Greenspace Alliance of Canada's Capital
Alliance pour les espaces verts dans la capitale du Canada

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To:
Land Use Planning and Appeal System Consultation
Ministry of Municipal Affairs and Housing
Provincial Planning Policy Branch
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By E-mail: PlanningConsultation@ontario.ca

Re: Consultation on the Land Use Planning and Appeal System

Outline

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1 Summary

We fully support the substantive and process objectives expressed in the four themes. We do not support the use of local appeal boards but offer some comments on the functioning of Committees of Adjustment. We suggest several ways in which the Province could be helpful in promoting dialogue at the local level and avoid appeals. We suggest that the *Consolidated Hearings Act* be amended to handle appeals with strong environmental content. We suggest a new, more limited role for the Ontario Municipal Board. We suggest that the balance of objectives set out in the *Planning Act* is rarely put into practice.

2 Greenspace Alliance of Canada's Capital

The Alliance works to preserve and enhance green spaces in the National Capital area. We believe that urban greenness is essential for a community's quality of life. Places of greenness (including waterways and wetlands) contribute to our personal, social, economic, cultural and spiritual well-being. They also connect us with the natural and cultural history of our region. Our comments are based on 16 years of loyal interaction with Ottawa's municipal government and the appeal process regarding land use planning.

3 Responses to Questions

Preamble

We fully support the goals stated in Themes A and D: The planning system should be predictable, transparent, accountable, minimize costs, and protect the long term public interest. Similarly, we are fully supportive of the process objectives noted in Themes B and C: Municipal leadership should be prime in resolving issues and citizens should be better engaged in the planning process.

Theme A - Achieve more predictability, transparency and accountability in the planning/appeal process and reduce costs

Q1. How can communities keep planning documents, including official plans, zoning by-laws and development permit systems (if in place) more up-to-date?

As a rule, Official Plan Amendments, Zoning By-law Amendments and Plans of Subdivision or Site Plans related to a development proposal should move through the review and approval/rejection process together. Splitting up the process is a waste of time, energy and money. Exceptions should be allowed only under special circumstances (to be prescribed). As noted in Q11 below, minor variance applications should be coordinated with the other applications for the same property as well.

While availability of planning documents on the City's web site is useful and very powerful, municipalities should nonetheless be required to deposit all key planning documents in their public libraries. We refer to the Official Plan, its supporting Master Plans and the Zoning By-law. These documents should be kept up to date using a standard updating procedure.

The Province should consider imposing financial penalties on municipalities that fail to comply with provincial standards of transparency as set out in regulations.

Q2. Should the planning system provide incentives to encourage communities to keep their official plans and zoning by-laws up-to-date to be consistent with provincial policies and priorities, and conform/not conflict with provincial plans? If so, how?

No. Municipalities should comply with the law and regulations. If they do not, the Province should consider financial penalties (refer to Q1). "Encouragement" means little.

Q3. Is the frequency of changes or amendments to planning documents a problem? If yes, should amendments to planning documents only be allowed within specified timeframes? If so, what is reasonable?

If this question refers to the current rule that a comprehensive review of the Official Plan should be considered every five years and that the Zoning By-law should be brought into conformity within three

years after a comprehensive OP Amendment, then we suggest that the current 5-year requirement is reasonable but the zoning by-law amendment should take place within a year following.

If the question refers to the large number of OPAs and ZBLAs that come before Planning Committee, under current law this is outside the control of the municipal government. The Province should consider permitting a municipality to declare a given number of hectares available for development (residential, commercial and industrial) in any given year, and then entertain bids for the right to propose a development. This would make for more orderly planning and is the system we understand to be employed in Portland, Oregon.

Q4. What barriers or obstacles may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?

The City of Ottawa frequently fails to promote collaboration and information sharing with the public -- in the case of individual development proposals as much as in comprehensive reviews or policy statements. The OP review that just concluded (December 2013) is a prime example. Two consultation panels were set up, one for the community, another for the development industry -- a structural impediment to dialogue.

Furthermore, exhorted by their political masters, the comprehensive review and all supporting master plans were completed within about a year, leaving not enough time for real consultation to take place. Massive documents were routinely tabled just weeks before their consideration by the relevant standing committee, making it extremely difficult for the public to consider them and provide substantive comments.

Equally indicative of the City's failure is the recently approved public engagement strategy which was severely criticized by community groups for failing to adhere to basic public engagement principles in its very development. Predictably, the resulting strategy, now adopted by Council, is weak and unsatisfactory.

If consultations were open and upstream (i.e., from the very beginning of the process) and if citizens, developers and any other stakeholders would participate in the process then appeals would become a rarity.

Consultation with the community should take place on an ongoing basis, e.g. through monthly ward meetings.

Q5. Should steps be taken to limit appeals of entire official plans and zoning by-laws? If so, what steps would be reasonable?

