



Ontario
Home Builders'
Association

Land Use Planning and Appeals System Response to the Consultation Document

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Brantford
Chatham-Kent
Greater Dufferin
Durham Region
Grey-Bruce
Guelph & District
Haldimand-Norfolk
Haliburton County
Hamilton-Halton
Kingston-Frontenac
Lanark-Leeds
London
Niagara
North Bay & District
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Oxford County
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Quinte
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Saugeen County
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Simcoe County
St. Thomas-Elgin
Stratford & Area
Sudbury & District
Thunder Bay
Waterloo Region
Greater Windsor



**Submitted to: Honourable Linda Jeffrey
Minister of Municipal Affairs and Housing
January 2014**

About OHBA

The Ontario Home Builders' Association (OHBA) is the voice of the new housing and professional renovation and land development industry in Ontario. OHBA represents over 4,000 member companies, organized through a network of 31 local associations across the province. Our membership is made up of all disciplines involved in land development and residential construction including: builders, renovators, trade contractors, manufacturers, consultants and suppliers. The residential construction industry employed over 322,000 people and contributed over \$43 billion to the province's economy in 2012.

OHBA is committed to improving new housing affordability and choice for Ontario's new home purchasers and renovation consumers by positively impacting provincial legislation, regulation and policy that affect the industry. Our comprehensive examination of issues and recommendations are guided by the recognition that choice and affordability must be balanced with broader social, economic and environmental issues.

OHBA members are critical partners to the Provincial Government and municipalities in the creation of complete communities and transit-oriented development that will support the implementation of the Provincial Policy Statement and other Provincial Plans.

Acknowledgements

OHBA would like to take this opportunity to thank Leith Moore and Neil Rodgers, Co-Chairs of the OHBA Committee for the *Land Use Planning and Appeal System* consultation, in addition to the numerous members from across Ontario who shared their extensive knowledge and expertise, and submitted invaluable comments in support of this report. OHBA would also like to thank the BILD Executive and staff for their substantial contributions to the writing and research in support of this report.














Process of Our Review

In an effort to prepare a comprehensive response to the *Land Use Planning and Appeals System* in Ontario, the Ontario Home Builders' Association solicited the feedback of its local associations. Several meetings took place over the course of the consultation period to obtain the feedback that is consolidated in this document, including:

- September 24th - OHBA Annual Conference (Niagara Falls) – Fighting for Affordability and Fairness
- November 8th - BILD Land Council meeting
- November 18th - Waterloo Region Home Builders' Association consultation meeting
- November 19th - Hamilton-Halton Home Builders' Association consultation meeting
- November 29th - London Home Builders' Association consultation meeting
- December 9th - Greater Ottawa Home Builders' Association consultation meeting
- December 12th - OHBA/BILD Consultation Steering Committee meeting
- December 16th - OHBA/BILD Consultation Steering Committee meeting

In addition to these association meetings, a number of working group meetings were held with industry representatives on specific policy themes.

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Introduction and Background

Over the past decade the land use planning system has significantly evolved, and in response the land development and residential construction industry has evolved with it. Since 2001, the province has implemented significant reforms to the land use planning system, including the Ontario Municipal Board (“OMB”), through the *Strong Communities Act* (Bill 26) and *Planning and Conservation Land Statute Amendment Act* (Bill 51) which strengthened the local decision-making process, while also empowering municipalities with a range of planning tools. Along with these significant legislative changes the province also implemented several pieces of landmark legislation, plans and/or policies. The cumulative impacts of these changes are noteworthy and the result is that the new communities and employment centres being approved and built in Ontario today are vastly different from those a decade ago.

While the province has been engaged in legislative, regulatory and policy changes to the land use planning system, it is OHBA’s opinion that there is a lack of fair and consistent application in the implementation and interpretation of provincial planning policy through municipal planning documents across Ontario. OHBA and its members are very concerned that Ontario no longer has a land use planning system that affords certainty which is paramount to ensuring investment-ready communities necessary to compete for new global investments or changing economic forces.

In order to contribute to the continued economic vitality of the province, the land development, new housing and professional renovation industry must operate within a framework that provides certainty and establishes clear and consistent rules for development in determining how our communities evolve. This certainty also serves the existing residents by providing them with clear and consistent reasons as to evolving nature of their community. It is essential that municipalities ensure local Official Plans (“OP’s”) and zoning by-laws are up-to-date as an effective implementation vehicle for provincial planning policy. Progressive and current municipal zoning by-laws will provide greater certainty resulting in fewer appeals to the OMB, increase public awareness and ensure a more efficient planning system that supports provincial goals for strong communities, a strong economy and a healthy environment. Municipalities must make greater use of the planning tools in the *Planning Act*, and complimentary legislation in conjunction with updated planning documents, to ensure the best possible planning outcomes in the development of strong and complete communities.

OHBA contends that a land use planning policy disconnect has emerged between the province and many municipalities. This disconnect is partly responsible for implementation delays (*Places to Grow* OP conformity) and in some circumstances, OMB appeals. Closing the gap and ensuring a better alignment between provincial land use planning policy and municipal planning implementation tools will emerge as a major theme within OHBA’s recommendations.

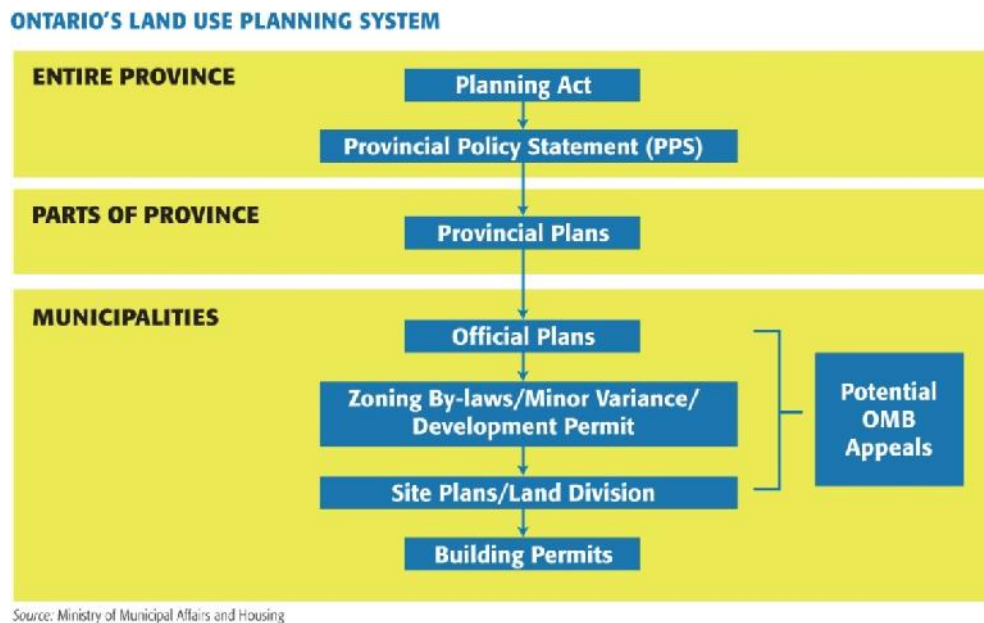
OHBA expects the province and municipalities to demonstrate stronger leadership to ensure effective implementation of provincial policy. Finally, the province must lead the conversation and educate municipalities and the public with respect to how provincial planning policies and objectives will impact their existing communities and neighbourhoods so that residents are engaged and informed as why their communities are evolving.

OHBA Priority Recommendations

- The province must ensure that municipal planning documents are adopted/approved in accordance with the *Planning Act*, PPS and (if applicable) Provincial Plans.
- Prior to the next Growth Plan review the province must establish, in conjunction with OHBA and municipal sector:
 1. standardized population projections/forecasts;
 2. land budget methodologies that are also consistent with the PPS and Provincial Plans, while allowing for local flexibility to reflect Ontario's diverse communities;
 3. employment land use policies.
- The province should encourage reviews of municipal OP's and zoning by-laws to run concurrently to facilitate meeting statutory timelines.
- Municipal planning documents must align with provincial long-term infrastructure transit investments.
- Municipal planning documents that are not in conformity with Provincial Plans and/or the PPS and that do not support "as-of-right" transit-oriented development should not be entitled to receive provincial funding for construction of higher-order transit lines.
- To reduce the frequency of amendments, municipal OP policies should not be overly prescriptive or restrictive.
- The province must clearly differentiate pre-consultation requirements between the landowner and municipality vs. public engagement between the public/municipality and the landowner.
- Appeals of entire OP's and zoning by-laws should not be limited in anyway. OHBA is prepared to consider improvements to the current system that would require appellants to scope appeals at the time of filing a notice of appeal.
- The existing timelines that a municipal council must make a planning decision imposed pursuant to the *Strong Communities Act, 2004* should be maintained.
- The province should undertake the strategic initiative to implement a DPS along a major infrastructure corridor or strategically important employment node to facilitate investment ready communities.
- Municipalities should only be allowed to access Section 37 when a municipality has established a development permit system or has updated their OP and zoning to be consistent with provincial policy within the timeframes established by the *Planning Act*.
- Applicants should retain the right of appeal to the OMB for Committee of Adjustment matters including minor variances and consents.
- The province should not consider granting an expanded scope of powers to Local Appeal Bodies until there is operational experience in place within Ontario municipalities.
- Pre-submission consultation (landowner and municipality) for many applications should be encouraged, but should not become a statutory requirement.
- Municipalities should be required to respond to a request for pre-consultation within a defined and timely manner particularly where pre-consultation is a pre-requisite in meeting complete application requirements. Furthermore, municipalities should be prohibited from charging a fee for pre-consultation.
- The Office of the Provincial Development Facilitator should receive additional resources and report directly to Cabinet.
- Provincial land use planning should be consistent with long-term infrastructure planning and as such the province must extend the current 20-year planning horizon in the PPS to align with longer infrastructure planning timeframes and better inform long-term land use in municipal OPs.
- Appeals of entire OP's and zoning by-laws should not be limited and the current appeal permissions continue to apply.

