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SUBMISSIONS ON BILL 159

AN ACT TO REVISE THE PLANNING ACT

3255

to

The Committee on General Government

prepared by

The Canadian Environmental Law Association

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I. INTRODUCTION

The Planning Act has been under review for several years. Five background papers and the Planning Act Review Committee's final report led up to the White Paper on the Planning Act, the Draft Planning Act published in December of 1979, and finally to Bill 159.

The Canadian Environmental Law Association reviewed the Draft Planning Act ("the 1979 Draft") and offered comments to the Ministry of Housing, based largely on environmental concerns and public participation considerations. Our outstanding problems with Bill 159 are discussed in this paper. We have also provided draft amendments which would, if adopted, improve the bill in relation to the matters discussed.

The Planning Act is an extremely important tool for the implementation of environmental controls. CELA has previously stated that:

> If there is any level of government decision-making that can be said to be in need of comprehensive environmental planning, it is the municipal level. Municipal land use decisions can frequently have important consequences for environmental quality. Whether it is designating or zoning significant marsh areas or prime agricultural land for development or approving subdivisions or severances without ensuring that construction activities will not adversely affect water quality, the municipal planning process is at the core of environmental issues. While some municipalities may wish to protect the environment, many are subject to heavy development pressure which, because of their limited local jurisdiction and resources, they may not be able -

> or willing - to balance with potential loss or degradation of environmental assets.*

Bill 159 has included few changes that would require that the province or municipalities deal more adequately with environmental concerns. Consequently, we recommend in this brief that the Minister be required to make provincial policy statements relating to protection, conservation, and wise management of the natural environment and the conservation and management of natural resources. We also recommend that the definition of Official Plan be broadened and that official plans be required to describe environmental impacts and the means proposed to mitigate such environmental impacts.

Our public participation recommendations relate primarily to the Minister of Housing's increased power and the proposed decrease in the power of the Ontario Municipal Board. We have also included many small specific amendments which, we submit, would improve the implementation of the Act.

II. PROVINCIAL INTEREST AND PROVINCIAL POLICIES

CELA's concerns relating to Provincial Policy and the declaration of a provincial interest are based on the extensive powers given to the Minister of Housing. An amendment from the Draft for Public Comment published in December, 1979 found in section 3(1) provides that before

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* CELA Submission on the Proposed Environmental Assessment Act Regulation for Municipalties, August 1978, p.2.

policy statements are issued by the Minister they must be approved by the Lieutenant Governor in Council. This additional control over the Minister's discretion is an improvement in that the Cabinet represents various interests, not just those of the Minister of Housing and any other Minister who might wish to jointly issue a policy statement with the Minister of Housing.

It is unclear in section 3(1) whether the Lieutenant Governor in Council must also approve policy statements issued jointly by the Minister of Housing and another Minister. We submit that this should be clarified to make such approval mandatory. Our suggested amendment is as follows:

> 3.(1) The Minister may, from time to time, issue policy statements that have been approved by the Lieutenant Governor in Council on matters relating to muncipal planning that, in the opinion of the Minister, are of provincial interest, and any other Minister of the Crown may, jointly with the Minister, issue such policy statements <u>after approval by the Lieutenant Governor in Council</u>.

A. <u>Relationship Between Provincial Interest and Provincial Policy</u>

The Minister is also given the authority to make a final decision in any matter declared by him to be of provincial interest (subsections 17(18), 22(5) and 23(1)). There is no declared or required relationship between provincial policies and provincial interests except in section 23.

<u>We would submit that matters of provincial interest should</u> be capable of being identified (under subsection 17(18)

and 22(5)) only if they relate to specific government policy, so that the Minister's decision on any such matter must be made on the basis of a public policy statement. In order to allow time for policies to be adopted, this requirement should be mandatory only after the elapsing of the time period during which policy statements are required to be made (see below for these proposed requirements).

The matters identified in section 2, with minor variations (see below) should be the subject of provincial policies to be established after draft policy statements have been the subject of public comment and have been adopted. There should also be a requirement for the Minister of Housing to consult other Ministers concerned with a particular matter which is the subject of a policy statement. This has been dealt with to some extent in subsection 3(2).

