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

October 16

http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do?locale=en&Date=2017-10-16&ParlCommID=9003&DocumentID=33491#P111_7841

Mr. Ernie Hardeman: "... The Federation of Rental-housing Providers of Ontario will not be heard. The Canadian Environmental Law Association will not be heard. The Greater Ottawa Home Builders' Association will not be heard. The Architectural Conservancy Ontario, Newmarket branch, will not be heard. The Bay Cloverhill Community Association will not be heard. Bloor Street East Neighbourhood Association will not be heard. The Carpenters' District Council of Ontario will not be heard. Cassels Brock lawyers will not be heard. The Church Wellesley Neighbourhood Association will not be heard. There are two different presenters from that one.
The city of Burlington, and the mayor, will not be heard. The city of Mississauga—I'm sure they have an interest—will not be heard. The city of Toronto, and Dave Shiner, will not be heard. ClubLink Corp. will not be heard.

...

Davies Howe will not be heard. The downtown Toronto residents' alliance will not be heard. Environmental Defence will not be heard. The Federation of North Toronto Residents' Association will not be heard. The Garden District Residents Association will not be heard. Greater Kitchener Waterloo Chamber of Commerce applied and will not be heard. The Greater Yorkville Residents' Association applied and will not be heard.

Greenspace Alliance of Canada's Capital will not be heard. The Hamilton-Halton Home Builders' Association, Kagan Shastri lawyers, Kingscross Ratepayers Association, the Lakeshore Planning Council, the London Home Builders' Association, the Lower Thames Valley Conservation Authority...

...

The Ontario Expropriation Association, the North Gwillimbury Forest Alliance and the Ontario Federation of Agriculture will not be heard. The Preservation of Agricultural Lands Society will not be heard. The Real Property Association of Canada, REALpac, will not be heard. The South Eglinton Ratepayers' and Residents' Association will not be heard. The Sudbury and District Home Builders' Association, the Swansea Area Ratepayers' Association, the Teddington Park Residents Association, and the Toronto and Region Conservation Authority will not be heard. The town of Aurora will not be heard. Turkstra Mazza Associates and the whole list of the lawyers will not be heard. "

Mr. Norm Miller: "... because two days of public hearings are going to be cut out with regard to the Conservations Authorities Act part of the bill, we won't be able to hear from the Lower Thames Valley Conservation Authority, the Ontario Federation of Agriculture, the Ontario Stone, Sand and Gravel Association and the Toronto and Region Conservation Authority. I think it's really unfortunate that, for the sake of two days, those very important groups will not be heard on this bill. "

...

Mr. Joe Vaccaro: Good afternoon. My name is Joe Vaccaro, CEO of the Ontario Home Builders' Association. I'm joined by my volunteer president, Pierre Dufresne of the Greater Ottawa Home Builders' Association, and Mike Collins-Williams, director of policy at OHBA and a registered professional planner. ...

... the principle of keeping politics out of those planning decisions needs to be supported.

... Under the Planning Act, subsection 26(9), no later than three years after the OP comes into effect, the council of the municipality shall amend all zoning bylaws that are in effect in the municipality to ensure that they conform with the official plan"—not "may," but "shall." In our meetings with the Minister of Municipal Affairs, we have been told that less than 50% of municipalities have complied with this law. OHBA does not see how this bill currently creates an incentive for updating zoning and planning documents.

... Our recommendations are things like improving the standard that the minister signs off on the OP. Earlier it was said that the minister signs off on the OP, and therefore that OP is good enough. That's in the existing standard, where you can test those policies at the OMB. In the future, if you cannot test those policies at the OMB, the ministerial standard needs to speak to their PPS goals—the government's PPS goals. Optimized land use policies: That's what we're looking for. "

Toronto Councillor Josh Matlow :

"I, along with my colleagues on Toronto city council, am concerned that the limit of only two years on secondary plan amendments is too short. Secondary plans can include extensive neighbourhood studies, requiring significant staff time and public input. For example, council requested staff to start a new review of the Yonge and Eglinton secondary plan on June 12, 2015; the final recommendations are expected to come at this November's Planning and Growth Management Committee, almost two and a half years later. It seems unreasonable that a moratorium period for appeals is less than the time it can take to even develop the plan in the first place. These plans should be allowed sufficient time to bear fruit.
I am hopeful that the government will extend the restriction period on applications to amend new secondary plans from two to five years to reflect the significant staff and community resources that go into the development of secondary plans.

I would also request that the government make the act retroactive to the day of first reading to reflect the flood of development proposals received in the wake of Bill 139's introduction by applicants hoping to skirt the new rules. "

BILD (Building Industry and Land Development Association) -- **Mr. David Bronskill:**

"Limitations on oral hearings at the tribunal run contrary to the duty of procedural fairness and natural justice. There need to be changes to this bill. Right now, the tribunal's rules would have priority over the Statutory Powers Procedure Act. This, to me, is an extraordinary and potentially unlawful remedy. A simple change to the legislation would ensure that the rules must comply with the SPPA, which codifies centuries of common law jurisprudence regarding fairness. It's a simple change and we propose it.

While hearings can be made more efficient, a hearing must still be a hearing. Whether it's an appellate hearing or something different, we need to have cross-examination. Every lawyer who will come in front of this committee can tell you an example of a planning opinion being tested under cross-examination and changing. Bill 139 would eliminate that possibility. With all due respect, that's wrong. That's a fundamental flaw and needs to be remedied. We have suggested ways in our package to do this.

