

THE REGIONAL MUNICIPALITY OF YORK

Planning and Economic Development Committee
February 4, 2004
Report of the
Commissioner of Planning and Development Services

BILL 26 - *STRONG COMMUNITIES (PLANNING AMENDMENT) ACT, 2003*

1. RECOMMENDATIONS

It is recommended that:

1. The Region of York advise the Province of its support for the proposed changes to the *Planning Act* contained in Bill 26 subject to the following specific recommendations:
 - a) Support the change from “have regard to” to “be consistent with” and recommend that the phrase be defined in both *The Strong Communities Act, 2003* and in the Provincial Policy Statement.
 - b) Support the increase to application time before applications can be appealed to the OMB.
 - c) Support the change in legislation to prevent appeals to the OMB for expansions or creation of urban settlement areas where not supported by municipal councils, and request the Province to actively support additional programs and initiatives such as the Regional Centres and Corridors Strategy.
 - d) Support the change in legislation to permit the Lieutenant Governor in Council to determine a final decision in matters where a proposed amendment, plans or by-law adversely affects a matter of provincial interest, subject to the Province consulting with municipalities in determining matters of Provincial interest.
2. The attached report be endorsed and submitted to the Province of Ontario as the Region of York comments on EBR Registry Number AF03E0001 and circulated to area municipalities in York and adjacent Regions for their information.

2. PURPOSE

The Province of Ontario tabled Bill 26, *Strong Communities (Planning Amendments) Act 2003* on December 15, 2003. This report reviews and comments on the proposed changes to the *Planning Act* and makes recommendations for the Region's submission to the Province.

3. BACKGROUND

Bill 26 - *Strong Communities (Planning Amendments) Act, 2003* received first reading in the legislature on December 15, 2003 and was posted on the EBR registry on December 16, 2003 for a 60 day comment period ending March 15, 2003.

During the recent Provincial election, the Liberal Party gave notice, through the party platform, of its intentions to effect changes in the practice of community growth and development in the Province. This Bill, along with other government initiatives, including Bill 27 - *The Greenbelt Protection Act, 2003* are two results of these election positions.

Ministry of Municipal Affairs staff advise that there will be a consultation process for Bill 26. Regional staff will continue to monitor the progress of the Bill and will report back to Committee and Council on an as needed basis during the process.

4. ANALYSIS AND OPTIONS

Bill 26 proposes four substantial changes to the existing *Planning Act* along with a number of smaller additions and deletions. These main changes through this Bill are:

- Require that planning decisions be “consistent with” the Provincial Policy Statement (PPS) in place of the current “have regard to”;
- Increase time for municipalities to make decisions on planning applications before appealed to the OMB;
- Prohibit appeals to the OMB of private applications for urban boundary expansions;
- Permit Cabinet to make the final decision on applications for “matters of provincial interest”.

These are each highlighted and discussed in the report sections following.

4.1 Require Planning decisions to be “consistent with” the PPS in place of the current “have regard to”

Section 3 of the *Planning Act* requires that, in exercising any authority that affects planning matters, municipalities “shall have regard to” Policy Statements issued under the *Act*. The phrase “shall have regard to” is not defined and is therefore open to interpretation.

In 2001, the Province initiated a five-year review of the Provincial Policy Statement (PPS) made under the *Planning Act*. Regional Council at its meeting of October 11, 2001 adopted Clause 4 of Report 8 of the Planning and Development Services Committee, which made recommendations to the Province regarding changes needed to the PPS. The issue of the “have regard to” clause was discussed briefly in this report.

The phrase “consistent with” was previously approved in the short-lived Bill 163 version of the *Planning Act* proclaimed by the NDP government in 1994. It has always been the

opinion of many planning professionals that this phraseology required greater adherence to the intent and wording PPS on the part of planning authorities than the “have regard to” standard. The new phrase should mean that decisions must be in *keeping with the same principles* as those expressed in the PPS and the change could result in decisions which more completely reflect the nature and direction of the Provincial Policy Statement (PPS). However in order to strengthen the meaning fully, the Province should also provide a definition of “consistent with” for inclusion within both the *Planning Act* and in the PPS. In this regard, Regional staff supports the proposed changes in Bill 26, and further recommend that the Province define the term in both Bill 26 and in the revised PPS.

Recommendation:

Support the change from “have regard to” to “be consistent with” and recommend that the phrase be defined in both the *Strong Communities Act, 2003* and in the Provincial Policy Statement.

4.2 Increase time Before Applications can be appealed to the OMB

In an effort to streamline and reduce “red-tape” the previous government had imposed strict time limitations in the *Planning Act* on the length of time municipalities had to consider a planning application before an applicant could request the OMB to intervene.

Many municipalities, including York Region, were challenged to respond to complex applications within these time frames. In some situations, it was felt that applicants used these time limitations to force local governments into hasty decisions to avoid an OMB hearing. In other cases, applicants effectively bypassed elected municipal councils as decision-makers in order to achieve an OMB hearing which might render a more favourable decision. It is likely that a number of hearings before the Board might have been avoided or issues narrowed if there had been more time available at the beginning of the process to resolve issues and disputes.

Bill 26 proposes to increase the time available for municipalities to consider applications before they can be an appealed to the OMB. Table 1 below, illustrates the proposed changes in regard to each type of planning application.

Table 1
Existing and Proposed Application Timeframes

Application	Current time before appeal	Proposed time before appeal
OP and OPAs (section 17 and 22)	90 days	180 days
SUB and CDMs (section 51)		
ZBs (section 34) Holding Bylaws (section 36)	90 days	120 days
Consents (section 53)	60 days	90 days
Deadline for municipalities to hold a public meeting in respect to a request for an amendment	65 days	repealed

It is noted that York Region refined its planning approval process to meet the 90 day requirement and currently averages less than the legislated time to process these applications (average processing time for Regional and local official plan amendment applications in 2002 was 74 days). The 90 day objective and will continue be the standard and is included as a Key Performance Indicator (KPI) in the Department's Business Plan..

