277

SUBMISSIONS OF THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION TO THE STANDING COMMITTEE ON RESOURCES DEVELOPMENT REVIEWING BILL 20, *THE LAND USE PLANNING AND PROTECTION ACT*

Publication #277
ISBN# 978-1-77189-450-0

Prepared by
Kathleen Cooper, Researcher
Canadian Environmental Law Association
February 1996

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The changes to the Planning Act as set out in Bill 20, the so-called "Land Use Planning and Protection Act" are regressive in many respects. If passed, this Bill will remove essential planning tools and thereby contribute to continued environmental damage, urban sprawl and renewed delays in the planning process. The Bill will also contribute to excessive costs as a result of both delay and conflict during the planning process and as a result of bad planning decisions.

The need to reform land use planning in Ontario was well known in the late 1980s. Much of this controversy surrounded the inability of the system to adequately address environmental concerns. After four years of exhaustive consultation, the planning reform package of the previous Ontario government represented a broad consensus and a valuable step forward.

Bill 20 reverses those reforms and in particular removes reforms that were broadly supported by citizens' and environmental organizations with extensive experience in the land use planning system. In addition to the views and experiences of these citizens, repeated opinion polling of the population at large shows continued high levels of support for environmental protection through vigorous enforcement of environmental laws as well as a willingness to see more money spent on environmental protection even during times of economic difficulty. There is widespread recognition in the public at large and in the scientific community of the need to reverse environmental degradation, of the intrinsic value of biological diversity and of the necessity for environmental health as a basis for a healthy economy. There is similar broad consensus on the need to control the environmental impacts and excessive costs of urban sprawl and scattered rural development.

These widely held views did not escape the authors of Bill 20. However, the importance of environmental protection only survived into the title of the Bill. In fact, the word "protection" in the title is a misrepresentation of the content of the Bill and the associated, retrograde changes to provincial policies. Rather, the government appears to have tried to apply a false green veneer over a pattern of amendments that favour the exclusive interests of the development industry and those municipal interests that support the views of the development industry.

More important however, under this false veneer, the stated goal of streamlining and saving money in the planning system will not be met by Bill 20. Instead, renewed confusion over both the status and the content of provincial policy will contribute to the frequency and length of Ontario Municipal Board hearings and the excessive public costs of bad planning decisions. With the loss of clarity there is a loss of effective planning tools. Put simply, Bill 20 strips municipalities of the tools to say no when they need to and mean it. The system will return to the bad old days of site-specific battles each time a development application comes along. For example, if a municipality wants to disallow development that could degrade environmentally significant natural areas, they will face developer challenges at the OMB. If, on the other hand, a municipality choses to approve such developments, citizens will very likely object and, if possible with limited resources, a reduced provincial role and no intervenor funding, mount an appeal to the OMB. The government appears to be under the impression that if it

strips out environmental protection tools, then public concern and motivation to protect the environment will also disappear. This impression is sadly mistaken and the inevitable result will be community discord and costly delay.

Bill 20 also removes important quality control measures concerning Official Plans. There will no longer be a definition of an Official Plan in the Act and the ability to prescribe the contents of Official Plans is deleted. Add this vagueness to the ability to process a private Official Plan amendment in 90 days and Ontario will see a return to the days of being able to criticize an Official Plan as being neither "official" or a "plan".

Bill 20 also deletes important planning tools to curb urban and rural sprawl and ensure public involvement in planning decisions.

Ontarians need only look to the recent past for numerous examples of poor land use planning that arose out of the planning system that Bill 20 substantially reinstates. With the renewed ability to ignore Provincial policies and the severe weakening of the policies themselves (in the proposed "Provincial Policy Statement") the lengthy and costly OMB hearings that occurred over the Eagle Creek golf course development in West Carleton, the Sydenham Mills estate residential housing proposal in Grey County, and other examples of poor planning decisions will now be able to be repeated from Kenora to Cornwall.

With the removal of effective planning tools to protect the environment and curb sprawl, the residents of Ontario can expect to see more roads, more traffic, more traffic accidents, (and continued burgeoning social costs associated with those accidents), more severe smog events and a continuation of the alarming trend of increased hospital admissions for respiratory problems during smog events, especially among children. Ontarians can also expect to see more planning disputes over aggregate extraction in rural areas, the continued inability to provide efficient public transit, continued fragmentation, degradation and/or loss of our dwindling natural heritage, and above all higher taxes and user fees to pay for the well-known inefficiencies of sprawl. All of this will occur so that the supposed free market forces unleashed by relaxing planning controls can be free to offer consumers "choice" in the marketplace; the choice, that is, of the mind-numbing sameness of inefficient and expensive "cookie-cutter" residential and commercial sub-divisions that surround just about every city and town in Ontario.

The blinkered oversimplification of land use planning evident in Bill 20 and the proposed "Provincial Policy Statement" is stunning. The return to a planning system with vague rules that can be ignored is no answer to the development industry's desire to recover from the recent difficult years of recession. There must be more to planning in Ontario than a misguided attempt to craft a system that will very likely please nobody. Bill 20 and the proposed "Provincial Policy Statement" should be withdrawn.

1.0 INTRODUCTION

The Canadian Environmental Law Association (CELA), founded in 1970, is a non-profit, public interest organization specializing in environmental law and policy. CELA's involvement with casework and law reform activities in land use planning matters extends back more than fifteen years in Ontario. In 1990, CELA staff helped to form the Land Use Caucus of the Ontario Environment Network. Through the Caucus, over 90 citizens' and environmental groups from across Ontario have maintained communication links and coordinated extensive joint activities on independent caucus initiatives and in response to government consultations. Member organizations of the Land Use Caucus operate in communities across the Province and possess considerable experience with the land use planning process.

