STIRRING THE POT:
Recent Planning Legislation and the Ontario Municipal Board

CONNECTIONS 2005
Hamilton-Burlington

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INTRODUCTION

- Legislative Initiatives:
  - Strong Communities (Planning Amendment) Act, 2004
    - Restrictions of appeals regarding boundaries of settlement areas
    - Re-introduction of referrals of OMB decisions to cabinet for matters of provincial interest
    - Longer processing periods before appeals may be made
    - Replacing “have regard to” with “be consistent with”
  - The Greenbelt Act and the Greenbelt Plan
  - Places to Grow Act and the Growth Management Plan
  - Ontario Heritage Act
- Ontario Municipal Board Reform.

STRONG COMMUNITIES (PLANNING AMENDMENT) ACT, 2004

PLANNING ACT

- Times of Significant Planning Act Reform:
  - 1983
  - 1994 (Bill 163)
  - 1996 (Bill 20)
  - 2004 (Bill 26)

STRONG COMMUNITIES ACT

- On November 30, 2004 the *Strong Communities (Planning Amendment) Act, 2004,* (Bill 26) received Royal Assent. This Act amends the *Planning Act.*

AREAS OF SETTLEMENT:
Rights Of Appeal

- Previously, the *Planning Act* allowed appeals to the Ontario Municipal Board (OMB) for all amendments to official plans and zoning bylaws.
- Now, the right to make “private appeals” in regard to “areas of settlement” has been largely removed.

DEFINITION OF "AREA OF SETTLEMENT"

- A definition of "area of settlement" is added to subsection 1(1) of the *Planning Act.*
  - *An area of land designated in an official plan for urban uses including:*
    - ***Urban areas,***
    - ***Urban policy areas,***
    - ***Towns, villages, hamlets, rural clusters,***
    - ***Rural settlement areas,***
    - ***Urban systems,***
    - ***Rural service centres, or***
    - ***as otherwise prescribed by regulation***

AREAS OF SETTLEMENT:
No Right of Appeal:
Requested Official Plan Amendments

- The *Planning Act* removes the right to appeal to the OMB an official plan amendment initiated by an applicant that proposes either:
  - to alter an “area of settlement” boundary or
  - establish a new “area of settlement”.

  where:
  - a municipality refuses to adopt or makes no decision on a request to adopt an amendment (s.22(7.1)), or,
  - an approval authority refuses or makes no decision on an amendment (s.22(7.2)), or
  - a municipality adopts a “plan” including lands for which a private amendment was made. (s.22(7.3))

  [Deemed date enactment commenced: 15 December 2003]

AREAS OF SETTLEMENT:
Right of Appeal: Requested Official Plan Amendments to Lower Tier Official Plans

- A right of appeal remains where a lower-tier municipality refuses or fails to adopt an amendment to alter an “area of settlement” boundary or establish a new “area of settlement” and such amendment conforms to the official plan of the upper tier municipality. (s.22(7.4))

  [Deemed date enactment commenced: 15 December 2003]

AREAS OF SETTLEMENT:
Right of Appeal: Requested Zoning By-law Amendments

- The right to appeal in regard to a requested amendment to a zoning by-law that proposes to implement either an alteration to an “area of settlement” boundary or the establishment of a new “area of settlement” has been removed. (s.34(11.0.1))

  [Deemed date enactment commenced: 15 December 2003]

PRIVATE OP AMENDMENT APPLICATIONS: Some Processing Time Limits Removed

- Prior to the 2004 amendments, the Act required that council:
  - give notice of a public meeting within 45 days and
  - hold a public meeting within 65 days

  from the receipt of a complete application for an official plan amendment.

- After the 45-day time period an appeal to the OMB could be made.

- The 45-day notice requirement and the related 65-day time period for holding a public meeting have been repealed. (s.22(1)(b)/22(2)(b)) [Deemed date enactment commenced: 15 December 2003]

- The 1994 amendments to the Act required the public meeting to be held within 120 days and the notice was required to be given within 90 days but these were shortened by the 1996 amendments.