B. Public Participation in Development of Policy Statements

Our proposal for wider public involvement in arriving at policy statements is embodied in the following draft provisions which amend and augment sections 2 and 3 of Bill 159.

Amended section 2(1)

> The Minister, in carrying out his responsibilities under this Act, will have regard to, among other matters, matters of provincial interest such as,

(a) the protection, conservation and wise management of the natural environment, including the agricultural resource base of the Province, and the conservation and Management of natural resources;

...

New section 2(2)

The Minister, in consultation with other Ministers of the Crown whose areas of responsibility encompass any of the matters enumerated in subsection (1), shall prepare and complete within two years of the date of proclamation of this Act, draft policy statements on the matters of provincial interest enumerated in subsection (1).

New section 2(3)

Any other Minister of the Crown may develop and submit to the Minister draft policy statements on matters relating to municipal planning.

New section 2(4)

Before issuing a draft policy statement, the Minister or any other Minister of the Crown shall consult with such municipal, provincial, federal, or other officials and bodies or persons as the Minister of Ministers considers have an interest in the proposed statement.

New section 2(5)

Where a draft policy statement is prepared under subsections (2) or (3) the Minister shall give notice or cause to be given notice by registered mail to all of those officials, bodies, or persons conferred with under subsection (4).

New section 2(6)

The Lieutenant Governor in Council shall review and approve or modify and approve or reject any draft policy statement within 60 days after a period of public consultation lasting no longer than twelve months.

New section 2(7)

Provincial policy statements approved by the

Lieutenant Governor in Council prior to January 31, 1982, and adopted as provincial policy statements by the Lieutenant Governor in Council subsequent to the enactment of this Act will be deemed to have met the requirements of this section.

Amended section 3(1)

The Minister may, from time to time, issue policy statements that have been approved by the Lieutenant Governor in Council on matters relating to municipal planning that in the opinion of the Minister are of provincial interst, and any other Minister of the Crown may, jointly with the Minister, issue such policy statements after approval by the Lieutenant Governor in Council.

New section 3(2)

Where a policy statement is approved under section 2(6) and issued under section 3(1) the Minister shall give notice or cause to be given notice thereof, in such manner as he considers appropriate, to all of those officials, bodies, or persons consulted under subsection 2(4), as well as to all municipalities.

New section 3(3)

The Minister or any other Minister of the Crown, jointly with the Minister may from time to time amend or modify the policy statements approved under subsection 2(6) so long as the public consultation process described by this Act and the regulations is followed.

Unchanged section 3(4)

Each municipality that receives notice of the policy statement under subsection (2) shall, in turn, give notice of the statement to each local board of the municipality that it considers has an interest in the statement.

Unchanged section 3(5)

In exercising any authority that affects any planning matter, the Council of every municipality, every local board, every Minister of the Crown, and every ministry, board, commission, or agency of the government, includ-

> ing the Municipal Board and Ontario Hydro, shall have regard to policy statements issued under subsection (1).

C. Notification of an Identified Provincial Interest

Notification of an identified provincial interest is not required to be given to anyone except the Municipal Board (section 17(18), section 34(28)), and then only ten days before the hearing is scheduled to begin. This notification should be given to the Council and to other interested parties. Also, notification of a provincial interest should be given shortly after circulation of an official plan or zoning by-law so that such a designation does not surprise the Council or persons affected. Deletion of section 17(18) and 34(28) and the following amendments would be required.

New section 17(4a)

> The Minister, if he is of the opinion that a matter of provincial interest as set out in a policy statement issued under section 3 is or is likely to be affected by the plan or any part thereof, shall so advise the Council within fifteen days of submission of comments under subsection (4) and Council shall, within fifteen days, notify all those persons required to be notified under subsection (2) and in no case shall the Council adopt the plan until such notice has been given.