Citizens' and environmental groups participated with hundreds of other organizations and thousands of individual citizens in the planning reform effort undertaken by the previous Ontario government. Four years of consultation hammered out a consensus among the many stakeholders. Bill 163 and the *Comprehensive Set of Policy Statements* updated the system to provide a positive direction for land use planning in Ontario.

These reforms are now to be swiftly and dramatically changed by Bill 20 and the proposed "Provincial Policy Statement". Numerous provisions that would have helped ensure environmental protection, compact development patterns and efficient up-front planning have been either seriously weakened or stripped out. These changes are not supported by the majority of Ontarians and they run contrary to views expressed by the Ontario Auditor General, by research conducted for the Golden Commission and by conventional economic views on the cost of urban and rural sprawl as expressed by the Bank of America and many other commentators.

The changes proposed in Bill 20 and the associated Provincial Policy Statement smack of political favouritism intended to contribute short term economic benefits to the development industry. Even this short-sighted objective may be thwarted by the delays that will inevitably result from these changes as well as our collective inability to pay for the excessive cost of bad planning. In short, the proposed changes to the planning system will have profound negative consequences on the environment, quality of life and the economy of Ontario.

2.0 THE NEED FOR REFORM

Throughout the latter half of the 1980s calls for planning reform came from all quarters. Many thorough reviews and news reports concluded that the planning system was seriously deficient; it lacked environmental integrity, the public was alarmed by many cases of actual

and perceived corruption and mismanagement and the system suffered from excessive delay[1]. Calls by many members of the public for designation and/or stiffer application of the *Environmental Assessment Act* to development and infrastructure proposals helped to shine a spotlight on the problems but offered little in the way of direct assistance and indeed caused further delay.

The Crombie Commission's review of environmental problems with land use planning recommended the establishment of a Commission of Inquiry. The Rae government responded in 1991 with the Sewell Commission and so began one of the most extensive public consultation processes ever seen in Ontario. After four years of inclusive public debate and compromise, the final reform package proclaimed in March of 1995 represented a broad consensus.

2.1 Public Support for Bill 163 and the Comprehensive Set of Policy Statements

The reform package earned the support of citizens' and environmental organizations for several reasons. First, the *Planning Act* was amended to clarify that policy would have to be taken seriously by all players in the process, including the Province. The policies themselves were also clarified. The prior patchwork of policies and guidelines was simplified and most important, made comprehensive by filling huge gaps in the area of environmental protection. Public support depended upon the strength of the policies to protect the environment. The key element that earned this support was the "no means no" prohibition on development in certain natural heritage features and areas. Finally, a policy was in place where no would mean no; it would no longer mean "maybe" or "later".

Some of the most controversial land use planning disputes of the 1980s had been over lack of clarity in the rules (see "examples of bad planning" below). The new Act made it clear that provincial interests, as expressed through policy, need to be reflected in land use planning decisions. With clearer status for Provincial Policy and effective policy tools to be able to say no to environmentally unsound development, the goal of up front planning could be achieved; the days of protracted site-specific battles over every development application could end or at least be greatly alleviated. Developers and citizens alike could know in advance, through their participation in the municipal planning process, where a community would grow and where

---

[1] See for example: Report #38 of the Environmental Assessment Advisory Committee (EAAC), *The Adequacy of the Existing Environmental and Planning Approval Process for the Ganaraska Watershed*, 1989, 44 pp., and Report #41 of EAAC, *Environmental and Planning Approvals in Grey County*, 1990, 51 pp.; three reports of the Royal Commission on the Future of the Toronto Watershed: *Watershed*, 1990, 207 pp., *Planning for Sustainability: Towards Integrating Environmental Protection into Land-Use Planning*, 1991, 101 pp., and *Regeneration*, 1992, 530 pp.; see also the series of nine articles about planning issues in York Region done by investigative reporters at the *Globe and Mail*, October 26, 27, 28, 29, 30, 31, November 1, 2, 3, 1988; a series of similar articles about planning issues in the City of York, August 16, 1990, March 25, 1991, May 15, 7, 1991, October 31, 1991 and November 1, 1991; and a review of rezoning issues on Bay Street in Toronto, December 12, 1987.

environmental features would be protected. A quality control measure in the reform package that earned broad public support was the ability to regulate the contents of official plans. Similarly, the package included a requirement for, and a degree of quality control over the contents of, Environmental Impact Studies to assess the environmental acceptability of development proposals adjacent to sensitive natural heritage features and areas. Further streamlining measures were introduced to regulate time limits throughout the planning process while maintaining opportunities for public involvement.

The final package was not perfect; the policies suffered from lengthy and poorly written implementation guidelines that were often misconstrued or misrepresented as mandatory regulations. The guidelines needed to be rewritten and a process was in place to continue that work. As well, much work was needed to educate all players in the details of the new system. An education and training package was initiated and, by many accounts, well received. Criticisms of the package ought to have been dealt with at the level of implementation and the five year review of the entire system would have been prudent.

Broad consensus existed that the basic model was sound. Nevertheless, on the basis of pressure from development and some municipal interests and with no other meaningful consultation, the new government has decided to completely dismantle the reform package and return Ontario to a planning system largely unchanged from the mess that pre-existed the reform effort.

2.1.1 "A Present Imperative" - Ecologically-Sound Land Use Planning

The need to bring environmental integrity to the land use planning system in Ontario is captured succinctly by the following words of the Ontario Ministry of Natural Resources:

> The natural landscapes of southern Ontario have been altered and fragmented since settlement to meet the need for economic and social development of the province. In many areas, the natural features of the landscape are now reduced to - and below - the threshold levels needed to sustain themselves...
>
> A present imperative is to exercise more ecologically-sound land-use planning. This requires a more sympathetic understanding of the ecological processes and components of the native landscape...
>
> Studies in landscape ecology, conservation biology and restoration ecology have had a special focus on disturbed ecosystems and fragmented landscapes typical of those dominating southern Ontario. Basic strategies for conserving natural landscapes in [the] settled south include landscape retention, landscape restoration, and ecosystem replacement. Key to these strategies is the identification and protection of core conservation lands, natural corridors and countryside, and restored connecting links, at scales ranging from individual species to whole landscapes.

