

excerpts from the Standing Committee on Social Policy hearings on Bill 139

October 16

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Testimony by Ministers Mauro and Naqvi (unabridged)  
(underlining added)

The committee recessed from 1631 to 1635.

## **Ministry of the Attorney General Ministry of Municipal Affairs**

**The Chair (Mr. Peter Tabuns):** The committee is back in session. Welcome back. Welcome, Ministers Naqvi and Mauro.

Colleagues, the ministers have up to 15 minutes to present, and then we have 15 minutes of questions for each caucus, starting with the third party.

I turn it over to you, Ministers. Divide your time as you see fit.

**Hon. Bill Mauro:** Good afternoon, committee members. I'm very pleased to be here this afternoon, along with my colleague the Minister of the Attorney General, Yasir Naqvi. We're very pleased to be here with you this afternoon to have this opportunity to discuss Bill 139, the Building Better Communities and Conserving Watersheds Act. I want to thank all members for their support of this legislation at second reading.

If passed, the proposed legislation would bring significant changes to the land use planning appeal system in Ontario as we plan for an anticipated four million more people by 2041 in the greater Golden Horseshoe.

In my travels as Minister of Municipal Affairs, there's one thing that I can't and I'm sure most of us can't help but notice, and that is that construction is blooming in many parts of our province. In Toronto alone, 180 buildings are under construction and another 445 are planned. In Ottawa, 81 buildings are in the planning stages. Development is taking place in communities throughout the province in many forms: condominiums, stacked towns, row housing, single detached homes, commercial developments, industrial developments and more. Against this backdrop, good land use planning is crucial in every Ontario municipality.

The Ontario we build today will determine what kinds of communities we live in tomorrow and for years to come. We need to do our best to get this right. We all want healthy, sustainable, livable and complete communities—communities that accommodate people at all stages of life, that are affordable and have a diverse range of housing options. We need to grow Ontario's communities in a way that attracts jobs and investments. We need to create vibrant urban centres while also preserving and protecting green spaces, farmland and ecologically sensitive land and waters.

Since 2003, we have had many conversations about the land use planning system with Ontarians and we have taken numerous steps to reform Ontario's land use planning system to achieve better results, to ensure that the communities we're creating meet the needs of Ontarians now and long into the future.

The land use planning appeal system is a critical component of the larger land use planning system. We have made improvements to the system, but we recognize that we have not moved the marker far enough. That's why, when I became Minister of Municipal Affairs, the Premier tasked me with leading a review of the scope and effectiveness of the Ontario Municipal Board. We were to engage

municipalities, the public and interested stakeholders in order to recommend reforms to improve the OMB's role within the broader land use planning system.

Starting in 2016, my ministry, in partnership with the Ministry of the Attorney General, conducted this review. There were 12 public consultations that were held: Newmarket, Clarington, Hamilton, Windsor, London, Guelph, Oakville, Sudbury, Ottawa, Toronto, Mississauga and in my hometown of Thunder Bay. There were several more local ones in the Toronto area, I know, by my Liberal colleagues. Many of them, as individual MPPs, held their own sessions in their own ridings. That resulted in this proposed legislation, the Building Better Communities and Conserving Watersheds Act. If passed, Bill 139 would transform the land use planning appeal system, replacing the OMB with the Local Planning Appeal Tribunal.

The reforms we are proposing would result in fundamental change. If our reforms pass, there would be fewer and shorter hearings and a more efficient decision-making process. There would be more deference to local land use planning decisions, and there would be a more level playing field for residents wanting to participate.

1640

The changes we are proposing follow an extensive consultation, and were informed by what we heard. The voices of Ontarians from Thunder Bay to Windsor, from Ottawa and all across the GTHA were heard. The review generated about 1,100 written submissions, and more than 700 people participated in our town hall meetings organized around the province.

There were a lot of different views, but there were also some recurring themes that we heard loud and clear from a wide array of stakeholders and the broader public: the need for more community involvement, a more meaningful voice for residents in the process, more local control over planning decisions, fewer hearings and a more transparent process.

We have been clear since the beginning of the process that we need an independent public body where people can challenge or defend land use decisions that affect their properties and communities. This tribunal has an important role to play in our land use planning process. People don't always agree on how their community should develop or change. The Local Planning Appeal Tribunal would give them a place to voice their concerns on planning decisions that affect where they live and where they work, and it would provide a better alternative to resolving disputes through the courts, but it's important that this process is appropriate, open and fair.

The proposed changes would give communities a stronger voice in the land use planning process. Local and provincial decisions would be given more weight. The most important planning matters could only be overturned by the new tribunal if the municipal decision is not consistent with or does not conform with provincial and local plans and policies.

We also propose to bring fewer municipal and provincial decisions before the tribunal. If passed, our changes would make the appeals process shorter and less costly by setting deadlines throughout the appeals process. Taken together, we believe these changes, if passed, could help bring development, including new housing, to market faster, creating communities that better reflect local concerns. Provincial and local policies that support the creation of complete communities offering a range of housing types would also become reality faster.

