



ISSN 1180-5218

Legislative Assembly
of Ontario
Second Session, 38th Parliament

Assemblée législative
de l'Ontario
Deuxième session, 38^e législature

Official Report of Debates (Hansard)

Thursday 3 August 2006

Journal des débats (Hansard)

Jeudi 3 août 2006

**Standing committee on
general government**

Planning and Conservation
Land Statute Law
Amendment Act, 2006

**Comité permanent des
affaires gouvernementales**

Loi de 2006 modifiant des lois
en ce qui a trait à l'aménagement
du territoire et aux terres
protégées

Chair: Linda Jeffrey
Clerk: Susan Sourial

Présidente : Linda Jeffrey
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Room 500, West Wing, Legislative Building
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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Thursday 3 August 2006

Jeudi 3 août 2006

The committee met at 1002 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mrs. Linda Jeffrey): Good morning. The standing committee on general government is called to order. We're here today to commence public hearings on Bill 51, the Planning and Conservation Land Statute Law Amendment Act, 2006. The first item of business is the report of the subcommittee on committee business. Could I ask someone to move the subcommittee report and read it into the record?

Mr. Peter Fonseca (Mississauga East): I'll do that, Chair.

The standing committee on general government, summary of decisions made at the subcommittee on committee business.

Your subcommittee on committee business met on Tuesday, July 4, 2006, and recommends the following with respect to Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts.

(1) That, as per the agreement of the party whips, the committee hold up to four days of public hearings in Toronto (Thursday, August 3, 10 a.m. to 6 p.m.), London, Napanee and Sudbury (Tuesday, August 8, Wednesday, August 9 and Thursday, August 10, 2006, 10 a.m. to 5 p.m., depending on travel arrangements); that the order of locations visited is to be determined by the committee clerk in consultation with the Chair, taking into account travel arrangements.

(2) That, as per the agreement of the party whips, the committee hold two days of clause-by-clause consideration on Tuesday, August 29, and Wednesday, August 30, 2006 (10 a.m. to 5 p.m.).

(3) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel, the committee's website and one day in the following area newspapers (dailies when possible; otherwise, weeklies): Toronto (Globe and Mail), London, St. Thomas, Woodstock, Stratford, Brantford, Kitchener-Waterloo, Sudbury, Sturgeon Falls, Espanola, Napanee, Kingston, Belleville, Trenton, Picton and Tweed. The ads are to be posted as soon as possible.

(4) That the interested people who wish to be considered to make an oral presentation on Bill 51 should

contact the committee clerk by 4 p.m., Wednesday, July 26, 2006.

(5) That, if required, on Wednesday, July 26, 2006, the committee clerk supply the subcommittee members with a list of requests to appear received (to be sent electronically).

(6) That, if required, each of the subcommittee members supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by 4 p.m., Thursday, July 27, 2006, and that these witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

(7) That the committee clerk, in consultation with the Chair, be authorized to schedule witnesses from the prioritized lists provided by each of the subcommittee members.

(8) That if all the groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists will be required.

(9) That groups and individuals be offered 20 minutes in which to make a presentation (15 minutes for the presentation and five minutes for questions from the committee members).

(10) That a minimum of six presenters (two hours) is required to warrant travel to London, Napanee or Sudbury; and that if travel is not warranted to a location, witnesses in that location be offered videoconferencing.

(11) That if London, Napanee or Sudbury have vacancies; and if Toronto-area groups are available to travel; and if there are more Toronto-area groups willing to travel than there are vacancies in London, Napanee or Sudbury, the subcommittee shall select the Toronto-area groups that will be heard in these locations.

(12) That the deadline (for administrative purposes) for filing amendments (as per the agreement of the three party whips) be Wednesday, August 23, 2006, 5 p.m.

(13) That on Tuesday, August 29, 2006, at 10 a.m., the minister be invited to make a 15-minute presentation followed by 10 minutes of questions and answers for each of the opposition parties (20 minutes in total for the two opposition parties).

(14) That in order to facilitate the distribution of written submissions before the beginning of clause-by-clause, the deadline for written submissions be 5 p.m., Monday, August 28, 2006.

(15) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Any comments or questions?

Mr. Ernie Hardeman (Oxford): I just wanted to make sure, for the record, we all understood that number 2, where it says "two days of clause-by-clause," is not a commitment from the three parties that we would have the clause-by-clause completed in two days. It just means that we will hold those two days, and if more is required, we will have to set more time beyond that to do that.

The Chair: Any other comments or questions?

Mr. Michael Prue (Beaches–East York): This is only a question. Obviously there weren't enough people to warrant going to London and Sudbury. I received a fax stating that we will be meeting here on Tuesday, August 8, from 10 a.m. until 3:50 p.m.—the last one being the regional municipality of Waterloo. Is that the only day or are we coming a second day as well?

The Clerk of the Committee (Ms. Susan Sourial): We're meeting on the 9th as well. I think the agendas hadn't been finalized for the 9th.

Mr. Prue: But there are enough people for the 9th to justify another day?

The Clerk of the Committee: Yes.

The Chair: Any other comments or questions?

The committee will remember that Minister Gerretsen was offered time on the 29th, and he informed the clerk that he was not available. He offered to attend on August 10, and the subcommittee declined that offer. It turns out we don't have enough people to see on the 10th, so maybe the committee was telepathic in their knowledge that we wouldn't have enough people, just for your information.

Could I have a vote on receiving the report? All those in favour? All those opposed? The report of the subcommittee is carried.

PLANNING AND CONSERVATION
LAND STATUTE LAW
AMENDMENT ACT, 2006
LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI A TRAIT À L'AMÉNAGEMENT
DU TERRITOIRE ET AUX TERRES
PROTÉGÉES

Consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts / Projet de loi 51, Loi modifiant la Loi sur l'aménagement du territoire et la Loi sur les terres protégées et apportant des modifications connexes à d'autres lois.

The Chair: We're at the public hearing portion of our meeting. I'd like to welcome our witnesses and tell them that they have 20 minutes to make their presentation.

Our first delegation this morning is the Ontario Catholic School Trustees' Association and the Ontario Public School Boards' Association. Could you come forward?

Are Mr. Murray, Mr. Johnson and Mr. Wright here? They're not.

STOP TRANSMISSION LINES
OVER PEOPLE

The Chair: We'll move on to our next delegation: Stop Transmission Lines Over People. Is Mr. Johnson here? Please come forward.

Good morning. As you set yourself up, thank you for being here today. Please announce your name and the organization you speak for so that Hansard gets a record of that. You have 20 minutes to speak. If you choose to use all that time, there will be no opportunity for us to ask questions. If you leave time at the end, it will be divided amongst the three parties equally.

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Mr. Richard Johnson: Thank you very much. My name is Richard Johnson. I've been a very active member of a community-based group called STOP. I'm not the official spokesperson for the organization; the official spokesperson is on holidays. I've stepped in to put our experience before this committee in the hopes that it will influence the outcome of Bill 51.

I actually wrote a six-page speech that I was going to read to you this morning, but rather than sit down and plow through it, I decided to leave that speech with the clerk. I'll try to summarize more succinctly my concerns and my experience.

STOP is a grassroots community group that came out of York region. It was created because Hydro One was proposing that a transmission line be built from Markham to Newmarket. That line was approximately 25 kilometres long, and it ran immediately behind residential areas. There was an outpouring of concern from the community. STOP was able to rally the support of approximately 3,000 people, who signed online and hard-copy petitions; 653 bump-up letters were sent to the Minister of the Environment.

We've met with all levels of government in trying to address this issue. In the process, I've become well versed in power infrastructure implementation issues and I've found case studies from across North America mainly, but many here in Ontario, that I think this committee should be and likely is well aware of. For instance, King township is experiencing a case right now with regard to our case. Aurora, Newmarket, Markham, Mississauga, Toronto, a town called Eden, Ontario, Niagara Falls—all of these communities have experienced power infrastructure issues in the past year that had the potential to impact communities.

My concern—the reason I'm here today—is that section 23 of the proposed Bill 51 apparently exempts power infrastructure programs from the Planning Act. Now, I understand that public institutions such as OPG

and Hydro One are already exempt from the Planning Act, and they are in some cases subjected to undertake what's called an environmental assessment, either a class EA or an individual EA depending on the scope of the project. But the reason I am here is that I do not believe there are enough controls or guidelines in place to protect our communities. I believe that municipal input and public input is absolutely essential to smart growth planning.

In our case in York region, Hydro One put forward a solution where they proposed putting 130- to 140-foot poles 50 to 70 feet in behind homes. They contended at many public meetings, where literally, in the end, thousands of people attended these and repeated meetings, that there was no real estate impact posed by these towers despite an OMB ruling that ruled in a similar case that there was a 30% devaluation of a homeowner's property. They argued there was no real estate impact; they argued there was no health impact, that they deferred to Health Canada despite the fact the Canadian Cancer Society raises concerns, Oxford, Yale, U of T, University of Victoria, Trent University—a great number of reputable institutions raise concerns over proximity to transmission lines. They contended that there was no aesthetic impact, if you can believe it, to putting a 140-foot pole 50 feet behind somebody's home.

The reason I'm outlining this case is that the Environmental Assessment Act was not able to resolve the issues of residents. Therefore, any effort to remove public input or municipal input into planning decisions I think is a very risky proposition. If we can't trust a public institution to act in good faith with the existing environmental assessment process, how can we trust anyone?

What ended up happening in our case is that we met with the Ontario Power Authority very early on. Amir Shalaby, the VP of systems planning, met with myself and a couple of other people one week before he actually officially started his job, and our case was his first and highest priority because of the pressing power supply needs. When he did hold open houses, or five working group meetings plus meetings with elected officials, all the municipalities were represented, citizen representatives were available from all the municipalities, and they ended up finding over 40 alternatives to what Hydro One proposed was the only viable solution. There was no silver-bullet solution; however, there were a number of combinations that met our needs. In fact, when it came down to it, at the end of the day the solution that was recommended to the Ontario Energy Board was faster, less expensive and less environmentally impacting, provided it's installed in the proper place.

The reason I'm saying this is because it should draw to your attention that public input and community participation in smart growth planning can actually work. So rather than limit the public's input or influence on the OMB or on the planning decisions that affect their community, I think we should be encouraging and facilitating better lines of communication. It's quite apparent that it was residents who pushed for environmental issues

to be addressed in York region, and without the support of the municipalities, and in particular the town of Markham, which poured hundreds of thousands of dollars into this fight, where we had environmental experts of all sorts—without them, without their support and without the ability or the mechanism to fight Hydro One, these lines would have been slapped into our backyard. They completely disregarded the public input. I don't have time here to outline why I say that, but I think there should be a closer examination of the way our approvals and appeals processes work.

I don't profess to fully understand all the implications of Bill 51. I did try to do some research. I know that the Pembina Institute, a very reputable organization that specializes in power supply issues, shares my concern with regard to the diminishment of public input or municipal input into these types of decisions. I know there are town planners, including from Oakville, and other planners who have raised concerns. I've seen legal opinions posted on the Internet that seem to suggest that the bill will result in a diminishment of public input and municipal control over power supply issues.

I totally support the intent of the bill, which is to increase municipal input. I totally support alternative energy solutions. I totally support local power generation, as suggested by the OPA. But all of it has to be underpinned by sound environmental planning, and with the lack of standards or guidelines that adequately address commonly held concerns, I have concerns that people are going to have infrastructure installed in their backyard that is going to damage their urban or rural environment for the long term. I think it's a very, very critical point to consider when we talk about smart growth planning. There is all sorts of positive legislation coming down the pike regarding protecting our environment, and I think that people and municipalities have to play a larger role.

I'll wrap up now, but part of the problem is that in our approach to planning, particularly with Hydro One, in my experience, what happens is that they look at technical and financial considerations first. They identify the solution based on technical and financial criteria, and at the end of the process they try to apply an environmental assessment process. The environmental considerations are an afterthought.

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The mandates of Hydro One, OPA, the Ontario Energy Board, the Ontario Municipal Board—none of them are required to address environmental concerns up front. They defer to the Minister of the Environment almost as an afterthought, and if it meets with the approval of the Minister of the Environment, then it's fine with us. But what happens is that public institutions and, potentially, private companies come up with solutions that are not consistent with the character of the community that they're imposing these solutions on. In the case of Hydro One, I personally feel that they paid lip service to the EA process. They saw it more as a hurdle to overcome than a helpful process to have dialogue that would result in positive solutions.

I'm sorry to run on here, but in 2004 the state of Connecticut passed legislation by a vote of 144 to 5 to address this very same issue that we've fought regarding transmission lines. They demand that transmission lines are underground and, where possible, behind residential areas, to address health concerns and aesthetic concerns, and as an economic development consideration.

There are all sorts of examples internationally where they have more progressive environmental standards with regard to power supply infrastructure. We should be learning from them, and we should be taking steps to engage the public and engage municipalities in responsible, smart growth planning as it pertains to power supply infrastructure.

The Chair: You've left two and a half minutes for each party to ask a question, beginning with Mr. O'Toole.

Mr. John O'Toole (Durham): Thank you very much for your presentation. In fact, the reason I'm here is that this presentation dealt with Mayor Don Cousens and the Markham issue. I'm quite familiar with this issue, and I commend you for your work.

I currently would ask your views on another issue I'm working on in Uxbridge. It's the installation of a wind turbine of about 4.5 megawatts, with 300-foot towers not far from existing residences as well as farm operations. The residents have met, have written the minister, and are very concerned that under the regulations for energy today, anything in excess of two megawatts—generally one of these large turbines is about one to 1.5 megawatts, so there are probably four or five of them, 300-plus feet in the air, flickering lights etc. But there's no requirement to have any kind of what's called an environmental screen, which is not really a formalized process to the extent of a full EA.

Given your experience and the importance of having sustainable solutions, as you put it, what recourse would you—under section 23, you're absolutely right, it kind of exempts this for energy, and for other infrastructure as well. For the greenbelt, they can build as many highways as they want without any environmental—because it's in the public interest of infrastructure.

Mr. Richard Johnson: If we're serious about protecting our environment and listening to the public, I think that we have to create standards that address commonly held concerns.

Mr. O'Toole: Well, I'm a little concerned—

The Chair: Mr. O'Toole, you don't have a lot of time left. If you want an answer, you're going to have to—

Mr. O'Toole: Yes, I just want to get to that question, but I want to say one more thing. I'm surprised that there hasn't been more public response, perhaps because it's the high point of summer—deliberately—because this has serious implications for municipal governance as well as the individual citizen's right of process. This is going to be passed, exempting—on section 23, with respect to Uxbridge, could you give me a response to—

Mr. Richard Johnson: You should look into a case in Eden, Ontario, that went before the OMB. A young

gentleman went before that board and made an impassioned speech, and it was completely disregarded.

I think the concerns are legitimate; there are solutions, however. One thing I found at the OPA working group meetings last summer is that when you get people in a room who are willing to discuss an issue, there are reasonable solutions to mitigate against the concerns. You may not please everyone all the time, but there are things that can be done to address these concerns.

I believe in appropriately located and designed infrastructure that addresses environmental concerns. Quite frankly, Hydro One pays lip service to it, and I'm concerned that some private companies may as well because they're motivated by other things than the environment. They're motivated by the bottom line and ensuring power reliability—

The Chair: Thank you, Mr. Johnson. Mr. Prue.

Mr. Prue: Again, your key concern, and one of mine as well, in this legislation is section 23. Have you been in touch with other environmental groups? You did mention the Pembina Institute. You were speaking of your own group, STOP. Have you been in touch with other ones? Do you know whether other ones share this concern?

Mr. Richard Johnson: There are a great many environmental groups: the Sierra Club, Greenpeace, the Pembina Institute. There's a community group similar to STOP, the Blue Highlands Citizens Coalition, that was concerned about wind turbines on the Niagara Escarpment. There are a great number of people who are well aware of environmental issues who share my concern.

It's my hope that we take a more serious look at that particular clause. I understand the interest in trying to expedite the implementation of infrastructure; it's very important. We've put ourselves into a crisis; it's a self-inflicted power supply crisis. I understand that they're trying to streamline the approval process, but we should not be forgoing public input to the detriment or the cost of the environment.

I've become what I would consider to be an urban environmentalist. I don't think the urban environment should be treated any differently than the rural environment. We have to seriously address these issues. Germany would never allow what Canada does. There are many, many countries—Sweden, the Netherlands—all sorts of states that have passed laws that address the very same concerns we're facing.

I have seen a huge lack of interest, or apathy. When I met my MPP, Greg Sorbara, he told me that he wasn't my elected representative and that he would exercise his own good judgment. When I pointed out the gaps in the planning process, that Hydro One has a limited mandate to only consider transmission lines and they were making their decision without considering conservation or generation, he basically said he'd seen it all before and he dismissed the concerns of thousands. We had a petition in front of him—at the time it was only 350 people, to be fair. But he completely washed his hands of it and then, shortly after, the people of Vaughan rose up: 1,500 people showed up at a public meeting on short notice

regarding the Calpine 1,000-megawatt plant that was proposed in a residential area and—

The Chair: Thank you, Mr. Johnson. Dr. Qaadri.

Mr. Shafiq Qaadri (Etobicoke North): Mr. Johnson, I ask this question in the spirit of inquiry and not really confrontation. You cited a number of institutions that have, for example, remarked on the incidence, as you said, of cancer: Yale, Oxford, Toronto etc. There are a lot of researchers who are studying potential or implied or some kind of effects, for example, regarding cellphones or any other kind of power generation or transmission. My question to you is, how robust is this information? First of all, it's not accepted by the medical community. Is it an area of research focus, interest? Yes. Is there an interest in terms of the public or outrages; has it reached the level of protest? Possibly, as you've brought to us. So I ask you again, as I say, in the spirit of inquiry, how robust do you say this information is?

Mr. Richard Johnson: It's robust enough that I think we should pay attention to it. Dr. Jaczek, the York region medical health officer, met with myself and Dr. Magda Havas of Trent University. We looked at the research and we discussed how Health Canada responded to our concerns. Dr. Jaczek, along with, I believe, the medical health officer of Toronto, shares enough concern that I think she felt—actually, I have letters where she did state that the World Health Organization's recommendation of prudent avoidance of risk should be adhered to. For instance, we have transformer boxes, the green boxes, running up and down our street. Kids are sitting on these boxes; they're having lemonade stands on these boxes. The Canadian Cancer Society comes out and they say that kids should not play under transmission lines or near transformer boxes. There's no label to suggest that kids should be staying off these boxes.

We aren't taking the least measures to protect our community based on the science. There's enough research out there, I can assure you. In fact, I shared with a gentleman back here a report that was prepared by the University of Victoria, the environmental law group out there. I would be happy to forward the link to you—Nadine Wu, I believe her name was. She wrote a report on international precedents that addressed the concern surrounding EMF. Canada is lagging, and I think there's enough research to warrant concern.

The Chair: Thank you, Mr. Johnson. We appreciate your being here today and your passion. You're a good representative. Thank you very much.

1030

ONTARIO CATHOLIC SCHOOL
TRUSTEES' ASSOCIATION
ONTARIO PUBLIC SCHOOL BOARDS'
ASSOCIATION

The Chair: Our first delegation wasn't here when we began. Are they here today now, the Ontario Catholic School Trustees' Association? Please come forward.

Welcome. I have three names here on my agenda. If you're all going to speak, okay. If you can get yourself settled. If you could identify yourselves and the organization you speak for, for Hansard, and you'll have 20 minutes. If you leave some time at the end, there will be an opportunity that I will share amongst all three parties to ask questions of your delegation. Welcome. You can start any time you like.

Mr. Bernard Murray: Good morning. I am Bernard Murray, president of the Ontario Catholic School Trustees' Association. With me today is Rick Johnson, who is president of the Ontario Public School Boards' Association. Randy Wright, next to him, is superintendent of planning, Peel District School Board. On his left is Paul Mountford; he's the land use planner at the Peel District School Board.

Together, OCSTA and OPSBA represent all English-language school boards and school authorities in Ontario, which collectively educate 1.8 million elementary and secondary students. Our partner associations from French-language public and Catholic school boards are co-signatories of our brief and supportive of our submission today.

I'll share with you a few of the provisions in Bill 51 that school boards support. The school boards associations are sympathetic to the long-standing complaint of municipalities that the Ontario Municipal Board has not deferred or paid sufficient attention to the decisions of the municipality on appeals from various planning decisions, including official plan amendments, zoning bylaw amendments, site plan conditions and conditions of draft approval. Municipalities have also complained that developers have utilized the timelines for appeals found in the Planning Act to push development proposals to the OMB too quickly for the ordinary municipal process, so that municipal council sometimes has not had before it a clear idea of the development in question. In effect, OMB hearings have, on occasion, become original planning exercises and not truly appeals.

The associations therefore support the measures in Bill 51 that give municipalities more time to consider planning changes and require the OMB to pay more heed to the decisions of municipalities while still respecting the appeal rights of proponents. The associations support particularly the maintenance of the OMB's right to hear appeals de novo, as we requested in our submission on Bill 26.

The associations are also pleased that the government is supporting an enhanced recognition of the status of public bodies, including school boards, in the planning process. We are particularly appreciative of the way in which the Planning Act enhances that status. We support the provisions that enhance the ability of public bodies to participate in an OMB appeal in respect of official plan amendments, zoning bylaws and plans of subdivision.

The associations believe that the effect of these enhanced rights will be to better ensure that municipalities consult actively and on an ongoing basis with public bodies. The experience of school boards across

Ontario is that some municipalities are exemplary in their involvement of school boards in the planning process while others treat school boards as an afterthought.

We are aware that the enhanced appeal rights and the rights to submit evidence given to public bodies in these provisions have been criticized as unfair, since proponents who are not public bodies do not have the same rights. These enhanced powers are very important to school boards, however, and the associations urge that they be retained. This is the only way in which the better coordination of public bodies called for in the provincial policy statement can be effectively carried out. We urge this committee to support the legislation in this respect.

I turn this over to Rick now for the opportunities for improving the Planning Act.

Mr. Rick Johnson: The opening of certain provisions of the Planning Act by Bill 51 affords the government the opportunity to address some long-standing issues of great importance to school boards. Bill 51, for example, would make a number of amendments to section 41 of the Planning Act, which deals with site plan control.

The primary concern of the associations with respect to site plan control is that it gives municipalities an opportunity to extract concessions from the school boards that are not actually permitted under section 41 and for which school boards are not funded.

The concern is particularly critical for the school boards when it comes to the placement of portables. Recent amendments to the Planning Act prior to Bill 51 have increased the degree of municipalities' control over site plan issues, including design. For many boards, getting site plan approval is a running battle with municipalities. They are often required to pay much more for site plan approval than the municipality is legally entitled to extract simply in order to secure building permits to get portables on site in a timely way.

This situation is especially problematic these days when the Ministry of Education's commitment to primary class size improvements and the provision of daycare, both of which the associations support, is creating new logistical and space problems in the short term and obliging school boards to locate portables on school sites. This becomes even more problematic where there is residential growth in the neighbourhood.

It is the position of the school boards that the placement of portables ought not to trigger the need for site plan approval. To accomplish this, the associations recommend that the definition of "development" in subsection 41(1) of the Planning Act be amended to exclude the placement of portables by a school board. If it is determined that the definition of "development" should be left as it is so that portables are not exempt, then the associations recommend that there be a specific exclusion of portables from the proposed 41(4)(d), which would give a municipal council control over "matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings...."

The associations are particularly concerned that, given the current appearance of portables, the use of this section by municipalities would effectively prevent school boards from placing needed portables on school sites. If school boards are obliged to comply with design requirements for portables, then portables will become an uneconomic way to deal with population problems in the schools. This is a matter of general public concern.

Exempt portable classrooms from site plan conditions: The Planning Act contains a number of significant elements concerning site plan control as conditions to site plan approval under subsection 41(7). These onerous conditions can include the widening of highways that abut on the land and the conveyance of land to the municipality for a public transit right of way. These conditions reinforce our argument that the mere placement of portables on a school site should be excluded from the definition of "development" for the purpose of site plan control. The associations recommend that section 41 of the Planning Act be amended so that subsections (7) and (8) do not apply to the placement of portable classrooms by a district school board.

Exempt permanent school buildings from design controls: The associations accept the application of section 41 to permanent school facilities. We are concerned, however, that Bill 51 proposes an addition to section 41 which will give municipalities control over matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design. The possible application of this clause not only to portables but also to new schools and to school additions would be problematic for school boards. The art of school design is driven in large measure by program requirements of schools, prescribed by the Ministry of Education, and by financial concerns about delivering schools on budget at a time when the benchmark construction costs in the funding model are not adequate. The municipal imposition of enhanced standards will reduce the ability of school boards to provide schools. The associations are not aware that there have been serious complaints about the design of new schools. We recommend that the construction of new school facilities be included in the list of matters exempt from municipal control over exterior design.