> As is the case on such landscapes around the world, public environmental concern is with issues like biodiversity, sustainable use and natural heritage, which individually express different facets of economically-responsible environmental protection of the natural ecosystems of the world's landscapes.
>
> Biodiversity is a concept expressing the diversity of reproductive life on the planet, and the diversity of ecological processes and dependencies that endow ecosystems with their infinite and evolving forms. Biodiversity expresses a key problem of science as a whole, to chart and portray the full texture of genetic, species, ecosystem and landscape diversity.
>
> There are numerous challenges in landscape-level planning, if we are to ensure that the indigenous biodiversity of a region is maintained and, where degraded, restored.[2]

These statements provide context for the concerns expressed by public interest environmental and citizens' groups throughout the four years of consultation on planning reform. The loss of biodiversity that has occurred in Ontario is reflected in a startling statistic: almost 50 per cent of the threatened and endangered species, subspecies and populations in Canada are from the Great Lakes-St. Lawrence Life Zone.[3] This statistic greatly underestimates the full extent of the problem since only a small proportion of rare, threatened or endangered species are actually on the official list generated by COSEWIC (the Committee on the Status of Endangered Wildlife in Canada).[4] The intrinsic value of maintaining biodiversity has been well documented.[5] Similarly, diversity in the gene pool, species and ecosystems provides the

---

[2] Ontario Ministry of Natural Resources, 1994. *The Natural Heritage of Southern Ontario's Settled Landscapes - A Review of Conservation and Restoration Ecology for Land-Use and Landscape Planning.* pp. 66-67.

[3] Government of Canada, *The State of Canada's Environment.* Ottawa: 1991. pp. 6-11 - 6-12. The Great Lakes-St. Lawrence Life Zone includes the roughly triangular area of land running south from Tobermory to Lakes Erie and Ontario and east from Windsor out the St. Lawrence River Valley. It also includes the Eastern Townships of Quebec.

[4] see e.g., Middleton, John, "A Proposed Landscape Management Approach", p.26. In Witness Statement No.9: "Management for wildlife and biodiversity", 1990. Filed on behalf of Forests for Tomorrow in the matter of the *Environmental Assessment Act* (R.S.O. 1980, c.140) as amended; and in the matter of a hearing before the Environmental Assessment Board regarding a Class Environmental Assessment for Timber Management on Crown Lands in Ontario; see also, Argus, G.W., K.M. Pryer, D.J. White and C.J. Keddy (eds.) *Atlas of the Rare Vascular Plants of Ontario.* Ottawa: National Museums of Natural Science, National Museums of Canada, 1982-1987.

[5] see e.g.: McNeely, J.A., et. al., "Strategies for Conserving Biodiversity," *Environment*, Vol.32, No.3, April 1990; Ryan, J.C., *Life Support: Conserving Biological Diversity*, Washington: Worldwatch Institute, Worldwatch Paper No. 108, April 1992; Wolf, E.C. *On the Brink of Extinction: Conserving the Diversity of Life*, Washington: Worldwatch Institute, Worldwatch Paper No.78, June, 1987; World Wildlife Fund, *The Importance of Biological Diversity*, Gland, Switzerland, World Wildlife Fund International, n.d.;

raw materials for diverse economic benefits. Environment Canada states:

> Preserving [Canada's] biological diversity is an integral part of the larger goal of protecting the health of our environment. However, wildlife is under pressure throughout the country from a wide array of human activities. Agriculture, forestry, and urban, industrial and resource management continues to effect changes in the quality and quantity of wildlife habitat over large areas. The results are seen in declining populations and extinction of species. Likewise, the far-reaching effects of toxic contaminants and acidic deposition, continue to degrade the health of natural communities and ecosystems... *The future of Canada's native flora and fauna depends more on the will of Canadians to insist that decisions concerning land use and resource development, whether by the public or private sector, must reflect sound ecological values*" (emphasis added)[6].

Unfortunately, Environment Canada's pitch for "sound ecological values" in decision making, the Ontario Ministry of Natural Resources' "present imperative" for more ecologically-sound land use planning, and the broad public support that exists for these sentiments are being largely dismissed by the present Ontario government. Policies to protect "core conservation lands, natural corridors... and restored connecting links" have been gutted in the proposed "Provincial Policy Statement" and in any case, as noted below, provincial policies can and will be ignored under the new planning system.

2.1.2 Support from the Auditor General of Ontario

Eric Peterson, the Provincial Auditor General did not frequently praise the actions of the previous Ontario government. But when he reviewed the planning reform package he concluded that "one area where significant progress has been made is in municipal land-use planning. Recent changes to legislation established specific roles and responsibilities for the province and municipalities, helping to eliminate inconsistencies and unnecessary duplication in planning decisions"[7]. Unfortunately, the new government's reforms take Ontario back to a planning system of vagueness about the provincial role and provincial policies which will lead to inconsistent application of policy and site by site battles over whether and how the rules apply rather than up-front planning and clarity in Official Plans about the form and direction of development.

Government of Canada, *The State of Canada's Environment.* Ottawa: 1991. p.6-23.

[6] Government of Canada, *The State of Canada's Environment.* Ottawa: 1991. p.6-23.

[7] Annual Report of the Ontario Auditor General, Ontario: 1995. p.205.

