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(Province)

DATE: July 13, 2004

TO: Chairman and Members of the Planning and Development Committee

FROM: Edward R. Sajecki, Commissioner of Planning and Building

SUBJECT: **Planning Reform Initiatives - June 2004**
MEETING DATE: August 3, 2004

ORIGIN: Planning and Building Department

BACKGROUND: The provincial government is reviewing the Ontario Planning System. To this end, the Ministry of Municipal Affairs and Housing has stated:

"Ontario needs effective land-use planning and an effective land-use planning system. This is especially critical given the pressures confronting the province today, such as:

- *Increasing gridlock as a result of urban sprawl;*
- *Unprecedented growth pressures in some parts of Ontario, such as the Golden Horseshoe region;*
- *Loss of prime agricultural land and other resources;*
- *The need for enhanced environmental protection; and*
- *The need for a strong economy."*

As part of this review, on December 15, 2003, the Ontario government released Bill 26, an Act to amend the *Planning Act*, commonly known as the *Strong Communities Act*. On December 16, 2003, the Ontario government released Bill 27, an Act to establish a "Greenbelt Study Area" and to amend the *Oak Ridges Moraine Conservation Act*.

A staff report titled "Bill 26 Proposed *Strong Communities Act* and Bill 27 Proposed *Greenbelt Protection Act* dated March 2, 2004 from the Commissioner of Planning and Building outlining staff comments was adopted by City Council on March 31, 2004 and forwarded to the Ministry of Municipal Affairs and Housing. This report is attached as Exhibit 1.

In February, 2004, the Minister of Municipal Affairs and Housing established a 13-member Greenbelt Task Force to develop recommendations on how the Province could most effectively establish a permanent Golden Horseshoe Greenbelt.

The Greenbelt Task Force released a discussion paper titled "Toward a Golden Horseshoe Greenbelt" on May 14, 2004. Staff comments have been forwarded to the Ministry of Municipal Affairs and Housing through a report titled "Toward a Golden Horseshoe Greenbelt: Greenbelt Task Force Discussion Paper" dated June 8, 2004 from the Commissioner of Planning and Building. This report is attached as Exhibit 2.

In addition, on June 1, 2004 the provincial government released the following discussion papers to address planning reform initiatives:

- Provincial Policy Statement: Draft Policies (Exhibit 3);
- Ontario Municipal Board Reform (Exhibit 4); and
- Planning Act Reform and Implementation Tools (Exhibit 5).

Other provincial initiatives underway include:

- Growth Management Plan for the Golden Horseshoe -- a long-term strategic vision and tool for how the Golden Horseshoe and surrounding areas should grow over the next 30 years.
- Source Water Protection - in mid-February, 2004, the Ministry of Environment began consultations on how best to deliver watershed-based source protection as a way of securing the long-term quality and quantity of water resources throughout the province.

This report focusses on the comments on the three discussion papers (Exhibits 3, 4 and 5) relevant to Mississauga's interests. This report includes consultation with Transportation and Works, Community Services, the Economic Development Office and Legal Services. The deadline for comments to the Province is August 31, 2004.

COMMENTS:**PROVINCIAL POLICY STATEMENT: DRAFT POLICIES**

The Provincial Policy Statement (PPS) sets out the Ontario government's interests in land-use planning and development and provides policy direction on matters of provincial interest. The PPS is the complementary policy document to the *Planning Act* and is issued under the authority of Section 3 of the Act.

The current PPS came into effect on May 22, 1996 and was amended in 1997.

A comparison of selected proposed policies in Key Areas is contained in Exhibit 6.

Exhibit 7 contains specific comments on the Draft PPS. The comments generally refer to areas needing clarification or where Mississauga has specific concerns. Some comments, however, are offered to acknowledge endorsement for specific draft policies which Mississauga has a specific interest (eg. retention of employment lands). The remaining policies where no comment is offered either do not apply to Mississauga or are supported in principle.

In summary, the major concerns are:

- The Role of the Region - Section 1.3.3 states:

"Where planning is conducted by the upper-tier level, upper-tier governments, in consultation with lower-tier governments, will":

- identify priority growth areas and allocate population, housing and employment projections for lower-tier municipalities;
- identify targets for intensification and redevelopment;
- identify minimum densities for transit corridors, including minimum densities that should be met before alteration to the boundaries of settlement areas; and
- provide policy direction for the lower-tier municipalities for matters which cross municipal boundaries.

These policies allow for Regional interference in local land-use planning. They should be deleted.