Preserve the right to appeal: The experience of school boards over time has been that municipalities routinely ask for more than they are entitled to get under section 41 in exchange for site plan approval. Since school boards often find themselves on tight timelines, they are forced to accede to municipal requirements that are, in fact, illegal, time-consuming and costly. While an appeal to the Ontario Municipal Board is theoretically possible under subsection 41(12), the delay that such an appeal would bring about often makes this remedy useless for school boards. The associations therefore recommend that a right to appeal and build be added to the Planning Act, with the requirement that the municipality reimburse the school board for the costs of the requirements im-

posed by the municipality that the OMB later determines ought not to have been imposed under section 41. This would give a school board the ability to dispute questionable municipal requirements without holding up the processing of the site plan agreement.

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Rights to approach the OMB: An alternative approach to assist school boards would be an amendment to subsection 41(4.2), which Bill 51 proposes to be added to the Planning Act. Currently, the proposed subsection would allow an owner to seek a direction from the Ontario Municipal Board ahead of time, but only in respect of certain matters. The school board associations recommend that subsection 41(4.2) be amended to expand the range of matters that one could bring to the Ontario Municipal Board for its review ahead of the conclusion of a site plan agreement. This section, as amended, would then read, “(4.2) The owner of land or the municipality may make a motion for directions to have the municipal board determine a dispute about whether a matter is subject to site plan control.” In some cases, a school board or owner might want to approach the OMB for a ruling, as suggested by Bill 51. In other cases, where time is short, it might be preferable to go ahead with the arrangement and try to recover costs later.

Mr. Murray: Time will not permit full discussion of all recommendations in our brief. We have therefore concentrated our presentation today on the key issue for school boards in regard to Bill 51, which is site plan control in respect of the placement of portables. It is essential that school boards be provided relief in this area. Excluding the placement of portables by a school board from site plan control would be the best way to ensure that the needs of the students and the school communities for sufficient classroom space and daycare facilities can be met efficiently and at a reasonable cost.

School board associations are grateful for the opportunity to make these submissions and urge this honourable committee to consider our recommendations carefully and act on them.

The Chair: Thank you. You’ve left about three minutes for each party to ask questions, beginning with Mr. Prue.

Mr. Prue: I’ve heard everything you said. Have you gone to AMO, the Association of Municipalities of Ontario, to float this? Are they in any kind of agreement? Have they been consulted?

Mr. Murray: We’re not aware that—

Mr. Prue: So the municipalities traditionally—and I was a former mayor—use the Planning Act to ensure that the school boards comply with the requirements of the municipality. What you’re saying—I’ve not heard this before from any school officials, that it’s onerous, that it’s time-consuming, that you’re almost held hostage. This is pretty new to me. I’ve never heard this expressed before.

Mr. Murray: Randy, do you have some—

Mr. Randy Wright: In response to that, we are aware—not necessarily in the Peel board, where I work,

but I’m aware that in the York board, for example, approval has not been granted by the municipality for the placement of portables. Prior to that point in time—and there are numerous examples, I’m advised, wherein and whereby the same number of portables on similar sites were allowed, and it was largely the consequence of local opposition to the placement of portables, quite distinct and quite apart from any Planning Act requirements.

In the Peel board’s case, from time to time we’ve been presented with certain requirements that we find onerous. One would be the stripping of exterior cladding from portables at one of our sites to match architectural brick on adjacent homes, which we thought was a little over the top when one considers that the placement of portables is generally temporary in nature. That money, of course, takes away from our capital funding that we would otherwise direct to the classroom.

Mr. Prue: Okay. You’ve given me one example, but is this widespread across Ontario, or was this just one municipal board, one municipal body that has created this? Because to change a whole law, to change the whole thing if it’s one municipality—

Mr. Wright: I would have to say, by our liaison with other municipalities, it’s primarily a matter that confronts boards that rely on portables. The growth boards, of course, are the boards that rely most greatly on portables. That’s not to say that non-growth or flatline boards do not rely on portables. If you know the mechanics of the funding model, it’s basically a cumulative count of enrolment versus capacity, and you get—how shall I put it?—spikes from time to time. So there are impediments, and we are aware that Toronto from time to time has had difficulty with portable placement, with reference to the examples I’ve already provided. So it would be growth boards and other boards; primarily, however, boards featuring large numbers of portables.

Mr. Prue: Do the municipalities have a history—again, I’m not aware of this—of delaying your applications? I know when I was a mayor the applications were dealt with forthwith, because we understood the timelines: The portables were usually put up in the summer and had to be ready for September.

Mr. Wright: On portables?

Mr. Prue: Yes.

The Chair: It has to be a really short answer.

Mr. Wright: Focusing my answer on portables, in Peel’s experience, recently the two major municipalities of Mississauga and Brampton have been working well with us.

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell): Thank you very much for taking the time to come and address your concerns to this committee. I agree with my colleague Mr. Prue about having to sit down with AMO, because when I looked at the presentation today I said to myself that there should be some discussion going on with AMO on this issue. Being a former mayor myself, portable is portable. When you referred to having to match the aesthetics of the other buildings in the area, we have to say that portable is

portable; it's like having a portable office during construction.

Did you say that at times portables are placed off school board property? No? Sorry, I misunderstood that.

Having this clause in the site plan agreement, having the portables excluded—I wouldn't go along with this. I have to agree with the issue that is indicated in Bill 51. I think there should be a uniform ruling on what is a portable in Bill 51.

What would you say the municipalities should have to have better control of the site plan agreement for portables? Sometimes portables are good for a year; they could be good for 10 years. When you look at the community itself, sometimes they're not too much in favour of having portables; it doesn't look too good. But it's up to the municipality to decide, really, what the site plan should require for those portables.

What would be your position at the present time? What do you think we should have in Bill 51 that would protect the school boards from going over expense?

Mr. Wright: Through you, Madam Chair, I think there may be a compromise in perhaps the boards in advance negotiating or applying to the municipality on a general area where portables would be located. We've tried that, and it seems to be working quite well in our jurisdiction and does not seem to be evident in other jurisdictions. In other words, there would be a general area on the school site that the municipality would agree on in advance as a proper location for the placement of the portables, and understandably, they would be removed in time.

Mr. Hardeman: Thank you very much for your presentation. I would agree with you that we shouldn't introduce legislation that's going to make it more difficult to provide the accommodations to educate our children. Having said that, I have a little problem with the portable issue, because in my community the portables were put there the year after the new school was built. A whole generation of children have gone through, though, and they have not been moved. So they become the standard building. The people who live in that community have some kind of a right—not the municipal council but the people in that community—I think, to have input into what happens and how their community is developed. Whether we call it “portable” or not is, to me, somewhat irrelevant.

The one thing that really tweaked my interest, I suppose, in your presentation is the area where municipalities are demanding more than is legitimate—as you pointed out, the exterior of the portables matching the houses next door. In your opinion, is there any reason to assume that they would not also be doing that with private sector development, to demand more in the site plan than they should have a right to? If so, is it more important to change the legislation so that's not possible than it is to just exempt a certain sector of the development industry?

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Mr. Rick Johnson: If I could, just on your first point about portables becoming permanents, part of the issue is that when you've got increased population growth, especially in your growth boards in the GTA, you're putting in something that is supposed to be temporary. When planning increases—there is more residential growth—then what happens is we deal with the issues of the funding formula. We're still waiting for the official capital plan to come out under the funding formula which would allow them to convert 15 or 16 portables on a site into a permanent structure. That is part of the issue of the funding formula that we're trying to deal with, of being able to move that. A number of boards, because of declining enrolment, have reduced their portables, so now we've got a lot of the rural boards in decline and our GTA boards in growth.

I'll let Randy talk about specific issues surrounding the onerous municipalities.

Mr. Wright: We certainly can provide you today with some colourful examples of where we believe there have been some onerous requirements in our case. Again, I'll speak on behalf of the Peel board and our experience. In one case, the board was required, as a condition of site plan approval, to construct a gate that would signify a gated community, a high-income gated community adjacent to the school. I would also draw to your attention that the gate was not to be built on board property but on city property. On other occasions, we've been required to construct off-site sidewalks and, furthermore, give a commitment to maintain them, as well as off-site traffic signals—all things we believe ought to have been captured in development charges, collected, administered and then applied to such infrastructure.

We've been asked for what we believe are over-the-top traffic safety improvements that would be applied to sites that are small. These are sites that were constructed before traffic safety was a major issue. The consequence of that is a significant reduction of play space and a very expensive improvement in our region called kiss-and-ride. The average cost of a kiss-and-ride at a new school is 250; we're well over 400, applying this same type of improvement to our older sites. The expense is—

The Chair: Thank you, Mr. Wright. I'm sorry. The question might have been a little too long, but thank you very much. We appreciate you being here today.

CITY OF BRAMPTON

The Chair: Our next delegation is the city of Brampton. Welcome, Councillor. It's nice to see the city of Brampton here. I have to say—

Ms. Sandra Hames: It's nice to be across the table from you again.

The Chair: —some delegations are more warmly received than others, this being my community. Welcome. As you settle yourself, you will have 20 minutes. If you could introduce yourself, anybody else who will be speaking today and the organization you

speaks for so that Hansard has a record of that. You will have 20 minutes after you've introduced yourself. If you leave time at the end, there will be an opportunity for all three parties to ask you questions.

Ms. Hames: Thank you, Madam Chair, and ladies and gentlemen of the standing committee on general government. My name is Sandra Hames and I'm a councillor with the city of Brampton. I have with me today Kathy Ash from the Brampton planning department, and Ted Yao from legal services.

I want to thank you on behalf of Mayor Susan Fennell and council. Mayor Fennell couldn't be here today. She's at an important regional meeting where it requires all of Brampton's attendance.

We thank you for the opportunity to speak to Bill 51. My purpose today is to inform you of the position that Brampton council has taken on Bill 51. On February 13, 2006, council considered a staff report on Bill 51 and passed a resolution to support the overall objectives of the bill and to provide suggestions for amendments to enhance the effectiveness of the legislation. This deputation will provide a brief overview of Brampton's support and recommendations for Bill 51. The council resolution and staff report that I refer to will be included in our formal submission to the standing committee for your review at the conclusion of these hearings.

Brampton is very supportive of Bill 51 and provincial planning reforms. Let me tell you why.

Brampton is the 10th-largest city in Canada and the second-largest city in the greater Toronto area. Brampton is Canada's number one city for residential growth. We have a current population of 433,000, and it is expected to almost double by 2031.

We've had a lot of experience in managing growth and we are committed to good planning principles. Brampton was one of the first communities in Canada to implement a growth management program that supports sustainable development. Brampton has incorporated an annual development cap to apply additional controls before approving new subdivisions and a more timely delivery of public infrastructure. We have provided our planning expertise to the Strong Communities Act, the Greenbelt Act, the Places to Grow Act and, most recently, the growth plan for the greater Golden Horseshoe.

The Places to Grow Act identifies Brampton as an urban growth centre to manage its own growth, while being consistent with provincial planning policies. Brampton has employed good planning principles from our official plan to plans of subdivision for the benefit of our citizens. We have taken a proactive approach for a clean, green, safe, healthy and attractive community. I have provided you with a copy of our annual report that has more information on Brampton's environmental initiatives.

First of all, I would like to congratulate the province for the proposed planning reforms, and in particular the Minister of Municipal Affairs and Housing for introducing Bill 51. The province has stated that it will give municipalities the tools to be empowered, and Bill 51

does that. As you can see from our rapid growth and depth of planning experience, Brampton welcomes provincial planning reforms that empower municipalities.

Bill 51 empowers municipal councils to make planning decisions. As municipalities, we know local planning the best. It's important that those planning reforms provide clearer rules for the Ontario Municipal Board that support local decision-making and protect the broad public interest.

The city of Brampton council supports Bill 51. The bill restructures the role of the OMB to hear appeals from the decisions of council, rather than the OMB making judgments anew in de novo hearings. Municipal councils will be given the opportunity and responsibility to make planning decisions that should not be easily overturned at the OMB.

Bill 51 requires a complete application, encouraging informed planning and decision-making at the local level rather than through the OMB appeal process. In Brampton, we were unfortunate enough to have one of the most blatant examples of abuse of the existing system. The developer refused to include in the zoning application all the lands needed to install a private sewer system, preferring to rely on amendment powers of the board. This makes the public consultation process before council meaningless. Included in your package is an amendment that addresses what should happen if the board is faced with a very old appeal and there is new information that is relevant because the province or municipality has moved ahead.

Bill 51 allows councils to enforce minimum and maximum building heights and densities, which again reinforces local decision-making. Inclusion of exterior design and character as matters for consideration for site plans is an important provision in terms of urban design. Brampton is at the forefront of the trend towards urban design, with significant policies and advanced practices promoting urban design quality. The provisions will allow such design matters to be defensible at the OMB.

The promotion of sustainable, transit-supportive and pedestrian-oriented development is commendable. Brampton believes there is a link between sustainable and pedestrian-oriented development and community design. Brampton is currently undertaking a study on sustainable development guidelines and has undertaken a comprehensive transit and transportation master plan. Brampton's leadership in sustainable development has been recognized by the province by awarding Brampton's rapid transit proposal AcceleRide \$95 million, and by various industry awards for our environmental best practices.

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Brampton supports the enabling legislation to permit conditional zoning. This tool offers great potential for intensification and infill for Brampton's downtown and central area, while ensuring technical issues are thoroughly addressed.

Brampton fully supports Bill 51, and we ask for your consideration of the following recommendation to

enhance its effectiveness before it proceeds to royal assent: that municipalities be consulted on the establishment of appeal bodies, regulations at the draft stage and the process for open houses, which we actually do hold today. Municipalities can be helpful to the province in establishing these regulations before they come into place.

Brampton recommends that a grant program be established to assist municipalities with the additional costs for the mandatory five-year official plan review, the conformity with provincial plans and the updating of zoning bylaws. We question the practicality of these time frames, given that official plans are subject to multiple appeals to the OMB.

We request clarification on the third party participation that must make oral or written submissions prior to council approval. Our concern is that the public could be shut out of the process if an application is appealed to the OMB.

We need clarification on the municipal requirement for energy conservation and supply. Brampton wants municipal control for zoning and site plan approval and to comment on the regulation for such projects, since energy projects eligible for exemption from the Planning Act will be determined by regulation. Brampton urges the province to continue to provide municipalities with the authority to exercise zoning and site plan control over energy projects.

Finally, we encourage the province to continue with enabling legislation toward design. This should include references and definitions for tertiary plans, block plans, urban design guidelines, massing, articulation, architectural detail and design briefs as well as choices in performing design review. The Planning Act should enable municipalities to establish special character areas where higher-level design control is exercised, similar to that which is permitted through the heritage act, part V.

We thank you for your attention and we would be happy to answer any questions you may have.

The Chair: Thank you, Councillor. We have about three and a half minutes for each delegation to ask a question. This turn, I believe it's Mr. Fonseca.

Mr. Fonseca: I'd like to thank the city of Brampton for its fine presentation. Also coming from a high-growth area, the city of Mississauga, and looking at the official plan and zoning, I know that this has been somewhat contentious. I asked the mayor and councillors about zoning in Mississauga, and it actually had not been touched in some areas since the 1950s, where you may have had a cow pasture or an apple orchard out there and today you have a sprawling metropolis.

In talking about having municipalities update their official plans every five years, would you not feel, in terms of that up-front cost and holding to standards every five years, that that would also reduce the number of appeals that would go forward to the OMB by having that in place?

Ms. Kathy Ash: We just feel that the five-year constant review could be expensive and limit our

resources. We already have many appeals on official plan amendments and zoning amendments that are dealt with effectively in that process. So in terms of the mandatory five years, it's—

Mr. Fonseca: What I was getting to was, with those up-front costs where the official plan is reviewed and updated every five years, would that not bring a reduction in the number of appeals that would go to the OMB because you would have that in place, that official plan and zoning? Could you see that happening?

Ms. Hames: But we actually do review our official plans every five years; it's just not that mandatory process. We do that today; we do review those plans every five years. The mandatory process just makes it a more onerous time frame. We may do it a little later, perhaps a little earlier. Doing every component of that mandatory five-year review we see as being—

Mr. Fonseca: Do you have a suggestion in terms of what you would like to see?

Ms. Hames: Today, we do those reviews on a five-year basis. Maybe that it not be the whole official plan and all of the zoning areas within that one time frame, that they are all looked at within that. We feel that what we are doing today is sufficient. We're still going to get those appealed to the board, and maybe Ted could put it a bit more—

Mr. Ted Yao: Yes. I could perhaps assure the member that we're pleased that your other reforms of the appeal process will—despite the fact that there may be more appeals, they will be dealt with more efficiently, and that may discourage folks from bringing appeals, when you have a better process that's downstream from the filing of the letter of appeal.

Mr. Fonseca: That's where I saw the savings—

The Chair: Thank you, Mr. Fonseca. Ms. MacLeod.

Ms. Lisa MacLeod (Nepean-Carleton): I'd like to thank you, Councillor Hames, and your counterparts for providing us with a great précis of your thoughts; certainly a well-documented package that you sent to us today.

Like you, I represent a very high-growth area, in Nepean-Carleton in the city of Ottawa. It's the fastest growing community, I think, in all of Canada. I have five city councillors. I met with three of them last Friday, and their concern—you mentioned on page 8 about the establishment of local appeal bodies, provision for an optional local appeal body that if established by a municipality would hear appeals of decisions on minor variances and consents. My city councillors are a little bit concerned about councils gone wild. I notice in your recommendation that the municipalities be consulted because the devil really is going to be in the regulations. I want to know, do you think that these bodies are necessary, and if so, could you give us some of your recommendations on how these local appeal boards would work?

Ms. Hames: A wish list.

Ms. MacLeod: A wish list, yes.

Ms. Hames: That's a difficult question for me to answer.

Ms. Ash: Perhaps I could jump in. In Brampton, we have a number of appeals on committee-of-adjustment applications. It could be about 40 a year. A lot of those are dealing with resident concerns: widening of driveways, establishment of doors into side yards. Those aren't necessarily matters of provincial interest, so it would probably be better taken to a local appeal body than as a matter before the Ontario Municipal Board. So that's one area where it would be very good.

Ms. MacLeod: In terms of appointments to these local appeal bodies—this is what was of big concern to city councillors in Nepean—Carleton—I'm just wondering what you would propose. Would it be a provincial appointment or would it be a municipal appointment?

Ms. Hames: If you asked me, I would just like to know that the people appointed to those boards have knowledge of my community, not that somebody from another community who really doesn't know it that well listening to an appeal from people who do know the municipality.

Ms. MacLeod: The one concern that came up in my community with Councillor Gord Hunter, who has been on our planning committee for about 25 years in the city of Ottawa, the former city of Nepean and the regional municipality of Ottawa-Carleton, was that these sort of part-time local appeal boards might not have the necessary background in planning matters and might not be as informed as perhaps people appointed to the OMB. How would you allay, for example, someone like Gord Hunter's concerns?

Ms. Hames: By appointing people who do have that knowledge. You go through an interview process to find out the background of people, the knowledge they have, similar to what you do at the province today, making sure that they fit whatever board you would put them on; and then, I assume, some training in certain things. I know for our committee of adjustment, we run sort of an orientation program so that they know what kind of things are going to come before them.

Ms. MacLeod: Okay. Thank you very much.

The Chair: Mr. Prue.

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Mr. Prue: Two questions. The first one relates to energy projects; you've only got one sentence, but we think this is probably the most contentious issue. You have written, "Brampton urges the province to continue to provide municipalities with the authority to exercise zoning and site plan control over energy projects." What do you see happening if the province continues and doesn't give you that authority?

Ms. Hames: I think we would probably see at some stage a project that is going somewhere that we as a municipality wouldn't want it to go.

Mr. Prue: We have examples in my community, and I know, if not in yours at least in Mississauga, of big gas-fired turbines being put up against considerable community opposition, over which you have little or no

control. Would you see those proliferating? A nuclear plant being built in Brampton?

Ms. Hames: We have that issue right now that we're dealing with the federal government on, one particular company trying to expand in a very residential area. No, we wouldn't like to see that kind of issue. We really do believe that the public need to be involved in some of these issues. We have just approved a plant for Sithe Energy, for Sithe to do—

Ms. Ash: They're connecting up with the Trans-Canada gas pipeline.

Ms. Hames: It's a huge project. It's going into Brampton with the full knowledge of everyone. It went through the planning process, and it's going to be in an area appropriate for it to be in.

Mr. Prue: I understand. You've been quite laudatory around this whole process, but you would not like to see that particular section remain extant. Have I got that right?

Ms. Hames: No, we'd like to have control over where they go.

Mr. Prue: The second aspect—I find it troubling, too—is that you request "clarification on the third party participation that must make oral or written submissions prior to council approval." Oftentimes, citizens will not understand or appreciate what actions are being taken until council finally makes a decision, and then all hell breaks loose. The current proposal would limit the public from being involved because they had not been there at the initial stage, and you would want them to be involved.

Ms. Hames: Yes, that's right.

Mr. Prue: How would you suggest that the law be changed: to exempt the public from having to have made a presentation at the beginning but not the proponents? Is that what you would do?

Ms. Hames: I think we were looking for clarification on that third party participation, if in fact it did allow resident participation after that level. That's what we would like to see, that we don't shut the public out of that process because they don't know or haven't been at that council meeting and had their voice heard. That's why we were asking for clarification on it, if in fact it still does allow for public participation.

Mr. Yao: If I could just add to what Councillor Hames said, when you look at the OMB's record of dismissing appeals on the basis of its power to do so because you did not speak, they're inevitably dismissing appeals which are in support of owners, owners dismissing residents' appeals. To a certain extent, I think you've touched on a very important issue. What we have to do is look at perhaps changing the culture of the Ontario Municipal Board into being somewhat less oriented toward the large landowner, expert-driven kind of solutions, which I think this bill does.

The Chair: Thank you very much. We appreciate your being here today.

ASSOCIATION OF MUNICIPALITIES
OF ONTARIO

The Chair: Our next delegation is the Association of Municipalities of Ontario, Mr. Anderson. Welcome. We're glad you're here today. We're staying right on schedule, and we appreciate your being here today. Could you introduce yourself, the individual with you and the association that you speak for for Hansard? When you begin, you'll have 20 minutes. If you leave time, there will be an opportunity for all the parties to ask questions about your presentation.

Mr. Roger Anderson: Thank you very much, Madam Chair. My name is Roger Anderson. I'm the chairman of the region of Durham, and I'm also president of the Association of Municipalities of Ontario, which I'm representing here today.

Beside me is a young woman who works for the association in our policy division, Milena—and I'll let her say her last name, because she will hit me if I say it wrong.

Ms. Milena Avramovic: Avramovic.

Mr. Anderson: Madam Chair, AMO is, I believe, well known to the committee members. AMO's member municipal governments govern and provide key services to approximately 10 million Ontarians. While each of Ontario's municipal governments is unique, the interests we share in common are greater than the differences that separate us all.

I am pleased to be here to discuss Bill 51. AMO has been very involved in the evolution of the land use planning policy and the improvements to the implementation and administrative functions of the Planning Act. I would like to, by and large, applaud the government's approach to the important issues contained in Bill 51 as well.

AMO supports the concepts of redevelopment, infill and intensification in Ontario communities. The changes proposed in Bill 51 will assist us in achieving those goals. They provide additional tools for implementation of the provincial policies and support sustainable development, intensification and brownfield redevelopment.

AMO is also supportive of the proposed legislative change that would allow municipal councils to refuse individual proposals to convert employment lands into other uses. The appropriate time to consider such action should only be at the time of a five-year comprehensive official plan review, which the proposed act now explicitly defines. If municipalities are to achieve sustainable communities and a live-work relationship for their residents, the provision in the bill in respect to the protection of employment lands is absolutely essential.

We have identified a couple of minor areas, though, that we feel need clarification. The first is in respect to the big box retailers and whether or not they would be allowed in the employment lands. From the municipal perspective, we propose that these types of land use be limited to locations designated for retail uses.

The second area is in respect to broadening the definition of employment uses in subsection 1(5) to include infrastructure such as energy from waste and composting facilities, as these uses are more akin to the traditional understanding of employment lands.

Finally, while the definition works well for the urban communities, I want you to be aware that employment lands for rural and northern communities are often different in character, as many employment centres are resorts, recreational and associated uses. The definition of employment lands should reflect this diversity across this province.

