



**Ontario Federation of Agriculture**

**Ontario AgriCentre**

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August 10, 2017

Mr. Ken Petersen, Manager  
Ministry of Municipal Affairs  
Local Government and Planning Policy Division  
Provincial Planning Policy Branch  
777 Bay Street, 13<sup>th</sup> Floor  
Toronto, ON  
M5G 2E5

Dear Mr. Petersen;

**RE: EBR Registry Number 013-0590 Bill 139 (Schedule 3) the proposed Building Better Communities and Conserving Watersheds Act, 2017: Amendments to the Planning Act**

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 36,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

Before addressing the proposed amendments to the Planning Act in Schedule 3, we emphasize that there is only one Ontario landscape, meaning that the full range of land uses and landforms found across Ontario; agricultural, urban, rural, natural heritage, cultural heritage, mineral extraction, etc. must share that landscape. Ontario's agricultural areas not only provide us with food, fibre and fuel, but also a broad range of environmental and ecological goods and services that benefit all Ontarians.

Furthermore, agriculture is Southern Ontario's principle resource-based land use. Protecting Ontario's prime agricultural areas for their long-term agricultural use is a key provincial policy objective, noted not only in the Planning Act [section 2.(b)], but also in the Provincial Policy Statement, the Greenbelt Plan, the Growth Plan for the Greater Golden Horseshoe, the Oak Ridges Moraine Conservation Plan and the Niagara Escarpment Plan. Maintaining our agricultural lands to produce food, fibre and fuel is critical. We also face the additional expectation, at least from the Ontario Government, that Southern Ontario in general and the Greater Golden Horseshoe in will accommodate substantial future population growth, along with the jobs and infrastructure necessary to support this projected growth. The proposed Local Planning Appeal Tribunal's decisions need to view Ontario through this lens.

In our previous submission on the role of the Ontario Municipal Board, the OFA advocated in favour of a number changes to the Board's role, responsibilities and decision-making authority. Among them were;

- limiting appeals to exclude municipal decisions that conform to the Provincial Policy Statement, a provincial plan, etc., and
- eliminating "de novo" hearings.

The proposed amendments to the Planning Act contained in Schedule III of the proposed Building Better Communities and Conserving Watersheds Act, 2017, reflect OFA's previous recommendations. In that light, the Ontario Federation of Agriculture supports the proposed amendments to the Planning Act contained in Schedule 3 of the proposed Building Better Communities and Conserving Watersheds Act, 2017.

The Ontario Federation of Agriculture does have some concerns with respect to the powers and authority of the Local Planning Appeal Tribunal, as set out in Schedule 1 of the proposed Building Better Communities and Conserving Watersheds Act, 2017.

The proposed *Local Planning Appeal Tribunal Act, 2017* includes powers to enter and inspect (section 13). Parallel powers are not found in the current Ontario Municipal Board Act. While we see value in Tribunal members familiarizing themselves with the site and surroundings of an appeal, we object to granting a Tribunal member or employee powers to enter and inspect without a warrant. A pre-arranged site visit is one thing. An unscheduled site visit is completely different. OFA would support, and even encourage, a pre-arranged site visit. A warrantless, unannounced visit to enter and inspect is excessive and unnecessary. Many farm operations utilize biosecurity provisions to minimize the risks of disease, pathogen or pest transfers to livestock, poultry and crops carried on vehicle tires or footwear. Simply put, restricting access to farms minimizes the risks of disease transfers. Warrantless entry fails to acknowledge that unannounced entry into areas frequented by livestock or crops can pose a risk not only to those animals or crops, but also to the entrant themselves, as they are unaware of potential risks inherent on the farm. Entry to farms should only come after direct contact with the farmer, and after any farm-specific biosecurity protocols have been followed. The Ontario Federation of Agriculture recommends that the warrantless entry and inspection provisions in the proposed *Local Planning Appeal Tribunal Act, 2017* be dropped and replaced with provisions that clearly indicate only pre-arranged site visits are allowed.