PRIVATE OP AMENDMENT APPLICATIONS: Processing Times Made Longer Again

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- *22. (7) A person or public body that requests an amendment to the official plan of a municipality or planning board may appeal to the Municipal Board in respect of all or any part of the requested amendment by filing a notice of appeal with the clerk of the municipality or the secretary-treasurer of the planning board if,*

  (a) Repealed: 2004, c. 18, s. 4(4)

  (b) Repealed: 2004, c. 18, s. 4(4)

  (c) the council or the planning board fails to adopt the requested amendment within 180 days after the day the request is received;

  [Enactment commenced: 30 November 2004]

  (d) a planning board recommends a requested amendment for adoption and the council or the majority of the councils fails to adopt the requested amendment within 180 days after the day the request is received;

  [Enactment commenced: 30 November 2004]

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PRIVATE OP AMENDMENT APPLICATIONS: Processing Times Made Longer Again

- The 2004 amendments changed the time periods in s. 22(7)(c) and s. 22(7)(d) from 90 days to 180 days. This merely returned them to the time period originally established by the 1994 amendments.

- Prior to the 1994 amendments, municipal councils were given 30 days to adopt a proposed official plan amendment before the right to request that the Minister refer the matter to the Municipal Board crystallized.

- Once the request to the Minister was made, whether because of a failure to adopt within 30 days or because of a refusal to adopt the requested amendment, the Minister was given complete discretion as to the processing of the request and as to whether to refer the matter to the Municipal Board. As a matter of practice, the Minister rarely refused to refer a matter to the Board. This procedure no longer applies, having been replaced with the appeal approach.

LENGTHENED PROCESSING TIMES:
Official Plan Amendments

- *17. (40) If the approval authority fails to give notice of a decision in respect of all or part of a plan within 180 days after the day the plan is received by the approval authority, any person or public body may appeal to the Municipal Board with respect to all or any part of the plan in respect of which no notice of a decision was given by filing a notice of appeal with the approval authority.*

  [Amendment commenced: 30 November 2004]

- When a provision similar to s. 17(40) was introduced into the statute in 1994 as s. 17(33), the processing time period for consideration by an approval authority was set as 150 days. The 1996 amendments reduced this time period to 90 days. The 2004 amendments lengthened to the present 180 days.

LENGTHENED PROCESSING TIMES:
Zoning By-law Amendments

- *34. (11) Where an application to the council for an amendment to a by-law passed under this section or a predecessor of this section is refused or the council refuses or neglects to make a decision thereon within 120 days after the receipt by the clerk of the application, the applicant may appeal to the Municipal Board and the Board shall hear the appeal and dismiss the same or amend the by-law in such manner as the Board may determine or direct that the by-law be amended in accordance with its order.*

  [Amendment commenced: 30 November 2004]

- When originally enacted in 1959, the right of appeal crystallized after 30 days. This remained the case until 1994 when the time period was increased to 90 days and then further increased to120 days with the 2004 amendment.

LENGTHENED PROCESSING TIMES:
Holding By-laws

- *36. (3) Where an application to the council for an amendment to the by-law to remove the holding symbol is refused or the council refuses or neglects to make a decision thereon within 120 days after receipt by the clerk of the application, the applicant may appeal to the Municipal Board and the Board shall hear the appeal and dismiss the same or amend the by-law to remove the holding symbol or direct that the by-law be amended in accordance with its order.*

  [Amendment commenced: 30 November 2004]

- In 1983, when holding provisions were first introduced into the statute, the subsection provided for a 30 day processing period before the right of appeal crystallized. That time period was extended to 90 days by the 1994 amendments and to 120 days by the 2004 amendments.

LENGTHENED PROCESSING TIMES: Subdivisions

- *51. (34) If an application is made for approval of a plan of subdivision and the approval authority fails to make a decision under subsection (31) on it within 180 days after the day the application is received by the approval authority, the applicant may appeal to the Municipal Board with respect to the proposed subdivision by filing a notice with the approval authority, accompanied by the fee prescribed under the Ontario Municipal Board Act.*

  [Amendment commenced 30 November 2004]

- The 1994 amendments introduced the first processing time limits in regard to draft plans of subdivision. The time limit was set as 180 days. This was decreased to 90 days by the 1996 amendments and increased back to 180 days by the 2004 amendments.

LENGTHENED PROCESSING TIMES:
Consents

- *53. (14) If an application is made for a consent and the council or the Minister fails to make a decision under subsection (1) on the application within 90 days after the day the application is received by the clerk of the municipality or the Minister, the applicant may appeal to the Municipal Board with respect to the consent application by filing a notice with the clerk of the municipality or the Minister, accompanied by the fee prescribed under the Ontario Municipal Board Act*.

  [Amendment commenced 30 November 2004]

- The 1994 amendments introduced the first processing time limits in regard to consent applications. The time limit was set as 90 days. This was decreased to 60 days by the 1996 amendments and increased back to 90 days by the 2004 amendments.