This function should be undertaken at the provincial level, with special reference to the GTA. A Growth Management Strategy for the GTA, administered through a GTA-wide authority, is the appropriate tool for handling matters that cross municipal jurisdictions.

- Resolution of Conflict - the document refers to the "inter-relationships" among the policies and that the PPS "is intended to be read in its entirety". However, there is no guidance on how to resolve conflicts among the various policies (e.g. natural heritage vs. mineral aggregates). This must be clarified.

Smart Growth

Another major planning initiative which needs to be considered in conjunction with the Draft PPS is the work undertaken regarding smart growth.

On April 17, 2003 the Central Ontario Smart Growth Panel delivered a long-term growth strategy to the Province. The final report contained a comprehensive set of recommendations for managing and promoting growth in

Central Ontario into the year 2035.

Several of the recommendations have been incorporated into the Draft PPS; namely,

- recognizing the need for balanced growth within the complex inter-relationships among environmental, economic and social factors in land-use planning;
- focussing growth and public investment into Settlement Areas;
- managing growth within the context of the natural heritage system and protection of prime agricultural lands;
- new development should occur adjacent to the existing built-up areas;
- preserving employment lands;
- priority on optimizing existing infrastructure;
- making transit the first priority for transportation investment;
- recognizing nodes and corridors in transportation planning;
- a comprehensive review as the basis for expansion of urban areas;
- protecting the environment; and
- protecting water sources.

It is considered important that the draft PPS has included several of the principles and concepts of smart growth.

Although affordable housing and waste management are mentioned in the draft PPS, the policies that address these issues should be strengthened as significant emphasis were placed on both these issues in the recommendations of the Central Ontario Smart Growth Panel.

ONTARIO MUNICIPAL BOARD (OMB) REFORM

The discussion paper states:

"Given the magnitude of changes in the municipal environment since the OMB's creation in 1897 and the heightened understanding of the role that planning and development activities play in our communities, it is important to review the role of the OMB in the context of land-use planning reform."

Attached as Exhibit 8 is the report titled "GTA Task Force on Ontario Municipal Board (OMB) Reform, dated April 23, 2003 from the Commissioner of Planning and Building. This report concluded that the report of the "GTA Task Force on OMB Reform" was generally consistent with the concerns of City Council, particularly with respect to recommending that the role of the OMB should be more of a true appellate body correcting unreasonable planning decisions, rather than having the authority to deal with appeals as if the matter was proceeding entirely anew and enabling the Board to wholly substitute its own decision for that of the municipal council.

On May 14, 2003 City Council adopted a resolution to address "GTA Task Force on Ontario Municipal Board (OMB) Reform". Specifically, regarding conformity to the Provincial Policy Statement and appeal rights the resolution stated:

- *request the Planning Act be amended to require that the decisions of the OMB must conform to the Provincial Policy Statement;*
- *request the Planning Act be amended to eliminate appeals of Committee of Adjustment decisions to the OMB and, instead, provide for a right of appeal to City Council, the decision of which is to be final;*
- *encourage a review by the Province of Ontario of the possible elimination of other appeal rights from City Council decisions on other Planning Act applications which do not relate to major planning matters that address Provincial*

Policy or approval of Official Plans.

Building on the above, and with respect to additional issues raised in the discussion paper, Mississauga has the following comments:

Accountability

The discussion paper poses three questions:

- *Should there be some appeal mechanism for land-use planning decisions?*
- *Should the courts be used as the appeal body for land-use planning decisions?*
- *Should the OMB's ability to substitute its decision for that of an elected Council be modified?*

There should be an appeal mechanism for land-use planning decisions. However, there should also be a clear set of criteria for when it is appropriate to appeal to the OMB (e.g. major amendments to the Official Plan, matters of provincial interest).

The courts are not the appropriate venue to hear appeals on land-use matters.

The discussion paper states, "*There are those who argue that allowing un-elected OMB members, appointed by the Province, to substitute their own land use planning opinions for those of elected Councillors is undemocratic and has the effect of undermining the authority of elected Councils.*" (This is an issue for Mississauga and, therefore, Mississauga questions the OMB's ability to substitute its decision for that of an elected Council.)

Onus (De Novo Hearings)

Should the OMB continue to conduct "de novo" hearings looking at the full merits of a planning matter?

The *Planning Act* generally requires the OMB to conduct each hearing "de novo" -- to start anew.

As stated previously, the OMB should be more of a true appellate body correcting unreasonable planning decisions, rather than the authority to deal with appeals as if the matter was proceeding entirely anew and enabling the OMB to wholly substitute its own decision for that of a municipal council.

Scope

Should the scope of matters which can be appealed to the OMB be narrowed?