A similar provision should be included in section 22 relating to amendments to Official Plans so that in those cases as well earlier notification of a provincial interest will be provided. The suggested amendment would read as follows:

New section 22(4)

> Where the Minister is of the opinion that a matter of provincial interest as set out in a policy statement issued under section 3 is or is likely to be adversely affected by an amendment to an Official Plan, the Minister shall, at the same time as he refers the amendment, advise the Council of his opinion and identify the part or parts of the proposed amendment by which the provincial interest is or is likely to be adversely affected.

Section 22(4) of Bill 159 should be renumbered as section 22(5) and section 22(5) of Bill 159 should be deleted.

Since there is no provision for appeals in matters not declared to be of provincial interest, any person should be allowed to request the Minister to make a declaration of provincial interest on the basis of a provincial policy statement. This provision could be included as follows:

New section 17(4b)

> At any time during the comment period provided subsection (4) and fifteen days thereafter, any person may request the Minister to advise the Council under subsection (4a) of the provincial interest which is or is likely to be adversely affected by the plan or any part thereof.

New section 17(4c)

> The Minister may refuse a request under subsection (4b) or may advise the Council of the provincial interest which is or likely to be adversely affected by the plan or any part thereof, but in any case he shall make a decision within 60 days of the request and shall, within 60 days, provide reasons for his decision.

Section 17(5) would require a minor amendment.

"After the meeting mentioned in subsection (2)(a) has been held and after the time for submitting comments under subsection (4) and (4a) has elapsed, the Council when it is satisfied that the Plan as finally prepared is suitable for adoption may by by-law adopt the plan and submit it to the Minister for approval."

Similar provisions allowing for a request for a declaration of provincial interest by an interested person or agency should be included under section 22 and section 34.

Amended section 22(3)

The Minister shall give notice of the proposed amendment to those persons, agencies, and bodies with whom he is authorized to confer under section 17(8) and 30 days thereafter he may refuse the request to refer the proposed amendment to the Municipal Board or may refer the proposed amendment to the Board.

New section 22(3a)

At any time after the Minister gives notice under and before he makes his decision under subsection (3), any person may request the Minister to refer the amendment to the Municipal Board and to advise the Municipal Board of a provincial interest which is or is likely to be affected by the proposed amendment.

New section 22(3b)

The Minister may refuse a request under subsection 3a or may refer the amendment to the Municipal Board and immediately advise the Municipal Board of the provincial interest which is or is likely to be affected by the proposed amendment, and the Minister shall provide reasons for his decision.

Under section 34, the amendments required could read as follows:

New section 34(13a)

> The Minister, if he is of the opinion that a matter of provincial interest as set out in a policy statement issued under section 3 is or is likely to be affected by the passing of the by-law, shall so advise the Council within fifteen days of submission of comments under subsection (13) and Council shall, within fifteen days, notify all those persons required to be notified under subsection (11) and in no case shall the Council pass the by-law until much notice has been given.

New section 34(13b)

> At any time during the comment period provided in subsection (13) and fifteen days thereafter, any person may request the Minister to advise the Council under subsection 13a of the provincial interest which is or is likely to be adversely affected by the passing of the by-law.

New section 34(13c)

> The Minister may refuse a request under subsection (13b) or may advise the Council of the provincial interest which is or is likely to be adversely affected by passage of the by-law, and the Minister shall provide reasons for his decision.

Section 34(28) should be deleted.

D. Recommendatory Role of the Municipal Board

In provisions dealing with Official Plans (section 17(18)), amendments to Official Plans (section 22(5), section 23(1)), and zoning by-laws (section 34(28), (29) and (30)), the Minister has only to be of the opinion that a matter is of provincial interest, then it is proposed that the Cabinet should be possessed of final decision-making power in the matter for which a hearing is to be held. If such a procedure were followed, participants would have no right to a hearing

held subject to the rules of natural justice as found in the Statutory Powers Procedure Act. Since the Municipal Board is acting as an appelate body in relation to zoning matters, participants should have a right to a full and fair hearing with the decision being made by the tribunal hearing the matter. In addition, the general tendency of having administrative tribunals make recommendations rather than decisions, with final power lying with the Minister or Cabinet, should not be proliferated, or the decision-making process will be seen to be entirely political.