MINISTERIAL DECLARATION REGARDING PROVINCIAL INTEREST

- The Minister has the authority to declare that an appeal before the OMB may adversely affect a matter of provincial interest, regardless of when the application was submitted.
- This authority was first introduced into the *Planning Act* in 1983, was removed by the 1994 amendments and was re-introduced in 2004.
- Matters before the OMB that may be affected by such provincial intervention include official plans, official plan amendments, zoning bylaws, zoning bylaw amendments and “holding” bylaws.

MINISTERIAL DECLARATION REGARDING PROVINCIAL INTEREST: OFFICIAL PLAN MATTERS (s.17(51)-(54) and s.22(11.1)-(11.4))

- *17. (51) Where an appeal is made to the Municipal Board under this section, the Minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the plan or the parts of the plan 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 of the appeal and the Minister shall identify,*

  (a) the provisions of the plan by which the provincial interest is, or is likely to be, adversely affected; and

  (b) the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected.

  [Enactment commenced: 30 November 2004]

- *17. (52) The Minister is not required to give notice or to hold a hearing before taking any action under subsection (51).*

  [Enactment commenced: 30 November 2004]

MINISTERIAL DECLARATION REGARDING PROVINCIAL INTEREST: OFFICIAL PLAN MATTERS

- *17. (53) If the Municipal Board has received notice from the Minister under subsection (51), the decision of the Board is not final and binding in respect of the provisions identified in the notice unless the Lieutenant Governor in Council has confirmed the decision in respect of the provisions.*

  [Enactment commenced: 30 November 2004]

- *17. (54) The Lieutenant Governor in council may confirm, vary or rescind the decision of the Municipal Board in respect of the provisions of the plan identified in the notice and in doing so may direct the Minister to modify the provisions of the plan.*

  [Enactment commenced: 30 November 2004]

MINISTERIAL DECLARATION REGARDING PROVINCIAL INTEREST: ZONING MATTERS s.34(27)–(30), INCLUDING HOLDING PROVISIONS BY-LAWS (s.36(3.1)-(3.4))

- Effect of Ministerial Intervention on when by-laws come into force:
  - *34. (30) If one or more appeals have been filed under subsection (19), the by-law does not come into force until all of such appeals have been withdrawn or finally disposed of, whereupon the by-law, except for those parts of it repealed or amended under subsection (26) or as are repealed or amended by the Lieutenant Governor in Council under subsection (29.1), shall be deemed to have come into force on the day it was passed.*

REQUEST BY MINISTER TO AMEND OFFICIAL PLAN REGARDING MATTER OF PROVINCIAL INTEREST

- *23. (1) Where the Minister is of the opinion that a matter of provincial interest as set out in a policy statement issued under section 3 is, or is likely to be, affected by an official plan, the Minister may request the council of a municipality to adopt such amendment as the Minister specifies to an official plan and, where the council refuses the request or fails to adopt the amendment within such time as is specified by the Minister in his or her request, the Minister may make the amendment.*
- *23. (2) Where the Minister proposes to make an amendment to an official plan under subsection (1), the Minister may, and on the request of any person or municipality shall, request the Municipal Board to hold a hearing on the proposed amendment and the Board shall thereupon hold a hearing as to whether the amendment should be made.*

REQUEST BY MINISTER TO AMEND PLAN REGARDING MATTER OF PROVINCIAL INTEREST

- *23. (3) Despite subsection (2), where the Minister is of the opinion that a request of any person or municipality made under subsection (2) is not made in good faith or is frivolous or vexatious or is made only for the purpose of delay, the Minister may refuse the request.*
- *23. (4) Where the Minister has requested the Municipal Board to hold a hearing as provided for in subsection (2), notice of the hearing shall be given in such manner and to such persons as the Board may direct, and the Board shall hear any submissions that any person may desire to bring to the attention of the Board.*

REQUEST BY MINISTER TO AMEND PLAN REGARDING MATTER OF PROVINCIAL INTEREST

- *23. (5) The Municipal Board, after the conclusion of the hearing, shall make a decision as to whether the proposed amendment, or an alternative form of amendment, should be made <u>but the decision is not final and binding unless the Lieutenant Governor in Council has confirmed it</u>.* [2004 amendment underlined]

  [Amendment commenced: 30 November 2004]
- *23. (6) <u>The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Municipal Board made under subsection (5) and in doing so may direct the Minister to amend the plan in such manner as the Lieutenant Governor in Council may determine.</u>*

  [Enactment commenced: 30 November 2004]
- Section 23 was introduced into the Planning Act by the 1983 Amendments.