The feedback from municipal leaders across Ontario has been encouraging. Toronto mayor Tory said, "I believe these reforms move us in the direction that we want to go, which is more local responsibility for local planning decisions."

Barrie mayor Jeff Lehman said, "I think it reinforces the democratic legitimacy of councils and reflects

the basic premise that the residents of a community should shape its future through their elected officials....”

Kitchener mayor Berry Vrbanovic said that “this proposal is going to return the determination of our community’s destiny back to the community.”

Those are just a few examples, and I think it suggests that we’re on the right track.

All Ontarians should be able to count on a land use planning and appeals system that’s efficient, transparent and predictable and one that gives residents a say in what is built in their neighbourhoods.

The proposed legislation responds to these needs which are at the core of building strong communities. I’ve been working with Minister Naqvi on this. As an MPP and as Ontario’s Attorney General, he has been very active in the conversation about improving our land use planning system. Together, we have developed proposed legislation that would give residents the tools to more effectively participate in land use planning and appeals.

I thank you for your attention, and I will now turn it over to Minister Naqvi to say a few words.

**Hon. Yasir Naqvi:** Thank you very much, Minister Mauro, and thank you to the members of the committee for asking us to come and speak to you today.

Today, I want to take this opportunity to speak about a few of the key components of this legislation which will transform Ontario’s land use planning appeals system by replacing the Ontario Municipal Board with the Local Planning Appeal Tribunal.

The government is proposing a number of reforms that will help build a stronger planning process for municipalities across Ontario. The changes we are proposing centre around four pillars: (1) creating greater predictability for residents, communities and developers by sheltering certain major planning decisions from appeal; (2) giving greater deference to the decisions of local communities while ensuring that development and growth occur in a way that is good for Ontario and its future; (3) ensuring faster, fairer and more affordable land use planning appeals; and (4) providing access to free legal and planning support for Ontarians.

Strong communities take careful planning and careful development, so it only makes sense that our appeal process supports those plans by giving communities and developers more predictability. That is why the proposed measures to transform Ontario’s land use planning appeal system include exempting a broad range of major land use planning decisions from appeal, including new official plans, major official plan updates, and detailed plans to support growth in major transit areas. These exemptions will help provide greater predictability in the planning system and will go a long way in helping developers and communities prepare to build stronger and more prosperous municipalities.

To help ensure that the voices of local communities in particular are heard, the proposed legislation would require that the tribunal give greater weight to the decisions of the local communities. This would be achieved by eliminating lengthy and costly hearings for the majority of planning appeals and ensuring that some matters could only be appealed on the grounds that they don’t conform or are not consistent with provincial and municipal plans and policies. What this means is that the new tribunal could only overturn the municipal decision if it does not follow provincial and local plans or policies. If the tribunal finds the municipality’s decision does not conform to an official plan, then the matter would be sent back to the municipality for reconsideration, which will help keep planning decisions local.

The government will also now be requiring parties in major land use planning appeals to participate in a mandatory case management conference prior to a hearing to identify, define and narrow the scope of the appeal and discuss opportunities for settlement, including mediation, which could ultimately avoid

the hearing process altogether, which, in my opinion—and I'm sure many would agree—is a far better option.

We are also taking a number of steps to make the appeals process more efficient; for example, by establishing clear timelines for the hearing processes. Our proposed changes would not only result in more effective hearings, but would also support a culture shift to a less adversarial system.

The tribunal will also have the power to ensure hearings are effective and fair by requiring parties to produce evidence or witnesses for examination by the tribunal, where appropriate.

In addition, under the new act, we are proposing to give the government the ability to make regulations that govern the practices and procedures of the tribunal, provide for the use and composition of multi-member panels, and prescribe timelines for proceedings before the tribunal under the Planning Act. These are important tools that will go a long way to improving the procedures at the tribunal.

Finally, I would like to talk about how we're helping citizens to access the appeal process through the proposed creation of the new Local Planning Appeal Support Centre. We appreciate that people don't always agree with local land use planning decisions that affect them, and we have heard the concern that people do not have access to information about the appeal process and planning or legal advice. That is why we are proposing changes that will empower and support people who want to participate in the appeal process. This will be done by establishing a new independent agency called the Local Planning Appeal Support Centre. This centre will help ensure that the views of local communities are taken into account when major decisions are made, by providing free legal and planning advice to Ontarians throughout the appeal process, including representation in certain cases. The centre will help Ontarians understand and participate more effectively in the appeal process by providing general information about land use planning, offering guidance on the tribunal process, and providing legal and planning advice at various stages of the appeal process, which may include representation in some cases.

Land use planning directly impacts Ontarians, so it is critical that they feel supported in the decision-making process. As such, we are also proposing that the tribunal build a new, revamped, user-friendly website. Once an appeal process is complete, tribunal decisions would be posted for all to see, and that includes new summaries of decisions that will be explained in plain language. The new website will also make it easier for the public to access information in different formats, such as videos.