Yes. The *Planning Act* should be amended to eliminate appeals of Committee of Adjustment decisions, rezoning and subdivision applications. The role of the OMB should address large complex Official Plan or those matters with Provincial interest.

This report does not address the following matters raised in the discussion paper:

- independence of the OMB;
- transparency of recruitment policies for OMB members;
- terms of appointment;
- compensation;
- performance;
- education and training;
- decision-making consistency;
- evidence;
- decisions
- case management;
- alternative dispute resolution; and
- participation at the OMB.

PLANNING ACT REFORM AND IMPLEMENTATION TOOLS

The initial comment regarding the proposed tools for

implementing the province's land-use planning system is the lack of financial tools to support the policy framework. The answer to the question "What More Needs To Be Done?" -- is to introduce financial-based tools.

The Provincial government has already proposed implementation tools through the introduction of Bill 26, the Strong Communities (Planning Amendment) Act, 2004, which amends the *Planning Act* to provide an enhanced framework for planning in Ontario. Bill 26 received second reading on May 13, 2004.

The main proposals in Bill 26 include:

- 1. Increasing the time that decision-makers have to review and make decisions on specific planning applications (ie. official plans/amendments, zoning bylaws, holding bylaws, subdivisions/condominiums and consents).*
- 2. Changing the implementation standard so that decisions affecting a planning matter must be "consistent with" provincial policy statements issued under the Planning Act.*
- 3. Ensuring that municipalities have the ability to determine their urban settlement boundaries by limiting OMB appeals on applications to amend official plans or zoning bylaws for urban settlement area boundary alterations or to establish a new urban settlement area where the proposals are not supported by municipal councils.*
- 4. Giving the province the authority to confirm, vary or rescind an OMB decision on an official plan or zoning/holding bylaw if, in the Minister's view, all or part of the matter adversely affects or is likely to adversely affect a provincial interest and a provincial interest is declared.*
- 5. Providing the Minister with the authority to make a regulation to deal with transition matters (e.g., how to deal with planning applications currently under review).*

As previously mentioned, Mississauga has already submitted comments on Bill 26.

With respect to ideas for further reform, Mississauga offers the following comments in response to the questions posed:

Complete Application

Does the Act and the accompanying regulations regarding "complete applications" already require adequate information to be provided with land use planning applications?

The *Planning Act* requirements for an application are insufficient. City Council should have all necessary studies available when considering an application to eliminate delays in processing and consideration of applications. The *Planning Act* should be amended to indicate that a complete application include any study required by a municipality.

Complete Applications for Minor Variances and Consents

Currently, Ontario Regulations 200/96 and 197/96 dictate what information and material are to be provided in an application under Section 45 and 53 of the *Planning Act*. This section of the Ontario Regulations should be expanded to provide more detail to allow the municipality to have a clear understanding of what information and documents form a complete application. For example, under the regulations, a "sketch" is to be provided with the application. A sketch may not provide sufficient information to evaluate the application but there is no mechanism to refuse the application with only a sketch. Some sketches received do not provide sufficient information and typically lead to an application being deferred to provide additional information.

Redevelopment, Infilling, Intensification and Compact Urban Form

Would changes to the Planning Act address these issues and make the planning system more responsive to the needs of

Ontario's communities and support a healthy economy?

The issues identified seem to be sufficiently addressed through existing procedures in the *Planning Act*. However, this type of development involves greater public consultation and, therefore, may require longer approval times.

Also, clarification is needed as to the difference among proposed conditional zoning, holding zone and the Development Permit System.

Bonusing

Does the ability to bonus support the objective of compact urban form and provide for community amenities?

Bonusing is used to permit an owner to increase the density of a site if a public facility is provided. In this regard, it would support compact urban form and allow for community amenities.

To date, bonusing has not been used in Mississauga. However, as Mississauga moves into intensification, this tool may contribute towards achieving intensification, compact urban form, and affordable housing. However, the relationship between increased density and the appropriate community amenities must be clarified.

In addition, clarification is required as to whether or not bonusing could be used in a situation of lands requiring to be assembled.

Transfer of Development Rights

Should transfer of development rights be a mechanism to achieve density increases in appropriate locations?

The transfer of development rights could assist in matters such as heritage and woodlot preservation. However, the issue of residential development rights, after they have been transferred, must be clarified.

Content of Official Plans

Should the Act more specifically set out and broaden the content of Official Plans?

The content of Official Plans is a municipal matter and sufficient flexibility must be provided to meet the various needs of municipalities. The provincial government should limit its role to ensuring that provincial government policy and areas of provincial interest are addressed by Official Plans.