Municipalities are very encouraged by the provisions of Bill 51 that modify the role and scope of the Ontario Municipal Board as well. Requiring the OMB to "have regard to" municipal council decisions is a progressive step in shifting decision-making responsibility from the OMB back to municipal councils. Municipalities are ready to work within this framework while hopeful that future reforms will see the board evolve into an appellate body.

We recommend, though, two minor modifications for clarity in the terms and process.

Firstly, to provide for consistent application of terms, we recommend that subsections 17(44.4) and 17(44.5) be amended to replace the term "consider" with the phrase "have regard to." This refers to a council's recommendation in those situations where the council was given the opportunity to reconsider its decision in light of new information or material. This change should prevent ongoing debate as to the subtle differences of these terms.

Secondly, subsection 17(44.4) should further be amended to provide that appeals be sent back to municipal councils in situations where revised and new provincial policies come into effect after a council's decision but prior to a hearing.

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What is most positive and appreciated by our members is the ability to define and require a complete application. Having a complete set of facts in support of a development proposal at the beginning of the process permits proper municipal review of an application. It allows meaningful public involvement in the municipal process, and it helps the municipal council to make appropriate and timely decisions.

Promoting pre-consultation between municipalities and the developers is already a best practice in many municipalities across this province and something AMO totally supports. Having said this, we understand there is some concern with the proposed bill in regard to notice for the acceptance of a complete application. We agree that the proposed bill needs to be amended to provide for municipal confirmation of a complete and/or incomplete application within a very specified time period. This provision should be limited to applications in respect to official plans, zoning bylaws and subdivisions.

AMO is also supportive of the proposal to narrow the scope of appeals and to modify the board's role with

respect to who may appeal a council decision, restrictions on adding parties to a hearing, restricting the OMB decision-making to those matters dealt with in the decision of council to which the notice of appeal relates, and allowing the opportunity to set up local appeal bodies for disputed minor variances and land severances.

We are supportive of limiting the evidence presented at the Ontario Municipal Board hearings to what is provided to the municipal council. Having said this, AMO does not want municipal councils to be inundated with overly detailed presentations or to be forced into stenographed minutes at the statutory public meeting.

To reach a balance between having all of the pertinent information for informed decision-making and providing an opportunity to introduce important new information which is discovered after the decision is made, a mechanism is required in this act. AMO would be agreeable to a provision in the act that speaks to the introduction of limited new information to the Ontario Municipal Board, provided that the information is not a material change that should have been presented to the council prior to it making its decision.

Following through from the previous statement on new information at the board, the act does not provide for the OMB to dismiss an application on the grounds that the application has substantially changed either. The act needs to be amended to allow the Ontario Municipal Board on its own motion or a motion by a municipality to dismiss an application. This change would ensure that a substantially revised proposal would not be dealt with by the Ontario Municipal Board without municipal review.

Sections 17 and 34 of the proposed bill add a new mandatory requirement for an open house meeting. Holding an open house has been the practice of major applications in municipalities across this province and will continue as an important part of consultation for major changes. Discretion should be provided, however, to councils such that where a matter is minor, an abbreviated process could occur. Mandating open house meetings in all instances will perhaps impact these minor applications, both in terms of timeliness and municipal resources.

The provisions for open house meetings should therefore be limited to new official plans and official plan updates, comprehensive bylaws and the three-year updates, as well as major amendments to any plan.

The provision related to updating official plans in section 26 speaks to revising the official plan not less frequently than every five years. This, ladies and gentlemen, represents an onerous challenge for many municipalities in this province, especially those attempting to achieve conformity with complex provincial legislation like the Oak Ridges moraine, the greenbelt or, most recently, the growth plan.

The proposed subsection 26(1) needs to make it clear that municipalities undertaking a provincial plan conformity initiative or a comprehensive planning review are not required to separately undertake a five-year review of their official plan. This should then be taken the further

step of ensuring that zoning bylaws will be updated three years following the approval of the conformity exercise.

Finally, subsection 3(6) on provincial policy plans needs to make clear that councils are not restricted from making comments that are critical of the results obtained from applying the provincial statement or provincial plans. So AMO requests the following addition to subsection 3(6):

“(c) Nothing in this provision will restrict councils from making comments critical of results obtained by applying the provincial policy statements or provincial plans.”

To summarize, AMO supports the concept of re-development, infill and intensification in Ontario communities. The changes proposed in Bill 51 will assist in achieving those goals, and AMO is encouraged by the provisions of the bill to modify the role and the scope of the Ontario Municipal Board.

Municipalities are ready to work within this new framework. We also expect the province will ensure that other activities, including source water protection, infrastructure planning and financing, complement Bill 51 in its intent of recognizing the important decision-making roles of municipalities.

Ladies and gentlemen, I want to thank you for the opportunity of addressing you here today.

The Chair: Mr. Anderson, you’ve left about three minutes for each party to ask questions, beginning with Mr. O’Toole.

Mr. O’Toole: Thank you very much—I don’t know whether it’s regional chair or president of AMO, but I do appreciate your input.

When they had the debate—and our critic, Ernie Hardeman, is quite familiar, having served in many of the same roles as you—it became clear to me there are a couple of things: the uploading of authority and downloading of responsibility. That was the general assumption after the debate, listening to Minister Gerretsen and others, that they were taking up all of the authority and giving you the job to implement many of the policies with respect to the debate around “having regard to” and “consistent with.”

I’m going to ask you a very general question and maybe a timeless question, because it has been debated since the Sewell commission and is still being debated, in my view, today. It seems to me there is no respect for the work done by local and regional authorities in planning, the municipal planning with respect to the employment area, for example, in Durham—it’s very important—and the local input would like to be consistent with provincial policy on the environment and other things. Which would you prefer, the “consistent with”—you’ll do what Gerretsen says—or the “regard to”? With all of the public processes you’ve just talked about and listening and trying to make the right decision, do you think there should be some respect or flexibility given to the municipalities, certainly at the upper-tier level, with ministerial oversight? There’s enough oversight here to overrule anything you do anyway, so would you like to see some

respect for all of the work that's done at the local and regional levels?

Mr. Anderson: Wearing both hats, municipalities and upper-tier governments have the authority for planning, and they should continue to hold that authority. If the province wants to put in place policies and provincial rules, we should be able to incorporate them around the vision that we, as municipal councils and the planning authority, feel are appropriate.

In regard to "conform with" and "have regard to," AMO's position—and I believe most municipalities' position—was quite clear: We believe that "have regard for" was the appropriate wording.

Mr. O'Toole: I appreciate that. That's very important. It does speak to the limited time I had on council working alongside you and other people, including members here at the table on all sides; Mr. Prue, for example, as the mayor of East York in his former life. It is just a respect thing.

Specifically, there are two issues in Durham. One is the employment area, and you want to respond in a general sense—what's allowed under the Places to Grow plan and the official plan. But also, something that I think AMO may want to look at is the emerging discussion around energy and sustainability in the energy supply mix. In Uxbridge, for instance, there is a wind farm proposal there and—

The Chair: Mr. O'Toole, you have 30 seconds left, just so you know.

Mr. O'Toole: Are you familiar with that proposal for the Uxbridge wind farm, and what process would you like to see and the role of either local or regional level of government?

Mr. Anderson: Mr. O'Toole, in all fairness, I would love to come and address this committee on all of those questions, I really would, but I'd like to come here as chairman of the region of Durham to do that.

In regard to your energy question, we're silent on that within this document and in regard to Bill 51, and—

Mr. O'Toole: But they're exempt under section 23, you see.

Mr. Anderson: I really wanted just to deal with Bill 51, but I'd be happy to be invited back and deal with all those other issues.

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The Chair: Thank you. Mr. Prue.

Mr. Prue: I'm going to come back to that last point again, but first of all I'd like to get a—

Mr. Anderson: Inviting me back?

Mr. Prue: Of course.

The Chair: No leading the witness.

Mr. Prue: Of course.

First, I'd just like to question your statement on big box retailers and that you want them to only be allowed on employment lands. There are many municipalities where it seems that the time of industrial application on some of the lands has passed. I'm speaking of my own municipality of East York, where the factories seemed to be moving away and big box retailers were a natural fit. I

can see that happening in Scarborough today. You don't want to allow that to happen, from what I see, and I'm questioning why, since it seems, at least in the Toronto area, to be quite acceptable.

Mr. Anderson: I'm going to assume that in the city of Toronto—and I really don't assume much when it comes to the city of Toronto. For you to do that, you would have had to go through an official plan amendment and redesignate the lands to accommodate that. We're saying that in our official plans in this province, we have designated lands that can accommodate big box users. We don't want them to take up zoned industrial land. If they did, they would have to go through a complete official plan process to redesignate it. We all want employment and jobs. We think that big box users should be designated to the lands where those types of uses are allowed. Most municipalities have those lands.

Mr. Prue: A second thing: Right underneath that, you write, "The second area is in respect to broadening the definition of employment uses" in subsection 1(5) "to include infrastructure such as energy from waste and composting facilities." The reason I'm asking this question is because the municipalities have been exempted from anything related to energy. It seems that if you want this to be included, you must see a municipal role in looking at energy, whether it be energy from waste, a nuclear facility, a wind farm, whatever. Do you not see—and you've been silent on this—a municipal role in the planning for energy? You've included this, skirted around it even, but—

The Chair: It has to be a really short answer.

Mr. Anderson: Yes, we do see a role.

The Chair: Thank you very much. I love brevity. Mr. Brownell.

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh): I would like to thank you for your presentation here this morning. Being an MPP from eastern Ontario, I'd like to get a jump on welcoming you and your delegates to the convention that's coming up in Ottawa.

Mr. Anderson: We hope to see you all there.

Mr. Brownell: That's my wish too.

Mr. Anderson: We're willing to sell you all three-day passes.

Mr. Brownell: Very good.

You commented on the new mandatory requirements in sections 17 and 34 for open houses and you indicated there that there should be a limitation on these open houses to new official plans, official plan updates, comprehensive bylaws and the three-year updates as well as major amendments. With regard to other amendments and other requirements in municipalities where there could be the need for an open house, do you have any other suggestions or ideas for alternatives to ensure that there is public engagement—because I think this is a public engagement process. Do you have any ideas that would help us for these public engagements?

Mr. Anderson: Most municipalities—and I'm going to let Milena supplement my answer—in this province that I'm aware of and that I've visited and I've followed

all have a public process, whether it be through a planning committee or a council. Nobody that I know of is not allowed to address council, other than maybe in the city of Toronto, where they don't accept delegations very often. But there are planning committees and there is complete access to councils. So on minor issues, our suggestion is to leave it up to us to decide whether we should have a whole public process, i.e. a delegation-type process.

Milena, did you want to supplement that?

Ms. Avramovic: In the act, there is the public meeting for every kind of application. This is an additional provision for public engagement, and it wouldn't necessarily be before council. It would be just to provide information. It would be for major applications. For those, most municipalities already have open houses. They're the ones that created the concept. We are just saying that for the minor applications, first of all, you're going to slow them down if you have an open house.

Secondly, it's quite a costly endeavour to have an open house on everything, even for a little technical change. There is a public process; it's in the act. This is an additional public process. The way the act reads now, it's a two-pronged public process. We're just saying, for the open houses, just limit them to the larger and more substantive applications; for everything else, you go through the normal public process.

The Chair: In the 13 seconds remaining, Mr. Sergio.

Mr. Mario Sergio (York West): I believe that Mr. Anderson's term will be up as president of AMO. Am I correct?

Mr. Anderson: You're stuck with me for another 10 or 12 days, but yes.

Mr. Sergio: On behalf of the committee and the ministry as well, I would like to thank Mr. Anderson for his untiring work on behalf of AMO, on behalf of all municipalities. His co-operation has been tremendous over his term during the various consultations, the various bills. We may see him again, as chair of the regional municipality of Durham, but I have to say his time as president of AMO has been very valued and his co-operation on behalf of municipalities has been very strong. It's been a strong voice. I'd like to thank you and wish you well as you continue your work as chair of the regional municipality of Durham. I hope to see you again soon on some other issues which reflect the interest that you bear so well on behalf of your people in Durham.

The Chair: Thank you, Mr. Sergio. A very long 13 seconds, but well deserved. Thank you, Mr. Anderson.

CANADIAN WIND ENERGY ASSOCIATION

The Chair: Our next delegation is the Canadian Wind Energy Association. Are they here? Come forward, please. As you get yourself settled, you can pour yourself a glass of water and settle yourself down. When you are seated and you're comfortable, if you could introduce yourself and the organization that you speak for, for Hansard. When you do begin speaking, you'll have 20

minutes. Should you use all of the time, there won't be an opportunity for questions, but if you leave time at the end, all three parties will be able to ask questions about your presentation. We have your presentation here.

Mr. Robert Hornung: My name is Robert Hornung. I'm the president of the Canadian Wind Energy Association. As the Chair has stated, you have copies of a presentation that I'll be speaking to here this morning.

I keep looking behind me a little bit. I may have one colleague join us partway through this.

Interjection: She's here.

Mr. Hornung: Oh, she is? Do you want to come up?

The Chair: We're flexible.

Mr. Hornung: Thank you. I appreciate the flexibility. This is Liz Cussans. I'll let her introduce herself. She has come here with me today. She represents Vision Quest Windelectric, a wind developer with interests across Canada and Ontario. Do you want to state your position, perhaps?

Ms. Liz Cussans: I'm the development and operations manager for Vision Quest, which is TransAlta's wind business. I focus purely on Ontario. Vision Quest focuses purely on wind development within TransAlta, an energy company.

Mr. Hornung: The Canadian Wind Energy Association is the national industry association for the wind energy industry. We have over 240 corporate members, made up of wind turbine manufacturers, component manufacturers, utilities, project developers, service providers. We have an Ontario caucus of our membership that involves about 70 of our members who are very interested in developments with respect to the wind energy industry in Ontario.

There certainly has been a lot of movement with respect to wind energy development in Ontario. As you know, the government has indicated that it is seeking 2,700 megawatts of new renewable energy capacity by 2010. It has issued requests for proposals for some of that power. Wind generation has been fairly successful in those requests for proposals. We now have 220 megawatts of wind energy capacity installed in Ontario. We have 1,000 megawatts that have signed power purchase agreements and will be building over the next couple of years. The government also recently initiated a program of standard offer contracts to support the development of smaller projects throughout the province.

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Wind energy is likely to play an increasing role, looking forward in Ontario. The Ontario Power Authority, in its recommendations with respect to the supply mix, has advocated that Ontario look at moving to 5,000 megawatts of wind energy by 2025. This priority of the government in terms of securing new renewable energy generation has been reflected in some initiatives that have had an impact for municipalities; for example, changes to the provincial policy statement and inclusions around greenbelt legislation with respect to renewable energy sources.

We're here today to speak about Bill 51, and in particular one portion of Bill 51, section 23. Section 23 has generated a lot of discussion and a lot of interest because of the proposal that certain energy projects, including category (b) projects under regulation 116/01 of the Environmental Assessment Act, which would include wind energy projects of more than two megawatts, would be exempted from the Planning Act approval process under the terms of Bill 51.

We're here to state that we strongly support that section 23 because we see it as a very useful tool to help eliminate a lot of duplication and overlap that currently exists between the environmental assessment process and the planning process. At the same time, we strongly believe that issues of concern to municipalities clearly must be addressed in approval processes, and municipalities clearly must have the opportunity to be involved very actively in those decision-making processes.

With respect to the overlap, we wanted to take a second to highlight that. It's important to know that the environmental assessment process doesn't only speak of the environment in non-human terms, in terms of the impact on water or air; it also speaks to the impact of projects and new proposals on the human environment. The current EA process reviews the potential negative effects of a project with respect to the displacement, impairment, conflict or interference with existing land uses, approved land use plans, businesses or economic enterprises, recreational uses or activities, cultural pursuits, social conditions or economic structure. So the mandate and scope of the environmental assessment process is quite broad and we feel overlaps many of the issues that are currently also looked at under the Planning Act. We note that both the Planning Act and the environmental assessment process require extensive and documented public information, require consultation processes and allow for an external review of decisions to be made when a project is actually permitted, in terms of allowing for an appeals process.

One thing that we note from our perspective that we think is actually an advantage with the Environmental Assessment Act is that we believe it has more clearly identified and mandatory timelines with respect to project assessment, appeal and approval. Clearly, for companies interested in making investments, some certainty around when decisions will be taken, regardless of what the decision actually turns out to be, is a very important thing. So we think there is an issue with respect to overlap and duplication that section 23 can help address.

Many of the same issues are covered in both processes, but different stakeholders tend to be involved and they tend to operate on different timelines. The results, from our perspective, are delays and increased costs in permitting processes and approval processes whatever the outcome—whether it's positive or negative for a developer. We think it also puts an increased strain, in terms of the overlap and duplication, on municipal

resources that are already stretched thin dealing with the amount of stuff coming at them.

We wanted to provide a couple of generic examples of how overlap and duplication can have an impact based on things that we've already seen with wind energy projects in Ontario. For example, we've seen projects have issues of concern identified and have them raised to both the Ontario Municipal Board and the Ministry of the Environment for a decision. Both of those processes then conduct a review of those same issues. In our view, that's not an efficient use of resources. It's costly. It can lead to delays because the two processes won't necessarily operate on the same time frame—one might be completed before the other—and it extends the period under which a decision is made.

We've also seen situations where projects have completed their EA review, their environmental assessment, and then continued in the planning process and seen changes come about as a result of the planning process that have resulted in changes in the project which require the environmental assessment to be done all over again. Again, we just don't see that as very efficient. Our question basically is, is it not possible, in these cases where issues are common to both processes, to get the same outcomes through active participation by all stakeholders in one process as opposed to having to go through it twice?

From our perspective, section 23 of Bill 51 would allow one process to review and approve issues that are currently covered by both of the existing processes. We do believe, however, that Bill 51 absolutely must encourage municipal governments to become active participants in the environmental assessment process if there is just the one process. We think this would diminish the need for a separate review process. Right now, under the Environmental Assessment Act, essentially project proponents are encouraged to consult with municipal governments in terms of the EA process. We would be quite happy to see that strengthened to say that municipalities and local councils must be identified as key organizations that must be consulted through the EA process, because we know that in that process there are a number of issues that are of concern to municipalities and, again, many of the same issues that we see with respect to the Planning Act.

Having said all that, we also recognize that in the drafting of Bill 51 the overlap between the environmental assessment process and the Planning Act process is not 100%. Our focus here is, let's try to use section 23 to ensure that where there is overlap we've got one process, we proceed more efficiently to try to do that and encourage everyone to participate. But in areas that are not covered under the environmental assessment process, it's very clear to us that municipalities must continue to have a role. We've identified some examples here with respect to a wind energy project in terms of elements of a site control plan, in terms of 911 access points, road allowances for routing of cables, provision of rescue equipment and training to local emergency service

providers, and there may be more. We don't know that this is a comprehensive list, and we'd be very happy to see the committee reflect on where there is no overlap between and what that should imply in terms of how Bill 51 is drafted.

So again, from our perspective, we strongly support section 23 to apply in areas where there is duplication and overlap in the environmental assessment and in the planning process. We think there is a need to ensure we have one process for purposes of efficiency and resource constraints on all participants in the process. But we also support Bill 51 looking at and including provisions to ensure that the limited number of issues that are not covered under the EA process remain within the mandate and scope, obviously, of municipal governments.

Thank you very much. We'll be happy to answer any questions.

The Chair: Thank you. You've left three minutes for each party to ask questions, beginning with Mr. Prue.

Mr. Prue: Thank you so much. You were in the room; you've obviously heard that I've been questioning people about section 23. To tell you the truth, wind energy, maybe solar energy: kind of benign; the public mostly accepts it. But what you're asking—would you ask the same thing? What you're asking, to include the nuclear industry or those who would burn tires—they're all the same, they're all going to be exempt. Do you see your industry in the same light as those?

Mr. Hornung: I can take a first crack at this and say that I'm here today as a representative of the wind energy industry and looking at the impacts of section 23 with respect to our industry. It will be the judgment of others as to whether an exemption, if it is in place—to what energy sources that applies. But what I've tried to indicate here is that from the wind energy industry perspective and our experience in terms of going through both the planning and the EA process, we think there is significant overlap that could be usefully addressed through section 23 from the perspective of this industry.

Mr. Prue: Okay. Just so the committee has it clear, you're asking this for the wind energy industry and not necessarily for some of the others that might be far more contentious, which a town or a city may want to deal with, such as burning of tires or a nuclear plant or energy from waste. These are all pretty contentious things.

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Mr. Hornung: Again, I will just restate, as the wind energy industry, we don't really see it as our role to comment on how this would apply with respect to other energy sources.

Mr. Prue: This is difficult, and I'm having some difficulty understanding how the municipalities would then be involved. If you take out all of the environmental issues, there are still some things involved, I guess, in terms of planning. Do you see that coming after the EA process? Before the EA process? I don't know how the EA process would deal with land use planning or those kinds of things.

Ms. Cussans: Just for an example, in the majority of the wind energy projects that are going through permitting at the moment, the municipal council is using that environmental review report as their review document. The fact is, even with the two processes that are parallel, the environmental review report is being prepared first to support the municipal government decision. That picks up the majority of the issues.

As Robert mentioned, there is a planning aspect to the environment report, but it does cover, obviously, a larger remit, and that section of the report tends to be what the municipal governments receive along with the zoning application and official plan amendment application. Then they flick to that and say, "Okay, these are the issues that we would have raised, and this is how the project is preparing to address them."

The Chair: Thank you. Mr. Sergio.

Mr. Sergio: Thank you very much, Mr. Hornung, for coming and making a presentation on behalf of the Canadian Wind Energy Association. I can appreciate that you don't speak for other agencies, for other forms of energy. I'm going to ask a two-part question. At the beginning of your presentation, you spoke of securing new energy. How do you see this securing new energy and the role local municipalities play in facilitating those projects? Part two, the role of the local municipalities and local communities: How do you engage the two of them to see that there is healthy participation of the local communities in those projects as well?

Ms. Cussans: In terms of the involvement of the local communities, I think the government standard-offer-contract process has been a major milestone toward achieving that because it has opened the door for smaller projects, up to 10 megawatts, which are of a size such that co-operative groups, community groups and even individual landowners can be their own generators. They can actually help the province by generating electricity and feeding it into the grid. That's one of the policies that Bill 51 would actually help to achieve the goal of, to assist community projects to get off the ground.

Mr. Hornung: We can go a little further on that, just to say—Liz can speak to the details of it better than I can—that in terms of within the environmental assessment process, there are ample opportunities for all stakeholders, certainly including municipal governments, to have an influence in terms of what issues will be designated as priorities to be addressed, to comment on those as they're going forward and to be an active participant in the process.

As I said earlier, from our perspective—I'll use an issue like sound from wind turbines. We have a Ministry of the Environment standard with respect to sound from wind turbines. The environmental assessment process is going to consider and review whether or not that standard is met. Again, if there are particular concerns about that, there are certainly opportunities within the EA process itself to bring those forward so that those are considered at that time and not in different processes and at different times.

The Chair: Thank you. Mr. O'Toole.

Mr. O'Toole: Thank you very much. I'm very interested in your presentation. First, I'd like to be on the record as saying that I support sustainable energy solutions, as you've suggested, wind being one, and solar and other forms of utilizing what otherwise might be considered landfill materials, provided we're recycling, etc.

That being said, I think there are some inconsistencies here, as Mr. Prue's pointed out, and I guess, technically, even in your responses. You're doing the best you can.

First of all, the issue with wind is sort of the aesthetics one, and the light-interrupt issues. You know they're big issues. I've dealt with both of them in my riding. The light has this sort of flashing, strobing effect.

The thing in this whole sustainable discussion is that it's almost motherhood. It's very difficult to argue against it, and so the NIMBYs—it's a nice, clever little word to dismiss their concerns. This process exempts them totally. In fact, it's confusing. Under section 23, it kind of exempts them, and the regulations themselves. Anything under two megawatts is sort of "not interested," and anything over two megawatts is basically an environmental screen, which isn't a full process.

So there need to be some standards. You work in the industry. Other provinces have standards with respect to some of the issues, including setbacks and appropriate locations. As the international environment in your industry becomes more informed—most of this stuff is offshore, in Denmark and Holland. As they become larger and a more effective source of power generation, and the infrastructure needed to connect them to the grid, etc.—it's a very important thing. I think the province is exempting their real responsibilities, and I'd like a response to that, because also a local tier in my case—if you heard one of the earlier presentations, Eden, Ontario—may not even have an engineer work for them. Small towns like Uxbridge, where I'm talking about—

The Chair: Mr. O'Toole, you've got about 30 seconds for the answer.

