



**RESPONSE TO THE PROVINCIAL LAND USE PLANNING
AND APPEAL SYSTEM REVIEW
JANUARY 10, 2014**

AWARE Simcoe Response to the Provincial Land Use Planning and Appeal System Review

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Introduction

Following the announcement of the review of Ontario land use planning and development charges and the series of workshops that were to be held in Thunder Bay, Sault Ste. Marie, Kitchener-Waterloo, Ottawa, Mississauga and Toronto, AWARE Simcoe chair Don Morgan wrote (November 4) to MMAH Minister Jeffrey, asking that the ministry schedule a workshop in Simcoe County. “The Simcoe Sub-area is the only jurisdiction within the Greater Golden Horseshoe to be specifically addressed in Places to Grow,” he wrote. “Section 6 and Amendments 1 and 2 are a clear demonstration of the unique nature of the land use stresses that we face.”

Our request for a workshop in Simcoe County was refused. So, five members of AWARE Simcoe travelled two and a half hours each way to Guelph to attend a workshop. We were advised at the workshop that we could hold our own workshop in Simcoe County if we wish.

The following is the AWARE Simcoe response to the “Land Use Planning and Appeal System – Consultation Document” questionnaire. While we are able to align most of our comments with your themes and questions, there are issues, which we consider to be critical which do not fit this format. Namely:

1. The context in which all planning takes place is one of assumed perpetual growth. Indeed, The Provincial Plan is called: The Greater Golden Horseshoe Growth Plan. In spite of the rhetoric, no community is ever deemed to be complete and no level of population is ever enough. In our view this assumption is perverse and irrational. The continuous pursuit of ever increasing population and resource use will inevitably lead to social and economic collapse. Most politicians, planners and economists seem to assume, without knowledge or reflection, that the unprecedented growth of the last 60 years can continue indefinitely. Simple arithmetic and a cursory review of the world’s desperate plight, with respect to both renewable and non-renewable resources, will show that it cannot. Climate change will only compound the problem. In our view the proper goal of all planning should be stability and sustainability. Municipalities should be encouraged to plan communities to restrict their size and stabilize their population at a sustainable number. In other words, municipalities should be encouraged to plan finite, complete communities that anticipate an end to growth.
2. Much of the energy devoted to Planning and Appeals is devoted to the accommodation of assumed/projected growth and in responding to the initiatives of developers. In AWARE’s view, all development proposals should be viewed through the lens of “Net Benefit” to the community. Developers are motivated by self-interest, while politicians and officials usually assume a priori, that growth pays – while the facts show that generally, it doesn’t. As noted under question #9, Australia has developed a “Net Benefit” standard, which could serve as a useful model.
3. AWARE would like to see a process that reviews the scope, functions and processes of the OMB. In our view, the OMB has a pro-development bias and often makes decisions that flout the expressed wishes of residents through their councils and are detrimental to community interests. It is distressing that Chairs with little local knowledge are empowered to overrule decisions of communities and their councils.
4. We would also like to register our concern that this review process has been too short, especially in light of the holiday season it included.

The following are the AWARE Simcoe answers to the questions set out by the Ministry of Municipal Affairs and Housing's review consultant (MMAH questions are in italics):

Theme A: "Achieve more predictability, transparency and accountability in the planning/appeal process and reduce costs. The review should lead to an improved, faster process that responds to changing municipal needs."

Questions 1-3

How can communities keep planning documents, including OP's, zoning by-laws and development permit systems (if in place) more up-to-date?

Should the planning system provide incentives to encourage communities to keep their official plans and zoning by-laws up-to-date to be consistent with provincial policies and priorities, and conform/not conflict with provincial plans? If so, how?

Is the frequency of changes or amendments to planning documents a problem? If yes, should amendments to planning documents only be allowed within specified timeframes? If so, what is reasonable?

We expect all levels of government to introduce cost-effective solutions to maintain planning documents up-to-date. We ask that the solutions be transparent and easily accessible.

4. What barriers or obstacles may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?

We believe that the first requirement must be to ensure the informed involvement of local citizens.

Growth Plan for the Greater Golden Horseshoe, 2006, Section 5.4.4 Public engagement states:

"1. The Minister of Infrastructure will ensure ongoing consultation with the public and stakeholders on the implementation of this Plan.