There are also practical reasons for allowing the Municipal Board to make decisions rather than recommendations. At present the Environmental Assessment Board hearing matters under the Environmental Protection Act and the Ontario Water Resources Act makes recommendations to the Director of Approvals, who is possessed with the final decision-making power. This role of the Environmental Assessment Board makes it necessary for the Board to prepare extensive reports to the Director of Approvals. The reports contain a summary of the evidence and submissions of all witnesses and participants, as well as recommendations for disposition of the matter and any conditions that might be placed on an approval if one is given. We submit that this type of process would severely hamper the Municipal Board in carrying out its functions.

Also, under the Consolidated Hearings Act, the Joint Board, composed of members of both the Municipal Board and the Environmental Assessment Board, is empowered to make decisions. Consequently, even in cases where, for example, the Environmental Assessment Board is hearing a matter under the Environmental Protection Act and other matters are being dealt with under the Planning Act or other legislation during the same hearing, a decision is made by the Joint Board.

The effect of the Consolidated Hearings Act will be that if there is a joint hearing required, the Joint Board will make a decision on the matter whether or not a provincial interest is involved. However, if only the Planning Act (as seen in Bill 159) applies, then the Municipal Board will not make a final decision. It seems that unnecessary confusion will be created by the practice of having the Municipal Board make only recommendations in cases where it is acting alone under the jurisdiction of the Planning Act.

In light of the above comments, we would recommend that the previously deleted section 34(28) should be inserted as follows:

> Where the Minister identifies a provincial interest under subsection (13a) or (13c), an appeal lies to the Lieutenant Governor in Council from the Municipal Board's decision.

Also, section 17(19) and 17(20) should be deleted and the following provision substituted for section 17(18).

> Where the Minister identifies a provincial interest under subsection (4a) or (4c), an appeal lies to the Lieutenant Governor in Council from the Municipal Board's decision.

A corresponding amendment to section 22 would involve amending section 22(5), which is section 22(4) in Bill 159.

Amended section 22(5)

> The provisions of section 17(12) to (16) apply with necessary modifications when a proposed amendment is referred to the Municipal Board under subsection (3) or 3(b) and the Board shall hold a hearing and thereafter reject the proposed amendment or direct that the Council cause the amendment to be made in the manner provided in the order of the Board.

Subsection (5) and subsection (6) of section 22, Bill 159, should then be deleted.

A new section 22(6) would read:

> Where a proposed amendment is referred to the Municipal Board under subsection (3) or (3b) an appeal lies to the Lieutenant Governor in Council from the Board's decision.

Section 64, which dispenses with the right to petition to Cabinet, should be amended to retain the right to petition to Cabinet under the Ontario Municipal Board Act where a matter of provincial interest is involved.

Amended section 64

> Despite section 94 of the Ontario Municipal Board Act, there is no right to file a petition under that section in respect of any order or decision of the Municipal Board made in respect of any matter referred or appealed to the Board under this Act, except where a matter of provincial interest has been identified.

E. Amendments by the Minister

Section 23 deals with the Minister's ability to request amendments to an official plan when he is of the opinion that a matter of provincial interest is or is likely to be adversely

affected by the official plan. Although we have no objection to the Minister requesting an amendment, we do not believe that the Minister should have the power to amend the Official Plan on his own. His right to refer the matter to the Municipal Board should be sufficient. Any decision made by the Municipal Board would in turn be appealable to Cabinet.

Although section 22 refers to amendments to official plans, it does not specify that the Minister on his own initiative may request an amendment. Section 23 should therefore be retained, with the following amendments.

Amended section 23(1)

> Where the Minister is of the opinion that a matter of provincial interest as set out in a policy statement issued under section 3 is, or is likely to be adversely affected by an official plan, the Minister may request the council of a municipality to adopt such amendment as the Minister specifies to an official plan and, where the council refuses the request or fails to adopt the amendment within sixty days of the request, the Minister may refer the amendment to the Municipal Board and the Board shall thereupon hold a hearing into whether the amendment should be made.

Sections 23(2) and 23(3) should be deleted; section 23(4) would become section 23(2) and sections 23(5) and 23(6) should be deleted. A new subsection (3) should provide for an appeal to Cabinet.