Mr. O'Toole: Thank you very much. I look for unanimous consent, because we couldn't even convene meetings in other areas of the province.

The Chair: Mr. O'Toole, if you let them answer, they'll be able to finish with the time to—

Mr. O'Toole: Yes, I'll give them time, or they can send me a letter.

The Chair: They have 30 seconds.

Mr. O'Toole: The point I'm trying to make is Uxbridge—I think it should be an upper-tier responsibility. Roger Anderson, the chair of AMO—I'm bringing it up at AMO this year. It's a huge issue, because there is going to be a lot of them. For every 1,000, you need to install 5,000, because there's a ratio of what wind is blowing where.

This is a huge issue. It should not be exempt. The province has a major responsibility here to look at other best practices in provinces like Quebec, Alberta and PEI, and not hide behind section 23 and ignore small com-

munities that are being forced to deal with complex technical—highly valued, I might say—

The Chair: Mr. O'Toole, you've exhausted the time. Thank you very much. I'm sorry, there's no opportunity.

Interjection.

The Chair: I'm sorry, Mr. O'Toole. You have exhausted the time. We cannot even get the answer now.

Mr. O'Toole: Chair, I have a motion: I seek unanimous consent to give the deputation five minutes to reply.

The Chair: Mr. O'Toole has asked for unanimous consent for a reply. Do we have unanimous consent? I don't see unanimous consent. I'm sorry. If I don't have a nod, then I don't have unanimous consent. I don't, so that's failed.

We appreciate your time. Perhaps you can respond by e-mail or by letter with the answers to those questions. Thank you very much for being here today.

Mr. Hornung: Thank you very much for the opportunity.

ONTARIO LAND TRUST ALLIANCE

The Chair: Our next delegation is the Ontario Land Trust Alliance, Smiths Falls. Welcome.

Mr. Ian Attridge: Thank you very much.

The Chair: As you get yourself settled down, if you want to get yourself some water. We have your presentation in front of us now. When you begin, if you could introduce yourself and the group that you speak for so that Hansard has a record of that. When you begin, you'll have 20 minutes. If you leave some time at the end, we'll be able to ask questions.

Mr. Attridge: Good afternoon, committee members. My name is Ian Attridge. I'm the chair of the government relations committee of the Ontario Land Trust Alliance. We very much appreciate the opportunity to make this presentation to you today regarding Bill 51, the Planning and Conservation Land Statute Law Amendment Act.

We believe that Bill 51 is a substantial and positive step towards updating Ontario's conservation easement legislation. You may be well aware of the planning dimension of the bill, but also the conservation easement provisions later on in the bill are important to many of our land trusts. We in fact have 34 land trusts. We're members of the Ontario Land Trust Alliance, and we are charities involved in land donations, receiving land donations and purchases of ecologically, culturally and agriculturally important lands. Currently, we hold, collectively, about 90 conservation easements protecting some 10,000 acres across the province.

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Land trusts help to achieve government and public objectives in many ways. We are dealing with natural and cultural heritage, farmland, source water protection, land use and growth planning. We can assist that through the use of conservation easements. We also believe that there's an important role for the government to create a framework to support this private charitable activity

working in the public interest on the landscape of Ontario.

Conservation easements are restrictions on the land title that are negotiated between a landowner and a qualified organization—perhaps a government, perhaps a conservation charity such as our own. There are three main statutes which govern conservation easements in the province. Primarily these are the Conservation Land Act, the Ontario Heritage Act and the Agricultural Research Institute of Ontario Act.

What we'd like to do today is indicate our support for the provisions that are found in the bill regarding conservation easements but also suggest that there may need to be some fine-tuning in order to make them more practical, perhaps more efficient on the ground as we've experienced it in our work. So we have six recommendations here. I'll spend a bit of time reviewing those and then invite questions afterwards.

The first one is that in clause 3(6.1)(a) of the Conservation Land Act, there's a term that indicates that conservation easements will be "suspended" if there's a merger of title, namely, the conservation easement holder and the holder of the land are the same entity. We're suggesting that "suspended" leaves some unanswered questions and that perhaps "remains in effect," or some wording to similar effect, might be appropriate here.

The second recommendation here is that the bill's requirement under the Conservation Land Act, subsection 3(6.2), for written consent by the holder of the conservation easement regarding building or demolition perhaps may go too far. In fact, we're proposing here that the prohibition apply but that there be two ways that that can be exempted: first of all, looking at the actual conservation easement document, the document that has been negotiated by the parties; and secondly, the bill contemplates a registry of these easements, and therefore there may be notice provided in that registry that may provide further information beyond the outright prohibition suggested for this subsection.

In practical terms, it's our intent to require applicants for a building or demolition permit to disclose whether there is a conservation easement on the property, whether there is some restriction on title that may be affecting their application. That's our general intent, and I understand it was the general intent for this section to trigger the Building Code Act.

The third recommendation is to clarify the default provisions should a conservation body lose its status. Already there's a provision in the statute that would allow the Minister of Natural Resources to become the default holder of that and then have the ability to assign it on to an additional party. We're suggesting that perhaps there are some additional provisions that might be added to that procedure, namely, notice on title, a mandatory notice on title and on the registry, and that the minister be required to consider any preferred assignee that might be indicated in the document itself. Currently, there's no reference to that kind of consideration.

The fourth recommendation is that the registries that are contemplated by the bill in subsection 3(11) of the Conservation Land Act should be capable of applying to conservation easements put in place under other statutes, for example, under the Ontario Heritage Act and under the Agricultural Research Institute of Ontario Act. The Ontario Heritage Act does have a limited registry, but we're suggesting it's worthwhile to have a comprehensive registry in the Conservation Land Act and that there be a provision that would allow for that registry to apply to the other statutes. The details of that can be worked out for the registry in a regulation—that's what's contemplated by the bill—and that would allow sufficient time to integrate those procedures with the Ministry of Culture.

The fifth recommendation is that the bill should add provisions to require under the Assessment Act that property assessors take account of the impact of a conservation easement on the property value for assessment purposes. Currently, there is no provision for that. We've been asking for this for a number of years, and we've had some assurance from senior finance officials that they're open to that suggestion. Currently, we have an uneven practice by the Municipal Property Assessment Corp. and by the Assessment Review Board, so we're looking for providing certainty not only for those government-related entities but also for advisers and landowners who want to enter into a conservation easement. Having certainty as to the financial implications of this will help them get proper advice and be more willing to enter into these agreements for conservation purposes in Ontario.

The final recommendation that we've numbered here is that there are several provisions under the Conveyancing and Law of Property Act, the Land Titles Act and the Municipal Act that we feel should apply to the Ontario Heritage Act as well. It currently lists the Agricultural Research Institute of Ontario Act, and now it's proposed to add the Conservation Land Act. We're suggesting that the Ontario Heritage Act, the third statute that deals with conservation easements, should also be referenced there. We understand it's the intention that the Ontario Heritage Act be subject to the same rules as the other statutes. Here's an opportunity through Bill 51 to tweak that and put them all into the same package so that there are the same rules.

Finally, we'd like to indicate that there are further legal and policy directions that need to be pursued in order to improve the policy and legal framework for conservation easements in Ontario. Certainly, there is the need to develop a regulation to specify additional purposes for conservation easements; there is the need to develop provisions and procedural details for the registry, including extension to the Ontario Heritage Act and the ARIO Act; integrating the legal and administrative provision for conservation easements under various statutes; refining other tax measures in order to enable conservation easements to operate more effectively; and that there are incentives in place to encourage landowners to enter into these kinds of long-term agreements.

We appreciate that these provisions may require further research and discussions, and we're certainly willing to engage in those with all parties, governments at all levels and with the broader land securement community. We offer our expertise and our on-ground experience.

In conclusion, we welcome these legislative proposals in Bill 51, those that deal with planning, that deal with the Conservation Land Act and complementary legislation, and yet we wish to see a few of them fine-tuned. We plan to continue our discussions with other land trusts and with other entities as may be necessary over the next several weeks, and we may submit further detailed proposals to you in order to provide further detail on our suggestions. We trust that these recommendations are helpful and that Bill 51, with some fine-tuning, will foster practical, effective and efficient use of conservation easements in Ontario.

The Chair: Thank you. You've left about three and a half minutes for each party to ask questions, beginning with Mr. Brownell.

Mr. Brownell: I've long been associated with history and heritage conservation and preservation back home in my riding of Stormont-Dundas-Charlottenburgh and certainly I'm familiar with easements in heritage through the Ontario Heritage Act, the Conservation Land Act and the Agricultural Research Institute of Ontario Act.

I'd like to go back to recommendation number 4. I do understand the connect between built heritage and natural heritage. I'm wondering, is this the intent, your interest in trying to bring those three acts together in a comprehensive registry? Could you expand on it a bit?

Mr. Attridge: I think there would be merit in bringing the three acts together. I don't think that's perhaps within the scope of this particular bill, but it is part of a longer-term legislative agenda that might be addressed. But I think the registry may be the start of that, so that there is one place to go where you can determine what the effect is on a particular parcel of land. You can look that up and find out whether a heritage easement, an agricultural easement or a conservation easement is applicable on that title, the nature of it, and therefore act accordingly, whatever that action may be that you're interested in. There is a municipal registry for heritage easements. However, it seems to be more limited in the types of information that might be contemplated than would be contemplated for the conservation land registry.

1210

Mr. Brownell: Could I ask, how limited? How limiting is it at the present time?

Mr. Attridge: I understand that only municipalities are required to establish those registries, and not the provincial government. The Ontario Heritage Trust, I believe, holds maybe 200-some-odd easements, both natural and cultural. I know that the city of Toronto has probably over 200 heritage easements now. This is an opportunity to bring some of that information together. I believe the heritage act only requires information on the

location and the land ownership, not the details of the content.

Mr. Brownell: Thank you.

The Chair: Ms. MacLeod.

Ms. MacLeod: Thank you, Madam Chair. I'll be splitting my question with Mr. Hardeman.

I just have a very quick question for you. I noticed in point 3 of your deputation you talk about, "Without public notice, there is no means by which the landowner, planning or other authorities can interact with the actual, legal holder of the easement." I'm just reminded of a conversation I had last week with the chair of the rural council for the city of Ottawa—we're the largest agricultural city, I think, in all of Canada. A good part of that is in my constituency of Nepean-Carleton. Land rights have come up quite a bit with our farmers, with our landowners and with our rural council. One of the questions they came up with in this respect with our chair, Bruce Webster, is that they feel they're going to lose legal recourse to property rights if elected officials are going to be able to have changes with the OMB. In particular, what they're afraid of is, for example, in Ottawa, ward boundary changes. The OMB actually stepped in at one point to protect rural farmers and landowners and indeed rural residents so that we would actually have a rural voice. I'm just wondering what your opinion would be on that.

It says "Smiths Falls" here. Is that where you're from? I'm just wondering.

Mr. Attridge: I'm actually from Peterborough. I'm the executive director and counsel for the Kawartha Heritage Conservancy. But the provincial office for the Ontario Land Trust Alliance is in Smiths Falls, in eastern Ontario.

Ms. MacLeod: So essentially what I'm looking for your opinion on is, do you believe that Bill 51 infringes on private property rights or landowner rights in rural communities?

Mr. Attridge: That's obviously a very large question.

Ms. MacLeod: But I feel you can answer it.

The Chair: How's that for a challenge?

Mr. Attridge: That's a large question. Perhaps I can turn my attention to the conservation easement provisions, which are the ones that we are addressing here and the ones that we've spent some time analyzing and circulating around our members. We feel that conservation easements are certainly something that is negotiated between the landowner and conservation charities such as our own. That is something that is negotiated. The terms of those are up to the individual parties to work out. So it's really up to the landowners whether they are interested in doing that. We're finding many are interested in that, particularly rural landowners. It's their choice. So it's an interest in land, it's part of their property interest. They can decide what they want to do with that. If they want to negotiate with us with respect to conservation easements, they're welcome to do so. There are tax benefits that come with that, federal tax benefits, and other aspects that may be attractive to

them—to some. It's not for everybody, but in the appropriate case and for significant properties, it's one of the tools that are available.

Ms. MacLeod: Thank you. Mr. Hardeman?

The Chair: She didn't leave you much time.

Mr. Hardeman: Thank you very much. I just wanted to ask a question about your number 1, "suspended." It would seem to me that there were some positives to having it suspended. If the easement and the property are owned by the same owner, that may very well be the opportunity for—the property owner may want to take the easement off before they deal further with the property. It would seem that this section would allow that, whereas if you went the other way, it would remain in effect. Then it would seem to me that there was no opportunity ever for a property owner, if he owns both the easement and the property, to divide the two.

Mr. Attridge: There are provisions for amendment—it's not captured within the bill—which I believe were put in place in Bill 16 back in December, that still would require the consent of the Minister of Natural Resources for changes or releases of conservation easements.

The Chair: Mr. Prue.

Mr. Prue: I'd just like to spend my time on your recommendation 5. We've discussed this before.

Mr. Attridge: Yes, we have.

Mr. Prue: Yes, but our discussion is a little bit fuzzy to me at this point. How many people, in all the negotiations that you've filed, have raised the issue of the Assessment Act impacting on whether or not they're going to sign on with you?

Mr. Attridge: I'm aware of at least one transaction I was involved in where, because there was no specific guidance in the legislation and there was a mixed MPAC practice and mixed results through the Assessment Review Board, the landowner felt that they could not enter into a conservation easement because they could not get certainty from the legislation, and when they sought advice from their advisers and from us, we were not able to provide that guidance. It's a bit of a crap shoot.

Mr. Prue: Obviously you've been to the minister or the ministry itself. Have they told you they're working on it, they're looking at it, they're not interested? What's their position?

Mr. Attridge: I believe that there is some interest. Perhaps it's finding the right vehicle. This bill, because it's dealing with conservation easements, may well be the appropriate vehicle. There may be other finance bills that are coming forward where perhaps this could be considered. This is the type of provision that's in place in British Columbia. It's in place essentially across the United States. Each state has its own assessment legislation and incentives and various other things. It's in there. I don't understand why we don't have it in Ontario. We have it for common-law easements and covenants but not for conservation easements.

Mr. Prue: I find this rather strange because, on the one hand, the government of Ontario prides itself on its

environmental responsibility, which is what these easements do, and on the other hand, they make no provision to allow people to enter them without fear of having their taxes go up. It seems bizarre.

Mr. Attridge: I can't explain why this hasn't moved forward before. I know that there remains some interest within government, within different ministries, in moving it forward. I guess it's finding the appropriate vehicle to move it forward. This committee may be able to do that.

Mr. Prue: To date, do the MPAC assessors just treat the land as ordinary, as not having an environmental purpose that's clearly designated and designed?

Mr. Attridge: Sometimes they don't understand conservation easements. Sometimes they will take an off-the-shelf 50% reduction. Perhaps that's also the decision of the Assessment Review Board. That may not reflect the value of that particular conservation easement. When we receive a donation of a conservation easement or when we purchase a conservation easement, we typically get an appraisal to substantiate that value for tax purposes or to substantiate the value that we're paying for that easement. That appraisal could easily be used as the baseline for assessing the percentage-of-value impact and would be very straightforward for the MPAC assessors. We feel it would be a simple system if the direction was found in the legislation.

The Chair: Thank you, Mr. Attridge. We appreciate you being here today.

Committee, this brings to a close all of our delegations this morning. We're recessed now until 1:30 sharp.

The committee recessed from 1219 to 1332.

CITY OF BURLINGTON

The Chair: Good afternoon, committee. The standing committee on general government is called to order. We're back this afternoon to commence public hearings on Bill 51, the Planning and Conservation Land Statute Law Amendment Act, 2006.

Our first delegation is the city of Burlington. Welcome, Mayor MacIsaac. If you could identify yourself and the individual who is beside you, and the organization you speak for, for Hansard. You will have 20 minutes. If you leave time at the end, there will be an opportunity for us to ask questions.

Mr. Rob MacIsaac: Thank you very much, Madam Chair, and thank you to the committee for allowing this opportunity to speak to the planning process and the reforms proposed in Bill 51.

I'm joined by the city of Burlington director of planning, Mr. Bruce Krushelnicki, who is also going to make a few remarks this afternoon. We're going to try to be reasonably brief so that there will be some time for questions.

I want to take this opportunity to acknowledge the government's work in bringing the province back into the planning process. For many years, Ontario has not been strategic in its approach to managing growth. From my perspective, we haven't been focusing enough on maxi-

mizing the benefits of growth or minimizing its impacts. Furthermore, we haven't been very good at recognizing the connectedness of things. In many respects, our approach to growth in the province has been balkanized.

Our message to you today is that the total package of reforms that are being proposed by the government—the greenbelt, Places to Grow, the role of the OMB, the new provincial policy statement, and now Bill 51—represents a new and deliberate approach that is unprecedented in recent history, and a very welcome approach.

In my view, these reforms affirm the principle that elected officials at the local level, aided by an increasingly qualified planning profession, can be trusted to decide matters of local policy, and they can do so responsibly and fairly, and with fewer and less complicated appeals to the Ontario Municipal Board. These reforms also embody the principle that where an appeal is lodged on a difference of opinion about local policy, the decision by the municipality will have some influence on the outcome. Among this group of reforms, I would like to speak specifically to the issue of complete application and new information. Mr. Krushelnicki is going to provide some comments on the protection of employment lands, the issue of the Clergy principle and design issues in planning.

To begin, the issue of complete applications, while present in many municipalities, rose to special prominence for us in Burlington where a well-known landowner made application and provided the absolute minimum information as required by the law as it now reads. We asked for further simple, basic information that would be routinely necessary in order to conduct a responsible review of the merits of the application—traffic studies, servicing studies—and were refused by the developer. The issue ended up in the courts, and we lost. Somewhat unusually, the court expressed some sympathy for the city's position but was unable to render a decision in our favour due to the state of the law.

The intent of the landowner in this instance was clearly to wait out and ignore the local review process so the matter could be put to the board, where of course the information we requested would eventually be provided. In effect, the developer was able to sidestep the local municipal review process, which in our view is profoundly disrespectful.

The reforms embodied in the legislation before you will provide the local council and planning staff with the authority to require the information needed to properly assess an application in light of local and provincial policy and, of course, the principles of good planning. If the requirements for further information are too onerous, there is recourse to the OMB. However, the application is not complete and the “appeal clock” does not begin until the information needed to assess the application is received.

Now, I know there have been some concerns expressed by some in the development industry, and in response to this the planning task force at AMO, which I chair, has worked with those developers to craft language

to ease their concerns about municipal abuse of this issue. I was able to review AMO's submission from this morning and am supportive, of course, of the AMO compromise set out there.

Let me turn to the reforms governing the information and evidence that can be brought to a board hearing and the limitation on the board's ability to revise an application beyond what was first seen by the local council. We encourage you to retain the principle that the OMB should only be able to deal with the same matter that was dealt with by a local council. This limits the ability of the board to revise an application without notice and without referring it back to the local decision-making body. It is also a limitation on the introduction of new information that was not made available to the local council when it made the original decision. Again, efforts have been made to refine this limitation, and we at the city are supportive of the compromise position that has been offered by AMO in this regard.

These reforms restore a fundamental respect for the decision-making process that takes place at the local level, and they send a clear message to the public about the role of the OMB: that it is adjudicative and not supervisory. The role of the board is to settle fairly and finally legitimate planning issues.

I'm now going to ask Mr. Krushelnicki to make a few comments.

Mr. Bruce Krushelnicki: Thank you, Mayor, Madam Chair and members of the committee. As a practising planner, I want to begin by reiterating the mayor's expression of our appreciation to the government for the various initiatives that have been proposed in the last few years. Among the most important of these, in my estimation, has been the attention given to employment lands.

The protection of employment lands is extremely important to the economic health of local municipalities and vital to their development as complete communities, that is, communities in which people can live, work and play with a minimum of travel. To this end, we support the government's two main initiatives of protecting employment lands from piecemeal conversion to other uses.

The first initiative is the bolstering of the employment lands status in the new 2005 provincial policy statement, the PPS, as you'll know it. The second initiative is the prohibition against what are commonly called “private appeals” to the OMB. Appeals of this kind are common, and although they may represent a cost of doing business to some landowners, defending employment lands from conversion represents a costly and time-consuming diversion from the main planning efforts of many mid-sized municipalities.

In Burlington recently, we spent more than \$1 million in consulting time, lawyers and staff time protecting a significant acreage of employment lands from conversion to other uses. Shortly after learning that the board had ruled in our favour, a new application for conversion was filed just days before the new PPS, which protects

employment lands, was issued. We may now be into another million-dollar defence of the very same lands in Burlington.

Ensuring an ample supply of lands for offices and factories aids in representing and promoting a municipality to prospective employers. This is only possible if we can assure them that they will find well located and reasonably priced lands suitable to their needs. We must also maintain an ample supply to accommodate expanding existing industries within Burlington.

1340

Importantly, the proposed reforms to protect employment lands assert that such decisions are beyond appeal, except at the time of the mandatory five-year official plan review. Again, we urge you to retain the principles embodied by these planning reforms. Continue the firm line of protecting employment lands from conversion and continue, please, the limitation on other private appeals.

On another subject of OMB procedures, we urge you not to relent on the position taken regarding the "Clergy principle," as it's known. This principle arises from a well-known OMB case in Mississauga having to do with a company called Clergy Properties. The principle states simply that an applicant has the right to have a development application assessed on the basis of the policies that existed at the time that the application was made. Under most circumstances, this is fair. However, in the real world, policies and best planning practices change gradually over time to accommodate innovation and to incorporate new professional skills and knowledge into our local policy.

Unfortunately, what started out as a principle of fairness has been elevated to a rule that can sometimes have patently absurd results. Some applicants, for instance, have taken unfair advantage of the Clergy principle by filing what we call "place-saver" applications. These are meant to achieve nothing more than to allow them to bring an often complicated and environmentally difficult proposal forward at some time in the future and have it assessed on outdated and sometimes patently obsolete planning policies.

The legislation before you asserts that all planning decisions must be consistent with the PPS and must conform to provincial plans and policies as they exist on the date that the decision is made. Some will argue that this is unfair and, if abused, could amount to retroactive regulation. On the contrary, we would like to remind you that when new development or redevelopment is approved, it will be around for many decades. For this reason alone, the responsible position is that any assessment of development, especially significant proposals involving complicated environmental or social issues, must be made on the basis of the most recent, up-to-date research and the very best state-of-the-art practices of planning, engineering, design and environmental evaluation available at the time that the decision is made.

The third and final area that I would like to draw to your attention is the increased authority to deal with matters of design and architecture made available by this

legislation. With the creative use of design guidelines, planners have been able to insist on the use of high-quality building materials. They have drawn greater attention to matters of form and massing of development and the relationship that new development must have to the existing context. Above all, planners can now insist that new built spaces retain a relationship with the public realm in the form of streetscapes and important view corridors. In other words, planning has evolved to include public aesthetics as an integral principle of good planning.

Having said this, we acknowledge the small but very important amendment to subsection 41(4) of the act which deals with site plan approval. The amended section provides for a much more extensive listing of items that may be required in development proposals that a municipality must approve in selected areas. This new authority permits us, under prescribed conditions, to review a whole new range of matters of "exterior design," including "the character, scale, appearance and design features of buildings." This is a small but very important step that must be accompanied by a responsible effort at the local level to provide design and site planning guidelines that will lead to a transparent and productive process of architectural review. We look forward to this new authority and urge you to defend this initiative against those who would argue that it amounts to a regulation of taste.

Mr. MacIsaac: Once again, we would like to thank you for the opportunity to be here today. Going forward, we know that the vast amount of growth will come in the form of redevelopment of older areas, infill in existing stable neighbourhoods, and intensification of low-density residential, commercial and employment lands. This is absolutely necessary if we're going to realize the benefits of the greenbelt and Places to Grow.

This is a new reality for Ontario residents and developers. In order to gain any level of community acceptance for our growth plans, we have to demonstrate to our constituents that their local council and planners have the authority to develop complete, prosperous and vibrant communities. They have to know that our local decisions will be respected and that those decisions will be made with the advantage of full information and state-of-the-art research and policy. They have to know that we will have the tools to plan and build communities with attention to great architecture and public spaces.

These proposed amendments to the Planning Act represent the next stage in the evolution of local government. The reforms reflect the re-entry of the province, including the OMB, as a positive force for change at the local level and provide local officials with the authority to assert the public interest in building our communities.

Thank you very much.