2. The Minister of Infrastructure will provide information to the public and stakeholders in order to build understanding of growth management and facilitate informed involvement in the implementation of this Plan.

3. Municipalities are encouraged to engage the public and stakeholders in local efforts to implement this Plan and to provide the necessary information to ensure the informed involvement of local citizens."

These regulations are not being followed by municipal staff. In 2008 in Midhurst, for example, the municipality adopted a plan to build 10,000 new dwellings around the homes of 3,500 families, with only a handful of people aware of the extent to the proposed development. The Midhurst Secondary Plan contains 16 known violations of provincial policy and has generated numerous appeals which would have been quite unnecessary if governments had simply enforced existing regulations and declined to entertain illegal development proposals.

5. Should steps be taken to limit appeals to entire official plans and zoning by-laws? If so what steps would be reasonable.

It seems reasonable to ask the appellant to scope his/her appeal down to specific issues rather than simply appealing an entire plan.

6. How can these kinds of additional appeals be addressed? Should there be a time limit on appeals resulting from a Council not making a decision?

We suggest a 6-month time limit from the receipt of a complete application.

7. Should there be additional consequences if no decision is made in the prescribed timeline?

If no appeal is made within the 6-month time limit, then the right to appeal should be forfeited.

8. What barriers or obstacles need to be addressed for communities to implement the development permit system?

No response.

Theme B: Support greater municipal leadership in resolving issues and making local land use planning decisions

9. How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?

One of the problems is that there are no generally accepted criteria for evaluating proposals. It is difficult, for example, to bridge the different interests and concerns of a developer who seeks to build a subdivision on greenfields adjacent to a community and those of the community that wants to preserve its character and its economic integrity. We think it would be helpful if a standard were adopted that required demonstrated Net Benefit. Australia has adopted such a standard, which is defined to mean "having an overall positive impact on relevant communities."

It further takes into account the costs and benefits related to the following criteria:

- Public health and safety
- Social and community impact
- Environmental impact and
- Economic Impact

Municipal councils need to be confident that they, not outside interests, are in the driving seat. Amend the Planning Act to better recognize the importance of the decisions of council, by replacing the current "shall have regard to" review standard for municipal decisions to a "shall be consistent with" standard.

10. What barriers or obstacle need to be addressed to facilitate the creation of local appeal bodies?

Appeals should be heard by the local council.

11. Should the powers of a local appeal be expanded? If so, what should be included and under what conditions?

No response.

12. Should pre-consultation be required before certain types of applications are submitted? Why or why not? If so, which ones?

No response.

13. How can better coordination and cooperation between upper and lower-tier governments on planning matters be built into the system?

The lower tier municipalities have been able to be more restrictive than the upper tier municipalities. If the lower tier conforms to the spirit and intent of the Provincial Policy Statement (e.g. protecting foodland) then appeal to the OMB should be prohibited.

Theme C: Better engage citizens in the local planning process

14. What barriers or obstacles may need to be addressed in order for citizens to be effectively engaged and be confident that their input has been considered (e.g. in community design exercises, at public meetings/open houses, through formal submissions)?

Open houses often do not include any formal presentation. Citizens would be better served if public meetings included a formal presentation, following which proponents, planners and local politicians were available to answer questions and to engage in conversation concerning pros and cons of the proposal or plan.

We also believe in the key importance of public meetings where community members can come together, hear the questions and views being expressed by their neighbours, and forge a bottom-up neighbourhood consensus.

During two years of negotiations with the Province, Simcoe County held multiple in-camera meetings of which the public was neither informed nor allowed to attend. The result was Amendment 1 to the Growth Plan for the Greater Golden Horseshoe.

Simcoe County has refused to hold public meetings on the much-changed Simcoe County Official Plan. This effectively cut the public out of the process and forced anyone wanting input to participate in the OMB process. The fact that the Planning Act can be interpreted to avoid public meetings in such a situation needs to be addressed.

15. Should communities be required to explain how citizen input was considered during the review of a planning/development proposal?

Yes! The fact is that citizens often feel that they are outside, looking in on the process. In spite of the fact that it is their community, they see the process monopolized by developers and their lawyers. If the Net Benefit standard, discussed above, was in effect, then the municipality should also be required to show how that standard was used to justify either approval or disapproval of a proposal.