Chair, I'm confident that these proposed changes would be successful in bringing effective change to the appeal process within the land use planning system. These are changes that, to me and my colleagues, continue to help represent the interests of developers while also giving residents a real voice when it comes to land use planning decisions. Most importantly, these changes will help ensure that cities and towns reflect the best interests of the people living in them today, as well as future generations. Thank you.

**The Chair (Mr. Peter Tabuns):** Thank you, Minister. Right on the button. Congratulations, you two.

I go now to the third party: Mr. Hatfield.

1650

**Mr. Percy Hatfield:** Thank you, Ministers, for coming in. I hope this becomes part of the delegation process as we go forward when we hear bills. I think it'll short-circuit a lot of the questions.

First, thank you for changing the Conservation Authorities Act, but we're hearing from people, especially in the Niagara Peninsula where there's a rogue conservation authority board, as we hear in the House from all sides. Would you consider amendments to allow for the appointment of a supervisor when a conservation authority fails to fulfill its duty with respect to sustainability and conservation?

**Hon. Bill Mauro:** We'll get Jason from the ministry to respond to your question.

**Mr. Jason Travers:** Good afternoon. I'm Jason Travers, director of the natural resource conservation policy branch from the Ministry of Natural Resources and Forestry. Thank you very much for the question.

The bill does not, as drafted, talk about the introduction of or have the power to put in place anybody—

**Mr. Percy Hatfield:** Jason, my question was, would you work with us to put that into the bill?

**Mr. Jason Travers:** As per the committee deliberations, if the committee puts forward ideas for consideration, we'll provide advice to the government as to whether or not that's an appropriate response.

**Mr. Percy Hatfield:** Thank you.

Ministers, can you guarantee that these reforms will actually be in place before the next election?

**Hon. Yasir Naqvi:** Obviously, we're in your hands in terms of the legislative process. We've done an extensive amount of work between both ministries, municipal affairs and housing and the Attorney General's office, in terms of having meaningful reforms in place. In my other role, as government House leader, I'm hoping to have this bill passed before the end of the year. Obviously I will need cooperation of all three political parties and all members for that to happen. I do not want to infringe on members' privileges in that regard.

Also, there's a sufficient amount of regulatory work that needs to be done in order to bring certain changes into effect. We are very much committed to working on that in an expeditious manner so these changes could come into place as soon as possible.

**Mr. Percy Hatfield:** Thank you. What possible reason is there to delay the enactment of schedules 1 and 2 until proclamation instead of having the bill come into force upon royal assent?

**Hon. Yasir Naqvi:** Sorry; say that again?

**Mr. Percy Hatfield:** Right now, as I understand it, schedule 1 and schedule 2 don't come into effect until proclamation, instead of having the bill come into force upon royal assent.

**Hon. Yasir Naqvi:** I think one of the things you have to be mindful of—so, two reasons. One is the regulatory piece. We have to develop certain regulations, so you need time to do that.

The second piece is very important. When it comes to matters of planning and OMB in the current context, there are cases going on right now, and there may be applications that may come forward. So we have to be very mindful as to the transition. How do we move from the old system to the new system? It has to be orderly. It has to be done in a manner that respects everybody's rights and the rule of law. We're quite mindful of that, and the two ministries are working very closely to develop a transition plan that doesn't impact a process that may be at the tribunal as we speak. There's deliberation that is taking place right now as it relates to those transitions. Hence you would see royal assent versus proclamation.

**Mr. Percy Hatfield:** Why is there no reference in the bill to the duty to consult First Nations? There's nothing in here on the duty to consult First Nations, or a requirement to obtain the free and informed consent of First Nations before approving a project that could adversely affect the territory of First Nations.

**Hon. Bill Mauro:** There was, I'm quite certain, special consultation held last year with First Nations specifically.

**Mr. Percy Hatfield:** But there's nothing in here that says this is what's going to happen.

**Hon. Yasir Naqvi:** For any future other development? Is that what you're referring to?

**Mr. Percy Hatfield:** Yes.

**Hon. Yasir Naqvi:** I think we have to be mindful—and I'll seek guidance from our staff on this—that the duty to consult is a constitutional right within section 35 of the Constitution. That exists. All our relative ministries work very closely with First Nations communities and through the Ministry of Indigenous Relations and Reconciliation in terms of having that consultation. Of course, municipalities are required, through the Constitution, to engage and have appropriate consultations with First Nations as well. That is something that is enshrined in the Constitution and affirmed by the Supreme Court of Canada. I would think, unless I'm told otherwise, that for constitutional matters like this, you don't have to restate that in the legislation.

**Mr. Percy Hatfield:** Why are aggregate pits exempt from conservation authority regulation under Bill 139, especially when Bill 39 to reform the Aggregate Resources Act included virtually no statutory environmental protections, leaving pretty much everything up to regulations written by the government of the day?