The Chair: Thank you. You've left about two minutes for each party to ask a question, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. There are two or three items that you mentioned that I'd just like to cover. The abuse of the use of the complete application—I've heard from a lot of people who oppose that part of the bill, and they suggest that municipalities use that on a regular basis to put off making a decision on the application. They say, "We need more information. This is not a complete application." They then provide more and the answer is, "Yes, but that's still not sufficient; we still need more," and it just keeps dragging on. That's one concern.

The other concern is the issue that you can only present at the Ontario Municipal Board what you presented to council when the application was heard. The concern is that council generally does not take the time required to hear a complete application, much less to ask for the information. So the applicant is concerned that we will not hear all the information; council will just not be willing to take the time to do that. If you look at an application that's going to the Ontario Municipal Board and the length of time it takes the applicant to present that application, that's not the amount of time that councils are taking to hear the original application. So they really believe that somehow some of this information that may not have been there first needs to be there second. Any comments on that?

Mr. MacIsaac: Yes, I guess I have two comments. First of all, with respect to municipalities abusing the process, there are safeguards in place that will allow developers, if they choose, to go to the board and say, "Look, we think it's a complete application. We want a ruling from you on that." AMO made a similar proposal. There's a way to find a balance between the two spots. Let the board make rulings on whether or not an application is complete.

Mr. Hardeman: But that would require an amendment to the act.

Mr. MacIsaac: I believe that's true. Right.

Mr. Hardeman: This act as it's presently written doesn't accommodate for the OMB to decide on the completed application without council having heard it?

Mr. MacIsaac: No, I think it does. Go ahead, Bruce.

Mr. Krushelnicki: Yes, it does. There are two safeguards in place that I think are important to mention. One safeguard is that we have to stipulate—I say "we" as planning officials—in our official plan documents exactly what sorts of reports we may need in any given situation. That has to be spelled out well in advance through our official plan policies. Then, as the application comes in, we can say, "Okay, on this application, we need a traffic study, a shadow study, a sewer study." That's the list we can choose from.

If we start asking for studies that are not on the list, if we ask for studies that they think are irrelevant or superfluous or are just there to waste time, there is recourse to the Ontario Municipal Board. You can make a motion and say, "Look, we think the application is complete. Make a ruling on our behalf." If the board rules, that's when the clock starts.

The point of the legislation which is good is that the appeal clock doesn't start until that ruling has been made, until either we determine the application is complete or the OMB does, and they have lots of recourse for that.

Finally, there is ultimately the board hearing on the merits of the application if it goes that far.

The Chair: Thank you. Mr. Prue.

Mr. Prue: You didn't address this, but I think, Mayor MacIsaac, you're probably pretty up on this. Section 23 of the act takes away the right of municipalities to make decisions under the Planning Act relating to energy projects. Should the municipalities be involved?

Mr. MacIsaac: I would expect that, notwithstanding the fact that that provision is in there, it would be foolhardy for a provincial government to come in without having some municipal involvement in the process.

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Mr. Prue: How would municipalities be involved in the process if it's left up to the environmental agencies?

Mr. MacIsaac: I can't speak for how the province is going to manage it. But what I do think is that without involving municipalities in some fashion, the province would certainly be acting at its own peril.

I understand why this is here. This province has been built on the fact that we have a reliable source of power supply. It has been a fundamental part of economic development in this province for many, many decades. If we do not have a reliable power supply, there's a whole other set of considerations that are going to come to bear.

The Chair: Mr. Sergio.

Mr. Sergio: Mr. Mayor, thanks for coming and making a presentation to us today. You didn't get away from Burlington because it was raining there, was it?

Mr. MacIsaac: It rained all the way in, actually.

Mr. Sergio: It's the particular interest you have shown, and we appreciate that. At the beginning of your presentation, you proposed \$1 million for fighting some application in your municipality. When the minimum information is provided to you as a municipality, and then, just prior to the OMB making a decision, the applicant comes up with new, revised minor or major information, how would you like to see that information treated by the board: as major and send back the application to council as a new application, or leave it to the discretion of the OMB?

Mr. MacIsaac: We have another file at the board where a developer made an application to convert from employment lands to residential and then, in the middle of the hearing, essentially said, "No, we changed our minds. We now want a retail designation." So it's a fundamentally different application that's now before the board and it has never gotten back before our council. I think there's no doubt that where there is a fundamental change in the nature of the application, such that important new information of that nature is being introduced, the board ought to lose its jurisdiction. The process should have to originate with the local council.

The Chair: Thank you, Mayor MacIsaac. We appreciate your being here today.

ORLANDO CORP.

The Chair: The next delegation is the Orlando Corp. Good afternoon, Mr. Kramer. We appreciate your being here today. Thank you for coming. As you get yourself settled, if you want to pour yourself a glass of water, please make yourself at home. We have about 20 minutes for your delegation. If you could identify yourself and the organization you speak for so Hansard has a record of that, then when you begin, after you've introduced yourself, you'll have 20 minutes. If you leave some time, there will be an opportunity for questions at the end.

Mr. Gary Kramer: Thank you very much, Madam Chair, members of the committee. My name is Gary Kramer. I'm a development manager with Orlando Corp. We certainly appreciate the opportunity to address the committee and offer our input on this bill.

The province has demonstrated its initiative and leadership on the approval of the new provincial policy statement, the greenbelt plan and the growth plan, which are designed to shape our communities, create certainty, provide real solutions to direct and manage growth. They certainly give us what developers need, which is certainty. The province also seems committed to meaningful planning solutions through Bill 51. We're pleased to offer our experience as it relates to the delivery and function of employment lands.

A little bit about Orlando Corp.: We are an Ontario-based company. We have been involved in the development, building and ownership of large business communities throughout the GTA over the past 60 to 70 years. We have constructed somewhere in the neighbourhood of 60 million to 70 million square feet of employment properties. We have retained ownership of approximately half of that amount through several business parks, from Richmond Hill in the east to Milton in the west. Our premier business park in the GTA is the Heartland Business Community. Some of you may be familiar with that. That has evolved over the past 20 years. Our new park is the Churchill business park in Brampton.

While employment lands share some similarities with residential lands through the development process, there are some fundamental differences, with the purpose of making them more adaptable to employment lands. Certainty, clarity and consistency are important, but we also need creativity, flexibility and innovation. That is required in order to make us competitive with other provinces, as well as the bordering states, such as northern New York. We've provided a full submission to staff on this, and I'd like to concentrate on some of the key issues.

The first is site and building design. As you know, in subsection 15(2) of the bill there's some consideration for "character, scale, appearance and design ... of buildings." We feel that this added requirement has the potential to unreasonably or negatively impact the function, costs and delivery of a design-build project. There are already rigorous urban design criteria in place in most municipalities that we've been dealing with, and

additional requirements have the potential of being misapplied by municipalities, which leads to increased disagreements and to frustrating and discouraging development activity. We feel that the design of development should rather be applied flexibly through general guidelines, creative discussion, negotiation with developers and municipalities. Having overly restrictive polices and regulations in place should be avoided, in light of the principle that the building's overall function will largely determine its built form. This is the way that approximately 1,000 square feet of prestige industrial buildings have been developed in the Heartland Business Community.

It's initially the building use that determines its function in terms of the size and shape of the building, taking into account the office configuration, plant function, orientation, and then the services and loading areas to suit. So building function determines the built form, and building function should therefore be given the priority. The design features after that should be secondary, enhancing the project to the greatest extent possible but not controlling the project.

The second issue is sustainable design and development. This term is now introduced in the bill, subsection 15(2), and also in section 2, under "provincial interest." It remains undefined. We don't have a clear definition of what it is in the bill or PPS or the growth plan. We feel a balanced approach in the definition of "sustainable development" is required, both in terms of economic sustainability as well as environmental sustainability. We feel sustainable economic development means the economic viability of the building and the site, which has to remain fundamentally competitive because essentially building costs determine lease rates, which determine the viability of the project.

Current initiatives by the conservation authorities and municipalities have focused only on environmental sustainability. That has the collective impact of decreasing density on employment lands and increasing costs. They've initiated green roofs, infiltration mats, drainage ditches and stream buffer zones. All these items lead to increased costs of the building. For example, a green roof adds 60% to the cost of a building, which essentially makes the building economically unviable. Of course, it would never be built. If we don't consider the economic sustainability as a key component, we'll lose competitiveness within the GTA and with the border states.

Intensification—regulation of minimum areas, densities and heights—again, businesses already are intensification-oriented. They require minimum land areas to accommodate the function of their business activities. Intensifying employment areas through new imposed regulations or initiatives has the potential of being, again, misapplied, impeding the proper and efficient function, layout and orientation of the buildings. If there are policies put in place, they must be tempered to meet tenant needs first and foremost.

1400

Overregulation of site and building design leads to increased construction costs, making us uncompetitive, and requiring more intensive uses, such as multi-storey facilities rather than low-rise manufacturing and warehousing, is restrictive. Low-rise warehousing and distribution facilities typically require large land areas to function, and they are compact in terms of the function without those regulations in place.

In summary, we ask that you don't try to create or change the marketplace. We cater to the warehouse distribution market in the GTA, such as the Heartland Business Community. On the flip side, we have tried to initiate certain things, ways of providing intensification through minor realignments of natural features, and we feel that these should be reasonably permitted where there's no impact on the natural habitat, thereby increasing land efficiencies. In addition to that, the issue of on-site stormwater management is another concept that we've initiated. Both of these initiatives have been made in the Churchill Business Community in Brampton. We feel that they will achieve the intent of subsection 14(3) of the act, minimizing site area for development. We can provide examples of that, but they essentially will reduce the land requirements by about 10%. That's the conflict between environmental sustainability and intensification. So there has to be some clarity on that issue.

On a couple of the other issues—enhanced information requirements, public notice, information consultation to be incorporated into official plans and zoning bylaw documents—it's really uncertain as to what effect this will have, but our experience is that the process is already cumbersome and time-consuming. For example, in the Churchill Business Community we're still awaiting a resolution of the environmental implementation report, which has been in the works for about four to five years, and that's the creek realignment and stormwater management issues that I was referring to.

Conversely, the design and building of employment lands sector is very time sensitive and we need to resolve development issues fairly quickly after a deal is structured. There's not a whole lot of time to develop and service the land and construct the building and deliver the finished product to the client if those delays are in place. So we have to be very careful that adding time to the development process through additional meetings and information requirements, either at the beginning of the development process or at the end, doesn't delay that process.

Conversion of employment lands: We'd like to see the OMB appeal opportunities on the conversion be maintained. Subsection (7.2) puts restrictions on the conversion. We feel that large, redundant sites where employment lands—some of them could be more effectively revitalized with mixed-use and retail/residential land use schemes. We feel that they may actually serve the better interests of the community at certain locations on a site-by-site basis. Having a long list of criteria for conversion of those sites to whatever use could be

difficult. Not allowing flexibility to the developer will result in lands being vacant for a longer period of time.

Alteration of settlement area boundaries: We feel that in designated areas of employment the OMB appeal rights should be maintained for privately initiated amendment applications, if refused by council. OPA applications may suffer at the hand of ratepayer groups where local councillors might be overly sensitive to their concerns. The primary issue should be the consideration and reliance on the efficient and rational use of existing public infrastructure. That should be a primary concern, and the denial of the opportunity to appeal is essentially at cross purposes with the objectives of protecting and promoting employment lands.

We feel that the amendments to the power of the OMB should be re-evaluated. Again, our municipal electoral system doesn't always lend itself to permit councillors to make global decisions in all instances. The strong voice of a minority often influences the parochial in their decision-making. An effective OMB should be available to make the decision based on the facts and the provincial policy. Eliminating the evidence in an appeal to the OMB is also a concern and may affect the best planning decision on an application.

In summary, in order to implement the changes, we request the committee to:

(1) broaden the economic objectives by directing the staff to recognize the distinct nature of employment lands compared to residential lands and, through the comments that I made, avoid over-regulation of site building design, intensification and sustainable design;

(2) focus on flexibility, creativity and innovation, and state in the act that the function of the building governs, as well as ensuring that economics is a founding principle in sustainability, that you can't always rely on just environmental sustainability but it also has to be economically viable; and finally,

(3) require an implementation manual to clearly inform, educate and give direction to municipalities in the interpretation of Bill 51, particularly in terms of the impact that these initiatives that I mentioned will have on the employment lands section.

We have discussed this with staff. We think it's a good idea and would like to be involved in that process.

Those are my comments. Thank you very much.

The Vice-Chair (Mr. Jim Brownell): Thank you very much. We have about a minute and a half for each party, starting with Mr. Prue.

Mr. Prue: Thank you very much. You have given a deputation which stands at some considerable odds to that which we've heard from the Association of Municipalities of Ontario and other municipal leaders. Has it been your experience that municipalities have actually stood in the way? I'm just trying to think of where you're from—Mississauga. Every time I go to an event, Hazel McCallion gets cheered by every developer in the room.

Mr. Kramer: I must say that Mississauga is one of the better municipalities. There are other municipalities where it's a little bit more difficult. As I mentioned,

we've been in the business in Mississauga for about 20 years and have worked out a rapport with the municipality. They have a lot of guideline documents that are good—and they are referred to as guidelines—and we've had a good working relationship with staff in meetings and discussions and so on. That's the way it really should occur.

Mr. Prue: So I take it, then, the problem is not the act but the actions of the municipality. It's how they see their municipality developing. In the case of Mississauga it's not at odds with your goal but in other municipalities it may be.

Mr. Kramer: That's right. It depends on the municipality. It depends on what policies are incorporated into their official plans as a result of these amendments to the act. At the end of the day, five years from now or whenever it's time to develop the lands, it's a function of how the municipal staff interpret those policies. And then that's where the conflict occurs. So at the end of the day, it's really, what are those elements in the act? Are they strict policies, or are they to be interpreted as guidelines by staff? I think that's what the implementation manual could achieve. It could achieve that issue.

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The Chair: Thank you, Mr. Kramer. Mr. Sergio, you had a question?

Mr. Sergio: Thank you, Madam Chair. I have a couple of questions, but we don't have too much time.

Mr. Kramer, thanks for the presentation. If Bill 51 will be approved as it is, it gives municipalities quite a bit of new power. In your presentation, you mentioned intensification and some of the difficulties you have with not intensifying to the limit of the needs of your client, let's say. In order for the local municipality to achieve some orderly development, if it is an employment area or a residential area, in order for the local municipality to do the good work in the local area and have good developments of any kind, do you think they are right in imposing some restrictions?

Mr. Kramer: Well, I think what I'm saying is, we have to be careful that we don't put intensification requirements into bylaws that don't allow us to fit that tenant into that building. And that's where the flexibility comes in. We have to make it as flexible as possible so that we can capture as many of those tenants as we can.

We feel that intensification will come over time. In fact, we have some of our older parks, constructed 40 or 50 years ago, where in a few years it might be time to redevelop those parks because of new technology, higher buildings, which are probably twice as high right now. So we feel that that intensification is sort of a natural process that will happen, rather than applying those strict policies now that restrict a tenant from moving into the building, whether it's an office building or a—

The Chair: Thank you.

Mr. Sergio: Are you talking intensification—

The Chair: I'm sorry; we've run out of time. Ms. MacLeod?

Ms. MacLeod: Thank you, Mr. Kramer, for your very informative presentation to us today. I'm concerned with your OMB reform issues, in particular with something that's not mentioned here, but I just want to repeat this: Permit municipal councillors to make global decisions in all instances where our electoral system doesn't lend itself to permit that. You also say that the strong voice of a minority often influences municipal politicians to be parochial in their decision-making.

Now, I'm just concerned about these local appeal bodies. I'm wondering if you think that the local appeal bodies would sort of lend themselves not to be able to make global decisions, and perhaps a minority might influence that particular body at the municipal level. Any comments on that?

Mr. Kramer: I can give you an example, a situation of land that's currently outside of the urban area boundary, that's outside of the greenbelt plan that's within the town limits. It's a parcel of land that for a number of years has not been included in the urban area boundary for essentially those reasons. It abuts an estate residential block of land where the residents have continually raised their objections to those lands being included, so therefore they're not designated for employment use. They abut a major parkway; they're close to all the services and utilities that are necessary to develop those lands. Of course, the growth plan makes statements on making the most efficient use of land where the services are available, but in this particular case they abut an estate residential plan. So if at the end of the day the council decides that those lands should be included in an urban area boundary—and that's the right thing to do. But what if those lands never are included, yet they're the best use of the land? That's really the point we're trying to make.

Ms. MacLeod: Would you say that—

The Chair: I'm sorry, your time is up.

Mr. Kramer, I appreciate you being here today. Thank you for your delegation.

Mr. Kramer: Thank you very much.

ASSOCIATION OF MUNICIPAL MANAGERS, CLERKS AND TREASURERS OF ONTARIO

The Chair: Our next delegation is AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario. Welcome. Please make yourself at home. If you could identify the organization you speak for and your names for Hansard after you've settled yourself. Once you've begun, I will give you 20 minutes. Should you leave time at the end, there will be an opportunity for questions.

Ms. Kathy Coulthart-Dewey: My name is Kathy Coulthart-Dewey. I'm the president of the Association of Municipal Managers, Clerks and Treasurers of Ontario, AMCTO for short. I'm here today to speak to you with respect to Bill 51. With me today is Frank Nicholson, the manager of legislative services.

First, let me say a few words about AMCTO. We are Ontario's, and indeed Canada's, largest association of municipal managers and other professionals. Our 2,200 members work in a range of departments in municipalities of all sizes across the province, from the city of Toronto, with 2.5 million residents, to Tay Valley township, where I am the CAO, with a population of only 5,000.

Founded in 1938, AMCTO has as its guiding objectives the promotion of excellence in municipal administration and management. We are widely known for our high quality education and professional development programs. For people wanting to enter local public service, AMCTO has long offered courses in municipal administration, finance and law, to which we have recently added a comprehensive diploma in municipal administration. AMCTO also offers training workshops to help people already in the field stay on top of developments. AMCTO's certified municipal officer or CMO designation is widely recognized as the predictor of success by municipalities looking to hire progressive management.

Another key AMCTO activity is our ongoing review of provincial policies, legislation, regulation and programs. In this work, we draw on the large and diverse pool of expertise represented by our 2,200 members. The perspective that we bring to this task is a very practical one. We ask such questions as: Does the initiative take into account the different kinds of municipalities, given that one size does not fit all? Does the initiative avoid prescriptive requirements that hinder the development of innovative administrative solutions? Have all the financial, legal, liability, human resource and administrative implications been taken into account? How can the initiative be improved? And when, in the end, the province makes its final decision, AMCTO disseminates the analysis and information to the municipal staff to whom councillors look for advice.

This is the approach that we have taken for Bill 51, the Planning and Conservation Land Statute Law Amendment Act. Immediately after the bill was introduced in December of this year, AMCTO representatives met with staff from the Ministry of Municipal Affairs and Housing to gain a full understanding of the intent and effect of the proposed legislation. AMCTO representatives then participated in a series of multi-stakeholder consultations that the ministry organized regarding possible regulations for Bill 51. Based on in-depth analysis done by AMCTO's legislative committee, our board of directors made a submission to the ministry in February and developed the expanded submission that I am presenting here today.

AMCTO supports Bill 51 in principle because we believe that the circumscribing of the role of the Ontario Municipal Board in the development application appeal process and giving elected municipal officials new tools to plan the future shape of their communities will improve Ontario's land use planning system. These are the two main thrusts of Bill 51. To be sure, AMCTO has certain concerns about provisions in the bill. These are

the provisions relating to the revision of planning documents; the giving of notice; the requirement of public, open meetings; the record of proceedings at public meetings; evidence admissible at hearings; parties at hearings; and local appeal bodies.

We also have an overarching concern about Bill 51's excessive reliance on regulations. Later in my presentation, I will speak to the specific amendments that AMCTO recommends to the bill.

The role of the OMB: Bill 51 addresses what is a major weakness in the present planning system—the broad scope of the appeal process for local development decisions. Some players have come to see the consideration of applications by municipal councils as simply a prelude to the “real” decision-making at the Ontario Municipal Board. This situation undermines the ability of democratically elected councils to make decisions for their communities. It also contributes to delays in the process and higher costs for all parties: builders, developers, homebuyers and the municipal taxpayer.

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Bill 51 tackles the problem by placing reasonable limits on the Ontario Municipal Board and the appeal process. The bill would require the board to have regard to decisions made by municipal councils. It would restrict the evidence that can be considered at Ontario Municipal Board hearings to that available to the municipality at the time the council made its decision. It would limit the right to appeal decisions and participate at Ontario Municipal Board hearings to individuals who participated in the process at the local level. It would provide wider discretion for dismissal of appeals where substantially the same application is presented in a somewhat different format. Finally, Bill 51 would authorize the establishment of local appeal bodies to deal with minor variances and consent appeals in place of the board.

AMCTO believes that these legislative changes, if approved by the Legislature, will serve to streamline Ontario's development approval process and to facilitate the redeployment of resources now tied up with 1,700 hearings at the board level each year.

We also support the changes that the Ministry of Municipal Affairs and Housing has recommended to the Public Appointments Secretariat relating to the recruitment, tenure, compensation and training of OMB members. These changes include encouraging qualified applicants to become board members by posting position descriptions and providing formal training to members throughout their term. These reforms would complement Bill 51 by enhancing public confidence in the board.

As the committee knows, in addition to rebalancing the roles of the board and the municipal council in the appeal process, Bill 51 would give councils new tools to guide development in their communities. These tools include the ability to regulate minimum as well as maximum height and density, the authority to regulate exterior design of buildings, the authority to set

conditions when approving zoning applications and the ability to prescribe the contents of complete applications.

We recognize that not every municipality will use all of these new powers. We nonetheless welcome their addition to the Planning Act because experience shows that municipalities are better able to respond to changing local priorities and conditions when provincial legislation errs on the side of expanding the repertoire of available tools. One power that we are confident many municipalities will use is the authority to spell out by an official plan policy what constitutes a complete application. This will provide greater certainty for the time frames laid out in the Planning Act.

As I previously mentioned, AMCTO supports Bill 51 in the main but sees parts of the bill that could be improved. Our recommendations for amendment are aimed at ensuring effective administration while respecting the policy intent. With the committee's permission, I would like to go through those amendments.

Section 12 of Bill 51 would require municipalities to revise their official plans every five years and their zoning bylaws within three years of each OP revision. These ambitious time frames will have significant impacts in terms of council time, staff resources and consultant fees. We understand the province's desire that official plans reflect such current initiatives as the provincial policy statement, the greater Golden Horseshoe growth plan and the proposed Clean Water Act. However, we believe that this objective could be met by a one-time requirement that official plans be revised within five years of enactment of Bill 51. Thereafter, the present Planning Act rule that councils must every five years consider the need for an OP revision—but not necessarily undertake unnecessary revisions—would apply. The timing of amendments to zoning bylaws would, in our opinion, be left to local initiative.

Bill 51 would require a municipality to hold an open house before a public meeting to consider any development approval application. The widespread use of open houses shows that they can be an effective means for securing public input early in the development process. The problem is that not all official plan and zoning bylaw changes merit an open house. Taking my municipality as an example, 95% of zoning applications are for the conversion of a simple cottage to a simple residence. Bill 51 states that an open house must be held at least seven days before the public meeting to consider a development application. This will create problems for scheduling open houses where multiple applications are being considered. The blanket rules in Bill 51 will disrupt practices that are working well and will entail unnecessary expense. Municipalities need to maintain flexibility.

AMCTO's preferred solution is that the Planning Act leave it to the municipalities to decide when an open house is appropriate for a particular type of application. Another approach would be for the act to mandate open houses only for comprehensive official plan and zoning bylaw documents. We also recommend that the requirement that open houses occur at least seven days prior to a

public meeting be deleted. This requirement, again, would create problems for scheduling open houses where multiple applications are considered.

AMCTO has a longstanding concern about the prescriptive nature of many notice-related provisions found in provincial legislation affecting municipalities. In its February 2006 submission to the Minister of Municipal Affairs and Housing on the Municipal Act review, AMCTO recommended that the act leave it to municipal councils to adopt policies governing where notice should be provided and the form, manner and timing of those notices. We suggested that this be done by deleting all specific notice provisions from legislation or, alternatively, by enacting a provision that where a specific requirement remains, council has the option of devising an alternative approach, in the absence of which the statutory rule would apply. The bill that the Minister of Municipal Affairs and Housing introduced on June 15, 2006, to amend the Municipal Act, Bill 130, moves in this direction by deleting certain specific notice provisions and strengthening councils' authority to adopt local general notice policies. Bill 51 should, as a minimum, follow the approach taken in Bill 130.