New section 23(3)

> An appeal lies to the Lieutenant Governor in Council from a decision of the Municipal Board after a hearing under subsection (1).

F. Written Reasons from Lieutenant Governor in Council

In order that the Lieutenant Governor in Council can be seen to have considered only stated provincial policy in its decisions, we are recommending that it give full reasons for such decisions. Therefore, a new section 23(4) would read.

New section 23(4)

> Upon the determination of any appeal under subsection (3), the Lieutenant Governor in Council shall provide the parties with written reasons for its decision.

Sections 17, 22 and 34 should also be amended to include this provision. Bill 159 provision numbers 17(20), 22(6) and 22(7) and 34(29) and 34(30) should simultaneously be deleted.

New section 17(19)

> Upon the determination of any appeal under subsection (18), the Lieutenant Governor in Council shall provide the parties with written reasons for its decision.

New section 22(7)

> Upon the determination of any appeal under subsection (6), the Lieutenant Governor in Council shall provide the parties with written reasons for its decision.

New section 34(29)

> Upon the determination of an appeal under subsection (28), the Lieutenant Governor in Council shall provide the parties with written reasons for its decision.

III. OFFICIAL PLANS

A. Official Plans and Environmental Considerations

The principle of environmental assessment has now been recognized and adopted in the province of Ontario. It is provincial policy, however, that the normal processes of the Planning Act, and not the Environmental Assessment Act, apply to normal urban commercial, industrial or residential development.*

As agreed by the Ministries of Housing and Environment, natural environment considerations should become an integral part of the administration of the Planning Act at the provincial and municipal level.*

Since the Official Plan becomes the blueprint for future development in the municipality, it is our position that the definition of "official plan" (s.1(h) and the provision dealing with matters to be addressed in the Official Plan (s.16) are not sufficient to ensure that environmental concerns are firmly and comprehensively dealt with.

To redress this problem we propose that sections 1(h) and 16 be amended as follows:

> s.1(h) "official plan" means a document approved by the Minister containing objectives and policies designed to provide guidance for the future land uses in, the health safety and welfare of the inhabitants of, and the protec-

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* White Paper on the Planning Act, May 1979, 16.16.

* Ibid., 16.6.

tion and conservation of the environment of a municipality or a planning area or a part thereof.

s.16(1a) An official plan shall contain

(i) a description of the effects on the environment that the implementation of the official plan may be expected to cause;

(ii) a description of the actions necessary or that may reasonably be expected to prevent, change, mitigate or remedy such effects on the environment.

For greater clarity in dealing with official plans and other provisions of the Act when the environment is dealt with, we are proposing that "environment" be defined in s.1(aa) as follows:

1.(aa) "environment" means air, land, water, and plant and animal life and the interrelationships between any two or more of them.

B. Waiver of Approval of Official Plan Amendments

Section 21(2) attempts to provide for the speeding up of the process by allowing a waiving of the requirement for Ministerial approval of official plan amendments where no provincial interest is considered to be at stake. It is not clear that this procedure would in fact expedite matters because the Minister could approve the amendment in a short period of time in any case.

Although this section has been improved by adding a provision that approval may be waived where there is no provincial interest and no request for referral has been

received under subsection 17(10), the provision is of limited usefulness and creates a new and unnecessary procedure. We submit that it should be deleted entirely and amendments should continue to require approval.

IV. PUBLIC PARTICIPATION

Introduction

Section 17(7) provides that the Clerk, after Council adopts the Official Plan, must give notice to..."every person who filed with the clerk at the meeting mentioned in clauses (2)(a) or at any time prior thereto, a written request to be notified if the plan is adopted and to every agency that submitted comments under subsection (4) and that in writing requested to be notified if the plan was adopted."

Then, under section 17(10) the Council or any person or agency can request that the Minister, within 30 days, refer the plan or any part of the plan to the Municipal Board. A person requesting a referral to the Municipal Board must also include a statement in writing setting out the reasons for the request (section 17(11)).