CONSISTENCY WITH PROVINCIAL POLICY STATEMENT: SUBSECTIONS 3(5)(6)

- **Previously, subsections 3(5)-(6)provided that all municipal councils, local boards, ministers of the Crown, ministries, boards, commissions or agencies of the government, including the OMB, when exercising any authority or providing advice that affected a planning matter, "shall have regard to" provincial policy statements issued under the *Planning Act.***

- **The 2004 amendments require that the decisions and advice of the above-noted land-use planning participants "shall be consistent with" provincial policy statements. The language of "shall have regard to" was first introduced into the Act by the 1983 amendments when the concept of provincial policy statements was first introduced. It was replaced with the "shall be consistent with" language by the 1994 amendments. This language was replaced,in turn, by the "shall have regard to" language by the 1996 amendments. Thus, prior to the 2004 amendments, "shall be consistent with" was in effect from March 28, 1995 to May 21, 1996..**

- **The Provincial Policy Statement made along with the 2004 amendments came into effect on March 1, 2005 with no retroactive effect.**

CONSISTENCY WITH PROVINCIAL POLICY STATEMENT: Meaning?

- "shall be consistent with":
  - "provides very little – if any – discretion" [*Delhi (Township) Official Plan Amendment No. 64 (Re)*, [1997] O.M.B.D. No. 154]
  - "higher standard" or "test" [*Material Handling Problem Solvers Inc. v. Essex (Town)*, [2002] O.M.B.D. No. 1133, application for leave to appeal dismissed]
  - Dictionary definitions of consistent:
    - "having agreement with itself or something else"
    - "accordant"
    - "harmonious"
    - "compatible"
    - "not contradictory"

PROVINCIAL POLICY STATEMENT

- Issued under Section 3 of the *Planning Act*.
- Approved by the Lieutenant Governor in Council, Order in Council No. 140/2005.
- New PPS came into effect on March 1, 2005.
- Applies to all applications, matters or proceedings commenced on or after March 1, 2005.

PROVINCIAL POLICY STATEMENT

- Key component of Ontario's policy-led planning system.
- Aims to provide for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural environment.
- Vision for Ontario's Land Use Planning System (Part IV)
- Policies (Part V):
  - Building Strong Communities (1.0)
  - Wise Use And Management of Resources (2.0)
  - Protecting Public Health and Safety (3.0)
- Implementation and Interpretation (4.0)
- Figure 1 (Natural Heritage Protection Line) (5.0)
- Definitions (6.0)

TRANSITION PROVISIONS

- A new section 70.4 has been added to the *Planning Act* enabling the Minister to make regulations dealing with transitional matters.

- A regulation has been made to provide direction on how the *Strong Communities (Planning Amendment) Act, 2004* provisions will apply to planning applications. (See Ontario Regulation 385/04.)

- This regulation is effective as of November 30, 2004.

TRANSITION PROVISIONS

- Applications Not Affected by the *Strong Communities (Planning Amendment) Act, 2004*
  - Planning applications commenced **before** December 15, 2003 are not subject to the new provisions.
  - Planning applications commenced **on** or **after** December 15, 2003 and **before** November 30, 2004 (Royal Assent), **except** applications for official plan amendments and those zoning bylaw amendment applications that implement an alteration to an “area of settlement” boundary or implement a new “area of settlement”, are not subject to the new provisions.
  - Notwithstanding the above, the Minister of Municipal Affairs and Housing has the authority to declare that a matter may adversely affect a provincial interest regardless of when the application was submitted.

TRANSITION PROVISIONS

- Official Plan Amendment Applications Submitted On or After December 15, 2003
  - Subject to the provisions of the *Strong Communities (Planning Amendment) Act, 2004.*
  - Therefore:
    - if the applicant seeks an official plan amendment that alters or establishes an “area of settlement” boundary and it was refused or no decision was made, it cannot be appealed,
    - council is not required to give notice of a public meeting within 45 days of the receipt of a complete application for an official plan amendment or to hold a meeting within 65 days.

TRANSITION PROVISIONS

- Official Plan Amendment Timelines
  - Official plan amendment applications made **before** November 30, 2004 (Royal Assent) are subject to 90-day decision timelines.
  - Official plan amendment applications made **on** or **after** November 30, 2004 (Royal Assent) are subject to the new 180-day decision timelines.

