



FORCE PRESENTATION TO MINISTRY OF MUNICIPAL AFFAIRS OPEN HOUSE ON PLANNING REFORM JULY 13, 2004, OAKVILLE

INTRODUCTION

- * Represent Friends of Rural Communities and the Environment (FORCE)
- * Citizen-based advocacy group - hundreds of supporters in Campbellville, Kilbride, Mounstberg, Freelton, and Carlisle
- * Formed in June 2004 to protect our natural and built environments in the face of a proposed large-scale aggregate open pit mine

LOCAL ISSUE IS A MICROCOSM OF LARGER PROVINCIAL INTERESTS

- * Communities within the Golden Horseshoe Greenbelt Study area
- * Groundwater quantity and quality are already significant issues and our aquifers exist in a fractured shale environment
- * Provincially significant wetlands, Bronte Creek and tributaries, significant woodlots/environmentally sensitive areas, and habitat to the threatened Jefferson salamander
- * Residential subdivisions, schools and community centres
- * Active agricultural economy
- * Identified sand and gravel mineral potential
- * Zoned for agriculture and conservation management
- * Pending proposal for aggregate development
- * Conflicting provincial and local interests and incompatible land use
- * FORCE feels a responsibility to input to broader provincial policy development not just to address our local issue

PLANNING REFORM PROCESS

- * FORCE will make a more detailed submission before the August 31 deadline to the three Planning Reform Discussion Papers

TWO OVERRIDING PRINCIPLES SHOULD BE KEY TO LAND USE PLANNING

1. Conservation First
 - * Precautionary principle
 - * Especially in Southern Ontario, the remaining primary resources like groundwater and natural features like wetlands are under significant development threat

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- * Consider World Wildlife Fund (WWF) approach to Conservation First for work with communities and the private sector: no new or expanded development uses until a network of protected areas is reserved which adequately represents the natural regions affected by the development - then, sensitive development can proceed outside of the protected areas using the latest technology and approaches to minimize adverse impacts on wildlife, ecosystem function, and local cultures and to enhance the natural environment, where possible
- * Speaks to "carving up the map" through exercises like the Greenbelt study, strong land use planning and stakeholder involvement in order to provide certainty and consistent land use planning decisions

2. Certainty

- * Certainty, achieved through consistent land use planning decisions at a local level, is important for all stakeholders - communities, residents, non-governmental organizations, private sector developers, and appellate tribunals

BILL 26 - STRONG COMMUNITIES ACT

- * FORCE supports the policy direction of Bill 26 and Discussion Paper #1, and specifically:
 - o Requiring planning decisions to "be consistent with" the Provincial Policy Statement
 - o Increasing timelines for municipalities to review applications for Official Plan amendments and Zoning By-laws before proponents can appeal to the Ontario Municipal Board
 - o Increasing the information required for a "complete application"
 - o Maintaining the application of the Act retroactive to December 15, 2003, especially within the Golden Horseshoe Greenbelt Zone
 - o Ensuring the most up-to-date policies apply to an application
 - o Adding performance monitoring and measurement requirements to Official Plans
 - o Having provincial ability to declare a provincial interest to OMB and resolve decision at provincial level
- * FORCE believes there is need for clear Provincial Policy Statements with greater guidance on provincial priorities, especially when the policy statements conflict
- * FORCE supports the need for improvement of and/or development of corollary policies and tools to assist municipalities to implement the Provincial Policy statement, such as:
 - o Optimizing demand/utilization of existing licensed aggregate resources through Ministry of Natural Resources as well as updated resource mapping which explicitly considers incompatible uses and establishes context appropriate extraction and rehabilitation objectives rather than uncoordinated licence-specific solutions to proposed Greenfield aggregate operations
 - o Use of best practices guides and reference materials for directions like watershed based source protection
- * If a clear legislative framework and companion policy tools are put in place, municipalities should be able to make local decisions in a consistent fashion where provincial interests are concerned with fewer appeals to the tribunal level

