Federation of Citizens' Associations of Ottawa **fca-fac** Fédération des associations civiques d'Ottawa

13 August 2017
Ottawa, Ontario

To: Ken Petersen, Manager
Ministry of Municipal Affairs and Housing,
Local Government and Planning Division
Provincial Planning Policy Branch
777 Bay Street, Floor 13
Toronto ON, M5G 2E5

By Email: OMBReview@ontario.ca

Dear Mr. Petersen:

Re: Bill 139: EBR 013-0590

The FCA-FAC is the forum for citizens associations and similar non-profit volunteer groups in the Ottawa area. Member associations share information about issues facing their communities and, where appropriate take joint action. Our membership includes over 40 community and citizens associations from the city centre, the inner suburbs, the suburban communities outside he Greenbelt and rural Ottawa.

The FCA applauds the Provincial government for its Bill 139 initiative.

Bill 139 assigns planning responsibility where it primarily belongs, i.e. with accountable elected officials in their local communities. In so doing, the Bill better empowers communities to be the architects of their own urban development. That is as it should be.

Every Ontario community, be it inner urban, suburban or rural, has its own metabolism. Each needs to develop in its own way and at its own pace. Our member associations and the many people they represent care deeply about that. They want their elected representatives to be the ones deciding what is allowed to happen where they have chosen to live. Decision-makers should be accountable to those affected by the decisions they make. That is at the essence of what representative democracy is about.

We urge the Ministry not to dilute this much-improved core aspect of the legislation as it considers proposed amendments to the Bill.

What We Like about Bill 139

The following are some of the more significant features of Bill 139 that the FCA fully endorses:

- Amending the Planning Act to eliminate *de novo* hearings.
- Limiting the basis for appeals of under Sections 17, 22 and 34 of the Act.
- Limiting the Tribunal's authority to overturn a municipal decision of a local council or planning authority to errors in law; failure to adhere to Provincial policies; or to Official Plans.
- Establishing the Local Planning Appeal Support Centre.
- Relying on written submissions and reducing the scope of oral hearings so that they will no longer hear evidence or permit the cross-examination of witnesses.
- Making case management conferences mandatory for Planning Act appeals.
- Requiring Official Plans to include policies aimed at mitigating greenhouse gas emissions and adapting to climate change.
- Affording municipalities a second opportunity to conform to the requirements of the Planning Act, the Provincial Policy Statement or its Official Plan if they have been judged not to meet those requirements in the first instance.
- Excluding Secondary Plans from amendment appeals in the first two years after they have been approved.
- Amending the Planning Act to allow Official Plans to include policies relating to development around higher order transit stations and stops.

We ask that the enacted legislation retain each of these provisions.

What We Don't Like

Although the Provincial Policy Statement; the Planning Act and other official planning documents selectively set out some criteria as to what constitutes good planning, the current planning framework does not provide guidance as to how such planning criteria should inter-relate in the aggregate; nor how they should be prioritized.

That Bill 139 does not correct this strikes us as a lost opportunity. If the Provincial government chooses not to address this issue in the current bill, we ask that it initiate broadly based public consultations, as soon as practicable, aimed at establishing a consensus on what amounts to good planning criteria and how they best inter-relate as a whole.

The absence of a well-integrated planning framework is what drives our principal reservations about Bill 139, which are set out below, namely:

- That Official Plans and Zoning By-Laws are exempt from appeals with respect to major transit station areas, except by the Minister.

  In principle, the FCA supports the policy goal of encouraging greater intensification around major transit centres. However, we are deeply concerned that most Ontario cities, including Ottawa, lack the money and other resources needed to undertake the extensive long-range planning required to determine the most appropriate zoning rules for the areas surrounding higher order transit stations.

  This is especially so with respect to appropriate transitioning of the built form in a manner that respects the characteristics of the surrounding neighbourhoods and with respect to local traffic and infrastructure implications.

  In Ottawa, for example, the characteristics of the neighbourhoods surrounding each of the LRT stations currently under construction vary greatly from greenfield sites; existing high-density urban and commercial sites; single family residential home neighbourhoods; and to parkland sites. A single unfettered zoning rule does not readily suit all these various situations. We are already seeing spot re-zonings around future stations without any cohesive plans.

