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PROPOSED BILL 51 THE PLANNING AND CONSERVATION LAND STATUTE LAW AMENDMENT ACT, 2005

The Planning and Economic Development Committee recommends the adoption of the recommendations contained in the following report January 30, 2006, from the Commissioner of Planning and Development Services, and the following additional recommendation:

5. The resolution of Council adopted on January 26, 2006 regarding “Places to Grow – Proposed Growth Plan for the Greater Golden Horseshoe, November 2005” be forwarded to the Ministry of Municipal Affairs and Housing and the local municipalities as part of the Region’s comments. (Clause 6, Report 1, Planning and Economic Development Committee)

1. RECOMMENDATIONS

It is recommended that:

1. The Region advise the Province of its support for its continuing efforts to provide municipal tools to support Provincial initiatives, subject to requested modifications to provisions detailed in Section 4.4 of this report.
2. The Region advise the Province that a number of the tools and process changes which will facilitate implementation of Provincial and Regional initiatives, have not been provided, including:
 - a. Additional financial tools to proceed with intensification in Centres and Corridors development including TIFs and *Development Charges Act* changes.
 - b. A streamlined planning and environmental approvals process applying in Centres and Corridors and Key Development Areas and to infrastructure projects to support an intensified development pattern.
 - c. Exemption from OMB appeal for intensification projects in Centres and Corridors and Key Development Areas.
 - d. Legislated as-of-right second suites.
 - e. Changes to OMB appointments as detailed in previous Council reports.
3. This report and *Attachment 1* be adopted and submitted to the Ministry of Municipal Affairs and Housing in response to EBR posting AF05E0001 as York Region’s comments on Proposed Bill 51 - *The Planning and Conservation Land Statute Law Amendment Act, 2005*.

4. The report be circulated to area municipalities, adjacent Regions and the City of Toronto for their information.

2. PURPOSE

The purpose of this report is to advise Committee and Council of the changes proposed through the *Planning and Conservation Land Statute Law Amendment Act, 2005* and provide comments to the Province in accordance with the EBR deadline of February 26, 2006.

3. BACKGROUND

3.1 The Changing Context of Planning in Ontario

Since the current Provincial government came into office in the fall of 2004, it has proceeded with a series of initiatives, Statutes and Plans which have the effect of profoundly changing the way planning and development occurs in the Province.

The focus of Bill 51 and other government initiatives involving planning, growth and development is to provide maturing urban areas with the tools to effect changes to the urban structure and advance city-building. These changes are tied to stronger Provincial Policy to which municipal Councils must conform in their decision-making.

This changing Provincial Planning framework includes:

- *The Oak Ridges Moraine Conservation Act, 2001* and Oak Ridges Moraine Conservation Plan (proclaimed under the previous Provincial government)
- *The Greenbelt Act, 2005* and Greenbelt Plan
- *The Places to Grow Act, 2005* and the Proposed Growth Plan for the Greater Golden Horseshoe
- *Bill 26 – The Strong Communities (Planning Amendment) Act, 2004* and Planning Reform
- New Provincial Policy Statement (PPS)
- Ontario Municipal Board Reforms
- Proposed *Clean Water Act* and other source water protection initiatives.

As part of these ongoing changes, in December 2005, the Honourable John Gerretsen, Minister of Municipal Affairs and Housing, announced further changes to the planning and development process in Ontario, through the proposed *Planning and Conservation Land Statute Law Amendment Act, 2005*. This statute was given first reading in the Legislature on December 12, 2005.

The intent of the Bill is to modify aspects of the *Planning Act* and other ancillary Acts to provide additional tools to implement Provincial policies and on-going initiatives such as

the Growth Plan for the Greater Golden Horseshoe and Ontario Municipal Board Reforms and give further support to sustainable development, intensification and brownfields redevelopment.