Ontario's Planning Framework

The *Planning Act* provides the legislative framework for land use planning in Ontario working together with the *Provincial Policy Statement (PPS)*, provincial plans and other legislation. The PPS, issued under the *Planning Act*, is the statement of the provincial interest in land use planning while recognizing the diversity of Ontario. Provincial plans apply to certain areas of the province and provide specific direction that generally takes precedence over the PPS.



Implementation of the PPS is set out through the *Planning Act*, which requires that decisions on land use planning matters made by municipalities, the province, the Ontario Municipal Board and other decision-makers “shall be consistent with” the PPS. Municipalities are tasked with implementing the PPS through policies in their OP’s and through decisions on other planning matters. It is critical that municipalities maintain up-to-date OP’s and zoning by-laws to effectively and efficiently implement provincial policy. OHBA recommends the province take a more pro-active and assertive role to ensure municipal OP’s by-laws are consistent with, and conform to, provincial planning policy as required by the *Planning Act* and/or Provincial Plans where applicable.

Recent Reforms to Ontario's Planning Framework

Since 2001, Ontario’s land use planning framework has evolved significantly and consequentially the land development and new housing industry has undergone a fundamental paradigm shift. The legislation, Provincial Plans and policy introduced since 2001 with direct impact on the land development, new housing and the professional renovation industry are as follows:

- *Made in Ontario Smart Growth (2001)*
- *Oak Ridges Moraine Protection Act (2001)*
- *The Brownfields Statute Law Amendment Act (2001)*
- *Strong Communities (Planning Amendment) Act, Bill 26 (2004)*
- *Greenbelt Act & Greenbelt Plan (2005)*
- *Provincial Policy Statement (2005)*

- *Planning and Conservation Land Statute Law Amendment Act, Bill 51 (2006)*
- *Places to Grow Act & The Growth Plan for the Greater Golden Horseshoe (2006)*
- *Endangered Species Act (2007)*
- *Metrolinx Act (2006) & The Big Move Regional Transportation Plan (2008)*
- *Lake Simcoe Protection Plan (2009)*
- *Growth Plan for Northern Ontario (2011)*
- *Strong Communities Through Affordable Housing Act (Schedule 2) (2011)*
- *Transit Supportive Guidelines (2012)*
- *Growth Plan Amendment 1 (2012) & Growth Plan Amendment 2 (2013)*
- *Greenbelt Amendment 1 (2013)*

In the immediate future a number of other land use planning related reforms and reviews are anticipated:

- *Next edition of the Provincial Policy Statement (2014)*
- *Greenbelt / Oak Ridges Moraine / Niagara Escarpment Plan (2015)*
- *Growth Plan (2016)*
- *Big Move, Regional Transportation Plan (2018)*

OHBA notes that in both 2004 and 2006, reforms were made to the scope of appeals and to the function of the OMB as well as the broader planning framework to further enhance municipal decision making as “mature levels of government”. These reforms were substantive and, at the time, OHBA supported some of the amendments, while expressing concerns that some of the proposed reforms would bring uncertainty to the approvals process and would, ultimately, both lengthen timelines and increase the costs of the planning process. OHBA contends that, while some of the Bill 26 and Bill 51 reforms were positive improvements, many of those changes have contributed to increasing the length, cost and complexity of the planning process. OHBA is supportive of the provincial leadership role within the planning framework, but remains concerned that many municipalities continue to have outdated OP’s and zoning by-laws in effect that do not conform to provincial plans.

The province’s lack of oversight in ensuring the planning system is functioning properly now requires immediate attention – not by more legislation but through administrative attention.

OHBA notes that substantive changes to the planning and appeals process occurred when the *Strong Communities Act* (Bill 26) was passed in 2004 including:

- Limited appeals to the OMB
- Declaration of provincial interest
- Increased timelines for municipal planning decisions

OHBA notes that substantive changes to the planning and appeals process occurred when the *Planning and Conservation Land Statute Law Amendment Act* (Bill 51) was passed in 2006 including:

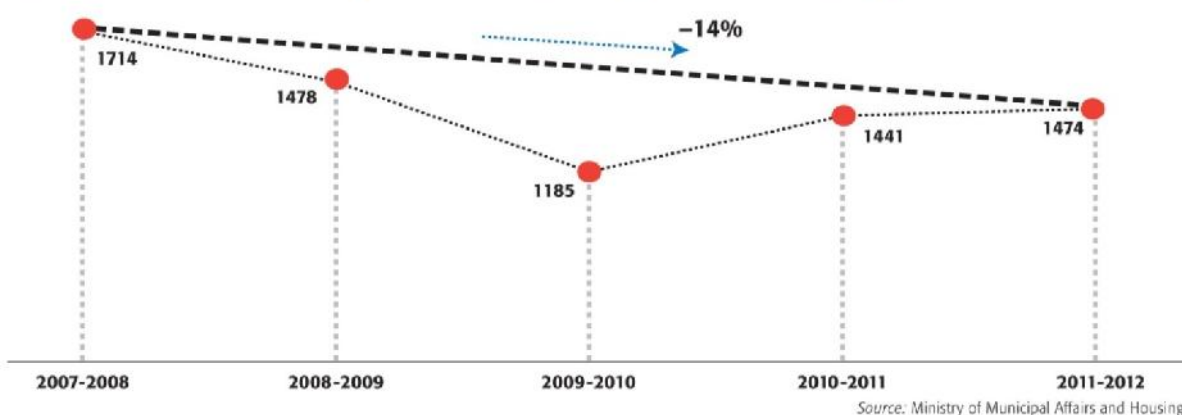
- Enhanced public notification
- Established pre-consultation process for planning applications
- Established complete application timelines and requirements for planning proponents
- Established a complete application requirement
- Established new appeal timelines based on an application being deemed “complete”
- Required updated municipal planning documents (Official Plan five-year review/zoning three years after)

- Restricted material to the board so that new information presented as evidence at the OMB could be required to be sent back to municipal council for review
- Dismissed repeat applications of similar request
- Restricted OMB jurisdiction:
 - Removed right-of-appeal on a council’s decision to refuse OPA or ZBA applications respecting the removal of land from “an area of employment”;
 - Removed right-of-appeal on a council’s decision to allow a second residential unit in certain low density house forms;
 - Removed right-of-appeal for those who did not participate during the planning process and council’s decision.
- Preserved appeal rights
- Restricted parties to an OMB hearing to those that made written or oral submissions to council prior to the decision being made
- Allow dismissal without a hearing for an application to which the appeal is substantially different from the application that was before council
- Established that the OMB had to “have regard” for local decisions as well as supporting information/materials that were considered by council in making its decision
- Allowed for the establishment of Local Appeal Bodies (LABs)
- Restricted OMB’s modification powers respecting OP’s and official plan amendments
- New powers to enact advanced land use planning tools to consider architectural features, innovative technologies and sustainable design

These reforms responded to a number of municipal requests to limit and constrain the role of the OMB in the land use planning process. Furthermore, these reforms provided municipalities with a new set of tools, including clear requirements for information and consultation at the front-end of the planning process in an effort to enhance greater public engagement in land use planning and facilitate better decision making by municipal elected officials.

These reforms have supported greater municipal leadership in resolving issues and making land use planning decisions. As the chart below illustrates, it appears that these reforms have resulted in a decrease in the total caseload of appeals to the OMB. However, OHBA is concerned that the increasing level of complexity and layering within the Ontario’s planning framework has slowed down the planning process and resulted in a reduction in the number of applications working their way through the planning process.

BOARD STATISTICS - Planning Act - Files Received by the Ontario Municipal Board



Role of the OMB in Ontario’s Public Planning Process

OHBA strongly supports the role of the OMB as the essential impartial, evidence-based, quasi-judicial administrative tribunal that is responsible for handling appeals of land use planning disputes. In this administrative authority the OMB serves to ensure that provincial land use policies and objectives are achieved and is a critical component to ensuring that consistency is applied in the application and of the implementation of the Planning Act, the *Provincial Policy Statement*, Provincial Plans and related land use legislation.

