

DATE: March 2, 2004

TO: Chairman and Members of the Planning and Development Committee

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

SUBJECT: **Bill 26 Proposed *Strong Communities Act* and
Bill 27 Proposed *Greenbelt Protection Act*
Meeting Date: March 22, 2004**

ORIGIN: Planning and Building Department

BACKGROUND: 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*. The draft legislation is attached as Exhibits I and II, respectively. The Bills have received first reading, and require second and third readings, together with Royal Assent, in order to become law.

COMMENTS: **Bill 26 - *Strong Communities (Planning Amendment) Act***

In introducing Bill 26, the Minister of Municipal Affairs stated the intent of Bill 26 is to "*give communities the much-needed tools to control their own planning*" by putting "*the ability to guide urban development back into the hands of locally elected decision makers*".

The salient proposed changes are as follows:

Urban Expansions

Bill 26 is proposing to prevent appeals to the Ontario Municipal Board (OMB) for urban expansions that are opposed by elected municipal governments stating, "a person or public body may not appeal to the Municipal Board in respect of all or any part of a requested amendment, if the amendment, or part of the amendment, proposes to alter all or any part of the boundary of an urban settlement area in a municipality or establish a new urban settlement area in a municipality". An Urban Settlement Area is defined as "an area of land designated in an official plan for urban uses including urban areas, urban policy areas, towns, villages, hamlet, rural cluster, rural settlement areas, urban systems, rural service centre or future urban use areas, or as otherwise prescribed by regulation".

Mississauga is designated as being within an Urban Settlement Area.

Consistency With Provincial Policy Statement

The Bill requires that decisions of a municipal council "shall be consistent with" the Provincial Policy Statements rather than "have regard to". The change will bring certainty to the manner in which Provincial Policy Statements (PPS) will be applied in local municipal decision-making on planning matters. It will be incumbent for the City to consider Provincial Policy in each planning application (and not just at the official plan stage) and ensure that each application is evaluated in the context of whether or not it is consistent with Provincial Policy. This requirement is more restrictive and may have the effect of giving Provincial Policy primacy over local planning interests, however, some leeway may be required to address unique, local situations. Clarification of "consistent with" may be required as there are some differences of opinion on how strictly one adheres given the existing language in the PPS. Further direction from the Province will also be required to address competing Provincial interests such as resource extraction and environmental protection.

Finally, and most importantly, the PPS will require a level of clarity, detail and precision that can be easily interpreted when applying the "be consistent with" requirement. Any proposed changes to the PPS will accordingly require careful consideration given the requirement for strict adherence by municipalities.

Planning Review Time Frames

Bill 26 is proposing increased time periods for development application review before an applicant can refer the matter to the OMB. The time period for applications for Official Plan amendments, subdivision and condominium approvals will increase from 90 to 180 days. For applications for Zoning By-law amendments and holding by-laws, the time period will increase from 90 to 120 days. The time frames for consents will be increased to 90 days from 60 days. The Province has stated that "the time extensions would allow municipalities more time to thoroughly study and consider the full implications of development applications".

These changes are positive for municipalities and should be supported.

However, these changes address only part of the problem. There is a further important issue as to what constitutes a "complete application" which triggers the commencement of the time periods. The *Planning Act* currently distinguishes between the statutory requirements for a complete application, and the ability of a municipal by-law to set out additional requirements for an application. There is an Ontario Superior Court decision which says that as long as the statutory requirements for a complete application are satisfied, even if the municipality's by-law requirements have not been met, then it is still sufficient to trigger the time period. This renders virtually meaningless the provision, whereby, municipalities can request additional information, as there is no consequence attached to the applicant if they fail to provide such additional information (although in theory the application may fail on its merits if adequate information and planning justification is not provided).

OMB and Matters of Provincial Interest

The Bill states "Where an appeal is made to the OMB, the Minister, if he or she is of the opinion that a matter is of Provincial Interest, or likely to be adversely affected by the amendment, or any part of the amendment, in respect of which the appeal is made, may so advise the Board in writing not later than 30 days before the day fixed by the Board for the hearing". These provisions would complement the revised wording requiring municipalities to be "consistent with" Provincial Policy.