Recommendation:

Support the increase to application time before applications can be appealed to the OMB

4.3 Prohibit Appeals to the OMB for Urban Boundary Expansions

As previously indicated, the current *Planning Act* permits appeal of official plan amendment and zoning by-law applications to the OMB after the minimum 90 day municipal review period regardless of whether a Municipal Council has taken a position on the application or not. In cases where an application has been requested to expand the urban boundary, this appeal mechanism has been seen as a means of pre-empting a municipality's ability to implement it's growth management strategies by making the OMB the decision makers as opposed to local councils. Significant criticism has been directed at the Ontario Municipal Board in the past several years for decisions which appear to implement private growth aspirations at the expense of publicly debated and supported directions.

York Region's Official Plan calls for the creation of compact well designed communities in order to protect our agricultural lands, rural countryside and green spaces like the Oak Ridges Moraine. Achieving these objectives means that the Region must direct a significant portion of its growth to existing urban areas. In addition to encouraging intensification within the existing built area, a key element of this growth management strategy also includes the creation of a system of Regional Centres linked by rapid transit corridors.

Bill 26, supports York Region's growth management strategy by ensuring Regional Council has the ability to prevent premature urban boundary expansions, which would undermine the Region's overall goals of encouraging intensification and building a sustainable, transit-supportive urban structure . There is also a need for the Province to take a strong and pro-active role in supporting Regional and area municipal activities to achieve this desired urban structure and to ensure an adequate supply of housing and employment lands over the longer term. This Provincial support will be necessary in advancing such Regional initiatives as the Centres and Corridors Strategy, as well as programs designed for Transit and infrastructure improvements. In January 2003, Regional Council requested the then Minister of Municipal Affairs and Housing to issue a Policy Statement under section 3 of the *Planning Act* in support of the region's centres and Corridors initiative.

This proposed change to the *Planning Act* is seen as a positive step in ensuring that municipal growth management strategies are not undermined by private aspirations and that municipally elected officials remain the decision makers in matters relating to growth and development.

The proposed change is also consistent with Action Item #23 of the GTA Agricultural Action Plan requiring holding firm urban boundaries to protect Agricultural land. This Action Plan was adopted by Regional Council at its meeting of January 22, 2004 as Clause 10 of Report 1 of the Regional Planning and Economic Development Committee.

Recommendation:

Support the change in legislation to prevent appeals to the OMB for expansions or creation of urban settlement areas where not supported by municipal councils, and request the Province to actively support additional programs and initiatives such as the Regional Centres and Corridors Strategy.

4.4 Permit Cabinet to determine a final decision where applications adversely affect Matters of Provincial Interest

In previous versions of the *Planning Act*, the Provincial government had the ability, at least 30 days before the commencement of an OMB hearing to declare matters subject to the hearing to be “matters of Provincial Interest”. In such cases, decisions made by the OMB were not final, but were submitted to Cabinet for their ratification or modification.

This provision is proposed to be re-instated through Bill 26.

While the Province is not limited in its ability to decide which matters could adversely affect matters of “Provincial interest”, previous experience with this clause indicates that its use was on those rare occasions where wider Provincial initiatives and strategies were at risk by the subject before the Board.

The Government of Ontario appears intent on directing matters relating to growth management and protection of essential green spaces. As such, the change proposed may be of benefit in implementing these strategies. As an example, the Region could benefit by the Province declaring an interest in the Centres and Corridors Strategy through supportive Provincial Policy (see section 4.3 above) and financial tools and programs. It will be important for the Province to engage in a dialogue with municipalities so that the Province understands the priorities and objectives of municipalities and that all parties understand the breadth of the Province’s interests. Further there is a need to ensure that when exercised, the review does not add significant time to the process for development approvals where such approvals are appropriate.

Recommendation:

Support the change in legislation to permit the Lieutenant Governor in Council to determine a final decision in matters where a proposed

amendment, plans or by-law adversely affects a matter of provincial interest, subject to the Province consulting with municipalities in determining matters of Provincial interest.

4.5 Relationship to Vision 2026

Vision 2026 contains eight goal areas, of which changes to the *Planning Act* proposed through Bill 26, along with other Provincial initiatives will indirectly support three goals. These are Quality Communities for a Diverse Population, Enhanced Environment, Culture and Heritage, Managed and Balanced Growth. The Provincial Direction on these initiatives is mirrored at the Regional level through a series of Regional strategies and actions including, Centres and Corridors (currently under discussion), Transit and Growth Management.

5. FINANCIAL IMPLICATIONS

In the past several years, York Region has been involved in a number of high profile and ultimately costly OMB hearings. The changes proposed through this legislation as well as other government initiatives at the Provincial and Regional level may assist in reducing the need for lengthy and costly hearings.

As well, the Provincial government direction for greater involvement in strategic growth management will assist the Region in achieving our growth management initiatives

6. LOCAL MUNICIPAL IMPACT

Area municipalities may also benefit from clearer rules and the limitations placed on OMB appeals by this proposed Bill.

7. CONCLUSION

The proposed changes to the *Planning Act* effected through Bill 26 – *Strong Communities (Planning Amendment), 2003* are consistent with the governments' intentions to assume a greater role in growth management and development. It is recommended that the proposed changes be supported by Regional Council, subject to the specific recommendations highlighted throughout this report. A copy of this report will be forwarded to the Ministry of Municipal Affairs in response to EBR Registry Number AF03E0001 and circulated to area municipalities in York and adjacent Regions for their information.

The Senior Management Group has reviewed this report.

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