4. ANALYSIS AND OPTIONS

The proposed *Planning and Conservation Land Statute Law Amendment Act, 2005*, contains a number of improvements which will provide the municipalities with additional tools (though not all tools required) to implement the changing development pattern desired by the Province and streamline the disposition of applications under appeal to the Ontario Municipal Board.

Attachment 1 to this report contains the detailed list of the changes along with staff comments. The changes proposed through this Bill, can be divided into three key areas of change:

- Implementing *Places to Grow- The Growth Plan for the Greater Golden Horseshoe*
- Planning Process Changes
- Ontario Municipal Board Reform

The key provisions contained in Bill 51 are discussed in Sections 4.1 through 4.3 following. Finally, several proposed changes are likely to be somewhat problematic to the Region. These are highlighted in section 4.4 along with recommended modifications.

4.1 Implementing Places to Grow

Overall Effect of Proposed Changes:

The Region has, on several occasions, provided detailed comments to the Province on the Proposed *Places to Grow – The Growth Plan for the Greater Golden Horseshoe*. The changes included through Bill 51 respond to several of the requested changes, but not all.

There is still a need for the Province to provide additional tools including TIFs, *Development Charges Act* changes and financial tools to assist the Region and area municipalities in facilitating development in Centres and Corridors.

The key changes provided through Bill 51 are:

4.1.1 Provincial Interest Expanded

Bill 51 proposes to expand the list of Provincial Interests in Section 2 of the *Planning Act* to include sustainable development, to support public transit and be oriented to pedestrians.

Staff Comment

These proposed changes are consistent with directions in the PPS and Places to Grow, however the term “sustainable development” remains undefined in both documents. Regional staff supports this Bill 51 change, but suggests the Province consider defining the term “sustainable development” in order to assist approval authorities in determining the extent of the Provincial Interest.

4.1.2 Decisions to be Consistent with or Conform to Provincial documents when approved

Proposed changes require that municipal and provincial planning decisions and documents must be consistent with provincial policy statements and conform to provincial plans in existence when the decisions are made or the documents are issued.

Staff Comment

Although there have been a few notable exceptions, generally decisions on applications have been made based on the Planning regime in place at the time the application was made, not necessarily the Planning regime as it has evolved and improved at the point the decision was made. This has lead to situations where older applications could be approved that would not comply with current Provincial Policy Statements (PPS) (whose date of application was March 1, 2005) and Provincial Plans such as the Oak Ridges Moraine Conservation Plan (whose date of application was December 16, 2001). While this proposed change to the *Planning Act* removes this possibility and requires consistency with planning policy current to the date of the decision, there will be transition provisions applied to applications in process when the Act comes into force. The effect of this new policy may therefore be somewhat limited, applying to new applications but not those older applications currently under review.

This proposed change will bind Regional and local Councils as the “approval authority” on applications and also binds the OMB and other tribunals.

4.1.3 Upper-tier Community Improvement Plan Involvement

Section 28 of the *Planning Act*, dealing with Community Improvement Plans, is proposed to be expanded to permit upper-tier municipalities to establish community improvement plans for prescribed purposes and to allow municipalities at each level to participate financially in the other level’s community improvement plans.

Staff Comment

The Region’s adopted Centres and Corridors Strategy as well as the Regional Planning Commissioners of Ontario (GTA Caucus) report, “Centres and Corridors Growth Management in the GTA” calls for a coordinated Provincial effort to ensure that the Places to Grow urban strategy is realized. Both documents call for a number of Provincial actions:

- Direct Provincial infrastructure investment particularly in transit and affordable housing.
- *Planning Act* revisions that allow for “as of right” mixed use development in fully approved Centres and Corridors secondary plans.
- Provincial financial tools such as TIFs, *DC Act* revisions and Community Improvement Area revisions.
- Examination of the Corporate and Property Tax regimes with a view to promoting mixed use development and investment in Centres and Corridors

Regional Council at its meeting of November 17, 2005 adopted Clause 1 of Report Number 9 of the Regional Finance and Administration Committee reaffirmed its support for tax increment financing (TIFs) subject to the Province’s financial participation, as one of a suite of optional funding tools to assist the Region in meeting its urban structure objectives. Regional staff support this proposed change to the *Planning Act*, but advise further information and clear criteria within the Regional Official Plan will also be needed to determine where and what level of involvement is appropriate at the Regional level. However, the development of TIF legislation would appear to provide the basis for Regional involvement in Community Improvements Plans.

