Pembina Institute for Appropriate Development

Holistic and practical solutions for a sustainable world.

Submission to The Standing Committee on General Government regarding Bill 26 – *The Strong Communities Act*

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I. Introduction

The Pembina Institute is a national, independent environmental and energy policy research and education organization, founded in 1984, with offices in Toronto, Ottawa, Calgary, Edmonton, Drayton Valley Alberta and Vancouver.

The Institute has taken a strong interest in issues related to the environmental, economic and social sustainability of urban communities in Ontario over the two years, publishing three major reports, *Smart Growth in Ontario: The Promise vs. Provincial Performance* (February 2003), *Building Sustainable Urban Communities in Ontario: Overcoming the Barriers* (December 2003), and *Building Sustainable Urban Communities in Ontario: Towards Implementation?* (July 2004) on the subject.

In this context, the Institute welcomes the introduction of Bill 26 as an important step towards the reform of the land-use planning process in Ontario to curb urban sprawl, promote more sustainable urban communities and strengthen local democracy. The Institute's specific comments on Bill 26 are as follows.

II. Section 2 – Planning Decisions Consistent with Provincial Policy

We are particularly encouraged by section 2 of the Bill, which would require that advice and planning decisions by municipal councils and planning bodies, provincial ministries and agencies, and the Ontario Municipal Board (OMB) "shall be consistent with" the policy statements issued under the *Planning Act* by the Minister of Municipal Affairs. The adoption of these amendments is essential to the provincial government's ability to provide the policy direction to planning authorities needed to curb urban sprawl and promote more sustainable development patterns.

However, the Institute emphasizes that it is essential that the revised Provincial Policy Statement (PPS), now being developed by the Minister of Municipal Affairs, be in place before the proclamation in force of these provisions of Bill 26. Unfortunately, if the existing PPS, adopted by the previous government in 1996, remains in place when Bill 26 is proclaimed, it would have the perverse effect of requiring that planning authorities ensure that their planning decisions "be consistent" with policies that are often too vague to provide meaningful policy direction, reflect outdated perspectives on resource development or, in some cases, have been major factors in the promotion of urban sprawl over the past seven years.

Recommendation

1. *Bill 26 should be amended such that section 2 comes into force on a date to be proclaimed by the Lieutenant-Governor in Council.*

III. Sections 3 and 4 - OMB Appeals

Bill 26 would also make a number of modifications to the OMB appeal process, including increasing the time period for making decisions before appeals can be made to the board with respect to official plans, official plan amendments, subdivision and condominium approvals, zoning by-laws, holding by-laws and consent applications (Bill 26. ss.3 and 4). The right of appeal to the board with respect to official plan amendments and zoning by-laws would be eliminated if the amendment relates to the alternation of the boundary of an urban settlement area or the creation of such an area (s.4 (7)).

These provisions are a good first step towards the reform of the OMB appeal process, providing planning authorities with a greater period of time to consider decisions before proponents can initiate appeals to the board, and eliminating the right of appeal in situations where municipalities might be compelled to expand urban settlement areas against their wishes.

In addition, appeals of official plan amendments should not be permitted until final decisions on these matters have been made by the councils involved. This would have the effect of reinforcing the central role of official plans in the planning process.

Recommendation

2. *Bill 26 should be amended such that appeals of official plan amendments to the OMB are only permitted once final decisions on the amendment application have been made by the municipality.*

Complete Applications

In order to fully address the concerns regarding the impact of the automatic rights of appeal to the OMB introduced through the 1996 Bill 20 amendments to the *Planning Act,* the issue of the triggers for timeframes for appeal must also be addressed. In many cases, proponents have only provided minimal information to municipal councils in support of applications, as required via through regulation 198/96,[1] triggering the Bill 20 timeframes for appeal, and then introduced additional information at the OMB appeal stage.

[1] The regulation requires minimal 'tombstone' information regarding an application (i.e. the name and address of the applicant, the plan that is to be amended, and the text of the requested amendment).

As noted in the government's discussion paper on planning reform,[2] such an approach does not give municipalities an opportunity to obtain information that may be needed to properly assess applications in terms of such things as traffic, hydrogeology, and natural heritage impacts, or their implications for the delivery of public services and infrastructure, before an appeal to the OMB is initiated.

To address this problem Bill 26 should amend the *Planning Act* to provide a definition of a 'complete application" for planning approvals, and that the timeframes for automatic appeals to the OMB are only triggered once an application is complete.

Recommendation

3. *Bill 26 should be amended to provide a definition of a 'complete application.' A complete application should be defined to include:*
   - *Such information as prescribed by regulation.*
   - *Additional information identified as required in support of applications through the municipality's official plan, or a by-law regarding application requirements*
   - *Information necessary to meet the requirements of the PPS; and.*
   - *Further reasonable information that the municipality deems necessary to assess the application.*

4. *Bill 26 should be amended such that the appeal timelines under sections 22(7)(c) and (d) (official plan amendments),s.51(34) (subdivision and condominium approvals), 34(11) (zoning by-laws), 53(14) (consent applications) are not triggered until the requirements for a complete application are met.*

IV. Restrictions on OMB Decision-Making where a Provincial Interest is declared

Bill 26 would restrict the powers of the OMB to make decisions in appeals respecting official plans, amendments to official plans, zoning by-laws or holding by-laws, if the Minister is of the opinion that all or any part of the proposed amendment, plan or by-law adversely affects a matter of provincial interest. The Lieutenant-Governor in Council would be able to confirm, vary or rescind decisions of the OMB in such situations.

Recommendation

5. *Bill 26 should be amended such that where the Minister advises the OMB that the provincial interest is or is likely to be adversely affected by a proposed amendment, plan or by-law, the Minister be required to provide an explanation of how the provincial interest would be adversely affected.*

[2] Ministry of Municipal Affairs and Housing, *Planning Act Reform and Implementation Tools* (Toronto: MMAH, June 2004) pg.10.

V. Section 10 Regulations and Transitional Issues

Bill 26 was first introduced in December 2003, and is likely to be enacted in the fall of 2004. This raises the question of the status of approvals sought or granted after the introduction of the Bill.

Recommendation

6. *Except in situations were final approvals have come into place since the introduction of Bill 26, decisions regarding planning applications should be governed by the rules as established by Bill 26.*

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