TRANSITION PROVISIONS

- Zoning Bylaw Amendment Applications Submitted On or After December 15, 2003
  - A zoning bylaw amendment application made **on** or **after** December 15, 2003 that implements the alteration to an “area of settlement” boundary or implements a new “area of settlement” is subject to the new changes. Where this type of zoning bylaw amendment application has been refused or no decision has been made, the application cannot be appealed.

TRANSITION PROVISIONS

- Zoning Bylaw Amendment Application Timelines
  - Zoning bylaw amendment applications made **before** November 30, 2004 (Royal Assent) are subject to 90-day decision timelines.
  - Zoning bylaw amendment applications made **on** or **after** November 30, 2004 (Royal Assent) are subject to the new 120-day decision timelines.

TRANSITION PROVISION

- Notification that a Matter before the Ontario Municipal Board may adversely affect a Provincial Interest
  - The Minister of Municipal Affairs and Housing has the authority to declare a provincial interest for appeals made on official plans, zoning bylaws and “holding” bylaws, regardless of when the application was submitted.
  - For the purposes of this authority, a “hearing” starts when the hearing on the merits is commenced and does not include a pre-hearing conference or other pre-hearing event.

GREENBELT ACT, 2005

- Received Royal Assent on February 24, 2005
- Deemed to have come into force on December 16, 2004
- Designation of Greenbelt Area (section 2)
  - No amendment if reduces total land area
- Establishment of Greenbelt Plan (section 3)
  - Plan for Greenbelt Area
- Establishment of Greenbelt Council (section 15)

GREENBELT ACT, 2005

- All decisions on planning applications shall conform to the policies in the Greenbelt Plan (section 7).

- All official plans to be amended to conform to the Greenbelt Plan (section 9).

GREENBELT PLAN

- The Greenbelt Plan was approved on February 8, 2005 by Order in Council 208/2005 and was “established …to take effect on December 16, 2004”.
- Protected Countryside Area: Geographic specific policies
  - Agricultural System
    - Specialty crop areas
    - Prime agricultural areas
      - Lands designated in municipal OP
    - Rural areas
      - Lands outside settlement areas in municipal OP
  - Natural System
    - Parkland, Open Space and Trails
  - Settlement Areas

GREENBELT PLAN

- Protected Countryside Area: Geographic specific policies (cont'd)
  - Settlement Areas
    - Towns/Villages
      - As identified in municipal OP
      - Existing OP policies continue to apply
    - Hamlets
      - As identified in municipal OP
      - Existing OP policies continue to apply
    - Settlement Area expansion policies (transitional provisions) (section 3.4.4)