  We are deeply concerned that municipalities may forsake good planning principles for the sake of increasing tax revenues and/or maximizing transit use without adequate regard to striking a good balance with other no less appropriate considerations.

  In light of the above, it is critically important that other stakeholders, particularly affected residents and community associations, should have a right to appeal Council zoning decisions relating to higher order transit stations and stops; not just the Minister.

  For these reasons also ask that the Planning Act be amended not merely to “allow” Official Plans to include policies relating to the development of higher order transit stations and stops but to “require” it, where applicable.

As well, we urge, that Official Plans be required to set out all priority transit corridors; all higher order transit station areas and the selection criteria used to include them.

- That non-adherence to the provisions of the Planning Act, particularly the Act's objectives as set out in Section 2, is not included as a basis for appeal to the Tribunal.

  We can think of no good reason why this shouldn't be permitted as grounds for appealing a Council planning decision.

- That Secondary Plans could be appealed within the first two years of having been approved if that is authorized by Council.

  We see some merit in Council having the authority to amend Secondary Plans within the first two years so as to take unanticipated changed circumstances into account.

  Nonetheless, on balance, we much prefer the greater certainty that comes with not opening the door to what too easily could become a slippery slope that unravels a newly minted Secondary Plan within its first two years.

- That appeals of a single-tier municipality's Official Plan or Comprehensive Official Plan Amendment would not be permitted once approved by Minister.

  We see this as an attempt to solve a past problem that Bill 139 appears to adequately solves by other means, i.e. by extensively limiting the grounds of appeals from Council decisions.

- That the Local Planning Appeal Tribunal, unlike the OMB, would not be a Court of Record.

  We would prefer that the LPAT be authorized to create a court of record at the request of any party with standing before the Tribunal.

- Although we enthusiastically support reducing the scope of oral hearings so that they no longer serve as venues for submitting evidence or cross-examining witnesses, we would be concerned if the Tribunal's yet to be established regulations and procedures did not provide an adequate opportunity to call into question evidence submitted by other parties to an appeal.

A Couple of Rebuttals

There are two misplaced criticisms of Bill 139 voiced by others on which we would like to comment:

(1) That the Bill purportedly would give rise to NIMBYISM at the expense of what is in the broader interest of a city or community overall.

There is no shortage of development proposals in Ottawa and elsewhere where Councillors have voted contrary to the wishes of local residents and community associations in a Ward where a controversial development is under consideration. For example: Lansdowne Park, Zibi, the Canadian Tire Centre, the Soeurs de la Visitation Convent. In each instance, Council approved those developments notwithstanding strong local opposition.

Concerns that NIMBYISM is about to hold undue sway over planning decisions strike us as greatly exaggerated. We see such concerns as a proxy for maintaining a status quo greatly in need of modernisation.

(2) That the proposed Local Planning Support Centre unfairly disadvantages the development community by providing advice, representation and/or funding to community groups.

Not-for-profit community groups often don't the have the money, knowledge or the in-house skills to launch appeals of municipal decisions with which they disagree.

Unaffordable costs are a high barrier to accessing the justice system. Inaccessibility amounts to a denial of due process for those seeking remedial justice. That needs to change.

Notionally, the Local Planning Support Centre should help to rebalance an unlevel playing field. However, success will depend greatly on how well the Centre is funded and on the yet-to-be-determined guidelines as to how its resources are to be distributed.

We encourage the Provincial government to be particularly mindful of need for adequate funding and the need for appropriate guidelines.

In Closing

We know that change is never easy; that you will hear many competing voices with disparate interests and goals. We encourage the Government throughout the review process to have the courage to remain true to the Bill's good intentions.

On behalf of the Federation of Citizens Associations of Ottawa,

Alex Cullen
Vice President. FCA (*for Sheila Perry, President, FCA*)
alexcullen@rogers.com

cc Sheila Perry, President, FCA (president@fca-fac.ca; www.fca-fac.ca)