It is important to note that decisions made by the OMB are based on planning evidence provided by expert witnesses which ensures that long-term public policy objectives, rather than short-term political judgments, are observed. OHBA notes that without an independent tribunal that specializes in planning law, many land use related disputes could end up in the court system where there is not the same level of expertise, which may lead to inconsistent and unpredictable results that are not in the public interest. Furthermore, the existence of an informed tribunal to adjudicate planning appeals has a positive role in focusing the work of professional public sector practitioners to work within the planning regime with integrity

Contrary to the popular media perception that the OMB most often sides with developers, independent research by Aaron A. Moore (Institute on Municipal Finance and Governance, Munk School of Global Affairs, Cities Centre, University of Toronto) found that the OMB bias most often favours expert testimony of municipal planners as they are considered to have greater autonomy than their private-sector counterparts. This is why the professional opinions of municipal planners are a critical component to the decision making process. The role of the OMB is also to assess and ensure accountability in the local decision-making process.

“While the OMB does decide on occasion in favour of developers despite city planner’s objections, the city fares much better when opposing development city planners reject. In addition, the city fares horribly when city planners support a development it [city council] opposes,” (Planning and Politics in Toronto, Aaron A. Moore).

This provides considerable value to the public good because decisions made by the OMB are an important counterbalance to the oftentimes local political sentiments of councils. The OMB provides a forum where the principles of fairness, quality, consistency, and transparency are fundamental, and the provision of administrative justice is the first and last order of business.

OHBA acknowledges, accepts and supports the province’s declaration that the role, operation and function of the OMB are not part of this consultation. That said, in order to achieve other desired policy objectives arising from some of the questions posed by the government, we are of the opinion that certain “reforms” to the Board’s operating structure, procedural policies and the role of minor variances and decisions arising from Committee of Adjustment (C of A) hearings may result in positive measures to assist the land use planning system in Ontario as a whole.

Theme A: Achieving more predictability, transparency and accountability in the planning/appeal process and reducing costs

While municipalities are required to update their OP's on a five-year basis and zoning by-laws within three years of an OP update, OHBA is concerned planning documents, especially zoning by-laws, generally remain out-of-date (Bill 51, the *Planning and Conservation Land Statute Law Amendment Act, 2006* amended Section 26 of the *Planning Act* to require regular updates to OPs and all zoning by-laws). OHBA is of the view that the province must assume greater oversight in ensuring that municipalities are meeting this legislative requirement. The lack of oversight is causing a disconnect between planning documents, leading to inconsistent decision-making at the municipal level and in many cases, particularly in rapidly growing communities, a failure of meeting provincial policy objectives.

The policy disconnect (Provincial Plans/PPS/municipal OP's) is magnified particularly with outdated zoning by-laws, resulting in many unnecessary zoning amendment applications and preventable OMB appeals. For example the province's largest municipality recently harmonized zoning by-laws in the now amalgamated city, but did not equally prioritize the important opportunity to modernize decades old zoning to bring regulations into conformity with the new OP and provincial policy. In maintaining an antiquated zoning system, many municipalities create unrealistic public expectations of uses, height and density. This "false expectation" leads to an inefficient use of scarce public resources (time and expense) and creates an uncertain public planning process, pitting development interests, who are attempting to deliver provincial policy or Provincial Plan expectations, with elected officials and existing residents who identify outdated zoning as the defense to maintaining the "status quo" thus avoiding the difficult discussion on the evolving nature of communities.

Question 1: How can communities keep planning documents, including OP's, zoning by-laws and development permit systems (if in place), more up-to-date?

Communities can keep local planning documents up-to-date by adhering to the *Planning Act*, *Provincial Policy Statement* and Provincial Plans which all have clear goals, objectives, timeframes and targets. OHBA is concerned that some municipal councils do not appear to be interested or perhaps "motivated" in conforming to provincial policy and often politicize applications or the requirements to realistically plan for future residents and employment centres (industrial, commercial and major retail).

Municipalities could consider an iterative approach, where its planning policy documents are updated on a constant basis and incrementally from the last approval, (i.e. if there are multiple OP amendments occurring that pertain to one aspect of the document such as density, or height restrictions those municipal documents could undergo a "mini review" of those particular policies, but without making fundamental or significant changes to the direction of the document/vision/policy). This would essentially adopt a "living document" and evolution of the policies rather than leaving the entire plan as a static document until the next review is required.

Recommendations:

- Where a municipality has not updated its OP and zoning by-laws within the required provincial timeframe in section 26 of the *Planning Act*, the *Planning Act* or related legislation should be amended to prohibit municipalities from utilizing or imposing planning and fiscal tool privileges (i.e. Section 37 agreements or parkland dedication contributions).
- The province must ensure that municipal planning documents are adopted/approved in accordance with the *Planning Act*, PPS and (if applicable) Provincial Plans.

- Prior to the next Growth Plan review the province must establish, in conjunction with OHBA and municipal sector:
 - standardized population projections/forecasts;
 - land budget methodologies that are also consistent with the PPS and Provincial Plans, while allowing for local flexibility to reflect Ontario’s diverse communities;
 - employment land use policies ;
- The province should encourage reviews of municipal OP’s and zoning by-laws to run concurrently to facilitate meeting statutory timelines;
- Utilize enhanced technological resources such as GIS.

Question 2: Should the planning system provide incentives to encourage communities to keep their OP’s and zoning by-laws up-to-date to be consistent with provincial policies and priorities, and conform/not conflict with plans? If so, how?

Is the question one of incentives or the failure of a provincially-led planning system that requires planning documents to be in conformity with provincial plans, polices, etc.?

OHBA is supportive of the provincial requirement to ensure that OP’s and zoning by-laws are updated in a timely fashion as required by Section 26 of the *Planning Act* and, in doing, so providing full disclosure to the public so all stakeholders understand the rules governing proposed development. OHBA supports statements in the draft *Provincial Policy Statement* requiring municipalities to update their zoning by-laws within three years of the adoption of an OP.

Furthermore, OP’s must provide transparency to residents regarding the classification of lands (i.e. open space classification on private lands that may be developed) to ensure appropriate disclosure as to how communities may evolve in the future. One of the most significant barriers to intensification is archaic municipal OP’s and zoning by-laws which ratepayer groups often use against intensification related development. Furthermore, other provincial priorities such as the provision of affordable housing and purpose built rental housing typically face local opposition through the outdated rezoning process. Despite current policies (*Planning Act*, Section 26) stating that municipal OP’s and zoning be kept up-to-date with provincial policy, some municipalities continue to maintain outdated implementation documents – in some cases decades out-of-date.

Furthermore, OHBA contends that some municipalities *intentionally* maintain zoning standards (i.e. height and density) for the specific purpose of leveraging maximum financial benefits and contributions from developer/builders. This “practice” is outside of the “spirit and intent” of the provincial planning policy framework, directing growth to achieve generally higher densities. OHBA believes that exchanging benefits through Section 37 of the *Planning Act* as the currency to achieve the desired urban form planned under the provincial legislative framework works at cross-purposes with intensification efforts. The province must provide greater oversight and assert a stronger role ensuring municipal planning documents are up-to-date and in conformity with provincial policy. Simply said, the province must stand behind the *Planning Act* and the PPS and act accordingly.

OHBA notes that the Ministry of Finance must address the method in which MPAC assesses properties that have been pre-zoned for higher densities. Property assessment should be based on the current use rather than the potential use, otherwise the current system of property tax assessment effectively acts as a disincentive for investment ready communities. The province has launched a *Special Purpose Business Property Assessment Review* and OHBA believes there is an opportunity to establish this principle moving forward.

When conflicts have been presented to the province regarding the implementation or interpretation of provincial policy by municipalities, the province identifies the OMB as the appropriate venue to adjudicate the dispute. This response has only served to create more tension and delays in the land use planning system.

Examples of existing out-of-date zoning maximum heights vs what was approved in high density communities					
Burano (Toronto)	Approved 160m	Zoning 61m	880 Bay St. (Toronto)	Approved 175m	Zoning 30m
Aura (Toronto)	Approved 272m	Zoning range 20m – 92m	Casa II (Toronto)	Approved 187m	Zoning 30m
Strata (Burlington)	Approved 21 storeys	Zoning allowed 8 storeys	Sunningdale (London)	Approved 14 storeys	Zoning allowed 4 storeys

Recommendations:

- If municipalities fail to update planning implementation documents to be in conformity with provincial policy within a prescribed timeframe, those municipalities should lose certain planning and fiscal tool privileges (i.e. Section 37 of the *Planning Act* would be revoked).
- Municipal planning documents that are not in conformity with Provincial Plans and/or the PPS and that do not support “as-of-right” transit-oriented development should not be entitled to receive provincial funding for construction of higher-order transit lines.
- Municipal planning documents must align with provincial long-term infrastructure transit investments. Therefore, municipalities should only be allowed to update their Development Charges by-laws if their local planning documents are up-to-date and in conformity with provincial policy.
- If an OP is up-to-date and conforms with provincial policy it should override out-of-date zoning by-laws. This would both encourage municipalities to update their zoning while reducing zoning by-law amendment applications (and therefore appeals) for projects that conform to provincial policy and the OP, yet do not conform with outdated zoning.