Unspecific appeals should not be allowed unless the argument is that the Official Plan or Zoning By-law as a whole does not conform to provincial or federal statutes. In our experience, wholesale appeals of comprehensive official plans are practised by landowners or their agents and amount to "keeping all options open" without divulging exactly what, later on, they'll continue appealing. This makes it difficult for communities to assess whether they should ask for Party status.

Q6. How can [appeals additional to those due to the failure to make a decision within the required timeframe] be addressed? Should there be a time limit on appeals resulting from a council not making a decision?

A failure to make a timely decision amounts to an abdication of Council's role as a decision making body. An appeal is then reasonable. But the appeal should, at the same time, argue that the proposal constitutes good planning. See Q17 for what we believe the appeal body should do.

The key to avoiding this type of appeal, however, is that the rules on when an application is complete need to be clear and the decision to find it complete must be arrived at in a transparent manner.

The Province should conduct an analysis of the reasons for appeals of this type. This could reveal structural or practice issues which, if resolved, could avoid many appeals of this type.

Q7. Should there be additional consequences if no decision is made in the prescribed timeline?

Direction by the appeal body should suffice (see Q17).

Q8. What barriers or obstacles need to be addressed for communities to implement the development permit system?

The City of Ottawa has not adopted a Development Permit System. The description suggests it may have some advantages over current practices but we would need much more information before expression an opinion on it. What is the experience of the four municipalities that have adopted it? How would it enhance public consultation opportunities? How can providing flexibility avoid ending up development to the maximum? As noted in response to Question 1, all components of a development proposal should always be considered together in any case. Public consultations should be timely and complete and provide realistic timeframes for community groups and other interested parties to review material and contribute while balancing the rights of applicants to expect a timely review of their application.

Theme B: Support greater municipal leadership in resolving issues and making local land use planning decisions

Q9. How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?

Instead of balkanizing stakeholders, the City should promote dialogue at all stages of the process by practising genuine public engagement. Don Lenihan's prescriptions for public engagement (Rescuing Policy, Public Policy Forum, 2012; put in practice for the current review of the *Condominium Act*) should become standard practice, at the appropriate scale.

Planning staff should be available to provide advice to community stakeholders as much as it is to proponents. All meetings with all stakeholders should be logged and that record should be publicly available in a timely manner.

Q10. What barriers or obstacles may need to be addressed to facilitate the creation of local appeal bodies?
and
Q11. Should the powers of a local appeal body be expanded? If so, what should be included and under what conditions?

We are not in favour of the creation of local appeal bodies. Most disputes arise over interpretation of and adherence to provincial policy, the official plan or zoning by-law, or about about the adequacy of the evidence considered. A "local" board would stand too close to the decision making body (Council) to instill confidence that it would perform an objective adjudicative role.

The Province should take steps to ensure that Committees of Adjustment adhere to the Divisional Court ruling in *Vincent v. DeGasperis*, (2005) re determination of when a variance is "minor," namely: 1) the four-part test mandated by the *Planning Act* cannot be collapsed into a consideration of impact alone; 2) determination of "desirable" must be objective and address the broader public interest; and 3) need and hardship may apply only if they "reasonably bear" on the application.

The 30-day deadline for a Committee of Adjustment to hold a hearing (s. 45(4) of the *Act*) should be extended to 90 days. Planning staff should be available to assist the applicants, intervenors and the Committee. Planning staff's involvement should be coordinated with any other applications being considered for the same property.

The Province should conduct an analysis of the reasons for appeals from Committee of Adjustment decisions. This could reveal structural or practice issues that, if resolved could significantly reduce the case load of the OMB for this type of appeals.

Q12. Should pre-consultation be required before certain types of applications are submitted? Why or why not? If so, which ones?

The requirement to pre-consult with staff regarding any development proposal should be extended to required pre-consultation with community stakeholders. All documents should be available in the appropriate format to all interested parties and the time restrictions under which community groups work should be respected.

Q13. How can better coordination and cooperation between upper and lower-tier governments on planning matters be built into the system?

N/A

<u>Theme C: Better engage citizens in the local planning process</u>

14. What barriers or obstacles may need to be addressed in order for citizens to be effectively engaged and be confident that their input has been considered (e.g. in community design exercises, at public meetings/open houses, through formal submissions)?

There are best practices in a full range of public engagement techniques. At the municipal level, we understand that Edmonton, Vancouver and Victoria are good examples.

Broad-stroke checklists should be avoided as a management tool. They tend to simplify and abstract from the real issues that are being expressed in the consultation/engagement.

The City of Ottawa is to be commended for offering Planning courses so as to educate interested citizens in the intricacies of the process. Still, the emergence of a Citizens Academy which offers training in how to navigate city hall, suggests that more is needed.

Q15. Should communities be required to explain how citizen input was considered during the review of a planning/development proposal?

Presumably, by "communities" you mean "municipal officials." Feedback on how input was considered and what difference it made is an essential element of the desired transparency. In doing so it is important to produce an analytical synopsis of the input (with appropriate responses) that preserves the essence of the input, i.e., not turn it into bland, unrecognizable statements.