**Mr. Jason Travers:** Similar to the Aggregate Resources Act, which we just amended in terms as you identified, similar to the point that Minister Naqvi mentioned about making sure that we have the regulations in place before we change things, we want to finish the process of updating the Aggregate Resources Act. There is no need to necessarily update the Conservation Authorities Act. There is an act that is already responsible for aggregate resources, so there's no need to reference it in the Conservation Authorities Act. I'm not sure—if I misunderstood your question, I apologize.

**Mr. Percy Hatfield:** Well, okay.

The mayor of Ingersoll was just here. He was worried about the municipality having no say in the establishment of a landfill in Oxford county to handle industrial and commercial—ICI—waste from Toronto. He thinks there should be something in this act that would give municipalities the authority to accept it if they want, or to reject it if they want, the same as they can with nuclear waste. He wants to know if you would accept an amendment to put landfills in there as another sensitive form of development that municipalities would have the yea-or-nay vote on before one was put in there by the provincial government.

**Hon. Bill Mauro:** Sorry; what is put in there by the provincial government?

**Mr. Percy Hatfield:** He's afraid, in Oxford county, that an ICI landfill will be dumped on his municipality without approval from anybody in Oxford county—that the province would just say, "Yeah, Toronto needs it. Put it here."

**Hon. Bill Mauro:** Well, it's not really an MNR—I don't know if it's MNR. It sounds to me like it would just fall under normal planning processes. Right now, the municipalities will conduct and review their official plans once and if this legislation is passed. They will go through an MCR exercise that will bring their existing OPs into conformity with the new land use plans that are in place, and then the new process, should the legislation pass, will take hold.

I don't see how the example that you've raised impacts on anything that occurs already in terms of planning at the municipal level. I'm not sure how anybody could simply dump something into the municipality, which is the language that you're using.

**Mr. Percy Hatfield:** Well, as I understand it, and I stand to be corrected by anyone over there, the deputy warden was here—he's the mayor of Ingersoll—and he said that "across the province, and particularly in southwestern Ontario, municipalities are being identified and targeted as potential host sites for Toronto's garbage."

“When it comes to hosting a landfill, we believe municipalities should have the right to choose whether or not they will host such a facility.”

He says, “While the ... environmental assessment process is designed to identify risk, and risk mitigation efforts, landfills are not risk-free. Moreover, municipalities do not have a role in this process, other than as a bystander. We are not asked whether we approve these projects, where they should be or how they should operate, yet they can have a permanent scar on the face of our communities.”

That was his position, stated to the committee just 20 minutes ago.

**Hon. Bill Mauro:** Okay. We’ll take that back.

**Mr. Percy Hatfield:** Thank you.

Thank you, Chair.

**The Chair (Mr. Peter Tabuns):** To the government: Ms. Malhi.

1700

**Ms. Harinder Malhi:** This question is for Minister Naqvi. We wanted to ask, would you be able to describe the consultation process for the proposed OMB reform?

**Hon. Yasir Naqvi:** Absolutely. Minister Mauro, in his remarks, talked a little bit about the process and the consultation that was taking place.

I would like to go back a little further, to a few years ago, when we did, I think it was, Bill 179 at that time, the smart growth act, where we made some substantive changes to the Planning Act. I go back just to highlight that this process of evolving our land use planning system has been going on for some time in a step-wise process.

In that piece of legislation we made some very important changes in terms of the nature of consultations that need to take place when a proponent comes forward with a proposal to develop: how communities have to be consulted, how community feedback has to be worked through the entire process, be it at the application process, then deliberation by a planning committee and a municipal council. There were some other things, such as community design, permit systems etc. The purpose behind that legislation was very much, again, to empower local communities and to make sure that there is a more deliberative process in place.

There were actually substantive consultations done for that bill. One of the things that became very clear through the consultation process at that time was that there was a strong desire on the part of everyone that we need to look at the appeals system as well. An appeals system, i.e. the OMB process, was sort of carved out at that time. That was not within the scope of the work that we did a few years ago.

As a result of the feedback we received this time around, as per the Premier’s mandate both to the Minister of Municipal Affairs and to the Attorney General, we looked at the land use planning appeals system, and engaged in very thorough consultations across the province to hear people around that particular piece. I think Minister Mauro went through the list of communities that we travelled. I attended a few of those consultations. I know Mr. Rinaldi, as the parliamentary assistant, attended a lot of those consultations. We were really able to get down in those consultations around, in light of the work that has been done in modernizing the land use planning system in the province, how do we evolve the appeals system, the dispute resolution process?

Besides consultations, we also had released a consultation document, so we received a fair bit of written submissions to that as well. As a result, we received about 1,100 written submissions because of

the document that we had put out, which was quite significant. We got very thoughtful and thorough responses to that.

Furthermore, we did a 93-day public comment period on the bill itself, from May 31, when we tabled the bill, up to September, when the bill was called for hearings.