In zoning by-law matters, the legislation specifies that written notice of the passing of a by-law should be given to persons who filed with the clerk a written request to be notified (section 34(15)). These persons or agencies under section 34(16) may appeal to the

Municipal Board, but the right of appeal is limited by the Municipal Board's power under section 34(24) to dismiss the appeal without holding a hearing if it determines that the grounds of appeal are not sufficient.

We submit that land use hearings of relevance to large numbers of people should not be unduly limited but should be as broad as is practically possible.

This position is further discussed under topics A. to E. in this section.

A. Review of Municipal Council Decisions.

Although the Statutory Powers Procedure Act is stated not to apply to meetings conducted by Council (section 16), the nature of the decision being made may subject decisions of Council to judicial review and to the requirement of full hearings including cross-examination.

Section 34 creates the most problems in this respect, since the Council is to make final decisions on by-law matters, and only appeals are to be heard by the Municipal Board. We submit that the best way to avoid this problem is to continue to have the final decision made by the Municipal Board. An alternative, which might or might not protect the process from challenge, would be to amend section 61 to exclude specifically the right of a person affected to:

- call evidence
- cross-examine
- challenge on the ground of bias
- have a full number of Council members in attendance throughout the hearing
- have an orderly hearing
- subpoena witnesses
- have evidence presented under oath
- receive a written decision

However, if the process were to be challenged in the courts, especially in a case where an individual's rights were substantially affected, a court might strain to find ways for the individual to receive a fair hearing and to overturn a process which might appear to be manifestly unfair. Given the structure of municipal Councils, it would seem impossible for them to provide an opportunity for parties to be heard with even the minimum rules of natural justice.

B. The Minister's Referral Power

Another notable amendment to the Official Plan approval process is that under section 17(1) the Minister is required to refer unless the referral would serve no useful purpose or, in his opinion, the request is made only for the purpose of delay. The Minister's power to refuse to refer when he thinks that the referral "would serve no useful purpose" is extremely broad and ambiguous. The wording of the old Act, which stipulates that the Minister shall refer "...unless, in his opinion, such

request is not made in good faith or is frivolous or is made only for the purpose of delay..." is more precise and is, we submit, still adequate. The number of frivolous referrals will be kept down by the requirement in section 17(11) for a statement in writing setting out the reasons for the request. Also, the OMB has, under the Ontario Municipal Board Act, (s.96) the ability to award costs incidental to any proceeding before it.

The wording of section 51(15) relating to referrals of draft plans of subdivision, and section 53(12) relating to consents should also be changed to delete the "serve no useful purpose" provision and to reinstate the "frivolous, vexatious, or for the purpose of delay" provision. Sufficient provisions to limit appeals on consents are provided in section 53(15), which stipulates that the Board may dismiss the appeal without holding a hearing if it feels that the reasons in support are insufficient.

C. Dismissal of By-law Appeal Without a Hearing

The provisions which allow the Municipal Board to dismiss an appeal on the basis of a letter setting out the grounds for appeal leave in question the rights of an appellant. He presumably has had no chance to call and examine witnesses or to cross-examine other witnesses at the municipal council meeting, and because the Statutory Powers Procedure Act is stated not to apply to proceedings held under section 34(24) there is no stated

right to appear by counsel or by an agent. The Board may dismiss an appeal from the Municipal Council decision without holding a hearing. We would recommend that there be clarification in the Act that the appellant has a right to be represented before the Board by counsel or an agent. It would also provide greater fairness if, when the Board proposed to dismiss an appeal without a hearing, the appellant and respondent were allowed to make oral argument as to whether the appeal should be heard.

D. Costs

At the present time section 96 of the Ontario Municipal Board Act allows costs to be awarded by the Municipal Board. However, this provision is not adequate to allow the presentation of evidence by a poor ratepayer's group or individual in a case which requires substantial and expensive expert evidence.

The Consolidated Hearing Act (subsection 7(4) and 7(5)) also provides that costs may be awarded by the Joint Board hearing a matter, but in both of the first two hearings under that Act*, the Joint Board has ruled that it cannot award costs in advance.