3.0 CONCERNS WITH BILL 20: A FALSE GREEN VENEER OVER POLITICAL FAVOURITISM

The long title of Bill 20 is: "*An Act to promote economic growth and protect the environment by streamlining the land use planning and development system through amendments related to planning, development, municipal and heritage matters*". However, not a single amendment in Bill 20 has to do with environmental protection and many amendments, combined with the virtual gutting of the *Comprehensive Set of Policy Statements*, will seriously undermine environmental protection in the planning process. The short title, *The Land Use Planning and Protection Act*, is similar environmental "doublespeak". If the intention were for land protection, then environmental protection should be included as one of the purposes of the Act.

Concerns with Bill 20 fall within 5 areas:

- the ability to ignore provincial policy (and policies have now been gutted)
- the provincial approval function is undermined
- no quality control on official plans and OPs can be easily amended
- the loss of tools to curb sprawl
- many restrictions on public involvement

In all five areas, Bill 20 and the associated "Provincial Policy Statement" contain a pattern of amendments that will serve the exclusive interests of the development industry. The amendments eliminate the many reforms that addressed diverse concerns about the provincial role, environmental protection, fiscally responsible development and public involvement in the planning process. Concerns raised by environmental and public interest organizations and thousands of members of the public during four years of public consultation have been largely dismissed.

3.1 Ability to ignore policy

Bill 20 reverts the *Planning Act* to the old standard that decision makers "shall have regard to" provincial policies. This change spells the loss of a key planning tool. Lengthy and careful discussion and compromise resulted in the change to a standard of "shall be consistent with". This new standard would have swept away the baggage associated with the vagueness of "shall have regard to" and would have improved the implementation of provincial policies (i.e., matters of broad public interest). The new language and the associated policies would have given municipalities the tools to say yes to good development and no to bad development. Necessary flexibility for decision makers was built into the policies themselves. For example, the policies used language such as encouraging or fostering certain kinds of development patterns. And, when clarity and strong language is required (such as being able to say no to development in provincially significant wetlands or floodplains), the strong and clear language in the policies would have been supported by the "shall be consistent with"

standard.

The loss of clarity, and the consequent ability to ignore policy, will mean the inability to achieve up-front planning. Instead, there will be a return to protracted site-specific battles each time an environmentally destructive development application comes along. The vague standard of "shall have regard for" will allow municipalities to ignore provincial policy as they have in the past. Or, if they attempt to apply strong environmental protection measures, they will face Ontario Municipal Board (OMB) appeals by developers (see "Before and After" - the City of London, below). Removal of this essential tool to implement provincial policy will undermine the goal of municipal empowerment. Far from increasing flexibility, a return to "shall have regard for" will increase costs, confusion, uncertainty, inconsistency, delay and the frequency and length of OMB hearings.

3.1.1 New Reforms Run Contrary to Opinion Polling

In the face of this stripping away of environmental protection tools, it should be recognized that these initiatives are in direct conflict with the wishes of the majority of Canadians. Two recent surveys demonstrate that Canadians support strong environmental regulation and, in the Greater Toronto Area, support increased spending for environmental protection.

The most recent survey done for the Canadian Council of Ministers of the Environment by Environics Research Group and Synergistics Consulting in September of 1995 demonstrated very strong support for increased environmental regulation in Canada, and no support for reliance on voluntary encouragement as a strategy for pollution reduction[8]. The standard of "shall have regard for" is essentially a voluntary approach since its vagueness enables municipalities to pay attention to, or ignore policies, whichever is more convenient.

A similar reflection of public concern for environmental protection comes from a survey of Greater Toronto Area residents done in the fall of 1995 by the Greater Toronto Coordinating Committee which found provision of environmental services ranked first amongst all municipal services listed, and most survey respondents wanted spending increased on environmental protection[9].

The public faith in effective environmental regulation seems well placed. A survey done in 1994 by KPMG Consultants, entitled "Canadian Environmental Management Survey" canvassed Canadian companies, hospitals, municipalities, universities and school boards. When

---

[8] Miller, Doug, The Environmental Monitor, "Canadians and the Environment". Presentation to the Canadian Council of Ministers of the Environment, October 23, 1995; and "Environmental protection a priority for Canadians", *Globe and Mail*, October 24, 1995.

[9] The GTCC Quality of Life Steering Committee, *Comparative Advantage: An Enviable Quality of Life*, October, 1995.

those who had environmental management policies in place were asked what had motivated them to establish the policies, 95% said the number one motivator was compliance with regulation; 69% were motivated by potential director liability; and only 16% were motivated by voluntary government programs[10].

Clearly, the public recognizes what the current government chooses to ignore: that clear laws requiring environmental protection are essential and worth paying for.

3.2 Loss of Provincial Approval Function

One objective in planning reform was to reduce the provincial role in reviewing local plans and developments. The goal was to save money and time and empower municipalities. The reduction in the provincial role can be responsibly achieved only if the province "speaks through policy" by issuing clear policies with clear status. This clarity has now been removed and Bill 20 transfers approval powers to upper-tier municipalities.

With the virtual loss of the Provincial review and approval role, it will be left to the public (with few resources and with far fewer provincial civil servants on whose expertise they have often had to rely) to ensure provincial policy is implemented. This public burden is doubly unfair since intervenor funding has never been available for public interest intervenors at the OMB. In effect, the Province is abdicating its responsibility to ensure that its policies are implemented and offloading this responsibility to the public.

Another change in Bill 20 is the concentration of power in the Minister of Municipal Affairs and Housing to determine whether matters are referred to the OMB. This change does not bode well for ensuring that the interests of other ministries such as Natural Resources or Environment are respected. One possible result could be approval by a municipality of development in a class one wetland with the Ministry of Natural Resources unable to appeal the matter to the OMB. Another possible scenario could be development approvals in specialty crop lands with the Ministry of Agriculture and Food similarly unable to appeal the matter to the OMB.