In addition, Regional staff recommends that Regulations prescribing upper tier involvement include, among other things, brownfield’s redevelopment, as well as activities to support Regional interests and implementation of Provincial Plans. A recommendation to this effect has been added to Section 4.4 of this report.

4.1.4 Clarification of Density Provisions

The Bill clarifies that municipalities’ power to regulate the density of development includes power to regulate minimum and maximum height, and minimum as well as maximum density. Municipalities are authorized to impose conditions on zoning.

Staff Comment

These proposed changes are intended to assist municipalities in intensification areas and implement changes to the Provincial Policy Statement approved in March 2005. In addition, this change supports policies in the Regional Official Plan relating to growth and development in our Centres and Corridors. Regional staff supports this *Planning Act* change, but notes that Council on October 11, 2001 and again in 2004, in discussing Planning Reforms identified that the establishment of minimum densities should be reflected as Provincial Policy to achieve the stated growth management objectives.

4.1.5 Expansion of Site Plan Provisions

The proposed changes allow municipalities to regulate matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their “sustainable” design, but only to the extent that it is a matter of

exterior design, and if the official plan and a by-law contain provisions relating to these matters.

Staff Comment

Regional staff and Council has identified the need to provide a higher level of urban design when dealing with intensification development. These changes will permit greater detail to be paid to the architectural elements associated with buildings to create more liveable communities. Regional staff supports this change. It would also have been helpful if the Province had provided some guidelines as to its definitions of “sustainable design”.

4.1.6 Second Suites

The proposed changes in Bill 51 allow municipalities to establish second unit policies in their official plans and zoning by-laws as of right, without appeal of the decisions to the Ontario Municipal Board, except where the policies are adopted as part of the 5-year review process, in which case they may be subject to an appeal.

Staff Comment

Regional Council in its comments on affordable housing and intensification has previously identified the need to provide for second suites as-of-right. The changes proposed through Bill 51 are consistent with the Region’s previous positions; however, the onus for proceeding with the prerequisite municipal official plan policies and zoning provisions is on the area municipalities as opposed to a legislated Provincial requirement for second-suite options. Regional staff is of the opinion that a legislated requirement for these would have been more efficient and equitable to ensure provision of this necessary affordable housing form.

Further, Bill 51 proposes that the inclusion of second-suites policies in Official Plans and Zoning By-laws not be subject to appeal, unless they are included in planning documents as part of the municipalities 5-year review exercise when appeal provisions would apply. Regional staff is of the opinion that regardless how second-suite policies are included, they be exempt from appeal. A recommendation to this effect is included in Section 4.4 of this report.

4.1.7 EA undertakings for Energy may be exempted from Planning Act

Proposed Bill 51 also contains provisions to permit Cabinet, through Regulations, to exempt Environmental Assessment undertakings for energy from *Planning Act* approvals.

Staff Comment

This streamlining is intended to be consistent with the Province’s desire to move to more sustainable and “clean” energy production and would support the Region’s initiatives regarding wind power generation. Regional Planning Committee raised several questions regarding this provision, relating to the types

of energy undertakings that might be exempted, including energy from waste incinerators and natural gas powered generation facilities.

Ministry staff have advised that there has been no formal articulation of what types of energy facilities might be included in the Regulation, however, Regional staff is of the opinion that at the outset, only exemptions reflecting wording similar to that used in the Greenbelt Plan, 2005, i.e. “renewable “green” energy systems such as wind and solar power generation and transmission facilities”, should be considered.