Bill 51 preserves the existing Planning Act provision that allows the province to prescribe by regulation the information that a municipal clerk must transmit to the Ontario Municipal Board in the event of an appeal. We are concerned that this power could be used to require a verbatim transcript of proceedings at public meetings. Such a requirement is unnecessary and could have very significant cost implications. The notice that the province recently gave through the Environmental Registry about the forthcoming Bill 51 regulations suggests that no such requirement is envisioned, at least at this time. The province seems open to the approach that AMCTO has advocated whereby attendees at a public meeting would be informed that only written submissions will form part of the record forwarded to the board except that, where a person makes an oral submission, their name and whether they are for or against the application would be included in the record. We recommend that this policy position be incorporated in the statute and not be left to regulation.

As I previously indicated, AMCTO supports the provisions of the Planning Act that would preclude the admission into evidence at an OMB hearing of information and material not provided to council before it made its decision. This change should encourage applicants and other parties to take the local decision-making process more seriously and thereby reduce the scope and duration of board hearings. The bill provides an exception where the board believes that it was not reasonably possible to provide the information and material prior to council's decision. We believe that this provision is too wide-open. It is in the interests of everyone—the appellant, the municipality, other parties and the board—to have certainty as to what constitutes new information and material. We strongly recommend that the standing committee consider adopting a definition for Bill 51.

Bill 51 introduces the reasonable rule that persons other than public bodies may only appeal a planning decision if they make a submission at the local stage of approval. The bill places a similar limitation on being a party to a hearing on an appeal but allows the OMB to make an exception if the board believes “that there are reasonable grounds to add the person as a party.” AMCTO is of the view that this exception would work against the streamlining of the review process, and we recommend that the provision be deleted.

A further AMCTO recommendation relates to section 6 of Bill 51, which authorizes municipalities meeting certain conditions to establish local appeal bodies to handle minor variance and consent appeals. Smaller municipalities like my own will find it difficult to take advantage of this good provision because of the costs involved in establishing and maintaining appeal boards. One solution would be a joint appeal body. This approach is relevant in my county, where, if everyone proceeded to separately establish local boards, there would be nine drawing on the resources of 50,000 people. AMCTO recommends that Bill 51 be amended to authorize the establishment of local appeal bodies on an inter-municipal basis.

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Finally, we are concerned about Bill 51’s excessive reliance on laying out key aspects of the reform plan system through regulations. The bill uses the word “prescribed” no fewer than 30 times, which is in addition to the more than 100 instances in the existing Planning Act. Legislation by regulation has two serious consequences. First, it’s very difficult for stakeholders to evaluate a bill when half the provisions have not yet been written. We appreciate that the ministry has recently outlined, through the Environmental Registry, the content of some of the planning regulations; however, a great many details remain unknown. Second, the fact that the cabinet or the minister can change the law overnight creates uncertainty for municipal administrators. Imagine the potential for disruption if the authority under which municipalities have developed all their policies and procedures is suddenly changed. For these reasons, we recommend that the standing committee consider replacing regulation-making provisions with substantive provisions wherever possible.

Such are the recommendations of AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario, to the standing committee on general government for adjustments to Bill 51. We believe that these changes would provide the flexibility needed to accommodate the varying circumstances of Ontario’s 445 municipalities: large and small, urban and rural, high-growth and low-growth. As I said before, one size does not fit all. Please consider these recommendations for amendments in the context of our overall support for the proposed legislation. AMCTO believes that Bill 51 will address long-standing weaknesses in our land use planning system and that the bill’s enactment is in the public interest.

I greatly appreciate the opportunity that you have given us to speak on this matter. I would be pleased to answer any questions the committee might have about our presentation.

The Chair: You’ve left exactly three minutes, so each party has one minute to ask you a question, and I know they’ll be brief. The first one is from Mr. Brownell.

Mr. Brownell: Thank you very much for your presentation. I served on township council and county council back home for a number of years—actually, 14—and there were a number of instances where we had public meetings, open houses for planning issues; not mandated, we just did it. I think we did it because we didn’t want to get into trouble and have a lot of confrontation later on. I saw things, happenings in other municipalities where they didn’t do that and they did get into trouble.

You’ve indicated here that open houses should be mandated “for comprehensive official plan and zoning bylaw documents.” How should we ensure that early public engagement happens, such as open houses and that type of activity for planning issues?

Ms. Coulthart-Dewey: The Planning Act, as I understand it right now, does allow the municipality to implement alternate measures, as described in their official plans. One of the recommendations is that it be clarified—at least clarified—that the public meeting process, as well as the open house process, be subject to those alternative approaches if the municipality believes that an alternative approach is warranted.

We believe that municipalities are taking advantage of those alternate approaches. They are using the open house alternative as an appropriate mechanism of engaging early, when necessary. The fact that the ability to do that remains in the act, I would suggest that municipalities would continue to do that and use their best judgment. The issue is whether the open house should be mandatory for all applications, and I think that’s where it’s being suggested that that’s overly prescriptive.

The Chair: Mr. Hardeman?

Mr. Hardeman: Thank you very much for the very good presentation based on the administration of the act as opposed to the merits of the planning process.

There are two areas I just quickly want to touch on. I’ll put them together and hopefully give you an opportunity to answer. One is your comment that the association “is of the view that this exception would work against the streamlining of the review process,” which is allowing someone to go to an OMB hearing if the board thought they had not had equal or adequate opportunity originally. The question is, taking away their total right because they didn’t get there in time, is that not working against the process, which is the public’s involvement?

The other one is the board, the local appeal body. Your suggestion in small municipalities—and I represent small municipalities—is maybe putting them together and having a joint board. What is your definition of the

difference? How would you define the difference between that joint board and the OMB?

Ms. Coulthart-Dewey: I'll try and address the second question first. I think the recommendation would be that the local appeal body would only deal with minor variances and only deal with the consent appeals. So it's a reduced scope of work to start with, and it would also be a local board, with an opportunity to give a local flavour to those minor decisions, rather than the board being in a larger municipality and not knowing what the local initiatives are.

Can you repeat the first question for me?

Mr. Hardeman: Taking away people's right to appeal.

Ms. Coulthart-Dewey: I don't think it is AMCTO's position that we would be taking away the right of local appeal. All we are encouraging is that the right of local appeal be exercised early on in the process, as the bill would suggest. One of the tenets behind the bill is to front-end the program. I think perhaps an encouragement of the public to get involved early in the process and clearly understanding that it's a necessity to do so would be a far better approach.

The Chair: Thank you. Mr. Prue.

Mr. Prue: Just on the same point, I must state that I agree with the general provision, that if you're not party to an appeal at the beginning, you shouldn't be at the end. But surely, the board would look at exceptional circumstances: a woman having given birth on the day that the thing was and who wants to say something about it; a person who's out of the country due to a death in the family. Surely there must be some provision that people can get into the process after, not just cut them out for all time.

Mr. Frank Nicholson: If I may address that one, we did hear reference earlier today to the culture of the board, the thrust of this legislation to making it an upfront process, all the provisions for people to have that chance up front. So it's just a concern this might undermine the thrust of the whole bill. It's always a balancing act in these situations. Our considered judgment: It would be better without that particular exemption.

The Chair: Thank you very much. Sorry, we've run out of time. That was a very interesting presentation. I think it sparked a lot of discussion.

GREATER TORONTO HOME BUILDERS' ASSOCIATION

The Chair: Our next delegation is the Greater Toronto Home Builders' Association. Welcome. As you get yourselves settled, if you'd like to pour yourselves a glass of water, please do. Make yourselves at home. When you begin, if you could introduce yourselves and the organization you speak for. After you've done that, we'll have 20 minutes. If you leave some time at the end, there'll be an opportunity for all parties to ask you questions.

Mr. Michael Moldenhauer: Good afternoon, Madam Chair and committee members. My name is Michael Moldenhauer. I'm a volunteer with the Greater Toronto Home Builders' Association, as well as chair of its government relations committee. We thank you for the opportunity today to provide comments with respect to the proposed planning and Ontario Municipal Board reform.

Joining me this afternoon is Paula Tenuta. Paula is the director of municipal government relations for the Greater Toronto Home Builders' Association. She's been actively involved in the topic of planning and OMB reform since the discussions began over two years ago. Together, we have worked closely with the Ministry of Municipal Affairs and Housing and have had a series of discussions since this legislation was introduced in December. Along with a copy of our speaking notes today, we have also before you our submission made to the ministry this past March, which lays out in full detail our comments and concerns.

Established in 1921, the Greater Toronto Home Builders' Association is the voice of the residential construction industry in the GTA. We have approximately 1,400 member companies representing a cross-section of the industry. Our industry is the largest employer in the province. Our membership has considerable experience and insight into the OMB's function and processes, and has been a significant contributor to the recent OMB debate.

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I am president of Moldenhauer Developments. We are an infill building company with recent projects in Oakville, Etobicoke, Mississauga and Toronto. This bill, if passed, would impact my day-to-day operations as a company.

Our land use planning system is of key importance, establishing the rules for development and helping determine how our communities grow. We know, as an appeal body that performs a vital function in the development approval process, that a strong OMB is essential. Bill 51 is a significant and complex piece of legislation that, if left in its current form, has the potential to threaten economic stability and housing affordability in Ontario. We're concerned that it proposes new, often onerous, requirements for landowners and proponents of development, and we're of the opinion that what may have been the intent of Bill 51—to reduce OMB workload—won't in fact materialize with the proposed changes.

Recent provincial initiatives—from the new 2005 provincial policy statement, the Oak Ridges Moraine Conservation Act and conservation plan, the Greenbelt Act, the greenbelt plan, the Strong Communities (Planning Amendment) Act, the Places to Grow Act, the growth plan for the greater Golden Horseshoe, the proposed Building Code Act reforms, to this legislation before you—are dramatically reshaping the landscape for the home building and development industry.

With the introduction of Bill 51, our industry is faced with greater complexity and more hurdles to the delivery of cost-effective development. In short, we are very concerned about additional costs and unnecessary delays. These concerns are not unique to developers. All parties involved in the planning approval process will be overburdened. Planning decisions will be delayed and potentially often paralyzed. As currently proposed, the Bill 51 reforms will bring uncertainty to the approvals process and will raise to even higher levels the barriers to entry into the home building and development business.

Housing affordability for consumers is also at stake. Ultimately it is the future homeowners who will bear the brunt of additional costs and delay in the process since they'll be faced with increased house prices. They may also be delivered a product much later than would have been the case without the additional procedural requirements that this legislation will impose.

Many elements of Bill 51 require serious re-examination and revision in order that planning authorities will have the controls that they want without damaging equally important considerations such as job creation, housing affordability and consumer choice. I'll take the next few minutes to go over our main concerns and, where possible, to provide some solutions for your consideration. Our March submission to the ministry presents our ideas in a more comprehensive way, but for this afternoon my remarks will focus mainly on the legislation's provisions related to new evidence, complete applications, urban design, the treatment of employment lands and the proposed timing for the legislation's implementation.

First, hearings de novo: Bill 51 proposes that no new evidence, aside from that which was brought before the council, can be presented to the OMB. The most serious problem with this idea is that it violates the fundamental principle that planning decisions should be based on the best information available. Preventing the Ontario Municipal Board from hearing the best information will result in worse planning, not better. Why would we not want the ability to provide the best information to any decision-maker in the planning process?

A second problem is how the applicant is supposed to know what studies and information to file and, on the other side of the coin, how the municipality is supposed to know in advance what the exact study and information requirements are for an application. Every application is to some degree unique, and the public input process under the Planning Act is dynamic. Sometimes the need for a particular study or information does not become apparent until after council makes a decision, such as when a citizen appeals to the OMB and raises a new issue.

A third concern is how municipalities will be able to digest the mountains of material that this requirement is going to generate. This will clearly lead to an increase in costs and resources not only for the proponent but also for the municipalities.

Consider as well what this will do to regular municipal council proceedings. How will a municipal council have the time to review all of the case material being presented, given the other matters that they deal with on a regular basis? The result will undoubtedly be an unnecessary increase in municipal workload.

There is also a fundamental question of procedural justice. Council meetings are not hearings in the same way as an OMB proceeding. There is no opportunity to present a detailed argument, given the typical five-minute limit on deputations. There is no opportunity to refute statements made by opponents, since the proponent normally only has one chance to speak. The OMB must retain the ability to hold independent, thorough hearings where all evidence can be debated in a fair and unbiased manner. The OMB must continue to have access to the best evidence presented by the full range of experts whose advice is at the core of good planning: planners, architects, engineers, ecologists and urban designers.

We therefore recommend that the proposal to have no new evidence presented to the OMB be eliminated and that full hearings de novo be maintained. If one of Bill 51's goals is to provide further emphasis on the views of the local municipality, a more appropriate safeguard would be to suggest that during an OMB hearing a motion can be brought forward requesting an adjournment to afford the municipal council an opportunity to consider any new evidence which could have affected its decision.

Bill 51 also includes a provision suggesting that if new material is presented to the OMB which may have affected the council's decision, the entire case may be submitted for re-review back to the municipality. This proposal is highly impractical and will be very expensive for everyone in the process. If this principle is to be retained in Bill 51, the Greater Toronto Home Builders' Association would recommend that new evidence be permitted to be resubmitted to council for review only on motion to the OMB, and only where the OMB decides that the request is reasonable.

Bill 51 also includes provisions that permit public agencies to introduce new information to the OMB, while denying the same right to the applicant, residents or other private interests. Being unjust to all parties involved, GTHBA strongly recommends a change to the proposed legislation to allow the introduction of evidence by all parties and that if public agencies are permitted to introduce new information, the proponents should be given the ability to respond. This is just basic fairness.

Complete application requirements: Closely related to the provisions of new evidence are the complete application requirements introduced in Bill 51. It is obviously the government's intent to ensure that a municipal council has all the necessary information prior to deciding on an application. That is, of course, fair. However, it appears that the underlying concern is the very few applicants who, for whatever reason, have had a disregard for the municipal planning process and have presented bare-bone applications with the intent of

ignoring the municipality and going as quickly as possible to the Ontario Municipal Board.

It's important not to swat this fly with a sledgehammer. This legislation needs to address the problem without overreaching and unnecessarily increasing costs and delay. The Greater Toronto Home Builders' Association would recommend that a prescribed preconsultation process set with minimum information standards and appropriate response times would be a far better alternative than what is currently being proposed.

As written, Bill 51's complete application provisions are vague and would allow municipalities to unreasonably refuse to accept applications. The proposal also has the potential to be used as a delay tactic; municipalities would be enabled to require studies that are not necessary. The current language is so open-ended that it allows a municipal council to require "any other information" that they feel is relevant.

A practical and effective solution would involve a process which puts an emphasis on communication and pre-consultation with municipal staff. The proponent and staff would work together to determine application requirements, and the next step would be for the applicant to submit what they believe to be a complete application. In order to provide a level of certainty for the applicant as well, the appeal clock would start at the point of this application submission. The municipality would then have a prescribed time to inform the applicant if the application is complete or not. If not, the municipality should clearly say why by way of a written notice, or else it would be assumed that the application is complete. If the notice indicates that information is missing, the applicant should have the opportunity to file the missing materials, but if the applicant feels the requirements to be unreasonable, then the applicant should have the opportunity to make motion within a specified period of time to the OMB for a determination of whether the application is complete or not.

In its current form, Bill 51 does not provide the opportunity for an applicant to challenge whether or not the additional material requested is reasonably required. Our recommendation here addresses that and brings a sense of certainty to all those involved in the planning application, review and decision-making process. It will require a clear definition of what constitutes a complete application, which should reflect that a one-size approach does not fit all types of projects.

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Many GTA municipalities already use a co-operative pre-consultation process which recognizes the site-specific requirements of applications. GTHBA members already commit substantial amounts of time and resources with community councils, local planning departments and residents to achieve consensus on development projects. This should be further encouraged by Bill 51.

Design and changes to the site plan process: Another significant element of Bill 51 is the change it contemplates to the site plan control process and the introduction

of additional municipal control over urban design. Proposed amendments to the Planning Act will give more open-ended powers to municipalities to require design features as a condition of planning approval and will, in effect, allow them to regulate elements such as the colour and texture of building materials. The Greater Toronto Home Builders' Association supports good urban design and our members strive for excellence in design and quality standards, but we say that good taste can't be legislated and design should not be dictated.

Regulating the urban design process won't necessarily result in a better product either. The proposed changes will impose an unnecessary degree of architectural control and have the potential to politicize the urban design process and reduce the art of architecture and design to a lowest-common-denominator committee process. There's also the potential for the process to become convoluted as more and more requirements are imposed, clearly leading to unnecessary delays and costs.

We also fear that some approval authorities, in the name of neighbourhood character and good urban design, will mandate unreasonably high standards of building materials, design and building features, which will compromise affordability and be passed on to the consumer as part of a higher house price. This is contrary to provincial goals for housing affordability.

Then there is the element of consumer choice, since the imposed standards may have nothing to do with what the consumer wants. The home-buying experience involves individualizing the appearance of your home. There has to be consideration given to what consumers desire. The marketplace, not council chambers, is where these very personal decisions should be made.

GTHBA recommends that proposed changes to section 41 of the Planning Act dealing with site plan control and urban design be reconsidered as, currently written, they allow for far more control than is necessary or desirable. We would strongly recommend that any provisions related to the control of exterior design be deleted, so that this can remain a matter that is dealt with between the applicant and the municipality as part of the consultation process.

Definition and limiting conversions of employment land: Another matter of concern is Bill 51's provision which would eliminate an applicant's right to appeal to the OMB if a municipality refuses its application for conversion of employment land unless it's part of their four-year review of an official plan. Many GTA cases of residential intensification have taken place on employment lands, and having such a conversion application at the mercy of an OP review is not in the best interests of industry or the municipality.

The redevelopment of brownfields more often than not occurs on areas historically designated for employment. It is unclear how the province intends on reconciling these two vital policy issues. This also serves as an example of how Bill 51, as written, has the potential to frustrate positive intensification and redevelopment applications either contemplated or currently in process.

The Legislature should also keep in mind that some municipalities deliberately do not keep their OPs up to date so that they will maximize their ability to resist or revise development proposals.

The Greater Toronto Home Builders' Association would therefore recommend that the province eliminate Bill 51's provision which states that an application for conversion of employment land, if refused by a municipality, cannot be appealed to the OMB unless it's part of a five-year official plan review. However, if this principle is to remain, GTHBA recommends that a municipality not be granted the option to limit conversions on employment lands until they have completed their five-year comprehensive OP review and that they lose the right to limit conversions if they do not complete one.

GTHBA also recommends that the province review and amend its current definition of "areas of employment" in Bill 51 so that areas of mixed use can in no way be included or caught. As currently written, "mixed use" is included in the definition of employment lands. To avoid being open to municipal abuse, policies concerning areas of municipal employment must be consistent across all provincial planning documents. Mixed-use applications, which can include a residential component, will severely affect, if not paralyze, attempts at increased intensification. Once again, this is an example of a policy that needs to be re-examined since it is clearly counterproductive to provincial policies.

Retroactivity and transition: In relation to the timing of the proposed legislation itself, the GTHBA recommends a phased implementation approach for the proposed changes. Clear transitional policies are needed to deal with all complete applications currently in process, and rules must not be changed midstream.

The proposed amendments include an unfair provision that could make the regulations apply across the board or, on a case-by-case basis, retroactive back to December 12, 2005. In essence, any decisions made by approval authorities and all time and effect invested by all parties involved in an application since that date, and before then, would unjustly become invalid. GTHBA recommends that the province delete this provision related to retroactivity in Bill 51 but instead work with the industry to determine a future effective date.

In conclusion, the GTHBA supports the OMB as an independent and impartial quasi-judicial tribunal that must serve to fulfill the planning goals of the provincial policy statement. With its full scope maintained, it will provide checks and balances outside the political system as the hearing process requires the application of due diligence to important long-term planning decisions.

The GTHBA supports a strong OMB that upholds the principles of responsible and good land use planning. The possibility of an appeal of every type of application encourages higher standards regarding the review, analysis and justification of planning decisions. GTHBA supports an OMB which weighs the impact of the changes proposed on the local environment and also

serves to promote provincial planning initiatives. Maintaining a strong OMB is essential to ensure that the province can implement its stated goals for intensification and growth management.

This must be balanced against the application of good planning principles and properly balanced growth in Ontario. As it stands, Bill 51 proposes problematic and onerous requirements for the homebuilding and development industry. It will result in additional complexity and will overburden all parties involved in the application process. Without reform, we will be faced with uncertainty, lengthened and potentially paralyzed planning applications. Proposed reforms will raise to even higher levels the barriers to entry into the homebuilding and development business.

We again thank you for the opportunity to voice our concerns regarding this extremely important piece of legislation and hope you will consider our amendments to Bill 51 as GTHBA members wish to continue building a prosperous, efficient and sustainable Ontario. Allow the homebuilding and land development industry to continue to assist in serving the provincial goals and interests of affordable housing and increased levels of intensification, and to continue to create dynamic communities.

The Chair: Thank you, Mr. Moldenhauer. You have left exactly 25 seconds.

Mr. Moldenhauer: My apologies.

The Chair: No, it was very thoughtful. Thank you very much. You've obviously put a lot of time into it.

TOWN OF OAKVILLE

The Chair: Our next delegation is the town of Oakville. Welcome, Mayor Mulvale. Thank you for coming here today. We appreciate you making the trek from Oakville. As you settle yourself, I'm sure you know the drill as you've been here once or twice before. If you could state your name and the individual with you, and the organization you speak for, so that Hansard has a record of it. You do have 20 minutes. Should you leave time at the end, we'll be able to ask you questions. I believe we have your presentation here.

Ms. Ann Mulvale: Thank you, Madam Chair. My name, as you have indicated, is Ann Mulvale, the mayor of the town of Oakville, as my former council colleague Kevin Flynn, who we anticipated would be here, would be pleased to attest.

To each of you members of the committee, I'm pleased to introduce my colleague Councillor Cathy Duddeck, for ward 2. Cathy Duddeck serves as the vice-chair of the Oakville Ontario Municipal Board reform working group. In addition, we have two members of the town's planning staff, Allan Ramsay and Diane Childs, with us in the audience.

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Let me commence by noting how pleased the town is that the current McGuinty government has focused on planning reform as a priority issue, noting especially the need for reform of the Ontario Municipal Board. I would

also like to acknowledge the ongoing recognition of the Conservative and NDP members of the need for such reform. We certainly have had conversations with both parties on this in the past. By listening to the public and working together, we can achieve sustainable legislation that supports provincial policies while at the same time protecting the neighbourhoods where we reside.

Madam Chair, you, like myself and other members of this committee, have experience first-hand at the municipal level of the negative impact of the existing Ontario Municipal Board. Let me say again, the need for OMB reform is not a new issue for the municipal order of government. On a personal note, my first encounter with the OMB took place in 1978 as the chair of an Oakville residents' association. The official plan of the then small town of approximately 55,000 people was appealed and resulted in a four-month hearing before the board. Their decision completely changed the cycle of growth that had been decided by the local council after extensive input from the existing residents.

Unfortunately, this experience has been repeated several times over the past 30 years. My colleague Councillor Duddeck, one of six first-term councillors in Oakville, has been extremely disappointed and frustrated over the past three years to see so many council decisions being overturned by the OMB, with dramatic consequences for the area she represents. Given the town of Oakville's considerable experience with the OMB, is it any wonder that the town has been a proponent of planning reform? In fact, MPP Flynn was Halton region's representative on the GTA task force on OMB reform, and I served as the alternate.

Unfortunately, Oakville's experience, like those of many other municipalities, too often involved matters where developers have sought a decision directly from the OMB and have purposely used the Planning Act process to bypass the duly elected municipal council. On many occasions, appeals to local planning applications have been filed prior to the local council having an opportunity to host a public meeting to consider the application. In other instances, appeals to the OMB have been filed prior to the submission of the information necessary to properly evaluate the application. With the residents of Oakville frustrated by the lack of progress on OMB reform in 2005, the town council established an Ontario Municipal Board working group of council to advocate for legislative change to help ensure greater emphasis on the role of municipal decision-making processes in land use planning decisions.

The three key principles for OMB reform identified by the working group and supported by council that they wanted to see addressed in the new legislation were:

- (1) developers to submit completed applications to municipalities prior to making appeals to the Ontario Municipal Board;
- (2) the OMB to be recognized as an appellate body, not a decision-making body; and

(3) grounds for appeal of the decision made by the democratically elected local government be limited to errors of fact and law.