Question 3: Is the frequency of changes or amendments to planning documents a problem? If yes, should amendments to planning documents only be allowed within specific timeframes? If so, what is reasonable?

The frequency of amendments to municipal planning documents and related appeals to the OMB are the result of the disconnect within the land use planning system. A key contributor to this disconnect is outdated zoning which undermines the ability to create investment-ready communities. This disconnect creates unnecessary friction within the planning system which is costly and time-consuming for both the public and private sector.

OHBA is supportive of a planning regime across the province that creates and supports modern and up-to-date municipal planning documents that are consistent with provincial policy. OHBA is confident that this effort will deliver greater certainty, transparency and predictability for municipalities, the established community and the development industry.

OHBA recognizes the need for some degree of flexibility in the land use planning system to recognize local circumstances, allow for local decision making and the ability to address emerging issues and local economic development initiatives. If limitations were placed on the ability to amend zoning by-laws or OP’s within a specific timeframe after those plans are approved the unintended consequence would be to encourage more appeals to entire OP’s and zoning by-laws. Therefore, limits to applications for amendment should not be considered as that could increase some appeals and reduce opportunities for investment that still meet the intent of provincial policy.

OPs should be strategic and outcome-based and establish a vision for the long-term complete community structure of the region/municipality factoring in all major issues such as land use, servicing, transportation, community and social services. In recent years, the development industry has witnessed municipalities trying to

deliver long-term strategic objectives with complex and prescriptive policies, which are better applied through secondary plans, zoning or site plan approvals.

Recommendations:

- The provincial government ensure that local planning implementation documents be consistent with provincial policy, while remaining flexible to appropriate amendments.
- To reduce the frequency of amendments, municipal OP policies should not be overly prescriptive or restrictive.

Question 4: What barriers or obstacles may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?

Implementing a shift towards web-based submissions/planning applications would allow for broader resource sharing amongst the general public and other government agencies. Assuming the expectations are reasonable and user-friendly, this could substantially assist in the flow of information, sharing of ideas and offer constructive advice towards achieving support for the intended development. That said, OHBA only supports the public posting of information/reports related to the application (OP, zoning by-law and plan of subdivision) once the application has been deemed complete by the municipality. OHBA remains cautious that the availability of more information to the public without context could result in the misinterpretation of some information. OHBA also recognizes that electronic submissions and public postings may not be possible in some remote northern and rural communities that do not have access to high speed internet. In recognizing the diversity of the province, the capacity issues of municipalities, OHBA submits that this idea is perhaps better suited towards establishing a municipal best practices as opposed to a legislative requirement.

OHBA believes that, in general, the pre-consultation process is working well and does promote greater collaboration and discussion between the applicant and municipality. The industry generally makes a strong effort for early engagement both with municipalities and local communities. However, OHBA is concerned by the lack of municipal uptake of this planning tool [33 per cent of municipal/planning boards – July 2011, source: MMAH]. Pre-consultation should be a desired protocol, but not a legislated practice/requirement.

Public open house requirements also encourage greater dialogue between applicants, municipalities and the public. OHBA believes this requirement has had mixed results with some situations leading to greater understanding between stakeholders and better outcomes, while other consultation opportunities have resulted in another forum for NIMBY opposition. Greater public education regarding the planning process as well as provincial planning policies should be encouraged at the provincial and local level. Meaningful and respectful consultation, where public participants better understand the process and scope of what is on the table for discussion, will lead to better planning outcomes.

Furthermore, municipalities must educate and engage residents regarding the planning rationale supporting OP's and zoning by-law reviews, and support those final OP and zoning decisions by informing the existing community of how their communities will evolve so that no resident is surprised by new developments in their neighbourhoods. Residents have a right to know why their communities are evolving as well as how new neighbours and businesses will be accommodated in their neighbourhoods.

Recommendations:

- Municipalities should move away from paper-based submissions to web accessible e-submissions.

- Municipalities should enhance public notification and engagement utilizing a variety of communication mediums, both during and after the OP and zoning by-law review period, to notify existing residents of the decisions that will shape how their community will evolve.
- The province must clearly differentiate pre-consultation requirements between the landowner and municipality vs. public engagement between the public/municipality and the landowner

Question 5: Should steps be taken to limit appeals of entire Official Plans and zoning by-laws? If so, what steps would be reasonable?

OHBA strongly supports maintaining existing appeal rights under the *Planning Act*. Such measures are a fundamental principle of the land use planning system in the province and should not be limited. Our reasons for this are that, sometimes the overarching policy or document is flawed and appeals to the entire OP are a reflection of broader stakeholder concerns. A multitude of appeals usually signal that fundamental principles/assumptions of a policy or policies require a broader evidence-based review.

While existing appeal rights for appealing whole or partial OPs and zoning by-laws should be maintained, OHBA would be prepared to consider, in consultation with the government, means by which applicants could scope the reasons and issues related to their appeals. Currently, the appeal system and the OMB procedures and protocols ultimately require appellants to scope their appeals typically during the pre-hearing process. It may be entirely reasonable to require that this be done at the time the applicant files their notice of appeal. This recommendation maintains appeal rights, but does offer clarity for the reasons of an appeal which may facilitate potential resolution of disputed matters reducing the time and costs for all participants.

Recommendations:

- Appeals of entire OP's and zoning by-laws should not be limited in anyway. OHBA is prepared to consider improvements to the current system that would require appellants to scope appeals at the time of filing a notice of appeal.

Question 6: How can these kinds of additional appeals be addressed? Should there be a time limit on appeals resulting from a council not making a decision?

The land use planning process is provincially led and municipally implemented, yet there are many occasions where municipalities fail to make a decision within the prescribed timelines of the *Planning Act*. It is essential to maintain existing timeline requirements to put tension in the system and to ensure that planning applications are reviewed and dealt with promptly.

OHBA submits that through the *Strong Communities Act* (Bill 26), municipalities were provided with extended timelines to make decisions without the prospect of an appeal. In 2004, the *Strong Communities Act* (Bill 26) increased the time allowed for planning authorities to decide on planning applications after it has been accepted by the municipality as a complete application as follows:

- OP amendments extended from 90 days to 180 days
- Zoning by-law amendments and holding by-laws extended from 90 days to 120 days
- Subdivisions and condominiums extended from 90 days to 180 days
- Consents to sever property extended from 60 days to 90 days

We cannot support additional time for a municipality to make a decision on a planning matter. Furthermore, there is no assurance that such additional time would result in a decision – we simply do not have confidence that municipalities would not use the additional time for further delay rather than to achieve a better outcome.

Recommendations:

- The existing timelines that a municipal council must make a planning decision imposed pursuant to the *Strong Communities Act, 2004* should be maintained.

Question 7: Should there be additional consequences if no decision is made in the prescribed timeline?

It is the submission of OHBA that in failing to make a decision, municipalities are put in the position where the consequence of that failure is that they will have to defend their position at the OMB.

Planning applications take an enormous amount of time to prepare, review and approve. Both greenfield and intensification proposals involve years of research and considerable resources. Furthermore, complete application and pre-consultation requirements by municipalities require significant supporting documentation and resources early in the review process. When no decision is made, it is frustrating to local communities and unfair to the applicant. Greater efforts should be made to reduce the frequency of non-decisions.

Question 8: What barriers or obstacles need to be addressed for communities to implement the development permit system?

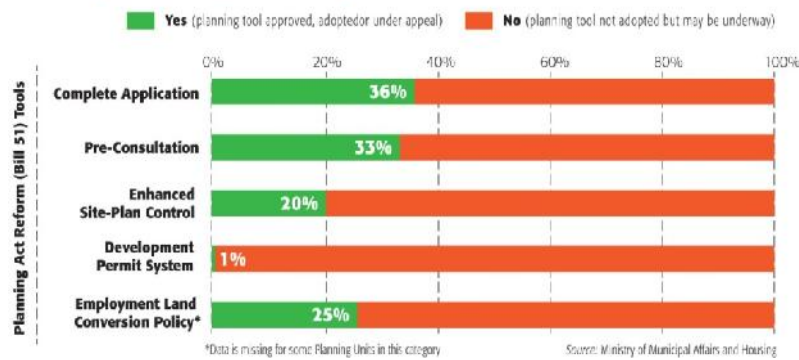
The Development Permit System (DPS) offers an innovative alternative to the re-zoning approval process. Yet despite the many benefits to create a more effective and efficient planning process, municipalities have not taken advantage of this alternative, notwithstanding numerous attempts by the province to encourage its use. A DPS would facilitate certainty for OHBA members and both existing and future residents of the land use vision and zoning standards of the municipalities. OHBA strongly supports the implementation of a DPS to provide enhanced certainty, streamlined approvals and a means to create investment ready communities across Ontario.