Additional changes may also be required to the *Environmental Assessment Act* and regulations there under to ensure that such proposals, if undertaken by private as opposed to public utility companies, would be subject to the *Environmental Assessment Act*, particularly if these enterprises were to be conducted on a larger scale. The environmental assessment should be comprehensive (i.e. not a Schedule A Class EA) in order to permit a proposed assessment of impacts, but there should also be consideration of the compatibility of the proposed enterprise with surrounding land uses.

It is although worthy to note, that this proposed legislative change, takes approval and construction of such facilities out of the hands of municipal decisions makers and the OMB. The only appeal recourse would be bump-up requests to the Minister of the Environment.

Regional staff therefore recommends that the regulations identifying exempt undertakings when drafted, be subject to wide public review and comment in order to protect the public interest. This has been included in section 4.4 of this report.

4.2 Process Changes

Overall Effect of Proposed Changes

The overall intention of these changes is to streamline processing of *Planning Act* applications at the municipal level, however, several of the changes add additional, and potentially unnecessary steps in the process. These are identified but not supported by Regional staff.

4.2.1 Municipalities may establish optional local appeal bodies for Variances, Consents and Conditions

The proposed changes through Bill 51 permit municipalities that meet the minimum prescribed requirements to establish optional local appeal bodies that would deal with variances, consents and conditions arising from those applications instead of the Ontario Municipal Board.

Staff Comment

The issue of minor variances and consents and the appeal procedures has been a significant issue in the City of Toronto, where much of the infill development proceeds by or requires this type of relief. Thus the major benefit to these changes is unlikely to be in the Region at this time. As we move towards a more intensive form of development in our urban areas and Regional Centres this type of provision may be a useful streamlining tool for area municipalities as Regional Council has delegated the responsibility for consent granting to the area municipalities. Regional staff supports this change.

4.2.2 Public Notice Provisions Increased

Public notice, information and consultation requirements for Official Plans and Zoning By-laws and Amendments to them are proposed to be increased. If proclaimed, these changes will require at least one public open house to be held at least 7 days before the statutory public meeting. The notice provisions for the Public Open House are the same as for a statutory public meeting.

Further proposed changes to Section 17 of the *Act* indicate that if a person (who is not a public body) does not make written or oral submissions to the Council before a plan under section 17 is adopted, then they are not entitled to appeal the Council decision.

Staff Comment

The proposed change will require a public open house be held before the statutory public meeting for official plan and zoning bylaws, amendments to them and applications to amend these documents. While the *Act* still contains the ability for official plans to establish alternative notice provisions on these applications, there does not appear to be a way to reduce the need for the public open house even for minor technical amendments.

This additional step is unnecessary as in most cases, the *Planning Act* requirements for notice are exceeded by municipalities. Further the addition of a mandatory public open house to an already cumbersome process, is contrary to the Regional Council position requesting the Province to streamline planning and environmental approvals. Regional staff therefore recommends that the proposed change requiring the public open house be deleted from the Bill and that current notice provisions either as required by the *Planning Act* or as modified through alternative procedures in Official Plans be maintained.

The requirement that individuals show prior involvement in applications to maintain their right of appeal should ensure that comments are made early in the process and are not frivolous or delaying tactics. Regional staff support this proposed change. Regional staff should ensure that the new provisions are reflected in Regional notices published after Bill 51 comes into effect.

4.2.3 OP 5-year Review Provisions Increased

Section 26 of the *Act*, dealing with the 5-year review is also proposed to be rewritten to strengthen and clarify the requirement to update official plans with respect to provincial plans, matters of provincial interest, provincial policy statements and designated areas of employment.

Staff Comment

The current *Planning Act*, for Official Plan 5-year reviews requires that municipalities hold a public meeting and report on the need for changes to the Official Plan. The proposed changes will require that the Plan be updated to conform with provincial plans, have regard to matters of provincial interest and be consistent with, provincial policy statements. In addition, where an Official Plan contains policies relating to areas of employment, the five-year review will need to specifically review the employment area designations and policies and confirm or amend them as required as part of the 5-year review.