Our second concern lies with appeal support services for the Tribunal. We acknowledge that the combination of an end of "de novo" hearings, with broader use of written, submission-based appeals should go a long way to easing the burden on Tribunal member to take personal notes of issues and information, while following the proceedings. Nevertheless, oral hearings remain a possibility. To support Tribunal members, the Ontario Federation of Agriculture recommends that court reporters be used to make verbatim records of questions and answers for all persons appearing at an oral Tribunal hearing.

Funding for the operations and operating costs of both the Local Planning Appeal Tribunal as well as the Local Planning Appeal Support Centre must be bourn solely by the Provincial Government.

Lastly, we come to the subject of costs. It has been our understanding that historically the Board has been extremely reluctant to award costs against any appellant on that basis that costs awards could serve as a deterrent to appealing to the Board. Matters appealed to the Board tended to be of broader community interest, such as the preservation of agricultural land from development, rather than disputes between neighbouring property owners. Of late, we've heard of instances where punitive cost awards have been levied.

Bill 139 ignores the opportunity for much-needed cost reform before the proposed Local Planning Appeal Tribunal. No changes to the general cost award powers are proposed by Bill 139. The Local Planning Appeal Tribunal would have authority to award costs in accordance with its own rules; no different than the current OMB framework. However, we are concerned that the Local Planning Appeal Tribunal's discretion on costs awards may be broader than the OMB's current power to award costs.

Currently, the OMB can award costs only where a party's conduct has been unreasonable, frivolous or vexatious, or a party has acted in bad faith. This is unlike civil litigation where costs are generally awarded to the winning party. Bill 139 introduces some uncertainty into the permitted circumstances for cost awards. While subsection 33(4) of the proposed Local Planning Appeal Tribunal Act, 2017 says the cost rules are subject to other legislation, another section of Bill 139 allows the Local Planning Appeal Tribunal's rules to "trump" any conflicting statute. We recommend this uncertainty be addressed by the Province to provide assurance and clarity that it does not propose to broaden the circumstances for cost awards.

Finally, Bill 139 provides no direction on the new rules on costs (e.g. fixing a tariff, maximum costs, etc.). Future rules on costs are left to the discretion of the tribunal. While some may assume the tribunal will follow similar costs rules to the OMB costs rules, this is by no means guaranteed by Bill 139.

Regarding cost awards, the Ontario Federation of Agriculture recommends Bill 139 be amended to:

1. Eliminate cost awards altogether, or if cost awards remain an option, that there be strict limits on these awards; and
2. Ensure there are procedural safeguards that limit the circumstances that may give rise to costs, as with the current OMB framework.

The current OMB rules have exposed farmers to extraordinary risks in bringing cases involving agricultural land protection to the OMB. In the case of the Upper Cold Creek Farm in Vaughan, Ontario, the OMB awarded \$85,000 against the farm family that challenged building a new 1,400-unit sub-division immediately adjacent to their third-generation livestock operation.

The farmers were upset that many of the "costs" claimed by the developers and accepted by the OMB were apparently never incurred, as there were no substantial studies, data, reports, field investigations, analysis or testimony generated for the \$85,000 cost award. The current OMB rules allowed a Member to "fix" costs without even determining if in fact those costs were actually incurred. If the Local Planning Appeal Tribunal does award costs arising from a hearing, we recommend that the claim for costs is clearly substantiated through studies, reports, etc. introduced or submitted as evidence to the Local Planning Appeal Tribunal during a hearing.

The Ontario Federation of Agriculture appreciates the opportunity to provide its perspective on the proposed amendments to the Planning Act and the proposed *Local Planning Appeal Tribunal Act, 2017*.

Sincerely,



Keith Currie  
President

cc: Hon. Bill Mauro, Minister of Municipal Affairs  
Hon. Jeff Leal, Minister of Agriculture, Food and Rural Affairs  
OFA Board of Directors