To that end, we observe and recognize that many municipal staff and elected officials lack practical experience to implement it effectively. OHBA also firmly believes many local politicians may be reluctant to implement a DPS since they would lose control of daily local planning issues on a site-by-site basis. Since land use planning continues to be one of the most visible levers that local politicians have to respond to voters within their local community, and a well operated and administered DPS relies on delegated staff approval, this represents a quantum shift in how Ontario municipalities have historically functioned. The implementation of a DPS may also not be financially attractive to some municipalities, who in our respectful opinion intentionally under-zone lands to extract and maximize financial benefits (e.g. Section 37) during the approvals process.

The current DPS structure is intended as a “wholesale replacement” for existing zoning. However, if the DPS could be simplified to co-exist with existing zoning, and be applied in specific circumstances (perhaps for strategic means such as transit corridors; re-investment areas or employment nodes), we submit it would be more effective and used more broadly to support economic development and investment ready communities.

As currently formulated, the development permit by-law must include operational concepts such as the manner in which notice is given, permit review procedures, and the scope of delegated authorities (not the delegation itself). This is in addition to the land use and built-form parameters like height, setbacks and other typical standards regulating the use. The weight of these conceptual policies and the fact that a DP by-law completely replaces traditional zoning makes it a very *heavy* system to implement up-front. These more high level concepts seem more appropriate for the OP, and even more so because subsection 3(1) of O.Reg. 608/06 already requires the OP to contain development permit policies of a similar nature.

UPTAKE OF PLANNING TOOLS - State of Land Use Planning in Ontario (July 2011)
 Total Planning Units (Municipalities/Planning Boards = 471)



Moving these policies to the OP focuses the development permit by-law on land use and built-form, greatly simplifying it for decision makers and the general public. It would put the DPS on a more tactical footing. Policies related to bonusing, in particular those setting a proportional relationship between facilities and money received in exchange for density and height (as demanded in subsection 4(6)(c) of O.Reg. 608/06), should also be moved to the OP.

Sites zoned as a Development Permit Zone (DPZ) would be regulated by a site or area specific development permit by-law. This would be similar to the CD (Comprehensive Development) zone in Vancouver or similar planned development zones in other jurisdictions. Buildings, structures or site alteration within a DPZ zone must address the development permit by-law, which would include design-oriented and positively formulated criteria rather than negative constraints such as “less than” or “a maximum of”. Projects would proceed by way of an administrative development permit.

The beneficial features of the DPS would be maintained, and applied more surgically. Namely, a range of permissible variation, conditional provisions, and a degree of oversight over architecture and urban design, all effected administratively rather than legislatively, meanwhile combining existing related, but loosely integrated, processes. The investment to implement the system in municipal time and staffing costs would be reduced.

The DPS as it stands requires more rigorous policies to implement bonusing, and is better suited to regulate how the bonus density and height is deployed (Section 37). It also provides a path to depoliticize deal-making. Using it would address the need to improve transparency, consistency and accountability around bonusing. Municipalities, developers and the public would experience greater certainty if these reforms were implemented. The perverse incentive to keep density and height artificially low to trigger Section 37 would be gone, allowing more land to be pre-zoned consistent with intensification goals of the PPS and other Provincial Plans. Finally, removing Section 37 from traditional zoning is also a “stick” to encourage municipalities to move toward a DPS.

OHBA acknowledges the numerous sessions that MMAH have led at various AMO conferences on the DPS concept, along with their efforts to outreach to key municipalities with additional staff support to encourage use of this valuable planning approach. With less than one per cent of all municipalities taking advantage of this planning tool to date, OHBA believes that municipalities missed an opportunity to better align their planning, infrastructure and economic plans and creating investment ready communities. OHBA will continue to encourage the province to promote and support the DPS as a valuable planning tool for municipalities to implement.

The implementation of a DPS also provides the existing residents with clear planning rationale and certainty as to how their community will evolve in the future.

Recommendations:

- The province should undertake the strategic initiative to implement a DPS along a major infrastructure corridor or strategically important employment node to facilitate investment ready communities.
- Move the more conceptual policies listed in subsection 4(2) and 4(3) of O.Reg 608/06 into the OP.

- Allow existing zoning to continue while providing for a new tactical “Development Permit Zone” (DPZ). Sites could then be rezoned to “DPZ”. Revise subsection 9(3) of O.Reg 608/06 to maintain existing by-laws passed under Section 34 of the *Act* unless specific provisions are superseded by a development permit by-law.
- Municipalities should only be allowed to access Section 37 when a municipality has established a development permit system or has updated their OP and zoning to be consistent with provincial policy within the timeframes established by the *Planning Act*.

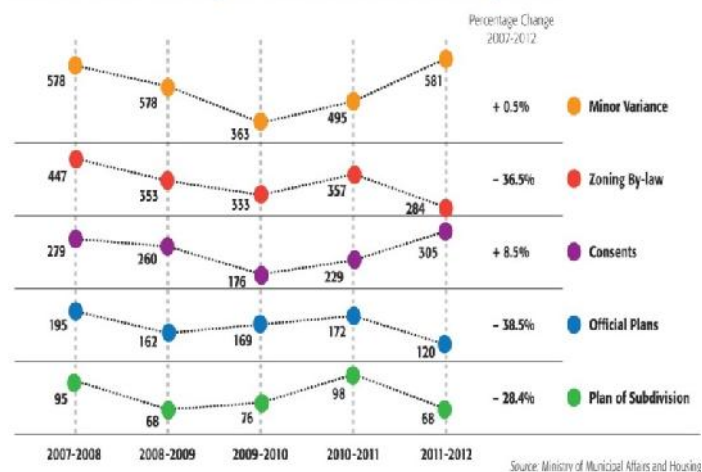
Theme B: Support greater municipal leadership in resolving issues and making land use planning decisions

Provincial planning reforms through the *Planning and Conservation Statute Land Amendment Act* (Bill 51) empowered municipalities with greater planning autonomy, while allowing for longer timeframes for public participation and municipal review. OHBA contends that such changes to the planning system have resulted in better municipal decision making, greater public participation in the system, enhanced reporting and disclosure of project information and fewer appeals to the OMB. However, despite these legislative reforms, the perception and debate amongst municipal and public stakeholders persist that the OMB is involved in too many cases and has become too costly/complex for meaningful participation by citizens/ratepayer groups. OHBA believes that there are a number of systemic improvements that can implement to support more collaboration between participants in the planning system while ensuring an equitable appeals process.

Question 9: How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?

Development brings change to a community and sometimes that change leads to adversarial positions amongst the applicant, the community and Council. Since the implementation of Bill 51, which places a greater emphasis on resolving issues at the front-end of the planning process, there have been fewer appeals to the OMB due to more cooperation and collaboration to resolve land use planning tensions locally. Since 2007, zoning by-law appeals have dropped by 36.5 per cent, OP amendment appeals have dropped by 38.5 per cent and plan of subdivision appeals have dropped by 28.4 per cent.

BOARD STATISTICS - Planning Act - File Intake at the Ontario Municipal Board



OHBA notes councillors and community groups need to have greater regard to professional opinions of municipal planners as there are many documented examples where the planning department makes a recommendation in the broader public interest, and in accordance with legislative or provincial policy, that is ignored by council for political reasons. Robust pre-consultation and communication between all parties does sometimes relieve the level of tension, but there are often extreme positions opposed to any type of development that can derail any amount of consultation and goodwill between stakeholders.

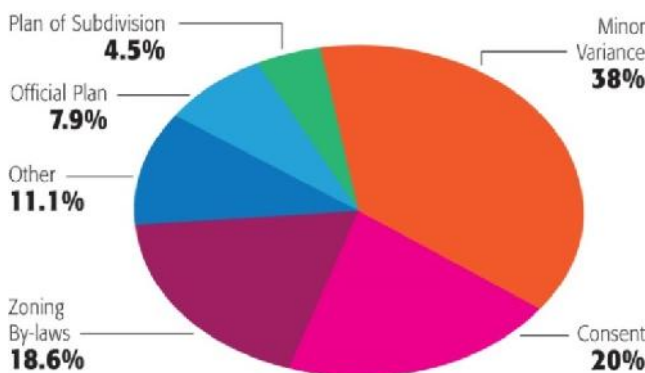
Recommendations:

- The province should continue to make reforms and further promote the use of existing planning tools that emphasize and enhance collaboration, cooperation and certainty at the front-end of the planning process.
- The province also ensures greater up-take of municipal planning tools and modernizes zoning by-laws.
- Municipal engagement and information to the community must continue after OP's and zoning are updated to educate and promote planning visions and principles to existing residents on how and why the community is evolving.

Question 10: What barriers or obstacles may need to be addressed to facilitate the creation of Local Appeal Bodies?

During the Bill 51 consultation, municipalities requested permissive authority to establish Local Appeal Bodies (LABs). Such bodies would be able to adjudicate appeals arising from decisions from their Committee of Adjustment (C of A) involving minor variances and consents. While LABs may provide opportunities to resolve more planning disputes at the local level, OHBA continues to have significant reservations with the notion of LABs.