Up to Date Planning Documents and Review of Official Plans

Should the Planning Act require that land use planning documents, such as official plans and zoning by-laws, be kept more up-to-date?

While planning documents should be up to date and consistent with the PPS, a mandatory five-year review may be inappropriate and unnecessary given the length and expense involved to complete a comprehensive review. Municipalities should determine the content of their own official plans and their review.

Official Plan and Environmental Assessment Processes

Should the province prepare a regulation or take other action to further harmonize these processes?

Some land uses with considerable environmental impact may require not only planning approvals, but also approvals under the *Environmental Assessment Act*.

Efforts should be made to avoid duplication and to reduce delays by continuing to harmonize these processes.

Effective Dates of Policies

Should the Planning Act be amended to state that the most up-to-date policies should apply if new policies are approved before a decision has been made on an application?

It is suggested that the most up-to-date policies be used to make a decision on development applications.

Performance Monitoring

Should key planning interests and conditions be monitored on a regular basis so trends can be identified and planning policies adjusted to respond to changing circumstances and conditions?

The *Planning Act* does not require performance monitoring for land-use planning.

While performance monitoring can be a useful tool in planning, clarification is required with respect to:

- who does the monitoring -- upper or lower tier municipality?
- who reviews the information -- upper tier, lower tier, Province?
- who is responsible for paying for monitoring? -- additional time, additional staff.

Increased Planning Decision Timelines (Background to Bill 26)

Mississauga has expressed a concern that the province did not review the minor variance process. The right to appeal date should be extended from 60 days to 90 days to allow additional material to be filed for a complete application to be considered by the municipality and committee.

Further, the province should increase the timelines for minor variances to 45 days to allow for the submission of a complete application and for flexibility in processing agendas. Committee of Adjustments in larger municipalities, such as Mississauga, which deal with many applications, require flexibility to organize and prepare agendas so that items are prepared in a manner that does not overload meetings and prevents lengthy public meetings.

Although not part of the proposed Bill 26, the provincial government should also review Sections 45 and 53 and the timelines for each process. The notification timelines should be identical for minor variances and consents. Currently, minor variances require 10 days notice and consents require 14 days notice.

Possible New Planning Tools -- Community Improvement Plans (CIP)

Permit upper-tier municipalities to prepare Community Improvement Plans as a framework to offer financing incentives to facilitate private sector initiatives, such as transit corridors, that have region-wide significance or span more than one municipality.

Who will provide the financial initiative? In the case of the Region of Peel, the Region does not provide or pay for transit (except Trans Help) in Mississauga or Brampton. Clarification is needed.

CIP should be prepared by the lower-tier or local municipality.

Consultation Questions

The discussion paper contained a series of additional questions.

- 1. Do you believe additional revisions are required to any existing provisions in the Planning Act to make the planning system more effective?*

Subsection 41(12) of the *Planning Act* should be amended to eliminate the opportunity "where the owner of the land is not satisfied with any of the requirements made by the municipality" to refer a site plan to the OMB. The setback requirements and other provisions have been the subject of a public process and a site plan is implementing the zoning by-law provisions. In addition, the conditions of site plan approval are outlined in subsection 41(7) of the Act.

4. Do you have any other suggestions for improving the land-use planning system in Ontario?

To allow for greater involvement of the public and to take their comments/concerns into consideration prior to making a decision, there should be a consistent approach throughout the province. A two-step reporting approach is suggested. At the time of the public meeting required under the *Planning Act*, at which time the public has the opportunity to provide comments, a decision on the appropriateness of the application should not be made in the report before City Council. The comments from the public and the commenting departments/agencies should be taken into account when considering the appropriateness of the application in a subsequent report to City Council.

5. What changes to existing planning implementation tools would assist in building strong communities, providing more efficient land-use planning and discouraging urban sprawl?

Criteria are required as to what circumstances Holding By-laws (Section 36) and Interim Control By-laws (Section 38) should be used in order to implement a consistent approach throughout the Province.

CONCLUSION:

On June 1, 2004 the provincial government released for comments three discussion papers to address planning reform. The Planning and Building Department has co-ordinated comments from other City Departments to forward to the Ministry of Municipal Affairs and Housing.

RECOMMENDATION:

That the report titled "Planning Reform Initiatives - June 2004" dated July 13, 2004 from the Commissioner of Planning and Building be forwarded by the City Clerk to the Ministry of Municipal Affairs and Housing.

Original Signed By:

Edward R. Sajecki

Commissioner of Planning and Building