GREENBELT PLAN

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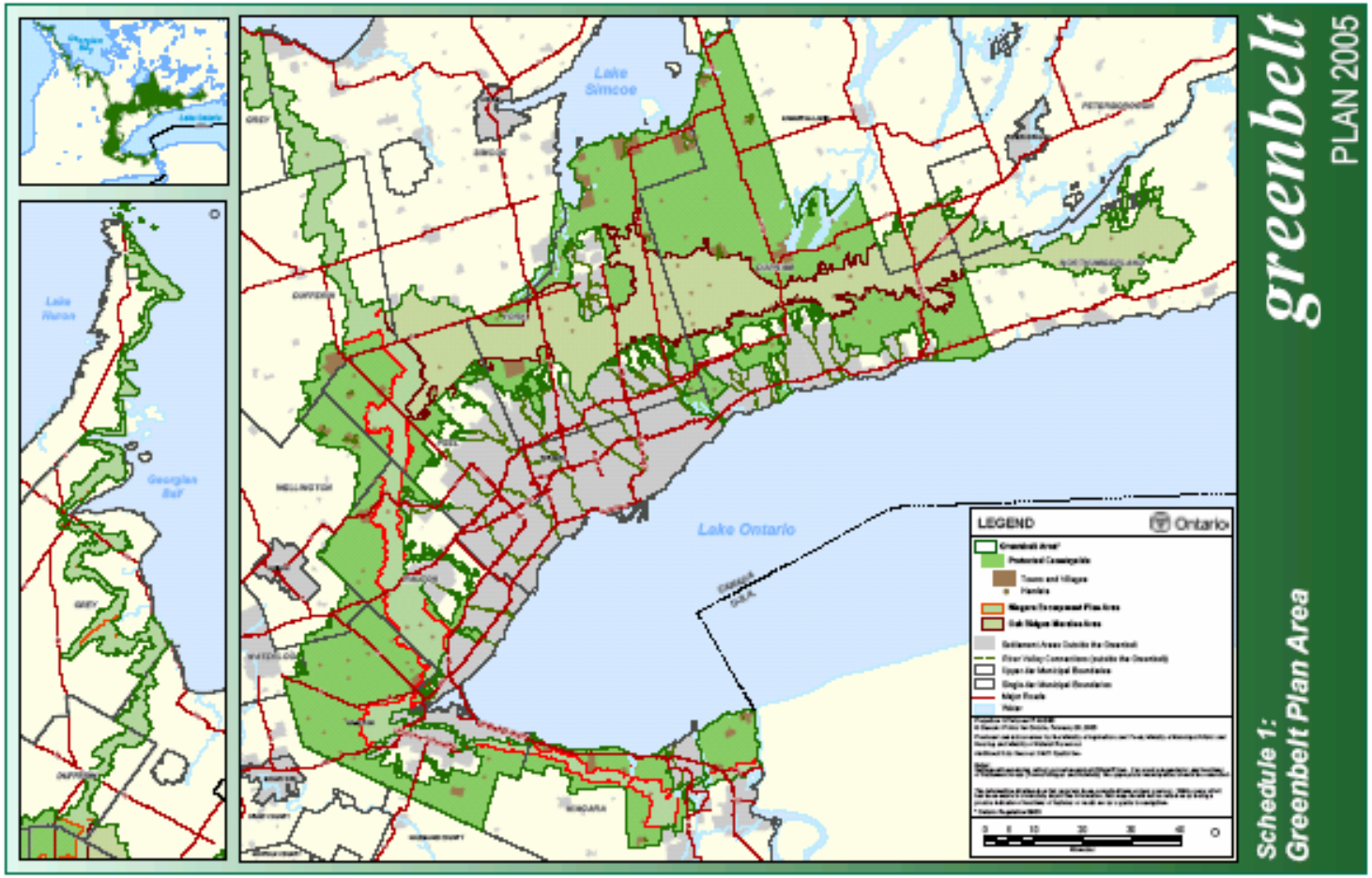

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PLACES TO GROW ACT, 2005

- Received Royal Assent on June 13, 2005
- Purposes of the *Act* (section 1)
- Designation of growth plan areas (section 3)
- Preparation of growth plan (section 4)
  - Advisory Committee may be appointed to advise Minister on growth plan, amendments, etc.
- Contents of plan (section 6)

PLACES TO GROW ACT, 2005

- Plan approved by Cabinet (section 7(6))
- Amendments to growth plan (section 10)
  - By Minister only
  - No municipal/private amendment applications

PLACES TO GROW ACT, 2005

- Effect of growth plan
  - Municipality to amend OP to conform with growth plan (section 12(1))
  - Growth plan prevails in the case of a conflict between the growth plan and (a) an official plan; (b) a zoning by-law; or (c) subject to subsection 14(4), a policy statement issued under section 3 of the *Planning Act*

ONTARIO HERITAGE ACT, 2005

- *Ontario Heritage Amendment Act, 2005* (Bill 60), came into force on April 28, 2005.
- Bill 60 introduced comprehensive amendments to the *Ontario Heritage Act.*
- Provides new municipal and provincial powers to identify and protect heritage sites and districts.

ONTARIO HERITAGE ACT, 2005

- Bill 60 adds a new Part III.1 to the Act.
- Part III.1 gives the Minister the power to prepare heritage standards and guidelines for the identification and preservation of property owned or occupied by the Government of Ontario and that has cultural heritage value or interest.
- Approval of the Minister's guidelines rests with the Lieutenant Governor in Council.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part IV

- Section 27 - the register of properties may include properties that have not been designated by a municipality under section 29 if the council of the municipality believes that the properties are nonetheless of cultural heritage value or interest.
- Subsection 29 (1) – ensures that, if criteria are prescribed, only property that meets prescribed criteria is designated as property of cultural heritage value or interest.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part IV

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- Section 34 – gives municipalities the power to prohibit the demolition of property designated by the municipality.
- Previously, the Act provided that if the owner of a designated property applied to the municipality to demolish the property and the municipality refused the application, the effect of that refusal would only delay the demolition by 180 days if the owner met certain specified conditions.
- Section 34 - ensures that if such an application is refused, the refusal will prevent the demolition from occurring, subject to any further application for consent in the future.