Theme D: Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions, and support for job creation and economic growth

Q16. How can the land use planning system support infrastructure decisions and protect employment uses to attract/retain jobs and encourage economic growth?

This is a most puzzling question. Surely, infrastructure decisions should support land use planning, not the other way around. Moreover, the scope of objectives (employment and economic growth) is quite limited. See our comments below on the need to balance all objectives of the *Planning Act*.

Q17. How should appeals of official plans, zoning by-laws, or related amendments, supporting matters that are provincially-approved be addressed? For example, should the ability to appeal these types of official plans, zoning by-laws, or related amendments be removed? Why or why not?

The preamble to this question suggests that it refers to comprehensive official plan or zoning by-law amendments. As stated earlier, appeals typically arise over interpretation of provincial or municipal policy. The suggestion that the right to appeal such amendments could be removed is puzzling.

The role of the Ontario Municipal Board should be significantly modified, however. In true appeal court fashion, the standard outcome of an appeal should be that the matter is sent back to the municipality, with an appropriate clarification or guidance regarding interpretation. We note that current law (*Planning Act*, s. 24.3ff.) requires the Board to send the dispute back if new information is brought to bear on the matter that Council had not or could not have considered, but this appears to be interpreted very narrowly. The mountain of new evidence that typically is brought forward in preparation of a hearing, arguing one side or the other, is not considered "new information."

The OMB's role is far too strong. All parties to discussions at the municipal level take into account "what the OMB will do." This hampers dialogue, mutual understanding and consensus seeking at the local level. The mountain of evidence that later appears at the appeal hearing should have been tabled as part of the community discussion.

A Council decision in 2009 to expand the urban boundary by 230 hectares ended up as an expansion of 1,104 hectares in 2012. That was a radically different decision which only the local community should be able to make.

When a proponent makes use of the "Integration provision" in a municipal Environmental Assessment process, resolution of an *Environmental Assessment Act* matter may provoke a stakeholder to make a Part II Order request to the Minister of the Environment. This has to be resolved before the OMB may be asked to adjudicate any *Planning Act* aspect. The Part II Order process is not transparent and causes delays. Far better would it be to amend the *Consolidated Hearings Act* so that joint boards of the OMB and the Environmental Review Tribunal can adjudicate any appeal, not just an appeal by the proponent as the current law stipulates. Both *Planning Act* and *Environmental Assessment Act* expertise and jurisprudence could then be brought to bear on their task. Similarly, any appeal, even if only under the *Planning Act*, that involves significant environmental matters should, at the request of a Party, be granted access to a consolidated hearing.

4 Matters beyond the scope of this consultation

The parameters of this consultation are quite narrow. We take the liberty of making three sets of comments which we trust you will consider and convey to the appropriate Ministries where appropriate.

First, regarding the operation of the Ontario Municipal Board we suggest the following changes:

1- make appointments to the Board in accord with criteria that are made public;
2- require mandatory mediation as a prerequisite for holding a hearing;
3- adopt a protocol for intervenor funding;
4- provide for transcripts and advance filings to a shared drive;
5- make not only decisions but also supporting exhibits available on the Board's web site;
6- vastly improve the web site's indexation and search functions.

Secondly, we draw attention to a major loophole in Ontario's land use planning system. The *Municipal Act* allows municipalities to enact by-laws governing site alteration and tree protection but it does not require them to do so. As a result, in the absence of such by-laws, a landowner, before filing an application, can make any change to the land including destroying any environmental features such as woodlots or wetlands. The Province should require municipalities to regulate site alteration, including the removal of vegetation at any time and under all circumstances.

Thirdly, regarding the broader frame of reference of land use planning, we are dismayed by the absence of reference in this consultation to key sections of the *Planning Act.* Similarly, we see limited adherence to them by our Council and in OMB decisions. We refer to the first purpose of the Act:

"s. 1.1. (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;"

and to the stipulation that all decision makers shall have regard to the first and last clauses of section 2:

"s. 2 (a) the protection of ecological systems, including natural areas, features and functions;"
and
"s. 2 (q) the promotion of development that is designed to be sustainable,..."

Before engaging in a comprehensive review of its basic planning documents, the Province should require that municipalities perform an analysis of how existing policies have worked. This in turn would require a system of monitoring. At present, in the City of Ottawa, monitoring of and reporting on past performance occurs only sporadically. The Province could play a useful role in providing guidance on ways to implement such monitoring, taking into account the broader provincial interests such as expressed in subsections (a) and (q) of the *Act*.

Implementation of the *Planning Act* is in overwhelming proportion about development -- delivering land for the purpose of putting up buildings. Decisions -- whether at the local or appeal level -- on what constitutes "good planning" are rarely about achieving the balance of objectives set out in the *Act*. This suggests that, at a fundamental level, the land use planning system in Ontario does not in fact implement the *Planning Act*, read as a whole, but instead primarily aims to satisfy the demands of the development industry. This is not in the pubic interest.

Submitted on behalf of the Alliance by
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Co-chair