In York Region, official plan updates to improve the Policy framework and incorporate new directions have been part of the continuous improvements of the Official Plan. Regional Amendments relating to updated population and employment forecasts, human services planning, transportation initiatives and Centres and Corridors have all proceeded in this manner, outside of the 5-year review framework. Since the principle of continuous improvements is part of the Official Plan management, this proposed *Planning Act* change is not anticipated to have major impact in this Region, since we undertake this process at this time.

4.3 OMB Reform

Overall Effect of Proposed Changes:

The proposed changes to OMB processes are intended to provide for more democratic decisions and streamline the conduct of hearings and reduce the range and volume of matters that may be appealed to the Board. This will result in a better OMB, however, the Bill clearly reflects the government's intention that municipal and Regional Councils' in their "approval authority" capacity will be responsible for the implementation of Provincial Policy.

4.3.1 OMB Decisions to have regard to Municipal Council Decisions

The addition of this section clarifies that Ontario Municipal Board OMB decisions must have regard to decisions made by municipal councils and approval authorities.

Staff Comment

Significant criticism has been made in the past when Ontario Municipal Board decisions on applications appeared not to give appropriate weight to previously made decisions of Municipal Council and other approval authorities. This proposed change to the *Planning Act* requires that municipal council decisions be considered in Board decisions. Regional staff supports this change.

4.3.2 No Appeal to the OMB Situations

Official Plan and Zoning appeals to the Ontario Municipal Board involving the reduction of designated areas of employment are prohibited.

Staff Comment

Bill 26, a previous *Planning Act* amendment statute, established situations where no appeals to the OMB were permitted from a council decision refusing or failing to deal with an application for OPA or ZB to alter settlement area boundaries, and establish new settlement areas.

The change proposed through Bill 51 adds references to loss of employment land designation to the list of issues where no appeal is permitted.

Loss of employment land has become a critical issue in many parts of the Province and may become an issue in York Region where demand may outstrip supply in several municipalities. This proposed change removes the ability of the Ontario Municipal Board to re-designate these sites to other uses. Regional staff supports this change.

4.3.3 New Information Presented at OMB Hearings Limited

This addition to the *Planning Act* generally prevents Ontario Municipal Board hearings dealing with Official Plans, Zoning By-laws and Subdivisions from considering additional information that was not available to the municipal council, whose decision is appealed.

Staff Comment

There have been a number of instances in the past where significant amounts of new information, not previously available to assist Municipal Councils in their review of applications and their decision making, has been generated in the course of preparation for Ontario Municipal Board hearings. While the provision of additional information at the front end of the process, before a decision is made, may have impacts on staffing and resources at the municipal level, this change should permit more comprehensive review of the application initially.

Ultimately, this change may have a significant impact on the conduct of Ontario Municipal Board hearings and ensure that Councils are fully apprised of information to assist their decision making. Regional staff supports this change.

4.4 Issues and Recommended Modifications

The first principle in changing the *Planning Act* should be to streamline the process to assist in city building. Several of the proposed changes will not have this effect and require further consideration. Of the proposed *Planning Act* changes highlighted in sections 4.1 through 4.3 or as detailed in *Attachment 1* to this report, several proposed *Planning Act* changes should be re-considered. These are:

4.4.1 Community Improvement Plan Involvement by Upper-Tier

Section 28 of the *Planning Act*, is proposed to be expanded to permit upper-tier municipalities to establish community improvement plans for prescribed purposes. Regional staff support this change and recommend that Regulations identifying the range of upper-tier involvement include, among other things, brownfield's redevelopment, as well as activities to support Regional interests and, implementation of Provincial Plans.

4.4.2 Public Open House in Advance of Statutory Meeting

Regional staff recommends that the Province remove this proposal from the legislation and permit Official Plans to determine the means of obtaining public input on applications.