Third, major transit station areas: Everybody loves major transit station areas. Let's have height and density around subways and GO stations, areas where we are investing in transit. It is a great idea. What the bill would propose is limitations on appeals. But why are there limitations on appeals from maximum heights and densities? That also makes no sense to me."

...

"...building on what Councillor Matlow said: Give municipalities a reasonable time to make that decision. That's why we've suggested the 270-day mark. If they make a reasonable planning decision within that period of time, all of the structure of Bill 139 would still be there for them to rely upon in

defending that decision. "

Advocates for Effective OMB Reform:
Mr. Scott Snider: (a land use planner and a lawyer with Turkstra Mazza in Hamilton. I've also been an adjunct associate professor at the University of Waterloo's school of planning for the past 25 years. I've taught planning law to many of the land use planners in the province. In my practice, I act for landowners, developers, municipalities, charities, ratepayer groups and individuals.)

"Your staff will tell you that the PPS specifically directs that municipalities permit and facilitate housing for those with special needs, so wouldn't I still win the appeal under Bill 139? The answer is "probably not," and there are two reasons why.

First, it's unlikely we would be able to meet the new two-part test, which not only requires that we prove that what we're proposing is consistent with the PPS and conforms to the official plan, but that the existing zoning doesn't. But the fact is that the Planning Act deems zoning to conform to an official plan, so I don't know how I can prove that something doesn't comply when it's deemed to conform by the act itself.

But just as important, the new tribunal will be expressly prohibited from calling or examining any witnesses. And here's the thing: There was a lot of pressure on staff. In the end, planning staff recommended against the Lynwood application. Fortunately, at the board hearing, Lynwood was able to confront and challenge those opinions, cross-examining those experts and introducing its own. This furnished the board member with enough evidence to make the right decision." (underlining added)

Ms. Signe Leisk: (a municipal and planning lawyer at Cassels Brock in Toronto.)

"If an applicant for a zoning bylaw must demonstrate why the existing zoning does not conform to the official plan or provincial policy and plans, while at the same time the Planning Act says it does, it has created a test that cannot be met.

... while the government has identified mediation as a goal, no such outcome has been accommodated. If there has been a mediated settlement, the new tribunal still has to send it back to council. "

...

Mr. Percy Hatfield: If you had to pick the top 1, 2, 3 of amendments that you would like to see the majority government accept, what would they be?

Mr. Scott Snider: First and foremost, there has to be some ability to call evidence. The board needs the discretion to hear some evidence.

Secondly, we think it's important that the two-part test be revisited, because it's impossible to satisfy in certain cases.

And the third?

Ms. Signe Leisk: The third, I would say, is the duplicative sending back to council. I think that needs to be thought about—when that is appropriate, and when it's not—because there are many instances where that would just cause delay and not lead to finality, and at greater cost. I think that needs to be reconsidered as well.

Mr. Percy Hatfield: Thank you.

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" **Mr. Percy Hatfield:** You must be aware of the Waterloo region complication, which I believe led to this abolition of the OMB." (Q: What does this refers to?)

...

Mr. Jack Winberg, of Building TO Inc. hit the nail on the head:

" Going forward, our municipalities are going to have to accommodate fuller hearings. They're going to have to compile more complete records. The councillors who are charged with making the decisions are going to have to attend much longer hearings, and they're not going to be able to get up, go and come back, because if they're going to make a fair decision, they've got to hear it all.

One thing is for sure: Our municipalities are going to have to devote much more of their limited resources to the planning process, and these are not trifling matters."

And Jennifer Keesmaat goes to the heart of the matter:

" An interesting thing has happened that is one of the absurd outcomes of the OMB. The development industry said to us, "Give us as-of-right zoning," and so we did. We want to see new development and intensification along our transit corridors. This is a critical part of combatting congestion. What's happened is, even though we have in fact done so, we have seen developers coming back and asking for more. This is the speculative nature of development in a high-growth city that the OMB enables. If we create policy that's based on sound planning principles, should that not be the policy that directs how we change and grow? The community really made a social contract in that process. They supported as-of-right zoning, recognizing that it was going to be compatible with the city's guidelines around creating a walkable city, mitigating the shadow impacts. But, in fact, what we've seen as a result of the opportunity of an OMB that doesn't currently respect the policy of local councillors is a whole industry that has been built on speculation. This is not in our best interests." (underlining added)

and

" I believe the greatest impact is that there will be an opportunity and a re-engagement by communities in the planning process, precisely because policy will become a key driver in how decisions will be made. That will be good for our cities; it will be good for democracy."

The mayor of Oakville, Rob Burton:

" There is no incentive for developers to participate in the creation of local official plans if they can appeal and effectively start all over with little regard for the extensive public consultation process undertaken by a municipality, and hope, instead, at a minimum, to split the difference at the Ontario Municipal Board. Splitting the difference is not good planning. If it is, then official plans have no good purpose."

Gregg Lintern (acting chief planner and executive director of the city's planning division for the city of Toronto)

What I was raising in my deputation was what happens, exactly, at that second hearing. Our concern is that we have a lack of clarity about what happens, what is the procedure at that second hearing. We have eliminated de novo in the first round. We understand that. Are we having de novo, though, in the

second round? Because if we are, then we're going back to where we are today. So we are expressing a concern about that.

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