Subsequently, in August 2005, the Large Urban Mayors' Caucus of Ontario, LUMCO, and many other municipalities throughout our province supported these principles. We are appreciative of the province's acknowledgement of the need for planning and OMB reform. We support many of the initiatives proposed in the bill before you today and firmly believe that planning reforms proposed in Bill 51 are urgently needed and must be proclaimed as soon as possible. The regulations implementing the provisions of the bill are equally important and need careful review to be set in place expeditiously, subject to sufficient municipal engagement. We are aware of the recent posting of the various proposals for new regulations to implement many of the proposed changes outlined in Bill 51 on the Environmental Bill of Rights registry. We will be reviewing those proposals with the intention of submitting comments prior to your October 2 deadline. Further planning and other legislative reform are needed if municipalities are to be effective in making sustainable land use planning and community building decisions in compliance with provincial policies and goals.

Support for proposed OMB reforms: The town of Oakville supports the proposed changes, and in particular the requirements for:

- the opportunity to create local appeal bodies to deal with consent and/or minor variance appeals;
- the requirement for the OMB to have regard for local decisions;
- the clarification and enhancement of what is considered a complete application;
- the introduction of restrictions regarding how new information and materials not available at the time of the municipal council's decision will be heard at an OMB hearing;
- the opportunity for the OMB to ask municipalities to consider any such new information and provide the board with a recommendation in response to the new information;
- the introduction of restrictions on adding new parties to OMB hearings;
- the establishment of qualifications for members of local appeal bodies, i.e., demonstrated understanding of the provincial land use planning process, the Planning Act and local planning and development matters;
- the addition of a provision to allow the OMB to dismiss an appeal without a hearing if it determines the appellant has persistently and without reasonable grounds commenced an appeal. This abuse-of-process provision would be used in cases where the current proposal is similar to or the same as proposals that have been previously adjudicated;
- the reintroduction of the authority for the minister to declare a provincial interest in matters involving appeals of minister's zoning orders. In that case, the provincial

cabinet would make the determination, rather than the OMB.

What's missing in the OMB reforms? While much has been achieved, there is still a great deal to be done. I am hopeful that, as many of the committee members have extensive municipal experience, you are undoubtedly aware that at the local level we are responsible for implementing all the changes that are proposed and want to make sure that the right processes are in place. With the introduction of local appeal bodies, it may be appropriate to expand their mandate to include appeals of site plans, plans of subdivision and other planning matters of a purely local nature. This could also include zoning matters where the application conforms to an approved official plan.

Another approach would be to permit appeals to be heard by the OMB only on matters that are declared provincial interests. Provincial interests could be defined as those matters set out in the provincial policy statement or as declared by the province. All other appeals, regardless of the type of application, would be heard by the local appeal body.

A further approach would be to add provisions to the bill to limit the scope of OMB hearings. Full hearings or de novo hearings should only be held if:

- there is a declared provincial interest in a matter;
- there has been an error in the decision-making process; or
- there has not been a municipal decision rendered.

The scope of all other appeals should be focused on specific aspects of the planning application. This would require a process whereby appellants must declare the specific nature of their appeals. Then evidence before the OMB would be limited to the declared issue, narrowing the scope.

With respect to completed applications, although Bill 51 contains new requirements for official plan, zoning, subdivision and consent matters, the bill does not allow municipalities to require complete applications for site plan and minor variance applications. While the processing requirements for these latter matters are usually less than other types of applications, certain minimum or baseline information is generally required.

For example, a recent minor variance application in the town sought approval for a waste transfer and processing station. The application was submitted without noise, traffic or any other technical studies. The matter was eventually appealed to the OMB and approved by the OMB without the requirement or consideration of any technical studies.

Further, the requirement for the OMB to "have regard" for a municipal decision is laudable but needs to go further. There is the potential for ambiguity as to what this really means. In circumstances where the OMB is making a decision contrary to the decision of the municipal council, there should be a requirement for the board to clearly demonstrate how it gave consideration to the municipal council's decision. It cannot simply be

stated that the board preferred the evidence of one party over the position of the municipality.

Our final concern with the proposed OMB reforms outlined in Bill 51 is how new information is considered at an OMB hearing. Although the bill provides the opportunity for the OMB to ask municipalities to consider any new information that may become available during a hearing and provide it with a recommendation arising from the new information, there must be adequate time afforded to the municipality, including its staff, to review and evaluate the new information and formulate an informed response.

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Other planning reforms: Although much of the town of Oakville's focus has been on OMB reform, we would also like to make a few additional comments with respect to other changes that you are proposing for planning.

The town of Oakville supports the proposed changes, and in particular the requirements for:

- requiring applicants to attend pre-consultation meetings prior to submitting applications;
- prohibiting appeals on official plan and zoning applications that seek to reduce the amount of land designated for employment use;
- requiring planning decisions to be based on the most up-to-date provincial policy statement and provincial plans in effect regardless of the time the application was filed;
- maintaining up-to-date official plan and zoning bylaws;
- allowing municipalities to apply conditions to the approval of zoning amendments; and, finally,
- permitting municipalities to regulate the external design of buildings through expanded site plan control.

While we appreciate the efforts of the province to better the planning process with the proposals in Bill 51, it is our opinion that further improvements are required. The town of Oakville requests consideration of the following additional planning reforms.

At the town of Oakville we believe we are leaders in ensuring the public and all stakeholders are fully engaged in local planning decision-making. For many years, our procedure has been that our planning staff host public information meetings early in the planning process. These meetings are in addition to any of the statutory public meetings required by the Planning Act. Bill 51 introduces the requirement for a public open house to be held no later than seven days prior to the statutory public meeting. While we support the concept of having such a meeting to allow the public to review and ask questions, we believe there may be circumstances where these additional meetings may not be warranted and could in fact delay the process unnecessarily. We would ask that the provisions of Bill 51 be permissive so as to provide municipalities greater flexibility or discretion for holding a public open house.

As already noted, we support the proposals in Bill 51 that planning decisions be consistent with provincial policy statements and conform with applicable provincial

plans in effect at the time of the decision, not those in place at the time of the application. While we support this change, given the various states of approval for planning matters, there needs to be further direction in the bill to address circumstances when some planning approvals have been granted under one set of provincial policies or plans and other, related planning approvals are being sought under current policies and plans.

Under the bill, the basis for updating official plans has been shifted from local determination of outstanding issues and circumstances to the need to conform with new provincial policy. While we accept that regular and timely reviews are necessary to keep up with the evolving provincial policy, the town believes the focus of the official plan review process should address a wider range of emerging community issues.

Further, we request provisions be included in the bill that would provide local municipalities the authority to approve part lot control bylaws for any plan of subdivision, regardless of the original approval authority of the subdivision. Currently, the Planning Act limits the local municipality's authority to grant part lot control exemptions to subdivisions where it is the approval authority.

The bill adds "sustainable development" as a matter of provincial interest. While we support this initiative, there needs to be some guidance around what constitutes sustainable development so that the municipalities can fairly evaluate whether a particular development is in conformity.

Finally, the bill needs to be amended to delete the proposal exempting energy undertakings such as the siting of power generating facilities from the requirements of the Planning Act. These new facilities need to go through the appropriate public process to resolve any conflicts. Local councils are all too aware of the issues and concerns of the community regarding the impact of these new facilities.

To conclude, I again want to congratulate the McGuinty government on recognizing the need for OMB and planning reform. These changes are clearly long overdue and need to be acted upon immediately in order that local councils, like the town of Oakville's, can properly serve their constituents. Although this is a great first step, more needs to be done to ensure that there is appropriate legislation in place to create healthy, sustainable and desirable communities.

The town of Oakville looks forward to continuing to work with the province and opposition parties to address these concerns and to ensure that Bill 51 moves toward final reading expeditiously. Simply put, every day prior to the passing of Bill 51, new applications can be and are being filed under the present flawed legislation. This results in the continuation of an inadequate and unnecessarily expensive process which frustrates the residents we all strive to serve.

Madam Chair, copies of this presentation have been made available, as you know, to each member of the panel as well as to Minister Gerretsen and his staff. For

the committee's reference, we have also appended the town's previous submission to Minister Gerretsen, which was dated February 23, 2006. We thank you again for your attention and for the opportunity to appear before you this afternoon.

The Chair: Mayor Mulvale, you've left about a minute and a half for each party, beginning with Mr. Hardeman.

Mr. Hardeman: Madam Mayor, I was just wondering: On page 7, the issue of the OMB and their not taking any new information—if they do get new information at the hearing, they must refer it back to local council for a decision. The act is quite clear that no new information will be allowed. Why would we be talking about referring that to council?

Ms. Mulvale: We are merely going on the record that should the bill not accommodate that and allow new information, it must go back. One of the things we're trying to work out with the industry, to agree with the province on a definition of a completed application, is to negate that. We don't think anybody should go forward and have someone at a late date say, "Oh, and by the way, we have this new information," and not be given adequate time to comment. So we're hedging our bets in our submission to you today to make sure that wherever this bill ends up, if the wisdom of the day in Queen's Park should be that new information will be received, there clearly be a complementary recognition of appropriate referral time back to the staff and the municipal councils to see if it influences their decision.

We, in short, are anxious to see the system work better for all parties.

Mr. Prue: A question from your statement on page 6. You write, "A further approach would be to add provisions to the bill to limit the scope of OMB hearings. Full hearings or de novo hearings should only be heard after the first one if:

"—there is a declared provincial interest in a matter."

Would this include something like socially assisted housing? We know that many town councils and city councils have a lot of difficulty with that and would quite often vote it down. We know that the OMB is probably the only avenue to get these passed. Would you include that kind of a provision, or would you think that's something the municipality should look at?

Ms. Mulvale: We clearly said earlier our three principles that we were able to get support on from LUMCO and from many other municipalities throughout the province last year—that the municipality must be in compliance. If they're not in compliance with provincial policies, and that would obviously include social housing issues—I can tell you that I have chaired, and I know you as a former mayor have chaired similar meetings in that capacity, quite lively meetings. We have made it very clear to our constituents that we're looking at housing planning matters, not tenure or who resides in those buildings. I have also taken some heat and lost some votes pointing out that many people who qualify for social housing would be nursing assistants or child care

workers. We as constituents are very anxious to have those people take care of our children and loved ones at very vulnerable times, so to be opposed to them living in our neighbourhoods would seem to me to be counterproductive.

That's a personal comment. The comment from the town is that our three principles speak to that issue: If they're not in conformity with the provincial policies, which would include social housing, the OMB is a vehicle to go to.

Mr. Lalonde: Thank you very much for your presentation. On the top of page 10, you indicate that, "We request provision be included in the bill that would provide local municipalities with the authority to approve part lot control bylaws." Why would you say that you would like to have this provision?

Ms. Mulvale: We just think it expedites the issue. But there are items that are delayed because at the moment, we can only do it if we passed it. So we're just saying it expedites the process. It's another thing that we can do locally: local decision-making rather than going to an OMB hearing.

Mr. Lalonde: Thank you.

The Chair: Thank you, Mayor Mulvale, for coming today.

Ms. Mulvale: Thank you for your time.

1520

SHARON HOWARTH

The Chair: Our next delegation is Sharon Howarth. Welcome. Do you have a presentation that you want us to have?

Ms. Sharon Howarth: I don't. It's just written out.

The Chair: All right. Welcome. You have 20 minutes, and if you've got yourself settled, would you say your name for Hansard so we have a record of that. You're an individual? You're not speaking for an organization? You'll have 20 minutes. Should you leave time at the end, there will be an opportunity for questions.

Ms. Howarth: Thank you so much. My name is Sharon Howarth and I'm a resident of Toronto.

Bill 51 has many positive and long-overdue changes that are being contemplated with regard to the OMB and the restoration of greater municipal control and influence over local planning and energy conservation initiatives.

All government jobs all the way up to the MPPs and the Premier exist because residents work and pay taxes, which pay all salaries. Governments are, in reality, employees of the residents and their *raison d'être* is to make decisions that benefit the majority of the residents.

When I have to make a decision, I have two avenues for seeking the necessary advice to make an informed decision. I will go to those who are in the field of the decision I need to make, and I will also go to neighbours. I stay aware that those in the field of work—there's a bias there—must speak for their employers, otherwise they will lose their jobs. So I don't necessarily feel that I

am their first interest. When I go to a neighbour, I know the reason for the decision is home. So that, to me, is the logical place. That's where I'll make my final decision: neighbours, home.

There needs to be a reminder that the government mandate is to make decisions that do benefit the majority. What the environment means—that word is used a lot—is drinkable water and breathable air. The economy is owned by the environment, and people are jobs and the economy. Without the drinkable water and the breathable air, there are no people and there's no government.

Energy generation is a provincial matter. Bill 51, in section 23, is a proposed law that would exempt private sector energy generation projects from Planning Act approval and a potential lack of a credible appeal process. Residents retaining the right to go to the OMB with concerns over a minor extension to a neighbour's house yet having virtually no ability to address local land use planning issues which arise in the context of a private sector developer's plan to install power generation facilities within a municipality is simply not logical.

I have followed the experiences of resident Richard Johnson from York region, who participated in the Markham Hydro Task Force as a representative of a grassroots, neighbours' community group called Stop Transmission Lines Over People. His primary interest is home, the same as mine. I know all of us, when we go home at night, have that same home interest, and this is actually part of what Richard deputed this morning. So I had read it.

Concerned citizens in here have spent—and this, I see myself in my neighbourhood, could happen down the road. This is why I've been following quite a bit of this. Concerned citizens spent hundreds of thousands and years of recreational time to address what was happening in their neighbourhood. The greatest obstacle was Hydro One and the local hydro distribution companies. Hydro One proposed solutions that were not recommended by the OPA. They did not see it as their mandate to extensively explore the impact of potential generation or conservation alternatives. They strictly looked at transmission solutions and ignored the public concerns. They adamantly pushed for a solution based primarily on technical and financial merit. They employed lawyers to contest points against the community group and community members—residents. They dismissed research that was brought up not only in York region but also in recent power supply cases in Mississauga, Aurora, Newmarket, King township, Toronto, where thousands of people have expressed serious concerns related to those proposed implementations of power generation and transmission solutions.

The OPA process mandate should be revised; applicable environmental impacts should be explored much earlier in the planning process. It is crucial that the public and municipalities stay engaged. Please ensure that the resulting bill will give more weight to environmental concerns—our breathable air, our drinkable water; it's simple, it's what we need—and ensure that

public and municipal input will be permitted to influence power supply planning decisions.

I know you're all good, caring people and I know you'll make the right decision and you're listening. Thank you so much for this opportunity.

The Chair: Thank you. You've left about four minutes for each party to ask you a question. Mr. Prue.

Mr. Prue: You zeroed right in on section 23; we've had a lot of discussion on that today. Do you believe that municipalities should have the right to say that they don't want particular types of power located within their municipality? I'll start first with nuclear. Do you think a town should say, "I don't want a nuclear site located within the scope of my municipality"?

Ms. Howarth: I think that if there's a proper process in place for people to be listened to—a neighbour of mine came up with an idea of lobbying. Lobbying needs to be open to those in the private sector, but also to citizens, because this is what it's all about. It's all about people and a process where they could listen to each other. There has to be that process where it all comes out, we all hear the same information at once, and then we can make an informed decision on that. I did a process with the Don River and I found that it's very much controlled; I didn't find it an open process. Whether it's generation of power or whether it's other issues, the public needs to be more involved and at a time when they can come, and again, this lobbying could be every two weeks. That's when the politicians and the people and the private sector would all be listening to the same thing at the same time and have that opportunity to listen. It could be in the evening. Again, this whole process is about people. These things take place in the middle of the day when they're supposed to be working to make money to pay the taxes. An open process is what I'm—

Mr. Prue: Okay, but section 23 quite clearly takes the municipality out of the—that's the municipal politicians, the elected people—

Ms. Howarth: I don't think it can be done.

Mr. Prue: —and substitutes in some cases the environmental assessment bureaucrats. Do you think that is adequate public consultation, or do you want to deal with your elected officials?

1530

Ms. Howarth: I think it has to be closer to home. There has to be more decision-making closer to home. Now, whether it's this one in particular—just generally, there has to be more decision closer to home, closer to the people so they feel like they're being listened to.

Mr. Prue: Thank you.

Mr. Sergio: Ms. Howarth, I have to say that you are a very consistent presenter. You've been here before and I appreciate the times that you come and express your views on different issues, especially those with respect to safe drinking water or clean air. I'm sure you've been following some of the things the government has been doing with respect to both of those very important issues. I'm pleased to see that you seem to be an environmentalist.

Ms. Howarth: I'm a human.

Mr. Sergio: Yes, okay.

Ms. Howarth: I think that environmental—

Mr. Sergio: But clean air and safe drinking water—I think those are two very important issues.

Ms. Howarth: The basics.

Mr. Sergio: I only have one question for you—I want to thank you before I forget for coming and making a presentation to us—with respect to energy as well. We just went through a couple of days of very, very hot weather. We need on a regular basis more energy; we need to generate new energy, stuff like that. What would you like to see the province, in conjunction not only with municipalities in general but with the city of Toronto, do in order to sustain, improve, produce more energy? And what kind of mechanism would you like to see on the part of cities or municipalities?

Ms. Howarth: Thank you so much for that question. When it comes to energy, we need—neighbours know—conservation. Conservation is such a big one. The reason I hesitated is that I can go to neighbours' homes—they work in the big buildings downtown, and it is so cold that on those days like yesterday and the day before, when it was so hot, there are heaters on. Women dress for the weather. There are those who can't afford air conditioning at home or who are trying to be so careful about what they do at home, and they keep their air conditioners off. They go downtown and, leaving the heat of their homes, they have to carry sweaters; many of them get downtown and there are heaters on. I have heard that from OPA people on a panel that Smitherman had, and I can give you the addresses of neighbours who will state the same thing: Those heaters are on.

So conservation; the government has to help us there, and they can win. "No, no, the people won't accept the green bin and all this recycling and that." They do, with help. They've got to work. As you're here from 9 to 5 and probably even later, so are they. They're at their work trying to make money to live but also to pay the taxes. They need the support. That's why they want governments to support them. I know you care. Look, you're listening. Of course you care, and you want to make the right decisions. So conservation and the green energies—people feel so good about the green energies.

Mr. Sergio: Thank you very much.

Mr. Hardeman: Thank you very much for the presentation. Obviously your presentation was all to section 23, which is the exemption that the bill gives to the siting of energy facilities and energy infrastructure in municipalities. We've heard a lot of presentations on that issue from different people coming before the committee, including a lot of mayors and municipal people who believe that they should have input into the siting of infrastructure for energy.

This morning we had a presentation from the mayor of Burlington. When asked by the member from the New Democratic Party about municipal involvement, he said it would be at their own folly if the provincial government didn't include municipalities in planning for energy

infrastructure. Yet we find section 23 is just that. It takes away the ability of the municipality to be involved in the planning for municipal infrastructure. The whole bill is based on—and I'm sure you're aware of that, as you've read it—setting up provincial policies as to how they expect the development to be done in the province of Ontario, and then the implementation of the provincial policies is going to be done locally.

Could you maybe help me with why it is you would think the province took energy out and exempted them from any of the planning requirements, when they've included that for everything else? Why could they not have set up a—in your opinion, could they set up a policy that says, “You cannot refuse the application based on these principles, but you can look at it from a planning principle, as to where this infrastructure should go,” recognizing that all development at some point in time is going to be dependent on that infrastructure that is being exempted from the planning process? I wonder if you could help me out with that.

Ms. Howarth: Well, I would say the government can do whatever it wishes. If they want to stay connected to the people, they need to bring the decision-making down closer to that level. It's just very simple.

We all need to be with various ecosocial scales, and that's what makes life exciting, interesting. We all need it. We can't be in that homogeneous setting. Something's missing. So if the provincial government gives the decision-making back down to a municipal level, closer to the people, we will have happier people; we can't help it. “Oh, I really have power in decision-making. They really want to listen to me.” You'll have a much happier city, a much happier province. And it's all people.

Mr. Hardeman: Thank you very much.

The Chair: Thank you very much for being here.

TINY'S RESIDENTS WORKING TOGETHER RATEPAYERS ASSOCIATION

The Chair: Our next delegation is Mr. Lawrence. Welcome.

Committee, you have on your agenda that WindWatch Conservation is speaking. I believe WindWatch has given up their place to Tiny's Residents Working Together, and Mr. Lawrence is the speaker on that subject. I gather WindWatch will be forwarding us a written submission later on.

Mr. George Lawrence: That is correct.

The Chair: Great. Welcome. You have 20 minutes. If you could say your name and the organization you speak for for Hansard so they get a record of that. Once you've done that introduction, you'll have 20 minutes. If you leave time, there will be an opportunity for us to ask questions.

Mr. Lawrence: Thank you. My name is George Lawrence. I'm a resident of Tiny township. I am the chair of the Tiny's Residents Working Together Ratepayers Association. I am the editor of the Tiny Ties

community newspaper. I also sit on one of the hospital boards.

I thank you for hearing me today, members. Frank Entwisle was originally scheduled to address this issue as the president of WindWatch. That's a growing organization coming across the province now. Unfortunately, due to short notice and a conflicting travelling schedule, I have been delegated to address this issue. I'm not as well versed as Frank, but I'm going to do my best here today. A full, comprehensive vision will be forwarded to your committee by WindWatch.

To date, our ratepayers' association, through our newspaper Tiny Ties and also through the holding of special information day meetings—we have held three of them throughout the community; Tiny township is a very large community in Georgian Bay—has been in contact with thousands of residents in Simcoe county. It could be fairly stated that 80% to 90% are strongly opposed to Bill 51, section 23.

What is Bill 51, section 23, and what will be its effects?

Bill 51, section 23, is a draft piece of legislation that was introduced to the Ontario Legislature by the McGuinty government on December 12, 2005. If it becomes law, section 23 of Bill 51 will allow the McGuinty cabinet to exempt from local municipal control prescribed private sector energy generation projects. In many cases, there would not be any need for an environmental assessment. All that would be required would be an environmental screening report followed by a mere 30-day public comment period.

1540

What is Tiny's Residents Working Together's position regarding section 23 of Bill 51? TRWT strongly opposes section 23 of Bill 51. The siting and permitting of private sector power generation facilities should remain subject to local municipal control.

The background: Tiny's Residents Working Together will argue in favour of two important principles. First, the power generation development issue should be dealt with through a responsible, informed decision-making process. Second, the power generation development issue should be subject to local municipal control. Section 23 of Bill 51 offends both of these principles.

What are the specific reasons for TRWT's opposition to section 23 of Bill 51? There are a number of reasons we oppose the current form of section 23 of Bill 51. They include the following:

(1) It is fundamentally unfair. Affected residents would virtually have no ability to address local land planning issues which arise in the context of a private sector developer's plan to install prescribed power generation facilities within a municipality, with the resulting adverse consequences for the local community. Meanwhile, other residents will retain their right to go to the OMB with concerns about, for example, a minor extension to a neighbour's house.

(2) It is not consistent with worldwide practice. Other jurisdictions with extensive experience with new forms

of power development—e.g. Germany, Denmark and Holland—have developed and implemented careful and informed planning policies and procedures regarding the installation of those power generation facilities. In its haste to enjoy the political benefits of encouraging new power development, the McGuinty government is ignoring the examples of these other, more experienced jurisdictions at the expense of Ontario municipalities and their residents.

(3) A mere environmental screening will not address all relevant issues. As recommended by the advisory panel appointed by the McGuinty government in 2004 regarding required environmental assessment reform, “an environmental assessment program should have a broad scope that encompasses pollution control, resource management and land use planning considerations.” Land use planning issues are best dealt with through control at the local municipal level. The proponent-driven nature of the environmental assessment screening process, a process which the Ministry of the Environment has recognized is in need of reform, provides little to no assurance that credible and legitimate local land use planning issues—e.g. density, setbacks, maximum height, cumulative effects of multiple projects etc.—will be adequately addressed.

(4) The required regulatory framework is already in place. The provincial policy statement already provides that renewable energy systems shall be permitted in rural areas, and the Planning Act was recently amended to require that local municipal council decisions shall be consistent with the provincial policy statement. Local municipal councils are in the best position to determine how best to provide for the implementation of renewable energy systems within any particular local community in a manner consistent with the provincial policy statement.

(5) Bill 51 facilitates power generation while ignoring key energy conservation. We question the focus of the McGuinty government’s policy on energy generation, at the expense of the residents, rather than on energy conservation. The government is aggressively pursuing generation initiatives while making virtually no demonstrable progress regarding conservation.

(6) The alleged benefits for new forms of power generation need to be proven before the adverse consequences are forced upon municipalities. For example, despite the apparent attraction of the wind power concept, there are real and substantial concerns about the true practical benefits. The need for backup generation, such as when wind is not blowing, is well recognized. The high cost of wind power is well documented. The fact that the worst air quality days, the hot, hazy days of summer, are days when the wind doesn’t blow means that the alleged ability of wind power to address air quality concerns is subject to serious questions. These issues need to be the subject of informed, responsible debate before the adverse consequences of wind power generation facilities are forced upon rural residents and their communities.