4.4.3 Second Suites not generally subject to appeal

Regional staff support the proposed change that second suite OP policies and ZB's not be subject to appeal, but Bill 51 goes on to propose that where second-suites policies are included in Official Plans through a 5-year review exercise, they then may be subject to appeal provisions. Regional staff is of the opinion that regardless how second-suite policies are included in Plans and by-laws, they should be exempted from appeal to the OMB. This exemption would encourage the provision of this affordable housing option.

4.4.4 Energy Undertakings exempt from Planning Act

Regional staff recommends support for this change however, there may be issues with the type of projects which may be included in the exempting regulation.

Regional staff is of the opinion that at the outset, only exemptions reflecting wording similar to that used in the Greenbelt Plan, 2005 i.e. renewable "green" energy systems such as wind and solar power generation and transmission facilities, should be considered. Regional staff further recommends a comprehensive review of the regulation, prior to its approval and that the exemption be limited to "renewable "green" energy systems such as wind and solar power generation and transmission facilities" that have been approved under the EA process as a first step.

4.4.5 Other

In addition to the above there are additional changes which are required to provincial statutes including, the *Development Charges Act* (specifically dealing with transit and EMS calculations as part of the DC charge) and the *Environmental Assessment Act*, to streamline approvals and support and facilitate the implementation of recent Provincial growth management initiatives. These changes have been articulated to the Province on numerous occasions over the past several years.

5. FINANCIAL IMPLICATIONS

The proposed changes to the *Planning Act* will in most cases assist in implementing the Province's vision for development in Ontario and implementation of Places to Grow. Additional costs associated with these changes are difficult to assess, however, Regional staff is of the opinion that the changes requiring an additional public open house will increase the costs of processing applications.

6. LOCAL MUNICIPAL IMPACT

The proposed *Planning Act* changes have the greatest impact at the area municipal level. Among other elements these proposed changes will allow area municipalities to:

- Provide OP criteria on information required for complete application
- Have Community improvement policies in OP's
- Adopt By-laws to regulate density of development and minimum and maximum height
- Adopt amendments to site plan control bylaws to govern architectural elements as defined in the *Planning Act*
- Adopt Official Plan policies and By-laws for second suites
- Give the ability to appoint appeal boards for minor variances, consents etc. if minimum regulations are met
- Adopt alternative notice provisions for OP's, ZB's and Subdivisions in Official Plan
- Require comprehensive 5-year review OP work plan and adoption of updated policies
- Adopt additional elements that may be included in Official Plan

7. CONCLUSION

Regional staff has reviewed the provisions of Proposed Bill 51 and for the most part supports their direction and the intent. A number of the provisions, as identified in Section 4.4 of this report are somewhat problematic and recommendations for changes or requests for clarification have been identified.

It is recommended that:

1. The Region advise the Province of its support for its continuing efforts to provide municipal tools to support Provincial initiatives, subject to requested modifications to provisions detailed in Section 4.4 of this report.
2. The Region advise the Province that a number of the tools and process changes which will facilitate implementation of Provincial and Regional initiatives, have not been provided, including:
 - a. Additional financial tools to proceed with intensification in Centres and Corridors development including TIFs and *Development Charges Act* changes.

- b. A streamlined planning and environmental approvals process applying in Centres and Corridors and Key Development Areas and to infrastructure projects to support an intensified development pattern.
- c. Exemption from OMB appeal for intensification projects in Centres and Corridors and Key Development Areas.
- d. Legislated as-of-right second suites.
- e. Changes to OMB appointments as detailed in previous Council reports.

It is further recommended that this report and *Attachment 1* be adopted and submitted to the Ministry of Municipal Affairs and Housing in response to EBR posting AF05E0001 as York Region's comments on Proposed Bill 51 - *The Planning and Conservation Land Statute Law Amendment Act, 2005* and circulated to area municipalities and adjacent Region's for their information.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)