

## Municipal & Environmental Law Bulletin

### The Standing Committee on General Government Adopts Amendments to Bill 51

by Laura Bisset & Chris Barnett

We reported in the spring of this year on Bill 51, “An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts,” (the “Bill”) which was introduced by the Minister of Municipal Affairs and Housing on December 12, 2005. The purpose of the Bill was and remains “to ensure that Ontario has an open, fair and transparent land use planning appeal process.” The Bill, if passed, will change the land use planning process significantly.

Second reading of the Bill occurred in April, and on the 26th of April the Bill was referred to the Standing Committee on General Government. The Committee held public hearings at the beginning of August, and gave clause by clause consideration to the Bill at the end of that month. The clause by clause consideration yielded a series of amendments, which were passed by Committee to address a number of the issues raised by stakeholders during the hearing process. The amendments will be referred to the Legislature before third and final reading of the Bill.

While many amendments were adopted at Committee, many of them were not substantive and were essentially “housekeeping” and changes to drafting style.

Some of the substantive amendments to the Bill are:

- **Complete Application:** The Bill has been amended to permit the OMB to make a determination not only as to whether an application is complete according to a municipality’s requirements, but also as to whether the requirements for a complete application are “reasonable”. A municipality will be required to determine within 30 days of an application for official plan, zoning by-law amendment or subdivision approval whether the required information for a complete application has been filed. The applicant will now have the option to bring a motion within 30 days of this notice to the Board to determine if the application is complete, or to decide whether the complete application requirements are reasonable. The Board’s decision in this regard is not subject to appeal or review.

- **Evidence at Hearings:** The amendments have removed the controversial limitation on private parties placing evidence before the Board that was not before council. The Bill now proposes that the OMB have a greater degree of discretion in determining whether evidence that was not before council at the time of application for official plan amendment ought to be admissible on appeal to the Board. Where information or material that is presented at a hearing (by either a public or private party) was not provided to the municipality before it made its decision, the Board will consider whether the information *could have* materially affected council's decision. If the Board determines that the information could have materially affected council's decision, the information will not be admitted into evidence at the hearing. The Board will give notice to the municipality that it has the opportunity to reconsider its decision and make a recommendation to the Board. Where council makes a recommendation to the Board, the Board is required to "have regard for" the council's recommendation. The Bill had previously used the language "consider" the recommendation.
- **Employment Land Conversion Appeals:** The Bill continues to propose a limitation on appeals from a refusal to amend an official plan to remove lands from an employment designation. However, that limitation will only apply where the official plan in question has policies that relate the removal of land from an area of employment.
- **Dismissal Without Hearing Where Applications Changed:** The amendments allow the Board to dismiss an appeal of an application that is *substantially different* from what council has considered. The meaning of "substantially different" is not defined; in fact, legal counsel from the Minister's office advised the Committee that the meaning of these words will develop through Board jurisprudence.
- **Open Houses:** The Bill will now only require open houses prior to statutory public meetings for certain applications. While the Bill had previously proposed open houses on all applications, they will now only be required during the five year review of an official plan or where an OPA is proposed for a development

permit system. Open houses will also be required for zoning by-law amendments to conform to a revised OP, or to implement development permits.

The list of matters that the Minister may deal with by way of regulation remains a long one, which continues to create considerable uncertainty as to the way in which the Bill will ultimately function. The Minister has posted a series of proposed regulations on the EBR website, including a transition proposal. The proposed regulations remain open for comment until October 2, 2006.✪

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