The Minister of Municipal Affairs is being given, in effect, a veto power over whether matters are to go to the OMB. Such judgements will be made in areas where the Ministry of Municipal Affairs does not have the relevant expertise. At the very least, this provision should be accompanied by procedures for ensuring that qualified staff from other Ministries are able to inform these decisions. Such advice should be a matter of public record.

---

[10] KPMG, *Canadian Environmental Management Survey*, 1994.

3.3 Loss of Quality Control in Official Plans

Two significant changes in Bill 20 remove necessary and broadly supported quality control measures for Official Plans. The provision to regulate the content requirements of Official Plans has been removed. Even the definition of an Official Plan has been deleted! Further, Official Plans can be very easily amended.

Regulation of the contents of official plans was another necessary tool to ensure that matters of broad public interest, contained in the provincial policies, were incorporated into Official Plans. In addition, shortening of the approval time for private Official Plan Amendments to 90 days could very well mean a return to the days of planning by amendment. Once again, an Official Plan may be neither "official" or a "plan".

The inevitable result will be uncertainty, community discord and costly delay.

Another related loss in quality control is the deletion from the proposed "Provincial Policy Statement" of the requirement for an Environmental Impact Study to assess the acceptability of development proposals in, and adjacent to, environmental sensitive features and areas. The old policies contained this requirement as well as a small degree of quality control over the contents of an EIS. The new "requirement" in the proposed "Provincial Policy Statement" is exceptionally vague. It states that development will be allowed "if it has been demonstrated that it will not negatively impact the natural features or the ecological functions for which the area has been identified". This vagueness is only marginally improved by the definitions of "negative impact" and "ecological functions" provided in the policy.

The lack of clear prohibitions on natural areas and clear requirements for proper environmental evaluation of proposals in adjacent lands opens the door to endless debate over compatibility on a site by site basis. Expertise is frequently inadequate at the municipal level to conduct or evaluate this work. The result will be a boon for lawyers and consultants, unnecessary cost, delay and no doubt, considerable loss the of dwindling natural heritage in southern Ontario.

3.4 Loss of Tools to Curb Sprawl

Bill 20 and the proposed "Provincial Policy Statement" remove numerous municipal powers and tools to encourage compact development. For example, Bill 163 prevented municipalities from standing in the way of two-unit housing development. Bill 20 removes that restriction and thereby removes an important tool to encourage compact development, infilling and intensification. Instead, there will continue to be both the incentive and development industry pressure for exclusive zoning that encourages sprawling, single use, automobile dependent sub-divisions and single-story commercial development.

Bill 20 also eliminates the provisions to allow apartments in houses (the previous

government's Bill 120). Thus, a useful part of the tool kit for intensifying communities and providing affordable housing is lost. Similarly, the current common sense policy requiring a percentage of affordable housing in all communities has been eliminated from the proposed "Provincial Policy Statement". All of these changes are regressive. They will have a disproportionate impact on low income people and will contribute to the negative economic and environmental impacts of urban and rural sprawl. Nor are these changes supported by residents of the Greater Toronto Area. A recent poll concludes:

> The majority of residents support intensification as opposed to the continuation of urban sprawl. As new development proposals come forward, emphasis should be placed on achieving a mix of housing types in existing built-up areas, with a view toward improving the situation for renters. There is public support for realizing this development mix.
>
> Indications of a tightening rental market, combined with public attitudes about the cost of housing, particularly for renters, supports the need for production and retention of affordable housing[11].

Regardless of this public support, Bill 20 and the proposed "Provincial Policy Statement" take away from municipalities the necessary tools to implement these public aspirations and indeed, go in the opposite direction.

Another key tool that is lost in the planning system as a result of Bill 20 (and associated changes in the policies) is the ability to apply a test of "prematurity". Bill 163 gave municipalities and other approval authorities the right to refuse to approve a development application if the supporting sewers, roads and other infrastructure was not yet in place. This power is removed from the *Planning Act* by Bill 20, thus potentially forcing municipalities to approve developments (or face OMB challenges by developers) without the necessary infrastructure in place and then later face pressure to finance and build infrastructure that may not otherwise have been necessary, planned or affordable. This concern is partially addressed by the policies in the section entitled "Developing Strong Communities". However, the problem will remain of vague policy language within the weak standard of "shall have regard for". In addition, the public is not entirely without a remedy here because the OMB has, in past, filled this gap by ruling against applications on the basis of "prematurity". However, once again, the goal of clear, up-front planning is lost by having to go all the way to the OMB to resolve such matters in one way or the other.

Proposed changes to the *Development Charges Act* are also included in the current government's reform package whereby municipalities will be restricted to charging developers only the costs of "hard services" such as road and schools. The impact of this restriction will be felt in higher taxes and user fees to pay for the additional costs of servicing inefficient

---

[11] KPMG, 1995, op. cit. p. 5.

sprawl (see "The Cost of Sprawl" below).

3.5 Restrictions on Public Involvement

Bill 163 imposed numerous time limits on the various stages of the planning process. Many of these time limits have been further reduced in Bill 20 and the ability for the public to be meaningfully involved in the planning process may be undermined. For example, Bill 20 further reduces the public notice period from 30 days to 20 days for notice of a private official plan amendment. This 20 day time period will occur in the context of an overall 90 day review process. If this new time period includes a weekend, slow postal service and perhaps holidays or other day to day details, citizens may be left with about two weeks to review complex documents and prepare submissions. People will barely have time to review the material on their own and little or no time to arrange meetings to discuss proposals among themselves or with their elected representatives or municipal planning staff. Decision makers will be less well informed as to community information and concerns. The opportunity for addressing concerns through alternative dispute resolution will be severely constrained. These shortened time limits could very well lead to more OMB appeals as citizens feel railroaded by too much information and not enough time to respond. Bill 163 already imposed significant time limits on the planning process. The shorter time limits in Bill 20 would appear intended to subvert public involvement rather than provide an opportunity for it.