We would submit that in order to allow proper representation in Municipal Board hearings, a provision should be included in the Planning Act allowing the Municipal Board to award full costs in advance. Since "costs" has a specific meaning in civil court actions, a provision

* The consolidated hearings relating to the Southwestern and Southeastern Ontario Hydro transmission corridors.

allowing for advance recovery of the full expenses incurred by a party should be worded more broadly. A suggested provision would read:

New section 64

64(1) In any proceedings before the Municipal Board the Board may order that the expenses of and incidental to the proceeding be paid.

(2) The expenses of an incidental to the proceeding before the municipal Board are in the Board's discretion and it may order by whom and to whom and in what amount the expenses are to be paid.

E. Notification Procedures

(i) Official Plans

Notification under various provisions of the Act is to be dealt with by the Lieutenant Governor in Council through regulations (section 71(a)). We would like to ensure that with respect to official plans and official plan amendments, specific government Ministries or agencies are given notification where the circumstances would require such notification. We propose that section 71 be renumbered as section 71(1) and that a section 71(2) be added.

New section 71(2)

In addition to persons and agencies required under the regulations authorized by subsection 1(a), where an official plan or official plan amendment is being considered, the municipal council shall notify:

(i) the Niagara Escarpment Commission where the area affected is within or adjoining the Niagara Escarpment Planning Area;

(ii) ~~the Ministry of Transportation and Communciations~~ (Corridor Control Section) where any part of the land affected is within the jurisdiction of M.T.C. under section 31 or 35 of The Public Transportation and Highway Improvement Act;

(iii) the Ministry of Agriculture and Food (Food-land Development Branch) where any amount of agricultural land would be taken out of production or would be affected by any provision of an official plan;

(iv) the Ministry of the Environment where matters coming within their jurisdiciton under the Environmental Protection Act, Environmental Assessment Act, Ontario Water Resources Act, or an international agreement are designated or might be affected by the official plan;

(v) the Ministry of Natural Resources where park-land, fisheries, hazard lands or wetlands would be designated or might be affected;

(vi) the secretary-treasurer of every conservation authority having jurisdiction within the area affected by the official plan.

This would necessitate a small change to subsection 17(2)(a) as follows:

Amended section 17(2)(a)

(a) shall, in the manner and to the persons and containing the information prescribed, and further in accordance with section 71(2), give notice of the time when and the place where council will hold a meeting to consider the adoption of the plan which meeting shall be held sooner than thirty days after the requirements for the giving of the notice have been complied with; and

(ii) Subdivision Plans:

Subdivision plans (s.51) are exempt from notification requirements. Although such plans are implemented according to zoning by-laws and official plans, the subdivisions proposed are often large, costly, and subject to controversy. We recommend that the public be notified before the plans are accepted.

The requirement of notification is especially important in areas where there is not municipal organization because official plans and zoning by-laws may not be in existence. We would suggest that the responsibility for giving such notice should fall on the Minister and that in unorganized territory notification should be given by area-wide newspaper advertising provided for by the regulation.

The amendments should read as follows:

s.51(3a) The Minister, before approving a draft plan of subdivision, shall in the manner and to the persons and containing the information prescribed, give notice of the application for approval.

(iii) Consents:

Consent to conveyances should also be subject to notification procedures. Specifically, the regulations should prescribe that persons within 120 meters of the land for which consent is sought should receive written notice, as should anyone who requests notice. The Act should be amended as follows:

s.53(4) A Council, in determining whether a consent is to be given, shall give notice to and shall confer with such persons or agencies as are prescribed.

(iv) Content of Notification Regulations:

In notification provisions specifying that notice shall be given to persons within 120 meters of any proposed zoning by-law or form of development tenants are not specifically included. The regulation should provide for notification to tenants as well as to landowners.

Where provision is made in the regulation for notification including an indication of where further detailed information relating to the proposed action can be examined, the detailed information available should include all staff reports.

Since the Statutory Powers Procedure Act is not to apply at municipal council hearings, the right to appeal by counsel or by an agent should be specified in notices under the regulation.