DRAFT PROVINCIAL POLICY STATEMENTS

- * Draft Provincial Policy Statements, especially Natural Heritage and Water subsections, reflect improvements over the 1996 (amended in 1997) version but...
- * Aggregates subsection remains outdated and
- * Missing from the overall framework are the 2 key overriding principles, especially in the Wise Management of Resources section:
 1. a conservation first/precautionary principle approach
 - o there needs to be a clear recognition that there are primary resources, like water, that are fundamental to human health and ecosystem function
 - o we can no longer take the risk to "test" a proposed mitigation method
 2. clear direction when the policy statements conflict
 - o municipalities, the public, the private sector, and appellate tribunals need to know that primary resource uses, like water, take priority and "trump" other uses based on the conservation first principle
 - o the competing provincial interests need to be prioritized, again based on a conservation first principle

Natural Heritage Features

- * the content is improved, particularly the upfront reference in section 2.1.1 recognizing the diversity and connectivity of natural features and the linkages between features, surface and groundwater
- * better reflect that wetland protection is an important link to protection of water quality
- * direction is still needed for conflicts between provincially significant wetlands and aggregates development, especially in Southern Ontario
- * protection of the habitat of endangered, threatened and vulnerable species is critical in order to preclude their risk status from worsening

Water

- * the content is much improved, particularly with the emphasis on watershed-based planning
- * water should be identified as a primary resource which takes priority over other land uses

Aggregates

- * Section 2.5 has not been amended in any material way and does not appear to reflect the environmental protection orientation of this government nor a sustainable approach to resource development
- * FORCE has significant concerns with this section - we are not an anti-aggregate nor anti-road organization but believe that the planning, approvals and regulatory monitoring processes for mineral aggregate operations is flawed
- * A prioritization of the provincial interests using the conservation first/precautionary principle is required at a minimum to address this section and its relation to water, wetlands, areas of natural and scientific interest, and agricultural uses
- * Concerns about the extraction of aggregate resources below the established water table raised during the 5 year consultation period have not been addressed, whether on prime agricultural lands or not, and are especially problematic in a fractured shale environment

- * We refer Ministry staff to the Ontario Environmental Commissioner's report released in October 2003 regarding MTO specs driving higher aggregate quality and quarry operations, poor optimization of the existing licensed resource, failure of the aggregates industry to progressively rehabilitate, failure of the MNR to inspect the required 20% of operations, and outdated resource mapping with a reliance on single license application approaches as rationale for the need to change the approach to aggregate planning
- * The focus of the section is on mineral aggregate protection and a presumption of development
- * The focus should be on mineral aggregate potential identification for long term supply and context appropriate land use planning for actual development
- * Demonstration of need should be required given existing licensed capacity and should include demand/supply analysis, identification of resource potential, designated resource potential and licensed resource capacity
- * Access to the resource close to markets is a laudable goal in the context of Kyoto implementation and air quality concerns - the reality of 400 series highway congestion means that the province should also be looking to the relative socio-economic and environmental cost/benefit analysis of shipment by water, as an example from areas like Manitoulin Island
- * Greater emphasis on conservation of mineral aggregate resources is required beyond making provision for aggregate recovery where feasible - Ontario usage per capita is much greater than other jurisdictions in the United States and the U.K, even accounting for population density factors
- * Greater emphasis needs to be placed on progressive full rehabilitation with exemptions versus the reverse
- * Improved notice and consultation requirements as well as provision for local municipal council decision making should be specified for wayside pits and quarries - FORCE refers the Ministry to the inadequate consultation in North Flamborough for a Dufferin Aggregates wayside pit that was authorized by the Ministry of Transportation kitty-corner to 2 schools without any input from the schools, school boards, and municipal council, among others
- * FORCE also believes that a corollary significant reform of the Aggregates Resources Act under the jurisdiction of the Ministry of Natural Resources is required for aggregate operations as well as for wayside pits and quarries, portable asphalt plants and concrete plants

ONTARIO MUNICIPAL BOARD REFORM

- * Discussion Paper #3 raises a number of important issues
- * FORCE input will be made on those key to citizen-based organizations such as ourselves
- * In particular, we note the need to improve accessibility to the Board and to assist citizen-based groups financially in making their representations through a vehicle such as intervenor funding