The time available for agency review of private official plan amendments is similarly constrained. Review and approval of a private Official Plan Amendment must occur within 65 days in order for the public to be aware of the provincial view on the amendment by the time of the public meeting. One implication of this short review period could be poorer reviews and less ability to research impacts, especially in winter, thus potentially allowing problems and the provincial interest to slip by. And, as noted above, the notion of Official Plans as documents with some degree of permanence will be lost. The ability to quickly change the Official Plan with little time for debate may result in the pitched community battles that have been typical of the planning system in the past. The goal of efficient, up-front planning is again, lost.

The removal of public meeting requirements for subdivision plans is of concern to citizens' groups. Also of concern is whether the current regulations governing notice requirements will continue or whether the current government intends to change them and perhaps restrict the manner in which notice will be given of sub-division applications. If so, and the regulation is too restrictive, neighbours may not be able to express their concerns about subdivisions near them. This concern is especially important since the renewed malleability of Official Plans will not provide any certainty to citizens as to where exactly the municipality is headed.

The decision to disallow minor variance appeals to the OMB may have significant implications in rural Ontario and cottage country. The decision to take away the right to appeal minor variance decisions to the OMB is apparently to streamline the process and

reduce what is often viewed as an inordinate amount of OMB time spent on minor variance appeals. However, OMB officials state that only 18% of OMB files involve minor variance appeals and consume only about 6% of the Board's hearing time[12]. It therefore does not appear necessary or justified to cut off the public's right to appeal what they consider to be bad planning decisions. This denial of appeal rights sets up a situation that is one-sidedly unfair to people who disagree with a minor variance approval.

To illustrate: if a developer or landowner is turned down on a minor variance application, he/she can simply reapply with another application (e.g., for a rezoning). For an individual opposing a minor variance application, there will now be no such "second chance" or ability to appeal. With the denial of this appeal right, rural property owners and cottagers can expect to see more, not less, misuse of the minor variance provision and they will have no recourse beyond appealing to the decision-makers in their local municipality who may very well have already voted against their wishes (or the alternative recourse of expending the time and expense of taking these matters to court).

4.0 RETURNING TO THE BAD OLD DAYS: SOME EXAMPLES

The people of Ontario can look to numerous examples of poor land use planning that arose out of the old planning system; that is, the system that Bill 20 substantially reinstates. Below are four examples, and a "before and after" look at the City of London which has revised its two year planning exercise in light of the most recently proposed changes to the planning system. These examples illustrate the folly of returning to a planning system characterized by vagueness, delay and a lack of tools to protect the environment.

4.1 Eagle Creek, West Carleton

In 1989, West Carleton township council approved a golf course development as compatible with the function of a Class 1 wetland. The Wetlands Preservation Group of West Carleton, the Ministry of Natural Resources and a private citizen objected to the rezoning of the wetland and the proposal was the subject of a lengthy OMB hearing in 1989-1990. Despite local objections and the pending OMB hearing, construction of the golf course went ahead. The OMB concluded that environmental damage occurred during the construction of the golf course and that operation of the golf course would lead to ongoing environmental degradation. The rezoning necessary for the operation of the golf course was denied by the OMB. Nevertheless, the golf course was built. The Township did not prosecute for contravention of

---

[12] Vaughan, M.B., "Ontario implements report of the Sewell Commission", *Municipal World*, July, 1994.

the zoning by-law[13] and the mayor was given an honourary membership.

In this situation, local citizens, the Ministry of Natural Resources and the OMB all concluded that a golf course could not be developed in a class 1 wetland while retaining the biological function of the wetland. The Provincial Wetlands Policy Statement (only in draft form at the time) provided that development interfering with the function of Class 1 wetlands should be prohibited. The local township spent over a hundred thousand dollars to defend its decisions only to hear from the OMB that, indeed, the development would interfere with the function of a Class 1 wetland and should not have been allowed. The Ministry of Natural Resources had to spend tens of thousands of dollars on the matter as well.

Meanwhile, the golf course was constructed and controversy over pesticide and fertilizer contamination from the site continues to the present day. The OMB decision supported the view of the Provincial officials and the local citizens. Even though the Wetlands Policy was still in draft form, the OMB found that the matter of provincial interest, as expressed in the policy, needed to be taken seriously. This example is typical of situations where policy is ignored at every step of the process despite the views of Provincial officials administering the policy and despite the interventions of local citizens. The matter had to drag on for over two years and a lengthy OMB hearing only to confirm what citizens and the Province had maintained from the start. The situation also underscores the difficulty of small municipalities to exercise independent judgement and to properly evaluate the environmental implications of development proposals.

With clarity as to the status of policy and a clear "no means no" on development in provincially significant wetlands, this development could have been directed to a more appropriate location and a lot of time and money could have been saved.

4.2 Sydenham Mills, Grey County

In 1988, the Grey County Planning Approvals Committee approved four development lots by consent in a location near the headwaters of the Spey River. Very soon after this approval was granted, developers sought approval for a neighbouring plan of sub-division. This plan would have built about 25 estate residential homes right in the headwater area. This area is characterized by many springs, crevices, easily blown over trees and generally obvious indicators of a very shallow water table. Development in the area nearby frequently experiences spring flooding and residents were very concerned about the water table effects of clearing and subdividing the headwater area and the installation of up to forty wells and septic tanks. Other citizens (and the Ministries of Environment and Natural Resources) also noted

---

[13] In fact, after the OMB hearing and the expenditure by the township of over $100,000, the township decided that a rezoning was not even necessary due to the peculiar wording of the zoning by-law and therefore, in the township's view, there was no contravention of the zoning by-law when the golf course was constructed and operated.

the potential for even more distant downstream impacts along the Spey River if development were allowed in the headwater area.

