach appeal stage, are of more germane provincial policy interest, such as those pertaining to urban boundary changes, employment land changes, OPA in the Greenbelt, etc.

Other

The Definition of Public Body

Amendments made to the *Planning Act* in 1996 excluded all ministries of the Government of Ontario except the Ministry of Municipal Affairs from the definition of "public body" for comment and appeal purposes. While we understand the nature of the "one window" approach to provincial comments on land use planning applications, the provision has the effect of preventing provincial agencies from commenting or initiating appeals without the concurrence and participation of the Ministry of Municipal Affairs. The "one window" system while positive in many respects has the potential to prevent timely interventions by provincial agencies with expertise relevant to local planning decisions. This is particularly important in the context of source water and natural heritage protection. FORCE would support the designation of the Ministry of Environment and the Ministry of Natural Resources as public bodies for the purposes of the Act for these reasons.

Sunset Clause for Dormant Applications

Building upon the notice of refusal of applications, Bill 51 should establish a sunset clause for dormant applications. Dormant applications might include applications applied for and not dealt with by the municipality, where the applicant has filed an application but chosen not to pursue the application through the full municipal process. Many municipalities have numerous applications which have been received but are gathering dust as the proponent chooses to wait for any variety of reasons. Such applications should be deemed to be refused after a specified period of time, with no opportunity to appeal.

Key Omission – Intervenor Funding

Intervenor funding for Municipal Board hearings:

Intervenor funding is a reasonable policy for three fundamental reasons:

1. it is important to ensure the best available information before the OMB or Environmental Review Tribunal or Joint Board
2. it is important that that information be presented in an efficient and effective manner and
3. it is important to address the inequity of resources for public participants and citizen groups.

Information on the OMB website recommends hiring lawyers and expert witnesses to make a strong effective case but the cost of same remains clearly prohibitive for many groups. Participation of community groups is in the public interest – in terms of upholding broader public interest policies and in terms of the democratic deficit.

FORCE strongly recommends that there be provision of intervenor funding for community and other groups to participate at administrative tribunal hearings, notably before the OMB. The Province can clearly determine the funding source of such a fund – whether it be a provincial fund fed by an application or development levy or whether it be proponent based funding (% of capital project, etc.) as had been the basis of the Intervenor Funding program that operated during the late 1980s through the mid 1990s. An independent panel would again be necessary for implementation of same along with development of clear criteria for allocation. We recommend that Bill 51 provide the statutory authority for intervenor funding and that a task force or similar instrument be established to develop the programmatic approach.

CONCLUSION

FORCE believes that the initiatives noted above and the areas for suggested improvement are necessary to support the government's intent regarding planning and Ontario Municipal Board reform. They are also necessary to support, rather than undermine, the government's important directions in terms of permanent Greenbelt protection, source water protection, viable agriculture and rural strategy, and sustainable urban and rural development patterns within the Greater Golden Horseshoe and across the province.

THANK YOU

FORCE thanks the Committee again for the opportunity to input and looks forward to reviewing the government's and Committee's response to these important initiatives.