So we feel that there has been a significant amount of consultation taking place on this bill. That's just going back a few years with the work that was done with the previous bill.

**Ms. Harinder Malhi:** So—

**The Chair (Mr. Peter Tabuns):** Mr. Rinaldi—oh, I'm sorry. Ms. Malhi.

**Ms. Harinder Malhi:** Minister Naqvi, will the proposed reforms limit procedural fairness?

**Hon. Yasir Naqvi:** That's a very important question. I've heard some concerns about whether these proposed reforms limit procedural fairness. In our view, the proposed reforms require the tribunal to adopt practices and procedures that would provide for the best opportunity for a fair, just and expeditious resolution of proceedings before the tribunal. My ministry, of course, paid particular attention to make sure that any dispute resolution process we put in place protects procedural fairness, and natural justice is obviously part and parcel of our responsibility.

We feel that these proposed reforms would empower the tribunal to actively guide the proceedings in order to level the playing field and make it less adversarial for parties and participants. For example, the proposed reforms would empower the tribunal to test the evidence. They would give the tribunal the power to examine parties, participants and witnesses who appear before it. The tribunal will also have the power to require parties to provide information and documentary evidence, to testify before the tribunal and to produce witnesses for examination by the tribunal.

In addition, the proposed reforms would require the tribunal to hold a case management conference, as I mentioned earlier, in all major land use planning appeals. The purpose of the case management conference would be to identify, define and narrow the issues; identify facts or evidence that may be agreed upon by the parties; and identify evidence that should be obtained and witnesses who should be examined. At the case management conference, parties may also be given an opportunity to propose questions for the tribunal to ask witnesses.

We've looked at every aspect around this. The function of appeals and reviews of decisions of our public decision-makers is not new to our system. We've got our Statutory Powers Procedure Act—SPPA—that outlines requirements around natural justice and fairness. We have paid very deliberate attention to make sure that all those requirements are met, and we feel comfortable that this legislation provides for this so that not only do we have procedural fairness requirements met, but we also have effective and expeditious decision-making that communities and businesses, like developers, desire, because it doesn't serve anybody when these hearings take sometimes in excess of a year or two. That holds back development in communities.

**Ms. Harinder Malhi:** Thank you so much.

**The Chair (Mr. Peter Tabuns):** Mr. Rinaldi.

**Mr. Lou Rinaldi:** Thank you to both ministers for being here today.

I guess my question is more geared to Minister Mauro. I know you highlighted in your opening remarks some of the highlights of the proposed legislation. I wonder if you could highlight—I shouldn't say "the more important," but what's in the bill that people are not used to today but that the new bill will propose down the road, if passed.

**Hon. Bill Mauro:** Thank you for the question. As I mentioned in my opening remarks, the goal and the

mandate for Minister Naqvi and me was basically a two-pronged approach. My ministry's piece of this was what we refer to as a bit of a scoping exercise in terms of dealing with issues that currently could be appealed to the OMB that, should the legislation pass, no longer would be appealable. Minister Naqvi's ministry was dealing with the effect of this, and he has just referred to and spoken about how we see that this new tribunal, should the legislation pass, would provide the effect.

By way of example, the legislation, if passed, would shelter from appeal a variety of measures that are currently appealable: a provincial approval of an official plan; an appeal of major official plan updates; a one-year limit on appealing an interim control bylaw; no ability to appeal the conformity exercise of the municipal comprehensive review that they all will undertake, should this legislation pass; and ministers' zoning orders.

There are a number of things that we have put in place that we think make sense, that speak—as Minister Naqvi has referenced—to providing something that we feel is absolutely appropriate, and that is more deference for local decision-making, so that people who live in these communities and who have their elected officials in place will be speaking to them about how they plan their communities. This seems to make eminent sense to us.

As well, I think it's important to remind people here today about the existence legislatively of the ability for municipalities to have local appeal bodies in their own communities since 2007.

By way of example, about 70% of Toronto issues that have ended up at the OMB have been matters—and I'm not sure if there is a one-year time frame for the metric that I'm giving you, but about 70% of what has appeared before the OMB within the city of Toronto are issues that could have been dealt with by their local appeal body and did not have to go to the OMB at all.

The city of Toronto—and we congratulate them for that—has very recently put in place—it's the first municipality in the province to actually constitute a local appeal body. I think it began in May of this year. So fully 70% of what was going to the OMB no longer will have to.

We are also, in this legislation, should it pass, expanding what a local appeal body can hear. Historically, it has only been consents and variances. We're now proposing that we would expand that local appeal authority to include site plans as well.

So we're moving to a place where, by scoping out a significant number of issues and files that currently can be appealed to the OMB, we will put in place a more efficient system that shows deference to local decision-making and that will expedite getting these projects into the community sooner.

1710

**Mr. Lou Rinaldi:** Thank you.

If I may, to Minister Naqvi: the number of consultations I attended—it was about three quarters of them. There was one common theme from Mr. and Mrs. Public, that whenever they wanted to go through an appeal process or question, they really found it hard to understand or navigate the system. I know, as part of the proposed legislation, that we're creating a support centre. Can you give us a little bit of insight into what that might look like and what kind of results it might have?