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ONTARIO HERITAGE ACT
Bill 60 Amendments - Part IV

- Section 34.1 – allows the owner of designated property that is refused an application to demolish the property to appeal the refusal to the Ontario Municipal Board.
- Section 34.1 – an owner may also appeal any conditions attached to an order approving an application to demolish to the Ontario Municipal Board.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part IV

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- Part IV adds a scheme whereby the Minister may designate property anywhere in the Province as property of cultural heritage value or interest of provincial significance.
- Properties so designated are subject to limitations with respect to any alterations of the property and, as in the case of properties designated by a municipality, buildings or structures on such properties cannot be demolished or removed without the consent of the Minister.
- The decision of the Minister to refuse consent to a demolition or removal of a building or structure on designated property is subject to appeal to the Ontario Municipal Board.

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ONTARIO HERITAGE ACT
Bill 60 Amendments - Part IV

- Section 35.2 is added to Part IV
  - Section 35.2 allows the Minister to issue a stop order to prevent the alteration, demolition or removal of any property in the Province if the Minister believes that the property has cultural heritage value or interest.
  - This power applies even though the property has been designated by a municipality under section 29 and even where the municipality has consented to the alteration, demolition or removal of the property.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part IV

- Section 35.3 is added to Part IV to give municipalities the power to make by-laws establishing standards for the maintenance of the heritage attributes of property designated by the municipality or by the Minister under Part IV.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part V

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- Municipalities are given by-law making power to impose controls on areas in the municipality that are designated as study areas for proposed future designation as heritage conservation districts.
- A municipality may, by by-law, designate an area as a heritage conservation study area for a period of one year.
- During the one-year period, alteration, demolition or removal of properties in the study area are subject to such limitations as may be specified in the by-law.
- A right to object to such a by-law may be made by any person to the Ontario Municipal Board.

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ONTARIO HERITAGE ACT
Bill 60 Amendments - Part V

- Sections 41.1 and 41.2 have been added to Part V. Under these sections, municipalities are required to adopt by by-law a heritage conservation district plan when designating a heritage conservation district.
- The plan would set out the objectives of the designation, an explanation of the cultural heritage value or interest of the district, the heritage attributes of the district, guidelines for achieving the objectives and managing change in the designated district, and a description of the types of minor alterations that may be carried out on properties within the designated district without obtaining a permit from the municipality.
- Section 41.2 prohibits a municipality from carrying out any public works in the designated district that are contrary to the objectives set out in the heritage conservation district plan.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part V

- The power of a municipality to prevent the demolition or removal of buildings or structures on property in a designated heritage conservation district is strengthened by the Bill 60 amendments.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part V

- Section 42 requires a permit from the municipality to demolish or remove a building or structure on property located in a designated heritage conservation district.
- Previously, if a permit for a demolition or removal was refused by a municipality, the owner of the property could still proceed with the demolition or removal 180 days after the refusal if certain conditions were met.
- Section 42 is amended to ensure that if such a permit is refused, the refusal will prevent the demolition from occurring, subject to any further application for consent in the future.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part V

- Subsection 42 (6) is amended to allow a person who is refused a permit to demolish a structure or building in a designated heritage conservation district, or who is granted the permit subject to terms and conditions, to appeal the refusal, or the terms or conditions, as the case may be, to the Ontario Municipal Board.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part V

- Section 45.1 is added to Part V to give municipalities the power to make by-laws establishing standards for the maintenance of the heritage attributes of property situated in a designated heritage conservation district.

ONTARIO HERITAGE ACT
Bill 60 Amendments - Part VI

- Part VI of the Act is amended by adding a regulation-making power to prescribe certain marine archaeological sites. Carrying out certain activities within 500 metres of such sites or within such other distance of the sites as may be prescribed is prohibited unless the person carrying out the activity has a licence to do so.

ONTARIO MUNICIPAL BOARD REFORM

FIRST PRINCIPLES:
The Role of the Board

- Strong, independent Board
  - Independence means independence from undue influence from either government or other participants in the process.
  - The Province obliges municipalities to make tough decisions that are difficult and unpopular – such as protecting agricultural land and wetlands, group homes, intensification, infill and redevelopment.
  - When municipalities neglect/refuse this duty, it becomes the Board's responsibility to perform this function. Thus, Board decisions are inherently controversial.
  - Administers government policy, whether provincial or municipal
  - The Board to maintain a province-wide standard for "good planning practice." Governs matters of Provincial interest.

