



**FRIENDS OF RURAL COMMUNITIES & THE ENVIRONMENT
(FORCE)**

**SUBMISSION TO THE
MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING RE:
*PLANNING AND CONSERVATION LAND STATUTUE LAW
AMENDMENT ACT (BILL 51)***

EBR#AF05E0001

FEBRUARY 27th, 2006

INTRODUCTION

Friends of Rural Communities and the Environment (FORCE) thank the Ministry of Municipal Affairs and Housing 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 also welcomed the government's corollary initiatives 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, Freelon, 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. Our submission focuses specifically on our experience in the Hamilton and western Halton regions and builds upon our submission made during August 2004 when the Ministry had issued three discussion papers on the topics of planning reform, the PPS, and OMB reform.

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, and begin to make the OMB process more user-friendly and more reflective of local decisions while still protecting broader provincial interests.

FORCE does note one significant omission in terms of making the OMB more accessible and that is the absence of any form of intervenor funding for community groups. More detail will be provided on this omission in a subsequent section.

We encourage the government 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 passage during the spring session of the Legislature.

Specific Comments

Complete Applications

FORCE 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 its content. We 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. We know from our own situation opposing an aggregate application – where the application had no "thud" factor and contained information substandard for a pre-submission consultation - that the municipality felt that it could not "reject" the application as incomplete, when it clearly was "thin" and deficient. This reality has been confirmed through the City of Hamilton's Peer Review process 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, etc. when there were still unanswered questions about some of the environmental and other effects. These changes will go some way to rectifying these situations.

Early Consultation

In light of the preceding, FORCE endorses the requirement that applicants consult with municipalities prior to submitting planning applications and that complete applications be available for review by the public 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.

Official Plan Contents

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.

Up-to-date Planning Documents

FORCE also supports the new Official Plan 5 year review requirements, conformity with the PPS 2005, 3 year time limits on Zoning by-law updates after an Official Plan review, and enhanced opportunities for the public to become informed and participate in the process. Currently participating in the Hamilton Official Plan review for Rural Areas, we appreciate the importance of timely incorporation of updated provincial interests and associated cross-government initiatives and measures, such as increased public information forums and increased timelines, which can only assist residents to access, understand, and contribute meaningfully to these complex processes. As an example, community groups and other stakeholders in Hamilton were asked to comment on detailed materials with an informal deadline of some 2 weeks after a recent public information session. This contrasts with a 4 month window for submissions in neighbouring Burlington.

Up-to-date Decisions

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 will provide improved protection for community quality of life and the natural environment.

Having regard to municipal decisions:

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. “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:

FORCE strongly supports the provisions that hearings before the OMB would be limited to the information and material that had been before municipal Council. This requirement is consistent with requirements for a complete application from the proponent. 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.

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

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. 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 Members

In general, FORCE supports the proposed changes 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.

Conservation Easements

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

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 retroactive needs of some provisions (backdated to December 12, 2005) such as those relevant to conservation

easements and in order to address the future development of companion regulations. 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.

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.

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