**Hon. Yasir Naqvi:** Absolutely. I think that's a very important point because I think we all probably can share stories and experiences of working with our local community in issues that relate to development. I often say jokingly, but I think it's serious, how many of us have been to how many bake sales that are supporting local community associations who are mounting an OMB challenge or are participating in OMB issues?

These are local members of the community. They are volunteers. They just want to live in good

neighbourhoods. They're looking for some good information and support if they can get it. We heard that in the consultations again and again. There was this strong desire to better understand a very complex system—land use planning is not simple—and a strong desire to have an effective voice, because it's their neighbourhood and it is their quality of life that is impacted by it.

There was a clear message from the consultations that people felt that there should be resources put in place to allow for a better relay of information, to better understand the process, and, if there is a capacity challenge and resource challenge, then perhaps assistance as well. The kind of system that we're proposing through the Local Planning Appeal Support Centre is not unique. You see something very similar in the human rights sphere as well. We have the Human Rights Legal Support Centre, which was created through the auspices of my ministry.

Our thinking is very similar in terms of the format in place: an independent agency with their own board, but having the resources to have information tools available, to have guidance available to local communities and, in some instances, to be able to assist as well in terms of planners or lawyers if a matter goes to the local planning appeal tribunal, if the legislation is passed.

You hear often—and I can only use examples from Ottawa because I have first-hand knowledge—that community associations have difficulty even retaining planners or lawyers because most of the planners or lawyers in Ottawa will be conflicted out, because there is such a large developing community and so much work is happening that you may not be able to find somebody. They may have to go to Kingston or beyond to have somebody help them to participate in the process.

Those types of challenges could be easily resolved through a local support centre as provided for—and better information. That's the impetus, and I think it speaks quite directly to what we heard in the consultation in terms of empowering local communities and giving the resources that they need to participate effectively in the land use planning appeal system.

**Mr. Lou Rinaldi:** Thank you.

Chair, I still have some time?

**The Chair (Mr. Peter Tabuns):** You're now out, Mr. Rinaldi.

**Mr. Lou Rinaldi:** Oh, I shouldn't have asked.

**The Chair (Mr. Peter Tabuns):** I would have been telling you in 10 seconds, so you haven't lost much, sir.

We go to the official opposition: Mr. Miller.

**Mr. Norm Miller:** Thank you, Chair, and thank you to both ministers for presenting today. Both of you focused on one section of the bill, and it really reinforces my thought that it should be two separate bills, because I didn't hear any mention of the amendments to the Conservation Authorities Act, which, as our MNRF critic, is what I'm interested in.

I specifically have one question with regard to entry without warrant. The existing act gave a conservation authority or its officers the right to enter private property without a warrant if they had reason to believe there was a contravention of a permit that was causing environmental damage. This bill proposes to change that to say that an officer appointed by an authority may enter any land situated in the authority's area of jurisdiction "to determine compliance," but it does not say anything about requiring a reason to believe there is contravention. It will allow the officer to take samples and photos and bring other experts with him or her. So I guess my question, then—and I can give you a bit of the existing act, because it seems quite reasonable. My question is, why would conservation authority officers need expanded rights to enter a property without a warrant? As I say, the existing act—and I

can read it to you:

“An authority or an officer appointed under a regulation made under clause (1)(d) or (e) may enter private property, other than a dwelling or building, without the consent of the owner or occupier and without a warrant, if,

“(a) the entry is for the purpose of considering a request related to the property for permission that is required by a regulation made under clause (1)(b) or (c); or

“(b) the entry is for the purpose of enforcing a regulation made under clause (1)(a), (b) or (c) and the authority or officer has reasonable grounds to believe that a contravention of the regulation is causing or is likely to cause significant environmental damage and that the entry is required to prevent or reduce the damage.”

That seems like quite a reasonable clause that we have right now: You can enter without a warrant, with a few conditions. I’m just wondering why that needs to be loosened up so basically you can enter without a warrant, with no reason.

**Hon. Yasir Naqvi:** I appreciate the question. We’re going to ask Jason from the ministry to answer.

I just want to say that when we were making arrangements for the ministers to come, it was indicated to us that OMB would be the focus, and therefore you got the two OMB guys to come here. I just wanted to say that for the record. That’s why you see the two of us and not Minister McGarry present today.

Jason?

**Mr. Jason Travers:** Thank you, Minister.

Yes, you’re right: There is an update proposed in the bill, and this is to be more consistent with other legislation that recently has passed in terms of similar powers that you also identified in your introductory statement, as well as the idea that it would be a modern compliance framework.

**Mr. Norm Miller:** As I say, I just read you the existing authority, and you do have authority to go on property without a warrant, but you just have to give a reason. You seem to be removing any reason for being able to go on the property.