Theme D: Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions and support for job creation and economic growth.

16. How can the land use planning system support infrastructure decisions and protect employment uses to attract/retain jobs and encourage economic growth?

The Ontario government can protect employment in Ontario by protecting Agricultural land. It is estimated that in 2012 (by JRG Consulting Group) “The \$11.8 billion output of the farm economy results in \$ 26.6 billion of economic activity throughout the province. Wages and salaries-\$8.1 Billion, Employment 157,829 full time jobs and farmers paid \$3.9 billion in tax revenue. Expenditures by food manufacturers agri-food sector generated \$53.7 billion in upstream transactions, which resulted in economy wide GDP of \$21.3 Billion of which \$12.4 Billion are payments to labour, employment 284,567, tax revenue-\$6.3 billion.

“A dollar spent on producing primary agricultural products circulates and re-circulates within the economy, multiplying the effects of the original expenditures on overall economic activity. This process is referred to as the economic multiplier effect.”(by JRG Consulting Group)

Never forget that farmland is employment land!

Agriculture is an important contributor to the performance of the Ontario economy and the best way to ensure that this continues is to protect farmland from development. The farming community has relatively low public infrastructure requirements, so protecting farmland protects the public interest and helps governments to control budgets.

Developers are often allowed to purchase perfectly viable farmland, which they see as the easiest and least cost route to development. Unfortunately the Provincial Government is failing to enforce its own policy statement, with the result that precious, irreplaceable agricultural land is being lost permanently to development. On occasion, the Government devises “Special Rules” which are completely at odds with earlier policies and commitments.

The new trend of planning communities with rural/agriculture settings causes great hardship. Regrettably flawed urban expansion/planning can destroy a viable agricultural community and create hardships not fully realized or evaluated by municipal or provincial governments. A recent resolution passed at the Nov. 2013 Ontario Federation of Agriculture convention asked for more comprehensive evaluation of the value of farmland.

17. How should appeals of official plans, zoning by-laws, or related amendments, supporting matters that are provincially-approved be addressed? For example should the ability to appeal these types of official plans, zoning by-laws, or related amendments be removed? Why or why not?

The Consultation Document pre-amble given, appears to answer this question. There is simply NO need to appeal an official plan, or by-laws etc, if the in place Provincial policies have been followed. Sadly they are often overlooked. An example may help to answer this question and Midhurst is a prime example:

The Midhurst Secondary Plan to add 10,000 dwellings to a settlement of 3,500 homes, was adopted by Springwater Council with no significant public consultation. This plan contravened provincial policy in many

ways (see below). Quite naturally the County of Simcoe did not approve the plan, but there were numerous appeals to the OMB challenging the non-decision.

a) If the plan clearly violated provincial policy why would these appeals be permitted?

After 3 years of silence, the County mysteriously approved the Midhurst Secondary Plan. The province then appealed the plan stating “The reasons for this appeal are that County Council's decision: is not consistent with the policies of the Provincial Policy Statement, 2005 (PPS); does not conform to the policies of the Growth Plan for the Greater Golden Horseshoe (Growth Plan); does not conform to the County of Simcoe Official Plan”.

b) This appeal would have been unnecessary had the County not approved an illegal plan.

Three months later, the Minister of Infrastructure amended the Growth Plan and created a “Special Rule” to permit the Midhurst Secondary Plan to proceed.

c) Again why would a Minister create a “Special Rule” to permit a development which contravenes his own ministry’s regulations. This again triggered more high cost appeals to the OMB?

In summary, none of these costly appeals would be necessary if the municipality, the county, the minister and the OMB had all followed the clearly laid out provincial policies.

Conclusion

It is our belief that the Land Use Planning and Appeal system can work in the interests of Ontario residents. However, all levels of government must be compelled to adhere strictly to the original Provincial Policy Statement, the Places to Grow Act and the 2006 Growth Plan for the Greater Golden Horseshoe. The current amendments to the Growth Plan were the result of development industry lobbying and should be repealed, pending the next overall review of all planning legislation, scheduled for 2015.

We repeat:

Municipalities should be encouraged to plan communities to restrict their size and stabilize their population at a sustainable level. In other words, municipalities should be encouraged to plan finite, complete communities that anticipate an end to growth.