BOARD STATISTICS - Types of Applications Received 2011/2012



Source: Ministry of Municipal Affairs and Housing

While some municipalities have continued to express their desire for greater autonomy with respect to planning decisions, they have failed to take advantage of existing planning tools that would provide them with the greater autonomy they seek. With that in mind, OHBA believes there are two key issues that exist as obstacles to the creation of LABs. Firstly, a significant barrier to the municipal implementation of LABs remains the municipal cost recovery of the appeals body while maintaining equitable access (measured in terms of application fees/charges).

The second major issue for LABS and primary issue from OHBA's perspective for homeowners and professional renovators is maintaining administrative and independent decision-making and neutrality. There remains no regulations or related procedures to determine the appointment process and, among others matters, to ensure candidates are qualified and, most importantly, remain neutral in their decision making.

It should be noted that the legal framework that governs the decision making of the CofA and the OMB adjudicative process will still continue to be the basis for any LAB decision and, as such, LABs may function as a "local" appeals board but they are still connected to, and grounded in, the existing planning law framework, including the right to appeal a decision to the OMB.

While recognizing that CofA appeals (minor variances and consents) constitute a significant percentage of the OMB's caseload (58 per cent), OHBA has a number of operational recommendations in the *additional recommendations* section of this submission that bring forward new ideas to deal with minor variance issues and technical matters that could go through a streamlined CofA approvals process.

Recommendations:

- Applicants should retain the right of appeal to the OMB for Committee of Adjustment matters including minor variances and consents.

Question 11: Should the powers of a local appeal body be expanded? If so, what should be included and under what conditions?

The *Planning and Conservation Land Statute Law Amendment Act* provided municipal councils with the option of establishing a LAB where decisions dealing with minor variances and consents could be made. To date there are no municipalities that have set-up a LAB. Furthermore, despite specifically requesting the ability to set-up a LAB and receiving the power to do so under the *City of Toronto Act*, the city has still not set up a LAB. Ontario municipalities do not yet have any experience with LABs and should not be granted expanded powers as this may result in unintended consequences.

Recommendations:

- The province should not consider granting an expanded scope of powers to Local Appeal Bodies until there is operational experience in place within Ontario municipalities.

Question 12: Should pre-consultation be required before certain types of applications are submitted? Why or why not? If so, which ones?

OHBA notes that pre-consultation has generally occurred across Ontario for complex applications (even prior to Bill 51). While the process is not perfect, OHBA members who are engaged with a municipality using pre-consultation are generally satisfied with the concept to engage staff early in the process. OHBA recognizes pre-consultation as a valuable opportunity for the landowner/developer and the municipality to meet prior to the submission of an application.

The purpose of pre-consultation is to commence a dialogue to establish clear requirements for information and identify any potential issues at the front-end of the planning process. The objective should be a more transparent and efficient process, which should set expectations of the reports to be filed as part of the application with a view to ultimately reduce costs and the likelihood of an appeal. OHBA members that have participated in pre-consultation believe that it is mutually beneficial to both the applicant and municipal planning staff, however the challenge is sometimes in securing the pre-consultation with all necessary municipal staff in a timely manner and determining a defined list of requirements that can support a timely complete application approval.

Pre-submission consultations should have status with clearer expectations regarding preliminary materials and should outline the terms of reference for what additional materials and studies will be required as part of a complete application. Pre-submission consultation for many applications should be encouraged, but *should not become a mandatory requirement*. This would recognize the diversity and capacity of municipalities while also recognizing that, in many cases, pre-consultation is already happening and OHBA members are choosing to engage with the municipality even before their application is submitted.

Recommendations:

- Pre-submission consultation (landowner and municipality) for many applications should be encouraged, but should not become a statutory requirement.

- Municipalities should be required to respond to a request for pre-consultation within a defined and timely manner particularly where pre-consultation is a pre-requisite in meeting complete application requirements. Furthermore, municipalities should be prohibited from charging a fee for pre-consultation.
- Municipalities should be prohibited from charging a fee for pre-consultation, as such, OHBA is aware of some municipalities who are now requiring a fee for pre-consultation.

Question 13: How can better coordination and cooperation between upper and lower-tier governments on planning matters be built into the system?

The province must fulfill its stated legislated role in the land use planning system as the *Planning Act*, PPS and Provincial Plans all contain requirements to ensure municipal conformity to provincial policies. Should an upper or lower-tier municipality refuse to coordinate their efforts, the province must intervene and ensure coordinated planning is occurring. Coordination of planning is of provincial interest.

The *Planning Act* requires that all lower-tier OP's conform to upper-tier OP's, yet lower-tier municipalities can adopt amendments that do not conform to the upper-tier plan. OHBA recognizes that this may cause tension in the planning system and that local circumstances require local solutions, but the province must show leadership in these circumstances.

During the current round of Regional OP conformity to the *Growth Plan for the Greater Golden Horseshoe* a number of lower-tier municipalities considered rejecting the population and employment allocations applied to them by the upper-tier and requested the province to reassign the population and employment allocations to other municipalities within the upper-tier. OHBA submits that the province did not fulfill its stated legislated role in requiring compliance with provincial policy, and this debate created extensive delays in moving lower-tier municipalities into conformity with provincial policy. It also undermined the public's understanding of the provincial planning regime, as it challenged the fundamental legislative planning regime the province continues to support. If legislative population and employment numbers can be rejected by lower-tier municipalities, how can residents have confidence and certainty in the public planning process? This exercise served to undermine the provincial leadership.

There are similar examples across the province when it comes to conflicting planning policies between upper-tier and lower-tier municipalities, and the coordination of regional services including water, waste-water and transit. There also exists in some communities a clear disconnect between historically zoned lands and other lands that are infrastructure ready. The City of London has launched a working group to determine if current lands within the OP urban boundary are in fact the most efficient to proceed with development.

The province established the Office of the Provincial Development Facilitator (OPDF) in 2005. The OPDF continues to be a valuable service for the province to mediate planning related disputes and is only activated when the parties of the dispute consent to the OPDF's services. Strengthening the role of the OPDF by establishing the Office to report to Cabinet can serve to help fulfill the legislative role of province in the land use planning system.

Recommendations:

- Provincial leadership in coordinating upper-tier and lower-tier municipalities on planning matters.
- Strengthen the Office of the Provincial Development Facilitator by having it report directly to Cabinet.

Theme C: Better engage citizens in the local planning process

OHBA believes that public participation is a critical component of the land use planning system. Our members work with the public and the communities that they operate in. The public engagement process should lead to positive ideas, contributions and opportunities for collaboration resulting in better outcomes. However, there are many examples where the public participation process is adversarial in nature and leads to significant frustration on the part of all stakeholders.

OHBA is concerned that many members of the public think that organized hostile opposition to plans (that may actually conform to public policy) should result in a veto over development. When that development is eventually approved by council or the OMB (on the merits of the application and supported by planning policy) they feel disenfranchised from the planning system and by the public consultation process. While OHBA is prepared to support some process improvements to better engage the public, regardless of any changes, when approval of new developments happens, some of those local citizens will continue to feel disenfranchised from the process. The province must take a much stronger leadership role in terms of educating the public and ratepayer groups with respect to both process and provincial policy and what the latter means for the local built environment. Furthermore, municipalities should undertake stronger community engagement following OP or zoning decisions. The province and municipalities do a disservice to the integrity of the public planning process when they fail to educate and inform the public and existing community as to the reasons why their community is evolving. Without an active public education program regarding planning policy and the changing nature of communities the current adversarial environment will continue to undermine the goals of provincially led planning objectives.

Question 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)?

Public participation is an important component of the planning process. There is already quite a high level of citizen engagement, and those that are engaged and take the initiative to participate are usually well regarded in the process. Many developers are already conducting public open houses to engage voluntarily with the community early in the process. The current regulations with respect to public participation, notice, and consultation are fairly robust and do not require any amendments.

OHBA is concerned that additional mandatory public open houses will serve as another platform for vocal anti-development residents (the merits of an application are often irrelevant to anti-development ratepayer groups). Land use decisions should primarily be directed from municipal planning departments adhering to provincial planning policies and objectives.

Citizens and their participation in the process must be seriously considered during the development process. Additional public education is required and often when an application polarizes citizens and Council, there is no trust or time to educate. This is an age-old planning dilemma.

Question 15: Should communities be required to explain how citizens input was considered during the review of a planning/development proposal?

OHBA notes that a municipality must continue to render decisions based on their up-to-date OP and zoning by-laws that are in conformity with provincial policy. OHBA notes that the relationship between registered

professional planners employed by the municipality require that they state their professional planning advice clearly and with confidence.

Sometimes such advice will not be consistent with what the citizen input desires or the desire of the local Councillor/Council. It is appropriate for staff reports to state how the public was informed and consulted and in fact some staff reports already do this. OHBA does not believe that there should be a legislative requirement to address this question. This matter is best addressed, if not already, through municipal best practices.

Recommendations:

- Citizen comments and how such input was considered during the review of a planning application should be established as a municipal best practice and a regular component within the process provided that the privacy of individual citizens is protected.