**Mr. Jason Travers:** As I said, the idea is that we would be updating it to be consistent with other legislation that has already passed. That would be obviously within the responsibilities of officers who have to exercise their powers before entering.

**Mr. Norm Miller:** Okay. I’ll pass it on to my—

**The Chair (Mr. Peter Tabuns):** Yes, Mr. Hardeman.

**Mr. Ernie Hardeman:** I too want to thank you both, Ministers, for being here today. It’s kind of a landmark decision to have ministers appearing at a committee. We really appreciate that, because I think it really helps the committee to understand what is going on in the bill.

**The Chair (Mr. Peter Tabuns):** Mr. Hardeman, if you could use your microphone more directly. We’re having a bit of trouble with the Hansard.

**Mr. Ernie Hardeman:** First of all, I just wanted to go back to the Oxford county situation with the landfill sites. I think the mayor made a very appropriate presentation about how the municipalities can decide that they don’t want a casino, and no casino can be built. They can decide if they want nuclear waste deposited in their municipality; if they decide they’re not a willing host, it doesn’t happen. Both of these have gone through. Some municipalities accept it; some don’t.

He has suggested that in this bill, we could do something about doing the same thing, that if someone

wants to bring waste from elsewhere into a municipality, municipalities can decide whether they will or will not accept it. That way, of course, would prevent unwilling hosts; it would create only willing hosts. It's not part of amending this bill, but it is part of the issue that governments deal with and there's not necessarily a bill that says "I don't have to" and "a willing host." You have to be a willing host to get a casino, because the province decided so. Why can't we have that for this?

**Mr. Ken Petersen:** It's Ken Petersen. I'm the manager with the provincial planning policy branch of municipal affairs.

I think the issue is sort of a complicated one because it's tied into an environmental assessment process as well. Throughout those processes, there are opportunities for public input. Through the environmental assessment process, there is that robust process of identifying where the best site for a landfill would be.

I think with the changes that we're proposing, the new test for rejecting an application, or what have you, would be consistency and conformity with not only provincial policies but local policies. There's going to be a process involved, but it's a little more complicated because of the intersection with the environmental assessment process.

1720

**Mr. Ernie Hardeman:** I guess the question would become, if Oxford county has an official plan that says that we don't allow landfill sites, it's not appealable?

**Hon. Bill Mauro:** If the official plan had been approved.

**Mr. Ernie Hardeman:** If we have an approved official plan. If it says—

**Hon. Bill Mauro:** No, but they still have the site-specific. They can still appeal site-specific—

**Mr. Ernie Hardeman:** The requirement for landfill—you're suggesting that in this new regime, that will not be appealable.

**Mr. Ken Petersen:** I think the issue is that when a municipality takes forward their new official plan process, they need to conform to or be consistent with provincial policies, right? So with respect to Oxford's official plan, the ministry is going to be the approval authority for that plan, and so the ministry would obviously have a role in that process.

**Mr. Ernie Hardeman:** Okay. Thank you. Now we'll get to the questions that I prepared, because I was really happy that you were going to be here.

Concerns have been expressed by the committee we've heard today about the second hearing through the tribunal as opposed to going directly to the OMB. When council makes a decision, we go to the tribunal. The tribunal says, "No, it is not in compliance with the official plan or with the provincial policy statement," it goes back and it comes back again.

People are suggesting that that really is lengthening the process. It might be better to make the first one longer, but not to have to do the same thing twice. I think they called it insanity—doing exactly the same thing over and over again, hoping to come up with a different result. There doesn't seem to be any place—because it's pre-defined, what the right to appeal is. It has to be out of compliance with one of the two. So there was concern expressed as to why you would have two.

**Hon. Bill Mauro:** If the municipality has ruled and it has been returned by the LPAT back to the municipality, is your question. Then you're asking—you want to skip the step. Is that what I'm hearing? The suggestion would be that you skip the first step?

**Mr. Ernie Hardeman:** I think if it has been decided that it can be appealed because it doesn't meet one

of the two, shouldn't the municipality know that the board is going to kick it right back anyway?

**Hon. Yasir Naqvi:** Again, I think it's important to remember the principle here. The principle here is to give greater deference to the decision-maker, which is the municipal council. Obviously, they've gone through the entire planning process under the Planning Act, from the moment the proponent walks into city hall to start having informal conversations about a project, to the public consultations that are required under the Planning Act, the detailed submissions that are made to the planning staff, the recommendations by the planning staff, the planning committee process, council etc. There's a lot of work that gets done.

What we are saying through this legislation is that the decision that should be made by the municipal council at the end of the day should be consistent with or conform to the official planning documents. That's not new; that's something that everybody expects them to do.

If somebody feels that that is not the case, then they can appeal that decision to the Local Planning Appeal Tribunal. The standard of review, the test that the Local Planning Appeal Tribunal will use, is exactly that: Does it conform to or is this consistent with the official plan? If the answer is yes, end of story. If the answer is no, then they will refer the matter back, with reasons, to the municipal council, saying, "You are not consistent with the planning documents. Reconsider."