The Bill also states that "the decision of the Board is not final and binding in respect of the provision of the amendment or provision of any part of the amendment identified in the notice unless the Lieutenant Governor in Council has confirmed the decision in respect of those provisions. Further, the "Lieutenant Governor in Council may confirm, vary or rescind the decision of the Municipal Board in respect of the provisions of the amendment identified in the notice and in doing so may direct the Minister to modify the amendment". Once this occurs, any decision of the OMB is not final and binding, but is subject to what the Provincial Cabinet will later decide. This ensures that the OMB makes decisions consistent with the PPS as identified by the Province.

Bill 27 - *Greenbelt Protection Act*

The key features of this Act include:

Greenbelt Study Area

For a one-year period, from December 16, 2003, lands within Durham, Halton, Peel, York, Hamilton, Toronto, Niagara, from the south shore of Lake Ontario to the Niagara Escarpment, portions of the Niagara Escarpment located north of Peel and east of Hamilton, portions of the Oak Ridges Moraine Area located east of the boundary of Durham and northern boundaries of York and Peel, and lands within Lincoln, Pelham, Thorold, Grimbsy and Niagara Falls designated as good tender fruit areas or good grape growing areas will form part of the "Greenbelt Study Area". The areas included in the "Greenbelt Study Area are attached as Exhibit III. In these areas, municipalities will not be permitted to

enact by-laws, approve official plan amendments or grant draft plan approval to permit urban uses outside designated urban settlement areas.

Retroactive Legislation

Notwithstanding that the Bill is not in effect, once it becomes law, any by-law or approval that contravenes the Bill passed after December 16, 2003 is of no effect.

Further, neither the OMB nor the joint board may make any decisions within the "Greenbelt Study Area" if it contravenes the Bill. The Bill includes provisions that, if a matter relating to the lands in the "Greenbelt Study Area" has been appealed or referred to a joint board, or to the OMB, whether before or after December 16, 2003, the Minister may notify the tribunal that its consideration of the matter should be deferred. This would freeze all matters before the OMB during the moratorium.

Limitations on Remedies

The Bill contains provisions which state: "no costs, compensation or damages are owing or payable to any person as a result of the moratorium and further that nothing done or not done in accordance with this Act or the regulations under it constitutes an expropriation or injurious affection". This would prevent land owners from seeking compensation if their lands are prevented from being developed as a result of this legislation.

Oak Ridges Moraine Act

There are also provisions in Bill 27 which propose to amend the *Oak Ridges Moraine Conservation Act, 2001* by introducing transition provisions for development applications which require further approvals under the *Planning Act*. Also, there will be "legal non-conforming" provisions added to the *Oak Ridges Moraine Conservation Act*. The *Oak Ridges Moraine Act* is not applicable in Mississauga.

Ministerial Zoning Order

While the legislation is being considered, the Minister, at the time the Bill was introduced, imposed a moratorium on development through a Minister's Zoning Order which prohibits all new uses of land in areas that are not located within a current urban settlement area and not expressly exempt from the moratorium. Exemptions include: rural or agricultural lands designated for housing within an urban boundary; land protected by the Niagara Escarpment Planning Area and the Oak Ridges Moraine Area; Duffin-Rouge Agricultural Preserve; the Pickering Airport lands; and the City of Toronto.

Greenbelt Task Force

On February 16, 2004, the Province appointed 12 members to a Provincial Task Force chaired by Mayor MacIssac of Burlington. These individuals have varied backgrounds and experience in development, viniculture, agriculture, environmental protection, aggregate production, environmental law and planning. This group will study permanent greenbelt boundaries this spring and make recommendations for action.

Implications for Mississauga

Although the City of Mississauga is part of the study area, it is not anticipated that there will be a direct impact on City operations as we meet the definition of an urban settlement area. However, due to our proximity to rural areas where there is pressure for development, it will be important to monitor the *Greenbelt Protection Act* as well as the impact on the Ninth Line Corridor Area.

CONCLUSION:

The Planning and Building Department will continue to monitor the progress of Bills 26 and 27 and report to Planning and Development Committee.

RECOMMENDATIONS:

1. That the Council of the Corporation of the City of Mississauga endorse the draft Provincial legislation known as Bill 26 (Proposed *Strong Communities Act - An Act to amend the Planning Act*) and Bill 27 (Proposed *Greenbelt Protection Act - An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001*).
2. That a copy of the 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, be forwarded, by the City Clerk, to the Ministry of Municipal Affairs, and to the Association of Municipalities of Ontario (AMO).

Original Signed By:

Edward R. Sajecki
Commissioner of Planning and Building