Since the proposal was for a plan of sub-division, it had to be submitted to the Grey County Planning Advisory Committee who would then submit it to the Ministry of Municipal Affairs for review, circulation to the relevant agencies and ultimately, an approval decision. While the proposal was circulating for comment at the provincial level, concerned residents appealed to the Minister of Municipal Affairs to declare a provincial interest in the matter. In the meantime, the developers decided to make a separate application to the Grey County Planning Approval Committee for eight severances and a roadway in exactly the same area as the sub-division application. The tactic was presumably intended to avoid provincial scrutiny by applying for a series of consent applications at the local level; a technique referred to as "sub-division by consent".

After many months of debate, a review of the proposal by the Environmental Assessment Advisory Committee, the many tentacles of this matter ended up in four weeks worth of complicated OMB hearings. In addition to the cost of the Environmental Assessment Advisory Committee process, the ministries of Environment, Natural Resources and Municipal Affairs were each represented by their own legal counsel at the hearing as were the appellant and the proponent. Considerable money was also spent on consultants to debate the merits of the proposal. After all of this time and effort it became clear that no amount of engineering would address the water table concerns. The Board's decision discussed the inappropriateness of the proposal on this particular site and the approach taken by Grey County officials to such matters in general:

> Although the proposed housing may well be desirable and marketable it is in no way essential nor is this the only location in Grey County where such housing can be located. *However, even if it was the last site in Grey County, the Board would still consider the risks unacceptable* (p. 18) (emphasis added)...
>
> In the Board's view and considering the letter and obvious intent of the *Planning Act* and this Official Plan, there are major flaws in the approach taken by the County planners and Council to this proposal and, generally to estate residential development in the rural areas of Grey County (p. 23)[14]

This situation again illustrates the need for clear policy with clear status to give municipalities the tools to say no to development that has the potential to cause serious detrimental effects to the headwaters of an important river system. In the *Comprehensive Set of Policy Statements* proclaimed by the previous government, there was a strong policy preventing development in headwater and groundwater recharge areas. Backed up by the "shall be consistent with" standard, such a policy could have been applied in the Sydenham Mills situation, or been

---

[14] *Re McLean v. Sydenham (Township)* [1990] O.M.B.D. No. 1881, Oct 19, 1990, D.H. McRobb and P.H. Howden.

required by the approval authority and excessive rancour, time and cost could have been avoided.

Unfortunately, the previous groundwater protection policy has been seriously undermined in the proposed "Provincial Policy Statement" and, under the "shall have regard for" standard, it can be ignored as well. Citizens however will no doubt continue to be concerned about such situations and they will fight them all the way to the OMB if that is what is necessary. Once again, the changes to Bill 20 and associated policies will contribute to more delay, unnecessary costs and environmental degradation. Indeed, with such poor planning tools, and explicit granting of sub-division approval powers to Grey County in Bill 20, developments like Sydenham Mills could very well be approved in future in many parts of Grey County and across the Province. Such decisions will likely lead to the kinds of problems experienced in Keppel Township in Grey County and Ennismore Township in Peterborough County.

4.3 Keppel Township, Grey County

Dominated by Karst topography, Keppel Township has allowed scattered rural severances to such an extent that a serious groundwater contamination problem now exists. Five years ago, scientists from the Ministry of the Environment recommended against the policy of allowing so many rural severances because of the vulnerability of the underlying topography to groundwater contamination. Sure enough, five years later, the same scientists are saying that the only way this problem can be satisfactorily addressed is for the Grey County Official Plan to disallow such development patterns. Grey County however has other plans. Throughout the Sewell process, Grey County gradually came round to the idea of including environmental policies and recognition of the Niagara Escarpment Plan in the Grey County Official Plan, as well as the notion of placing limits on scattered rural severances. However, these rational planning sentiments appear to be short-lived as the change in the provincial government has also prompted a weakening of Grey's Official Plan policies more in line with the development aspirations of some sectors of the community.

4.4 Ennismore Township, Peterborough County

This small township northeast of Peterborough has, as a result of bad rural planning, a serious groundwater contamination problem. Wells and septic tanks are too close together and the drinking water contains high levels of bacteria, sodium and nitrates. The local Medical Officer of Health has stated that the nitrate levels in the water can cause "blue baby syndrome" and the water should not be given to babies. A pitched battle has raged for several years as to the severity of the problem and the cost of fixing it. An early estimate had a price tag of about $21 million of both provincial and local money. The latest figures are in the order of about $6 million to pay for only water servicing (and provide clean drinking water but continue the groundwater contamination by septic systems). A decision has yet to be made and, with the uncertainty surrounding the problem and the need to spend provincial money as soon as

possible, (it will apparently be unavailable in the near future), residents are understandably concerned about having to decide soon on bearing some or all of the capital and operating costs of a water treatment facility.

The clear point with this example is the excessive cost of responding to the long term impacts of bad planning decisions. This is an enormous amount of money to remediate and only partially solve a problem in one small township. Again, a strong groundwater protection policy and a clear requirement to follow it, might have prevented this situation. Unfortunately, these kinds of planning decisions will more easily be repeated now across the Province under Bill 20 and the proposed "Provincial Policy Statement".

4.5 "Before and After" - The City of London

When the City of London annexed a large parcel of land by special legislation, it was required to prepare an Official Plan for the annexed area by January 1996. For over two years, the city conducted a thorough planning and consultation process. Detailed sub-watershed plans were developed in order to include Official Plan policies and maps that would protect important environmental features and functions in line with the new policies and planning system proclaimed by the previous government.