Again, that's not new in our system. That's exactly how reviews of public decisions are done. There is a review of whether there's conformity. If not, then the matter is sent back to the original decision-maker to reconsider the decision, and there will be reasons guiding the council as to why the tribunal felt that their decision was not in conformity or consistent. Then they will have another opportunity to make the decision.

That could be the end of the story, unless somebody says, "No, they still have not complied with—they still have not followed the guidance or the ruling of the tribunal." Only in that instance that the matter comes again to the tribunal can the tribunal, based on the evidence before them, make a final decision.

There's a very fundamental difference between how planning decisions are considered by OMB today versus what we are proposing to do. How it's done today is that the OMB can basically decide what is a good planning decision. That's where the concern comes in: that they sometimes override the municipal council's decisions, as opposed to, based on the rules in place, whether the decision is consistent or in compliance. We're saying the decision around what kind of planning should take place should happen at the municipal level, the local level. Of course, it's not happening in abstract. It has to happen in line with the policy planning documents, which we know is a robust process with the Planning Act, the provincial policy statement, the official plans and the amendments to official plans etc.

**Mr. Ernie Hardeman:** The other one we've been hearing about is the concept of natural justice and the fact that natural justice requires a fair, objective hearing. Many people have raised the concern that this bill doesn't do that. I guess part of it is the fact that it is no longer part of the Attorney General's department; it's now a municipal function with the ministry of Municipal Affairs. They don't believe that a five-minute or a 15-minute presentation in front of a whole council is in fact giving a fair, open hearing on the matters that are before. And then, all of a sudden, it—there's no further discussion at the tribunal because they're not going to hear any information. There's no cross-examination, and it comes back for another 10-minute hearing in the council chamber. There were people here presenting this afternoon who didn't believe that that was natural justice, and we would see those cases in the courts instead of at the OMB.

I guess the question really is, what is the benefit of taking the tribunal out of the jurisdiction of the Attorney General and putting it with municipal affairs? Could the tribunal not be part of your ministry,

to make sure that we are getting justice as opposed to just a planning matter?

**Hon. Yasir Naqvi:** We're not changing any of those aspects. That's why I'm sitting here. As the Attorney General, I'm responsible for the tribunal and the whole design work around the tribunal. The appointments process, the rules that will be created, that's all within the scope of the Ministry of the Attorney General.

That question was asked earlier by MPP Malhi, and I want to address this question again because I think it's an important one. We're not undermining procedural fairness, and I've spoken with the same friends as well on this particular issue in our deliberations. What we are doing is, we're changing the scope of the new tribunal. The OMB right now acts as the court of first instance. That's why it's called a de novo hearing, as if the matter never took place. We're saying that that is not appropriate, because there has been a lot of shelf life to that issue.

As I said to you earlier, the process is an extensive process under the Planning Act. A proponent comes with an idea, they usually have informal conversations with municipalities, and municipalities usually have some sort of a system in place where they start talking about these issues. Then there's an official application. There's public consultation. There's a more detailed plan that's put forward. There's a report by the planning department, planning committee deliberations—and on and on it goes. And there's a public role and different interested stakeholders all throughout the process.

What happens in today's system is that when you get to the OMB, it's like you hit the reset button and you didn't have to go through all that process. We're saying let's redefine the system, where all that happens at the municipal level is legitimate. There's a record that gets developed. There's deliberation that takes place that should have meaning. And, at the end of the day, in order to have predictability, the municipal council really should make a decision based on everything they have received and what's being recommended by the planning committee, who are the experts.

The role of the tribunal really should be to then review whether that process and the decision that came out of that process were consistent with the planning documents. In order for that to happen in a robust manner, the only thing you really need is the documentary evidence from that whole process. Otherwise that whole process is for naught, and that's the biggest concern that we hear again and again.

1730

**Mr. Ernie Hardeman:** Excuse me; we don't want to stay on the same one. I have a number of questions that—

**The Chair (Mr. Peter Tabuns):** You've got about a minute left, Mr. Hardeman.

**Mr. Ernie Hardeman:** Oh. I would like to know a little bit more about the transition. I have a lot of people who want to know whether they should fundraise when they're doing an objection to something for the OMB hearing, or whether it should be for a tribunal hearing.

Furthermore, we have municipal leaders who are not making decisions because they're so ready—they like this one a whole lot better, so they're going to wait with making decisions and so forth.

I think we need to very quickly move forward in setting up the framework for getting that transition in place, so everybody knows when it's coming and which one they will be in. But the minister doesn't get to make that decision of one person gets in the old system, and the other one gets in a new system.

**The Chair (Mr. Peter Tabuns):** Mr. Hardeman, you're now out of time.

**Mr. Ernie Hardeman:** I thought that maybe I might be.

**The Chair (Mr. Peter Tabuns):** Ministers, thank you for spending your time here with us. We appreciate it.

[end]