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

The land use planning system can best support strategic infrastructure investment decisions and encourage economic growth when municipal OP's and zoning by-laws are up-to-date (OP's every five years and zoning within three years of an OP update) and in conformity with provincial policy. Municipal planning documents must also support infrastructure investments through appropriate pre-zoning. When the province provides funding along corridors such as Sheppard Avenue in North York to construct a subway, it should have been the pre-requisite of the municipality to pre-zone the corridor for transit-oriented development that supports ridership before provincial funds were committed.

A positive example of the preferred OHBA approach is the St. Clair corridor which was in fact pre-zoned to support mid-rise development following the construction of the streetcar right-of-way. Furthermore, creating additional certainty and streamlining through a development permit system that is strategically located to take advantage of investment-ready communities will support major infrastructure investments. The current GO System, O-Train in Ottawa and other rail-based services and planned LRT systems provides an opportunity to extend the principle of pre-zoning across the province.

Question 16: How can the land use planning system support infrastructure decisions and protect employment uses to attract/retain jobs and encourage economic growth?

The land use planning system can support infrastructure decisions by ensuring planned growth is allocated to areas where existing or logical extensions of infrastructure exist. Employment uses (industrial, commercial and major retail) must be protected, but also must be supported by residential and mixed uses to ensure success. The notion of promoting "live-work" lifestyles through planning is only successful when growth is properly planned and housing choices/options are made available. This will ensure successful employment lands, reduced commute times and less strain on highways which should be "goods movement" focused. Furthermore, ensuring that OP's contain secondary suite policies as required by Schedule #2 of the *Strong Communities Through Affordable Housing Act*, 2011 will facilitate intensification by professional renovators that takes advantage of existing infrastructure. In essence the province can support complete communities by enforcing current planning policies.

Aligning infrastructure and planning decisions can assist economic growth but there continues to be silos that prevent communication/collaboration on these critical decisions. In other situations, infrastructure decisions can be highly politicized and may not yield the best results to support employment. The current planning regime allows for infrastructure planning beyond 20-years, but limits the land use planning to 20-years – essential 100-year infrastructure financed by 20-year OPs.

Municipal OPs should be required to connect the long-term infrastructure plan with the municipalities long-term structural concepts plan, including: employment (industrial, commercial and major retail) and residential land uses, open space, transportation and transit corridors.

Recommendations:

- Provincial land use planning should be consistent with long-term infrastructure planning and as such the Province must extend the current 20-year planning horizon in the PPS to align with longer infrastructure planning timeframes a better inform long-term land use in municipal OPs.

Question 17: How should appeals of OP's, zoning by-laws, or related amendments, supporting matters that are provincially-approved be addressed? For example, should the ability to appeal these types of OP's, zoning by-laws, or related amendments be removed? Why or why not?

In 2005, OHBA submitted a *Tools to Support Intensification* report (attached in the appendix) and followed up with submissions regarding the *Growth Plan for the Greater Golden Horseshoe* that outlined a number of related concerns. OHBA has consistently identified issues that require strong provincial leadership to avoid appeals to the OMB. First and foremost, OHBA has advocated for the province to establish a standardized land budget methodology and best practices guide that allows for some local flexibility to reflect the diversity of communities across Ontario while ensuring consistency with provincial policies for municipal use. The provincial failure to provide clarity on this fundamental methodology issue is at the centre of many OMB appeals regarding OPs. OHBA has a long history of working with MMAH and the Ontario Growth Secretariat to advocate for the province to have a stronger and more proactive role at the front end of the planning process. While we acknowledge the extensive literature and tools provided by the province (Appendix A: Building Blocks for Sustainable Planning) more leadership is required to actually implement these tools. OHBA is concerned that the default position of the province has often been to resolve these issues (i.e. land budget methodology) at the OMB rather than implementing clear rules at the front end of the process. There are similar examples that can be provided regarding updates to the PPS, natural heritage features, the *Endangered Species Act* and many other new provincial plans or regulations mid-stream in various updates to OPs that have resulted in uncertainty and appeals.

The complexities of the land use planning system cannot be minimized by the arbitrary removal of appeal rights. Instead, clarity in the assumptions and interpretation of the provincial policy or plan must be paramount. The stagnation of the planning process is in large part due to the lack of clarity, the absence of certainty and misalignment of municipal planning documents with provincial policy. Therefore, the province must demonstrate greater oversight and leadership and strongly enforce provincial policy at the municipal level.

Removing appeal rights do not confirm that the provincially-approved matters are automatically consistent with existing provincial planning policy. The Region of Waterloo's land budget methodology underlying its new OP implementing the Growth Plan serves as a public example. Regardless of the outcome of the decision, the Region of Waterloo methodology's unique approach was one that should have been testable through an appeal and hearing process. The province should not be afraid to have their "provincially-approved matters" exposed

to scrutiny and potential appeal to the OMB. If anything, this principle of eliminating appeal rights runs counter to the evidence-based planning, collaboration and consensus-building approach that the consultation is seeking to create.

OHBA notes that if appeal rights are removed, that the courts would likely become the sole avenue for resolution. Simply said, the courts are not equipped or experienced to deliberate on complex planning matters. OHBA recognizes that there is, unfortunately, an element of abuse by a minority of those who appeal applications. However, the resolution to this problem should not hamper the vast majority of applications submitted in good faith. Hearings allow for a debate and comprehensive review of the planning merits of a case that cannot occur at a municipal council meeting. When properly adjudicated, good decisions result, to which others can follow.

Recommendations:

- Appeals of entire OP's and zoning by-laws should not be limited and the current appeal permissions continue to apply.
- OHBA notes OP's or related amendments implementing provincially approved planning documents should still have the ability to be appealed and face scrutiny and review in front of an evidence-based planning tribunal.
- With respect to appeals of entire OP's or zoning by-laws, there is usually one fundamental issue at hand and a stronger pre-screening system or initial review could better scope the issues and provide reasons for the appeal at the time of filing the notice of appeal.
- Appeals should undergo mediation first, and then, if irreconcilable differences continue, a board hearing can be convened. This will help to narrow the concerns as mediation provides participants an opportunity to be heard prior to convening the board hearing.
- To assist in ensuring that municipal planning documents are prepared in a timely manner in accordance with the *Planning Act*, PPS and (if applicable) Provincial Plans:
 - Prior to the next Growth Plan review commencing the province must establish:
 - standardized population projections/forecasts
 - land budget methodologies that allow for some local flexibility to reflect Ontario's diverse communities, but that are also consistent with the PPS and Provincial Plans
 - employment land use policies
 - Reviews of OP's and zoning by-laws could/should run concurrently;
 - Utilize enhanced technological resources such as GIS.

Additional Recommendations for Consideration

OHBA acknowledges that a primary goal of this consultation is, in part, to achieve greater public participation and confidence in the outcomes of Ontario's land use planning system. To achieve these policy and planning objectives OHBA proposes a number of additional recommendations and ideas. OHBA is now encouraging the Ministry of Municipal Affairs and Housing to establish a separate consultation process with OHBA and the municipal sector to further discuss these concepts and report back to the government within 90 days.

OHBA believes that an effective land use system requires:

- Clear and consistently applied policies directed by legislation;
- Fair and reasonably applied decisions by municipal councils; and
- Where land use conflicts arise, a strong effective and independent OMB to adjudicate planning matters.

Removal of the Ontario Municipal Board from the “cluster” to provide a distinct and separate process for “DISPUTE RESOLUTION”

In order to provide a “marked” change on the current appeal process, which many believe to be too confrontational between applicants, municipalities and ratepayer groups and/or individuals, OHBA is suggesting a number of changes to the operations of the OMB. The OMB should focus on a more collaborative and informative environment for unrepresented parties, with a focus on “dispute resolution”, proceeding to hearings in only those cases where such alternative resolution cannot be reached. However, these changes could only be effective if the OMB was truly considered as an *independent tribunal, with its own distinct members, trained and duly qualified in the area of land use planning.*

Mandatory Mediation

The pertinent idea behind requiring mediation is to encourage a system of dispute resolution. There would be no inherent risks to participants; there would be no requirement to settle and parties would still have the right to proceed to a full hearing.

We suggest implementing a pre-hearing requirement of mandatory mediation for applications (suggestion of hearings in excess of one or two weeks) in order to provide a forum of principled dispute resolution and aid in the facilitation of decision making at a pre-hearing level, thereby reducing the number of full hearings before the Board. This process would not pre-empt the scheduling of a hearing date, as both would be scheduled concurrently; however, by having mandatory mediation for all applications prior to a full hearing, the volume of cases going to a full hearing would be reduced as many resolutions could be reached through mediation or settlement. Further, the length of hearings before the Board would be reduced as many issues would be raised in the mediation session thereby reducing costs and time for all parties involved.

Although this would require the Board to hire and train more experienced mediators, it would alleviate the case load of many Board Members as the number and length of full hearings would be reduced.

Provide planning resources to rate payer groups

Through the mediation process, the Board would have the authority to assign recognized ratepayer associations/groups with a resource with planning experience and perhaps more preferably a registered professional planner with mediation training and certification. This would encourage greater public participation

as groups would have equitable access trained professionals whose role and purpose is to resolve conflict. Such resources would be funded by the Board. OHBA and its members are prepared to discuss with MMAH proposals on how this effort can be achieved.