(7) The issues presented by power generation projects vary from municipality to municipality. What is right for one municipality may not be right for another. Even within a single municipality, a proposed power generation development will present different issues within different communities. It is only through local control over the planning process that the relevant issues can be dealt with appropriately and democratically.

I would like to also bring to your attention the fact that many municipalities have written rejecting section 23 of Bill 51. Tiny township, in a letter dated February 20, 2006, stated, “The municipality believes that the planning process under the Planning Act most appropriately provides for full local input and implementation where appropriate for land uses that relate to energy.”

In closing, I would like to thank you for your time and ask that each and every one consider the democratic process that has been used as a guideline in fairness across this great province for generations.

The Chair: Thank you. You’ve left about three minutes for each party to ask you questions. Our first speaker will be Mr. Jean-Marc Lalonde.

Mr. Lalonde: Thank you very much for your presentation. Since we’ve been sitting here this morning, I’ve been hearing about that section 23 that concerns a lot of people. Going back to the Environmental Assessment Act and also to the document that you presented to us, they don’t get a freebie. Either they go through the planning process or they go through the environmental process. At the present time, if it is under two megawatts, all they have to go through is the planning process. If it is over two megawatts, then they have to go through the full Environmental Assessment Act. Were you aware of this?

Mr. Lawrence: I’m aware of it, but I understand that it’s a limited hearing compared to if the municipalities were involved, that we all could be a part of.

Mr. Lalonde: We’re just trying to eliminate a process. It’s either one. What the people are always referring to, it seems that they would like the municipality to have to go through the two processes. This way, they don’t have to; it’s either one of the two. Probably somebody from the ministry could clarify this point, Madam Chair, because we’ve been hearing about this since this morning. Looking at the bill here, it’s very clear.

The Chair: I’m sorry, Mr. Lalonde, we don’t have the time to do that, but I think what we can do is ask our research staff to get back so you can get some additional information to help you with clause-by-clause.

Mr. Lalonde: Thank you.

The Chair: Ms. MacLeod?

Ms. MacLeod: Thank you very much, sir. We really appreciated your very well thought out deputation. Just to follow up with MPP Lalonde, section 23 has been a big issue today, and certainly my colleagues in the Conservative Party are very outspoken on this. We are very concerned that large energy projects are just going to go through, usurping local authority and eliminating a public process. I’m just wondering, with respect to what Tiny

township has said—you're speaking for the residents' association, not for the township?

Mr. Lawrence: The township has spoken through a letter to the government, and I am speaking on behalf of the residents who have written numerous letters to the community newspaper. We've held general meetings. We had general information days where we rented halls and sound equipment and we had standing-room-only crowds to participate.

Ms. MacLeod: Good for you. Now, for clarity's sake, I understand that Tiny township has said, "The municipality believes that the planning process under the Planning Act most appropriately provides for full local input and implementation where appropriate for land uses that relate to energy." So you are advocating this as well, just for clarity purposes?

Mr. Lawrence: Yes, I am.

Ms. MacLeod: Excellent.

Mr. Lawrence: To answer your question, Tiny township is a resort area on Georgian Bay. We are definitely not anti alternative energy. One of the pages in our last newspaper that was put out here is "A Truly Green Energy Future for Tiny." There are about six different options in that paper to educate our community on what options may be available, because we want to be part of the energy program.

1550

We have a two-bag limit in Tiny township for pickup. We are not in the area of million-dollar homes. Where people come up from Toronto to enjoy the scenery, the trees and the landscaping, there are historical homes in the area that have gone from generation to generation, and they would be more than willing to accept alternative power sources. Windmills are not conducive to that particular landscape. That's why we say municipality by municipality should have—

Ms. MacLeod: Mr. Lawrence, just to jump a little bit ahead, in your opinion, would you agree that section 23 is rather inconsistent with the rest of Bill 51 insofar as this is taking away local control and in other parts of the bill we're giving more control?

Mr. Lawrence: This was a great concern of mine because in one respect—and all due respect to all members of government; I don't want to pick on one side or another, and it might have come out that way—

Mr. Prue: I think they're used to it.

Ms. MacLeod: They've missed us for a few months, so—

Mr. Lawrence: No, no. This is not to pick on the government, with all due respect. We need help from everybody. And if I had ever had an answer that I wish I could express it would be that the McGuinty government would take more direction in respect to conservation and perhaps we wouldn't have to have these wind turbines. Our member of Parliament, Garfield Dunlop from Simcoe North, stood up in the Legislature a while back and showed the Melancthon ratings, for the wind turbines in Shelburne. There is a rating for those wind turbines up here that the energy minister has given. But when you

follow the asterisks at the bottom it says those wind turbines are producing 10% of what is listed by the government. And this is by your own people, the Independent Electricity System Operator. I believe that everybody in every party here, if they were sold a furnace or an air conditioner and the seller said to you, "You've got a dependability of 10%," would not buy this.

Ms. MacLeod: Mr. Lawrence, I just want you to know that Garfield has been a very big opponent of section 23 and he has spoken out on that on behalf of your constituency. I just wanted to let you know that.

Mr. Prue: I just want to be clear. The biggest concern the people in Tiny township have is the proliferation of windmills. Have I got that right?

Mr. Lawrence: As opposed to what?

Mr. Prue: As opposed to other forms of alternative energy—solar, you know.

Mr. Lawrence: We are acceptable to all alternative forms of energy. Windmills are not conducive to the windswept pine trees of the Georgian Bay landscape. When you educate people fairly, like we have tried to do, and you find out the production that comes out of the wind turbines being subsidized—the hydro rates are still going up. They're producing 10%, and this is verified by Europe. We really want to look at some other alternative ways of energy. We're not turning a blind eye to that. We want to look at some ways.

Mr. Sergio: So are we.

Mr. Lawrence: Great.

Mr. Prue: In this past week, I heard an energy expert from the United States speaking, and he said it in terms of what I've heard in Ontario before: The best kilowatt you could produce is the one you don't use. Is that your position, that the government should be looking to conserve energy before wasting millions or billions of dollars on any form of energy?

Mr. Lawrence: Without picking on a particular government, yes, sir. That is what I tried to say in part of my statement here. We have a lot of cottagers and people who live in Toronto, Kitchener and surrounding areas who come up to Tiny and their cottages in the resort area. When they come up they are shocked to find out that we have a two-bag garbage limit. They come down to the city and they say, "Oh, we put six bags out."

We had an article in the newspaper recently about people putting sofas on the side of the road, just dumping them, and appliances that are broken down in the cottages. Somebody called in from a built-up area—I believe it was Aurora or Newmarket—and said, "Well, why don't they do what we do and call ahead of time each week and have the heavy garbage pickup come along and take that sofa rather than throw it in a ditch?" We only have one garbage pickup each year, and if you don't get it then, you don't get it. That's why they throw it in the ditch. For us to learn through the television that somebody in a built-up area can call and say, "At the end of this week my stove or my fridge will be out at the end of the driveway"—you just have to call, and it's 52 weeks a year.

Mr. Lalonde: It costs you \$10 to do that.

Mr. Lawrence: Does it? I wasn't aware of that.

The Chair: Thank you, Mr. Lawrence. We appreciate you being here today. You've been a great advocate for Tiny.

MICHAEL WALKER

CLIFF JENKINS

The Chair: Our next delegation, and our last for today, is Mr. Michael Walker.

Mr. Michael Walker: I'm going to share my time with my colleague Councillor Cliff Jenkins.

The Chair: You can bring whoever you want up. I know you know the drill; you've been here before. Welcome back. We thank you for coming today. If you're both going to speak, we just need you to identify yourself, the individual who will be speaking with you and the organization you speak for. After you've done that, you will have 20 minutes. Should you leave a little bit of time at the end, we'll be able to ask you questions about your presentation, which we have in front of us.

Mr. Walker: Thank you. My name is Michael Walker. I'm a city councillor for going on a quarter of a century, if the electorate is good enough to return me. I represent St. Paul's, which is in the geographic centre of the new city of Toronto.

Mr. Cliff Jenkins: My name is Cliff Jenkins. I'm city councillor for ward 25, which is the north part of Don Valley West and is essentially bounded by Yonge Street, the 401, Don Mills and Eglinton, roughly.

Mr. Walker: The citizens whom I represent in St. Paul's are all too familiar with the Ontario Municipal Board and the power its unelected members hold over this city's well-being. Many residents wish to see the OMB abolished, some want major reform, but all want more protection for their neighbourhood than Bill 51 presently offers.

Over the past years, I have worked with the resident umbrella group FoNTRA, Federation of North Toronto Residents' Associations, meeting with various MPPs here at Queen's Park and their staff to convey the urgency for reform needed to protect our neighbourhoods from irresponsible overdevelopment. This legislation does not put in place a process by which the citizen is properly respected. This legislation does not strike the right balance between the rights of the citizen and the rights of the provincial government.

If Bill 51 is passed as is, the Ontario Municipal Board will still be able to make subjective judgments on proposed developments over the heads of local elected officials and the residents affected by a proposed development in their neighbourhood. The Ontario Municipal Board will still be able to force their own prejudices and interests upon Toronto in the name of the public interest. Last time I checked, the public interest is defined by what the public is interested in and by what they

value, not by a ruling from above driven by a process which defers to developers.

In the words of the Ontario Municipal Board, here's a common frustrating example of an OMB decision which overturned a city decision:

"The proposed development is not out of character with its neighbourhood.... Such a proposal successfully balances the goal of intensification with the goal of protecting a stable neighbourhood.... Finally, the board finds that well-intentioned neighbours who fear change in their neighbourhoods reflect private interests, not the public interest. They have a right to bring their concerns to the board, as does the ward councillor, but the board must not mistake private interest or public opinion as enunciated by an elected official for the public interest."

This is the level of insult and contempt our citizens receive from the Ontario Municipal Board and its current process.

What is the public interest but the collective interest of the governed? How can an unelected board so brazenly brush aside the will of the citizens and a local elected official? How is the OMB's decision accountable to anyone?

Further, in the words of a north Toronto ratepayer past president, "Clearly it is the Ontario Municipal Board's view that together the taxpaying residents of our community and duly elected representatives cannot be trusted to know what is best for our neighbourhood. Indeed, they have once again demonstrated that [our area] requires the sage offerings of an appointed board to make the appropriate decision for our neighbourhood. This is yet another galling example of how the OMB totally disregards community opinion and that of our elected officials."

1600

Your committee needs to hear this, because this is just one example. Your committee needs to understand how people are being treated and how they feel about the Ontario Municipal Board.

As in that quote, residents all over the city are fed up with the Ontario Municipal Board usurping the city's planning decisions. Bill 51 needs to be amended to overcome the many areas of concern of the citizens I represent. I want to make nine suggestions for change to your committee:

(1) The OMB should be an advisory body only.

(2) Ontario Municipal Board decisions need to not only "have regard to" municipal council decisions, but should be "consistent with" municipal council decisions supported by the official plan in force.

(3) A local appeal body for minor variance appeals should be composed of municipal councillors, as well by citizens deemed eligible by the municipal council.

(4) A number of sections restrict the addition—they're listed here—of new evidence in the hearing of an appeal. The Ontario Municipal Board should hear any evidence from residents submitted at the time of the appeal to the Ontario Municipal Board. This is crucial for public input on a proposal, because that's when the citizens do

harness their resources and hire their professional staff, and then develop detailed evidence.

(5) A number of sections restrict the addition of new parties to the hearing of an appeal. The Ontario Municipal Board should hear from any residents who wish to join at the appeal stage.

(6) This bill gives the municipality the power to regulate minimum densities and minimum heights of development. This is, in my opinion, plainly undemocratic. Private property should not be impinged upon any more than it is. A resident should not be forced to build something taller and denser than what she or he needs or wants.

(7) Bill 51 does not amend the administration and accountability of the Ontario Municipal Board itself, and it should, such as:

(a) the terms of office for Ontario Municipal Board members should be lengthened to reduce the effect of political appointments;

(b) compensation should be reviewed so the best qualified applicants apply;

(c) Ontario Municipal Board members should be required to regularly attend formal training on land use planning issues throughout their term of office;

(d) members should be selected against standard and published criteria for qualification;

(e) a list of eligible or qualified candidates for appointment to the Ontario Municipal Board should be developed and maintained as in the professional civil service here at Queen's Park;

(f) elected officials should only select members for appointment from the published list of qualified candidates developed by the civil service;

(g) qualifications of candidates for appointment should disallow former elected officials—most particularly municipal officials—former senior government staff, municipally especially, former lobbyists, development lawyers and other specialists involved in the development industry until a cooling-off period has taken place, at minimum.

(8) Minor variances heard by the committee of adjustment should be required to meet all four tests of the Planning Act, not only some of the four tests. Therefore, you need to amend subsection 45(1) to include the wording for approval. It's outlined in my submission.

(9) Section 37 of the Planning Act presently excludes the municipality from using financial donations secured under this section to conduct heritage conservation district studies. The need for heritage conservation of select buildings or entire neighbourhoods is often instigated by new development in the area of heritage significance. Therefore, section 37 of the Planning Act should be amended to allow the municipality to use these funds to conduct heritage conservation studies.

Bill 51 also mandates that the municipality must update its official plan every five years and the zoning bylaw every three years. This will be nearly impossible, in my opinion, for large cities such as Toronto to do.

Toronto's new official plan is presently in its fourth year of appeals at the Ontario Municipal Board, and the Toronto zoning bylaw is sorely out of date by 20 years in most areas. This will serve only to reduce the municipality's integrity at the Ontario Municipal Board, since the updating will not be achieved and the responsibility will fall on the municipality for failing to meet this arbitrarily high standard. The developer will be able to punch holes in the armour of the municipality's defence, and the Ontario Municipal Board will once again rule on the side of the developer, who has proposed a development in a neighbourhood they don't know or care about.

All through this bill are provisions that allow the minister or the Ontario Municipal Board to usurp the municipality's power and interest. This should not be. City councils need to have the final say over development proposals. If the provincial government will not abolish the Ontario Municipal Board—nowhere else do we have one—then at least give the necessary autonomy to the elected officials of the municipality over which the Ontario Municipal Board looms. Then accountability will rest with elected officials where, in a democracy, it belongs.

Bill 51 does not change the Ontario Municipal Board. Bill 51 does not change the Planning Act for the better. What does it do? It only restricts citizens even further from having any real control over the planning of their city. This bill enables elected provincial officials to shirk responsibility and defer to appointed members of the Ontario Municipal Board. It seems the provincial government would rather listen to the concerns and count the election contributions of developers than those of the citizens they purport to represent.

Where will it stop? The province still has not adopted election campaign finance rules that exclude developers from feathering the nests of sitting MPPs and, most particularly, municipal politicians.

There is no justification, in my opinion, for the role of the Ontario Municipal Board in Toronto as proposed in Bill 51. Toronto needs real autonomy over its planning decisions, and Bill 51 only hinders the process and continues to favour developers over the people through their elected representatives.

The Chair: Were you going to speak? Go ahead. You're at the nine-minute mark, just so you know.

Mr. Jenkins: Thank you. I will try to be brief, although I may go on. First of all, let me say that I agree very strongly with everything that Councillor Walker has said here, and I particularly concur with the recommendations. What I'd like to do with my remaining time is give you a real-life example of the things that Michael Walker has talked about, one that has occurred in my ward, and I'd like to extrapolate from that to talk about the financial implications that exist both for the city and also for the province in the types of things that are occurring at the OMB in other development applications.

I'd like to quote from an article that appeared in a local newspaper recently. It says, "Residents of North Toronto who cherish our great relationships with area merchants were disappointed with the closure of the local

gas station at the corner of Mt. Pleasant Road and Keewatin Avenue a few years ago. Later, they became alarmed when they learned that the new property owner proposed a large apartment building for the site. Now, with the recent decision by the Ontario Municipal Board to actually permit the proposed building against the will of city council, many are furious.”

There are a few things that really are said in that statement. The original property owner, probably not by will, had become a land speculator and profited very greatly. There are financial implications for all of us in this room, both at the provincial level and the city level, and I'd like to get to that later on.

“The proposal is for a 159-unit apartment building totalling 13 storeys”—by the way, this is straight across the street from single-family homes on both the north and east boundaries—“and would cover not only the gas station site but also eliminate the treed green space immediately to the south fronting on Erskine Avenue.” So we're going to lose part of our urban forest canopy as well.

“After seeing the initial application, the Sherwood Park Residents' Association ... organized the community to seek a more compatible development. They proposed alternatives which were rebuffed. The developer appeared very confident of success, despite the additional opposition of city planning staff who also found that the application did not conform to good planning principles as embodied in the city's official plan.

“City council listened to arguments of both sides and decided to reject the application based on sound planning arguments presented by the community and city staff. The applicant then appealed, as permitted under the provincial Planning Act, to the OMB.

“The board—in this case, one person from an unelected, unaccountable body of men and women appointed by the provincial government—reheard the entire case and came to the” exact “opposite opinion of the city, its planning staff and the community. In the course of permitting the entire development, the OMB rejected the evidence of one resident,” a professional architect, “simply because he lives in the community and hence would be biased. Strangely, the board did not reject the evidence of a professional planner hired by the applicant for similar potential bias.” It's almost a systemic bias against communities when you see this kind of thing occurring in a decision.

“No wonder developers display supreme confidence in their appeals to the OMB. They almost always win. As well, they win in ways from which observers infer that the board does not present a level playing field for residents who want to preserve the best of their communities.”

1610

The amendments in front of you today would really not prevent this from happening; Councillor Michael Walker's amendments would.

I want to talk about the financial implications of this, both to the city and to the province. The 159 suites would represent part of the growth of the city of Toronto in the next year. We'd have approximately 250 new residents.

The city would have to provide infrastructure. We have to provide infrastructure as the city grows. What are we doing currently? We're asking the provincial government and the federal government for money. We're on bended knees. We shouldn't really be doing that; we should be capturing the money for that growth at the time the demand is created.

What do we get, by the way? We'll get about \$900,000 in development charges. How much will we need? That's a difficult question to answer, but there is a way of determining what that might be, and that is to figure out how much infrastructure the city currently has, and how much we have per resident. It's actually a well-known number at the city. We have between \$50 billion and \$60 billion of infrastructure supporting the residents of Toronto. That's subways, it's buses, it's municipal infrastructure in terms of sewers, water mains, whatever. For each citizen, you divide 2.5 million people into the \$50 billion, to be conservative, and you've got \$20,000 of infrastructure per person. As we grow, we have to supply new infrastructure.

It's an open question. The developers would say, basically, “Do you know what? All the infrastructure exists. You don't have to provide a penny more.” I personally think that's false. I don't know what the right answer is, but I know that we're asked to provide new subways, we're building new water mains, we're building new sewer capacity. I personally think the number that we have to provide for each new citizen is probably not unlike the number that exists for each existing citizen: \$20,000 each. So these 250 people, on that math, would require \$5 million of development charges, and we're getting less than \$1 million. That's a \$4-million shortfall.

By the way, the province loses as well. Right now, you are upgrading Highway 401. It's costing you a fortune to do that. You've been doing it almost continually for years. Why are you doing it? You're doing it because the city is growing. You get zero dollars as well from development; you get no development charges. The Toronto District School Board gets zero, and they have continually had a problem.

Interestingly, the Toronto Catholic District School Board will get \$400 a unit in development charges; they'll get about \$70,000 in development charges from this project. I have a feeling that's probably not a bad number for them; they're almost being kept whole. But the province, the city and the Toronto District School Board are not being kept whole by these developments.

The OMB is part of it. The OMB approved this, and it's part of the growth of the city. So I think that basically, as a start, you're going to have to consider the amendments proposed by Councillor Walker, and you're also going to have to step up to the completely inadequate financial arrangements that result from this. Thank you, Madam Chair.

The Chair: You were on a roll there. You have about three minutes, so that gives one minute to each party, beginning with Ms. MacLeod.

Ms. MacLeod: Thank you both for attending. I always get a little nervous when I am in front of another politician who has time in elected office for almost as long as I've been alive, so permit me to—and that's meant as a compliment to you.

Listen, I share your frustration with the OMB. Right now in south Nepean we have a case where our council's decision has been overturned based on our official plan. We wanted a town centre in our community. The zoning has been changed, and the developer won.

I'm really happy that there are two city councillors here from the city of Toronto, because we were under the impression that the city of Toronto was praising this plan. The Toronto Sun reported on Tuesday, December 13 that "Mayor ... Miller praised the plan" and said, "Neighbourhoods and people who live in them have a real right to a real say over development." He goes on to say in the National Post the same day, "By allowing the city to steer, rather than the OMB, I think it's a much better situation, and I think that should mean fewer applications go to the OMB."

You have effectively said that Bill 51 does not change the Planning Act for the better, which obviously my colleagues and I would agree with. I'm wondering, with the number of city councillors in the city of Toronto—as you know, my riding is within the boundaries of the city of Ottawa, and I am finding that the five city councillors who represent my riding actually oppose this as well. I'm wondering, which is the predominant view in the city of Toronto? Is this for better or for worse?

Mr. Walker: I would think the predominant view is the one that we represent and also FoNTRA. FoNTRA is an umbrella organization that represents over 125,000 people in the resident groups that have organized in five ridings. The councillor and I represent two of those. They have organized and spent hundreds of thousands of dollars fighting developers and losing at the board. It's a fait accompli. There's a contempt. As a matter of fact, there's open hostility if any politician dares show their head. They order in the sheriff and want you shackled and sent off for 24 hours to cool off or something. So my assessment is that the mayor is waxing eloquent in general terms, but you just wait. It's not going to make anything better. Quite frankly, he's got a major challenge on his hands with somebody who's of a different opinion—that lady, who is about your age, who is challenging him.

Interjections.

Mr. Walker: I'm sucking up to Councillor Pitfield just for a future vote.

The Chair: Thank you, committee. When I said you had one minute, it wasn't two minutes to ask the question, so please remember your time.

Mr. Prue, you have one minute.

Mr. Prue: Ontario is the only province that has an OMB; that is, a municipal board. All the rest have done away with it. Do you have any evidence that that's caused any problem to any of the other nine provinces or the people who live there?

Mr. Walker: No. As a matter of fact, all seems to be happiness and love and pixie dust, and there isn't here. There's real anger and a sense of no empowerment and loss of control over change that takes place.

If people are going to make mistakes, it's better that the governed, the citizens, make those mistakes through their elected officials. It works in the republic of the United States in the House of Representatives, where they get elected every two years. And you can be assured that they have to be very careful when they do their nation building. But they've succeeded in doing that. And it's better to have elected officials make mistakes and be accountable in the ballot box.

The Chair: Thank you. Mr. Sergio.

Mr. Sergio: I can't let you go scot-free, Michael, you know? We've known each other for a long time.

Mr. Walker: Yes, we have.

Mr. Sergio: We have. And it's wonderful to see you again, and Councillor Jenkins here.

You have pointed your presentation mainly at the OMB. I have to say, some good changes are coming to the OMB indeed. Regrettably, time, I guess, didn't allow you to delve more into Bill 51 and what it really does for municipalities in Ontario. And there is a lot of good with respect to Bill 51.

But let me say one thing before I let you run. The city, not the OMB, often makes awful, awful decisions. Weston Road—one application did not go to the OMB because the residents are too poor and disorganized. How did you approve 15 high-rises at Weston Road and Finch, 22 storeys high, at one of the worst intersections in Metro? That application didn't go to the OMB; it was dealt with by the city. That's a terrible decision.

Mr. Walker: I don't know the specifics, but—

Mr. Sergio: It's not part of Bill 51, but—

Mr. Walker: —I suspect it's in compliance with the provincial policy relative to intensification. And their representative doesn't know how to be an advocate for people who need—they're empowered through their elected official. Quite frankly, if we make bad decisions, it's better that elected officials, whom the citizens, the governed, can get their collective hands around and wring their necks, make them rather than an appointed body that's accountable to nobody and is usually all compromised with other interests.

Mr. Sergio: Absolutely. I agree with that.

The Chair: Thank you, Mr. Walker. Thank you both, gentlemen.

Interjection.

The Chair: Thank you, Mr. Sergio. We appreciate this lively conversation at the end of a very interesting day.

I'd like to thank all of our witnesses and our members and our committee for their participation in the hearings.

This committee now stands adjourned until 10 a.m. on Tuesday, August 8, 2006, in this room, room 151.

The committee adjourned at 1618.

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