V. ONTARIO HYDRO EXEMPTION

Section 62 provides that, except in specific limited circumstances, Ontario Hydro will be exempt from the provisions of the Planning Act. According to the commentary

in the 1979 draft which preceded Bill 159, the exemption was based on the fact that Hydro is subject to the Environmental Assessment Act and to require Hydro to be subject also to the Planning Act would involve needless duplication.

This argument does not justify Hydro's exemption. The Consolidated Hearings Act now provides for one hearing where more than one hearing, by more than one tribunal, under more than one piece of legislation specified in the schedule under the Act, would otherwise be required. Hydro will not normally be forced to undergo duplicitous hearings, so this exemption should not be provided

We therefore submit that section 62 of Bill 159 should be deleted.

VI. RECOMMENDED ADDITIONS TO BILL 159

A. Recognition of Unincorporated Associations

The question of the status of unincorporated associations has not been dealt with in the Act. In the past, the Municipal Board has ruled that it has no power to recognize an unincorporated association as a party.*

Some provision should be inserted in the Act giving the Municipal Board the authority to recognize residents' associations or other unincorporated associations as parties to its hearings. This could be accomplished by inserting a definition section for the word "person".

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* Bedford Park Homeowners Association v. Davmark Developments Ltd. (1974) 3 O.M.B.R. 66

New Section 1(i)

s.1(i) "Person"means an unincorporated association as well as a corporation and a natural person.

The last three definitions in section 1 should then be re-numbered as (j), (k), (l), respectively.

B. Right to Enforcement by Injunction

Bill 159 does not include s.43 of the Planning Act, 1970 which provides that a municipality, a planning board or any ratepayer may bring an action to restrain the contravention of a by-law implementing an official plan and contraventions of s.19 and 32 of the same Act.

We recommend that this provision be included in the new Act, along with the penalty provisions provided in s.67. We submit that the penalty provisions alone are not adequate in all circumstances because of the higher onus of proof in quasi-criminal prosecutions and the short limitation periods in such actions. This alternative provision which was formerly section 43 should therefore be re-enacted as section 67a.

New section 67a

In addition to any other remedy or penalty provided by law, any contravention of a by-law that implements an official plan and any contravention of section 24 may be restrained by action at the instance of the planning board of the planning area in which the contravention took place or any municipality within or partly within such planning area or any ratepayer of any such municipality, and any contravention of any order of the Minister made under section 47 may be restrained by action at the instance of the Minister or the planning board of the planning area in which the contravention took place or the municipality in which the contravention took place or any adjoining municipality or any ratepayer of any such municipality or adjoining municipality.

VII. MISCELLANEOUS AMENDMENTS

A. Requirement that Provincial Ministries Consult with Municipalities

Under section 6 provincial ministries and other public agencies are to consult with municipalities and to have regard for municipal planning policies before carrying out any provincial undertakings that may affect a particular municipality. However, section 6(2) stipulates that the Ministry need only consult where that Ministry considers that the project will directly affect any municipality. We propose the following amendment:

> 6(2) A ministry before carrying out or authorizing any undertaking that will directly affect any municipality, shall consult with, and take into account the established planning policies of, the municipality.

This provision does not leave discretion with the individual ministry proposing to carry out a project, but makes the determination of whether a municipality will be affected an objective determination. We submit that this change in wording will provide the municipality with greater protection.

B. Clerk's Certificate Relating to Notice and Appeal Requirements

Under section 34(18) the clerk's affidavit or declaration relating to notice and to notices of appeal in relation to zoning by-laws is said to be conclusive evidence of the facts stated therein. We see no problem with having a presumption that the facts stated in the

certificate are true, but to say that they are conclusive evidence is needless and unfair. We would suggest that the word conclusive be changed to prima facie.

C. Assessment Act Disclosure

Penalties are provided for disclosure of information which is prohibited from being disclosed under the Assessment Act. Section 68(2) provides a fine of not more than $200.00, or imprisonment for a term of not more than six months, or both. As the maximum fine and a maximum prison sentence are seriously mismatched in severity, we would recommend that the fine be increased and the jail term decreased.

All of which is respectfully submitted.

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