Increased fees to Appeal to the OMB

The ideas behind mandatory mediation and providing planning resources to ratepayer groups are offered for consideration with a view ensure that the land use planning system in Ontario remains fair, equitable and accessible to better serve all stakeholders, the public included. It is acknowledged that this effort will take financial resources, which is limited within provincial means.

OHBA also wishes to note that, at this time, the compliment of OMB members is at a historic low. This is unacceptable. The monies generated through potential increased appeal fees could also be used for the hiring and training of more Board Members and mediators.

Set the bar higher in regard to awarding of costs

Consideration should be given to amending the procedure for awarding costs, specifically establishing higher standards before costs are awarded against an unrepresented ratepayer. This ensures that costs are virtually never an issue that deters an unrepresented ratepayer from presenting their views at a hearing. The standard should be such that unless the conduct of an unrepresented ratepayer is completely unreasonable or vexatious would an award of costs be considered? It should be certain that only in the most unusual circumstances would the Board even consider a motion for costs against an unrepresented ratepayer.

Amendments to notice procedure on minor variances and decisions of the Committee of Adjustment

Appeals of minor variances and consents make up a large component of applications to the Board (some 58%) with the City of Toronto contributing a substantial number of that percentage.

A primary goal of OHBA is to have the OMB deal with more complex cases and “freeing-up” the resources of the Board to address such cases. A means to achieve this objective would be to address the volume of Committee of Adjustment cases dealt with by the Board. We envision a scenario that a effectively establishes a two-tiered system for notification and approvals for C of A hearings province-wide through appropriate amendments to the *Planning Act* which strives to achieve the following objectives:

- Mandate a more complete consultation process for more complex applications
- Streamline the process for “non-contentious” matters;
- Reduces the volume of minor variance appeals heard by the OMB.

Currently, the regulations under the *Planning Act* call for a minimum 10-day notice in advance of a C of A hearing. Instead of only 10-days’ notice being issued prior to the scheduling of a hearing, we would suggest that the original 10-day notice be one which invites comments from those notified of the hearing. If no person files an objection(s) (including City Staff and/or the local Councillor), the Secretary-Treasurer of the Committee would have the “delegated authority” to approve the application, removing essentially “non-contentious” applications from the Committee’s hearing schedule. There would still be a “right of appeal” against a decision made by the Secretary-Treasurer and the notice provisions of a decision in effect today will continue to apply.

In the event objection(s) are raised during the original 10-day notice period, the applicant will have an obligation to consult, in person, with those person(s) raising concerns/objections, within the next 10 days from the time they are advised of the “objections” being filed with the Committee. Once written evidence of the consultation is provided to the Secretary-Treasurer of the Committee, notice of the hearing will be sent out, with an additional 10-day period providing a more fulsome time period to allow for both consultation and a potential resolution of issues prior to those “contentious” applications proceeding to the C of A.

There would still be a “right of appeal” against a decision made by the Secretary-Treasurer and the notice provisions of a decision in effect today will continue to apply. If an appeal is filed, mandatory mediation may take place prior to the full hearing. Furthermore, OHBA would recommend that similar to the *Planning Act* provisions related to OP, zoning by-laws and other planning matters, parties filing an appeal to the OMB must have participated in the statutory public meeting and/or, per the recommendations above, raised an objection to the proposal before the C of A.

Mandatory Reporting on Ontario Municipal Board Cases and Decisions

Improvements are needed to provide a more accessible and transparent reporting system to enhance the public’s understanding of the Board’s activity and operations. OHBA suggests that this should be a function of the Ministry of Municipal Affairs and Housing in conjunction with municipalities. Reporting should be annually and include the types of appeals, the geography of appeals, and the decision history of the Board. Municipalities could provide details on the number of applications and appeals, while the Board would report on decisions. This would provide more information to the general public, providing a greater understanding of the role and operations of the Board, and enhance the transparency of the Board, especially as it pertains to how many major development decisions are made by the Board.

OMB as part of the Environment and Land Tribunals Ontario

Finally, we note that if these recommendations are to be successfully implemented, it is important that the OMB remain as a *distinct part* of the Environment and Land Tribunals Ontario, with its own members and staff, and with sufficient expertise in the land use planning discipline.

Site Plan Approval Process

OHBA recommends a number of improvements to the Site Plan Approvals (SPA) process to maintain competitiveness of our communities to attract the businesses that will provide a range of employment opportunities (industrial, commercial and major retail). Complete applications are a new requirement of the *Planning and Land Statute Law Amendment Act* (Bill 51) and the building permit process. This means full site plan approval is a requirement prior to submitting building permit applications.

OHBA is concerned, that without SPA, building permit applications are not considered complete and therefore have no status. It is up to the discretion of the local chief building official as to whether or not they will accept building permit application, and issue foundation to roof permits. However, due to the perceived risk of issuing foundation and roof permits, SPA timelines continue to increase. Over time, fewer and fewer conditional permits are being issued and, in many cases, the time taken to achieve final SPA ranges from nine months to more than a year. Prior to the changes in Bill 51 our members would be able to achieve satisfactory SPA in approximately three months and obtain shell permits in that same timeframe. Doing business this way leaves a tremendous amount of uncertainty in the system. OHBA recommends that the province clearly allow for the

issuance of a phased SPA. A phased SPA would then be recognized as applicable law which would then allow for permits to be issued earlier in the process.

Once zoning is confirmed, the building is sited, the urban design agreed upon, and appropriate securities obtained, the municipality could issue a phased SPA which would then allow the building permit review process to proceed through to the issuance of foundation to roof (or “shell”) building permits. Meanwhile, the applicant would continue working with the various agencies towards final SPA which would need to be provided prior to final occupancy of the building. This legislated approach would provide greater certainty and transparency in the process and would respond to the changing needs of the business community. The ICI sector needs to have building permits issued earlier in the process in order to deliver facilities within a reasonable timeframe.

Integration of Land Use Planning and Municipal Class EA Process

The Municipal Class EA process must be better integrated into the land use planning process. *Ontario’s Open for Business* roundtable through the Ministry of Economic Development and Trade previously worked with stakeholders to examine opportunities to streamline and better integrate existing requirements from the *Planning Act* with the *Environmental Assessment Act* to avoid duplication. This review process has stalled and should continue along with other improvements to Ontario’s EA process.

Conservation Authority Appeals of Fees

The province must address concerns surrounding Conservation Authority (CA) fees as currently there is no ability to appeal a CA fee to a higher body than to a CA Board of Directors. Section 69(3) and 69(4) of the *Planning Act* (Tariff of Fees) provides any person with the right to appeal any fee that they may be required to pay for the processing of an application with respect to a planning matter, where such fees have been established under a tariff pursuant to Section 69(1) of the Act. The current legislation contemplates a tariff of fees established for the processing of applications by the municipality, a committee of adjustment or a land division committee. CAs are not currently identified in the provisions of Subsection 69(1) and accordingly, there is no similar requirement for establishment of a tariff or the provision of a right of appeal to the OMB concerning the fees charged by CAs.

The ability to appeal the fees is a very important check and balance in the system for both home owners applying for minor variances and severances and for land developers applying for larger planning matters. As such, OHBA recommends that the *Planning Act* be amended to include CAs, through an amendment to Section 69. If CAs were identified under Section 69, this would allow the applicant access to an appeal process at the OMB in the event of a dispute.

In addition, OHBA continues to be concerned that members of the CA hearing boards consist of some of the members of the CA’s board of directors. OHBA is concerned that those members on the CA hearing board, who are also represented on the board of directors, create a perception of bias and conflict of interest from the hearing board.

Conservation Authority Appeals of Permits

The Office of the Mining and Lands Commissioner (OMLC) is no longer an appropriate forum for appealing these decisions. The development process largely falls under legislation contained in the *Planning Act*, however the OMLC falls under the jurisdiction of the Ministry of Natural Resources and is governed by the *Mining Act*. OHBA recommends that the appropriate amendments be made to move appeals under the Mining and Land Commissioner to the jurisdiction of the OMB. This seems reasonable, as the OMB is the appeal body which normally adjudicates all of the other planning and environmental matters associated with land use planning.

Conclusion

OHBA appreciates the opportunity to submit our recommendations with respect to Ontario's land use and appeals system for consideration by the Ministry of Municipal Affairs and Housing. OHBA expects this consultation will result in the province and municipalities demonstrating stronger leadership to ensure effective implementation of provincial policy. Furthermore, with the 80-day consultation period coming to an end, the OHBA and other stakeholder submissions should serve as an opportunity for the Ministry of Municipal Affairs and Housing to directly engage with stakeholders with respect to recommendations to improve Ontario's land use planning and appeals system.

OHBA members from across Ontario from Windsor to Cornwall and from Niagara to Thunder Bay have been very engaged with both the government and their provincial association throughout this consultation. Going forward, OHBA expects that the province will meet and engage with stakeholders including OHBA with respect to the recommendations put forward in the consultation and potential solutions. OHBA expects that there will be additional consultation prior to any new legislation moving forward impacting the land use planning and appeals system.