FIRST PRINCIPLES: OMB vs. the Courts

- The Board as a preferred avenue for appeals of local decision-making compared to the courts
  - The Board should be a reservoir of specialized adjudicative expertise.
  - The Board considers matters affecting the public interest, while considering government policy, in the context of rules of procedural fairness.
  - The Board provides easy access to the public in a relatively non-intimidating environment.
  - Over time there has developed a public expectation of a right to appeal.
  - Board can be a simple quick dispute resolution process

FIRST PRINCIPLES:
Support and Commitment

- A strong government commitment to the Board is needed
  - Support independence of the Board and acknowledge the inherently controversial nature of its exercise of jurisdiction.
  - Support commitment by the provision of adequate financial resources.
  - Support commitment to the appointment and re-appointment of the Chair and members based on merit, competence and professional distinction.

JURISDICTION OF THE BOARD: Standard of Review

- Overturning a municipal decision: should the bar be raised?
  - Should there be a standard of review upon which the Board must make a finding before overturning a decision by a municipal council (i.e. “correctness”, “reasonableness”, “patently unreasonable”)?
  - Should hearings be *De Novo* or based on an “appellate role?”
  - Should there be a principle that where the evidence is balanced - that is, where there is no discernible difference between the evidence of the municipality and that of its opponents (either developers or objecting citizens) - the decision of the municipality should prevail?

JURISDICTION OF THE BOARD: Reviewing the Board's Power to Overturn Municipalities

- Should the standard of review be different according to the jurisdiction exercised?
- Should the Board's authority be limited in specific areas:
  - Official plan Policies regarding urban boundaries?
  - Official plan policies regarding conversion of lands between designations?
  - Official plan policies and zoning limitations on height?
  - Private Official Plan Amendments that alter fundamental Plan policies?
- Should the Board's authority be narrowed to the protection of matters of Provincial interest?

TOWARD THE REFORM OF THE BOARD: Procedural Reform

- Establish clear, comprehensive procedural guidelines
  - cost guidelines
  - conduct of hearings
  - admissibility of evidence
  - cross examination
  - controlling the length of hearings
  - participation by lay persons and un-represented parties

TOWARD THE REFORM OF THE BOARD: Procedural Reform

- Address complaints regarding long and costly hearings
  - Recognize that most hearings are short, simple and low cost.
  - A few are necessarily long, complicated and costly.
  - Encourage case management that identifies and scopes, streams and manages hearings by type.
  - Explore opportunities for short, low-tech hearings (no lawyers, few experts and agents).
  - Use of para-legals and “planning agents”

TOWARD THE REFORM OF THE BOARD: Board Mediation

- Can mediation be ordered?
- How effective is mediation in dealing with matters of planning principle?
- Can mediation be more costly and time-consuming that simple adjudication?
- The problems of multi-party mediation

TOWARD THE REFORM OF THE BOARD: Improved Public Access And Participation In Board Proceedings

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- Public Information
  - Level the playing field so as to improve public access to Board resources and understanding of the process.
- Public Education
  - Board staff be empowered to provide more assistance in the form of public education about participating before the Board.
  - Staff person capable of assisting the public with procedural assistance and substantive guidance on particular cases (without taking sides).

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TOWARD THE REFORM OF THE BOARD: Appointment and Qualification of Members

- Basic Appointment Principle
  - Appointments and re-appointments to the Board should result in a knowledgeable, productive Board consisting of 25 to 28 well qualified and hard working members.
- Appointment of the Chair
  - The Board requires clear leadership in the form of a Board Chair who receives government and Board member support.

TOWARD THE REFORM OF THE BOARD: Appointment and Qualification of Members

- Acknowledge that recruitment may be political, but must also be based on proven professional accomplishments in one of the participating disciplines, and/or distinguished record of political accomplishment at municipal or provincial level.
- Establish criteria and qualifications for prospective Board members based on professional requirements.
- Term of appointment for members and the Chair: minimum 10 years with opportunities for renewal based on merit.
- Should there be an advisory body to suggest and screen applicants and prospective members, based in stakeholder organizations and participating professions?

TOWARD THE REFORM OF THE BOARD: Re-appointment of Members

- Re-appointment should be based on performance in hearings and quality of decision-writing – not on the nature of decisions or on political considerations. This acknowledges the inherently controversial nature of Board decisions.
- Re-appointment should be the prerogative of the Board Chair (or by mutual consensus of the Chair and the Government).

TOWARD THE REFORM OF THE BOARD: Remuneration

- Salary and benefits
  - Should reflect the importance of the work.
  - Should be sufficient to attract competent appointments.
  - Should compensate for absence from an alternate, successful professional career.

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