Mandate/Scope

- * There needs to be a route of appeal
- * An administrative tribunal is a better mechanism than the courts in terms of access, cost and timing
- * A statutory requirement for decisions under the Planning Act to be consistent with Provincial Policy Statements, clear Provincial Policy Statements, and corollary policies/tools should lead to fewer appeals and to better decisions by the OMB when appeals occur
- * FORCE supports the direction to support the decisions of municipal councils and to limit appeals by developers to the OMB in cases regarding urban settlement boundaries
- * Consideration should be given to other appropriate circumstances supporting the decisions of municipal councils - FORCE will address this in our more detailed submission

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Onus or Nature of the Appeal

- * The focus of the OMB should be decisions on planning grounds, its area of expertise
- * More attention should be given to smart growth planning, which requires integration of community planning with infrastructure planning, and fiscal innovations (and should be directed by the planning reform noted previously) and its decisions should be informed by expertise in several fields including biological and water sciences
- * The discussion paper offers polar choices in terms of de novo (new hearing) and appellate standard (i.e. errors in law)
- * Consideration should be given to hybrid models such as those used on BC
 - o In general, the OMB appeals should be true appeals where the Board is asked to assess the information that was before the municipal council and new information may only be allowed with leave of the Board - this makes the democratic process paramount and limits the ability of developers to put little effort before the local council and save the agenda for the OMB
 - o Some cases will be significant in terms of provincial and public interest. In these cases, the Board should have the ability to examine the case and evidence and determine whether a new hearing is warranted.

Member Qualifications/Tenure/Accountability

- * Appointments should be based on the merit principle
- * OMB should be and be seen to be free of political interference and not biased in any way (i.e. pro-development)
- * Hearing expertise should be obtained from a variety of disciplines (i.e. planning, legal, scientific, and technical, among others) and the Board, as a whole, should include skills to address matters outside hearings such as negotiation and dispute resolution
- * Criteria should be developed for qualifications and experience - this can be fostered by requiring appellants and all parties to identify at the outset, the technical and scientific issues associated with the appeal
- * More open search recruitment and notice/availability of vacancies should be adopted
- * Reasonable terms of office are required for both independence and hearing expertise
- * Appropriate security of tenure is also important to attract quality personnel mid-career - this should not preclude more part-time appointments to obtain requisite expertise for certain hearings
- * Consideration should be given to feedback from forums like the Canadian Council of Administrative Tribunals and movement by other provinces to 5-7 year initial terms with opportunity for renewal (capped at a maximum)
- * Compensation reform is required such that the salary levels are reasonable enough to attract quality (recognizing the reality of differing pay scales for different professions/disciplines) and should be part of a general reform of boards/tribunals
- * Adequate training should be provided with an emphasis on the skills necessary to run hearings and write decisions in an expeditious fashion
- * Performance management agreements should exist between the Chair and members with the focus on quality decisions delivered in a timely manner

Accessibility

- * The municipal planning process and the OMB have become increasingly inaccessible to the public in terms of complexity, time, and cost
- * The OMB has itself, on occasion, displayed a hostile attitude to public participation and the limited resources of many public interest groups before it
- * FORCE quickly came face to face with the requirement and attendant implications, including cost, of incorporation in order to even be a party to a hearing before the OMB
- * The costs of legal counsel and expert analysis and witnesses necessary to make one's case at municipal council are significant
- * OMB hearing costs related to same for groups are even more staggering
- * The establishment of an "advisor" role is a reasonable idea in order to establish one central contact to assist the public regarding the OMB process
- * Increased/improved alternative dispute resolution and mediation services will also be appropriate in some cases
- * The fundamental reasons for inaccessibility have not been addressed
- * Although the paper states that the public can represent itself and does not require legal counsel nor expert witnesses, the reality is otherwise in terms of process and calibre of representation
- * FORCE believes that intervenor funding should be reconsidered in terms of OMB, Environmental Review Tribunal, and Joint Board hearings
- * The OMB could be given the authority to award intervenor funding with respect to a major hearing - i.e. Official Plan, Plan amendment, rezoning which in the opinion of the Board, affects a significant segment of the public, and concerns public interests (provincial interests) not just private interests
- * Applications would not be considered until the Board has determined that a full hearing or mediation would take place

THANK YOU

- * Thank you for opportunity to input