By the time of the January 1996 legislated deadline however, developers insisted on a weakening of the environmental provisions in the Official Plan and have said that if the changes are not made to their satisfaction, they will appeal the matter to the OMB. The City of London no longer has the policy or legislative tools to implement clear and strong environmental policies in its Official Plan and has drafted the amendments called for by the development community. The legislated deadline of January 1996 has passed but is not being enforced by the new government. The City will now wait until the new system is in place and submit the weaker Official Plan (actually a very large Official Plan Amendment) for approval. Citizens groups are considering an OMB challenge to have the results of the earlier planning and consultation process maintained.

The situation in London illustrates what will occur under Bill 20 and the revised policies. If municipalities want to say no to environmentally unsound development, they will very likely face OMB appeals by developers. If on the other hand, municipalities allow development that will cause environmental damage, citizens groups will mount the appeal. The new government can take away the tools to protect the environment but it cannot take away the public's desire to see the environment protected. As Ontario looks ahead to population increases of anywhere from 3 to 5 million or more people over the next twenty years, the frequency and bitterness of these site specific battles will inevitably increase under this "new" planning regime. The goals of streamlining, saving time and money will not be achieved.

5.0 THE COSTS OF SPRAWL

One of the driving forces behind clarifying and updating provincial policy in Ontario was to come to terms with the spiralling costs of urban and rural sprawl. Numerous studies from across North America have confirmed what people can see for themselves: the sprawling inefficiency of low density, single-use "cookie-cutter" sub-divisions and commercial-industrial parks that are utterly dependent upon the private automobile.

With more roads comes more traffic and demand for more roads. The response in Ontario to increasing traffic is constantly to widen roads and build more roads which in turn leads to more traffic and the spiral of ever more road building continues. Transport 2000, Ontario estimates that Ontario has a $9 billion accumulated debt (assuming a forty year amortization on capital expenditures) for highway construction[15].

Road-building requires tonnes of aggregate. Residents of rural Ontario are increasingly facing planning disputes over aggregate extraction. Concerns arise over the dust, noise and traffic of pit operations as well as serious environmental concerns about loss of natural heritage areas and/or the potential for widespread problems with groundwater quality and quantity.

The imperative of building ever more roads amounts to an enormous subsidy to private automobiles. This development pattern is automobile-dependent because public transit cannot possibly be efficient when communities are so spread out and street patterns are not arranged with transit riders or pedestrians in mind.

As the traffic increases, so do smog levels and related health problems. Officials with Health Canada and Environment Canada report a direct correlation between smog events and increasing respiratory problems and hospital admissions, especially in children[16]. And, the Ministry of Transportation estimates that the social costs of automobile crashes Ontario cost about $9 billion per year in lost earning power, medical and rehabilitation costs, repair and replacement of vehicles, policing, etc[17].

And the costs of sprawl continue. Suburban sprawl and scattered rural development leads to escalating costs for provincial taxpayers to provide both hard services (water and water

---

[15] McCullum, J, 1993. "Highway Construction and Provincial Debt in Ontario", paper published by Transport 2000, Ontario.

[16] see: Burnett, R.T. et. al., "Associations Between Ambient Particulate Sulfate and Admissions to Ontario Hospitals for Cardiac and Respiratory Diseases", paper published by Environment Canada and Health Canada; and Burnett, R.T. et. al., "Effects of Low Ambient Levels of Ozone and Sulfates on the Frequency of Respiratory Admissions to Ontario Hospitals", Environmental Research, Vol. 65, 1994. pp. 172-194.

[17] Ontario Ministry of Transportation, 1994. The Social Costs of Motor Vehicle Crashes in Ontario. Of the $9 billion total, $7.3 billion relates to the human consequences of crashes, $1.5 billion relates to property damage and $.03 billion is the value of time and material expended on crashes.

treatment plants, sewers and sewage treatment plants, roads, electricity, etc.) and soft services (health care, schools, libraries, day care centres, police, fire, etc.) to low density populations[18]. The cost of sprawl has not escaped the scrutiny of bond raters. In 1990, bond raters gave Howard County, Maryland, which is in the shadow of Baltimore and Washington D.C., an AAA bond rating. The bond raters said that the limits placed by the county on development, including a farmland preservation program, enhanced the county's fiscal integrity by demonstrating a commitment to a high quality of life and controlling the costs of development[19].

So too in Ontario, the recently published Golden Commission provided some hard dollar figures for the Greater Toronto Area. The background report prepared by economist Dr. Pamela Blais, conservatively estimates that $1 billion could be saved by adopting a more compact development pattern typical of the older neighbourhoods of every town and city in Ontario[20]. Unfortunately, the planning tools to achieve and, where necessary, require such development patterns have been seriously weakened and/or tossed out with the dismantling of the planning reform package. Instead, the free market forces that are supposedly unleashed by relaxing planning controls will now be free to continue to offer the mind-numbing sameness of inefficient and expensive sprawl that surrounds most towns and cities across Ontario.

6.0 RECOMMENDATIONS

We cannot support passage of Bill 20. We urge withdrawal of the Bill (and the proposed "Provincial Policy Statement") and the immediate reconsideration of the diverse matters of broad public interest raised herein.

---

[18] see e.g.: Dekel, G.P., "The fiscal impact of development: A regional perspective in Canada", *Land Use Policy*, 1994. Vol 11(2), 128-141; National Round Table on the Environment and the Economy, *A Strategy for Sustainable Transportation in Ontario: Report of the Transportation and Climate Change Collaborative*, 1995; *Beyond Sprawl: New Patterns of Growth to Fit the New California*, Consensus Report of the Bank of America, (San Francisco), the California Resources Agency (Sacramento), the Greenbelt Alliance (San Francisco) and the Low Income Housing Fund (San Francisco); Thomas, H.L. "The Economic Benefits of Land Conservation", Technical Memo of the Duchess County (New York) Department of Planning and Development, February, 1991, etc.

[19] Thomas, H.L. 1991, op. cit.

[20] Blais, P, *The Economics of Urban Form*, background report to the Greater Toronto Area Task Force. Toronto: 1996.