

“PRIVATE BUSINESS VS. REGULATORY OVER-KILL”

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

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January 10, 2011

Ms. Gail Paech, Associate Deputy Minister
Ministry of Economic Development and Trade
375 University Avenue, 7th Floor, Suite 700
Toronto, Ontario, M5G 2J5

Dear Ms. Paech:

Re: Open for Business Initiative (OFBI)

This Letter and Submission e-mailed to: gail.paech@ontario.ca

Founded in 1994 at Trent University, the Ontario Property and Environmental Rights Alliance (OPERA) is a provincial coalition of trade associations and community groups mandated to review and, where indicated, dispute government legislation that negatively affects the lives and property of private citizens.

Represented at many policy workshops, conferences and focus groups over the past 16 years and, in that interval, filing countless submissions to various provincial bureaucracies, OPERA is fully aware that many factors determine the pace and direction of economic development across this province. Still, the process usually involves and largely depends on two interconnected common denominators – legal acquisition and prudent use of land.

It would be hard to imagine continued or anticipated viability of core economic sectors such as food production, business, manufacturing, transportation and construction without regard for their essential geographic and topographical component. In that context, we suggest legislation that arbitrarily transfers economic control of privately owned land to the state not only violates natural justice but, in and of itself, discourages investment.

We understand several Ontario organizations were specifically invited to file OFBI submissions and will be afforded an opportunity to enlarge on their views in personal discussion with certain Ministries. Although an uninvited presenter, OPERA will appreciate your acknowledgement of our interest in this matter together with advice as to whether arrangements can be made for our representatives to meet with the Ministers of Municipal Affairs, Attorney General, Environment, Intergovernmental Affairs, and Natural Resources.

Listed in priority sequence, the following submission to the Open for Business Initiative briefly addresses 5 primary elements of that program from the perspective of land use regulation...

Yours truly

R.A. (Bob) Fowler, Secretary
Ontario Property and Environmental Rights Alliance

c.c. Premier Dalton McGuinty
Honorable Sandra Pupatello, MEDT
Honorable Rick Bartolucci, MMAH
Honorable Chris Bentley, MAG
Land Use Council
OPERA Members and Supporters

Honorable John Wilkinson, MOE
Honorable Monique Smith, MIGA
Honorable Linda Jeffrey, MNR

“to protect, and entrench in law, landowner rights and responsibilities”

ONTARIO'S OPEN FOR BUSINESS INITIATIVE

Measuring Economic Development against Land Use Regulation

Submitted by the Ontario Property and Environmental Rights Alliance

January, 2011

Measuring Economic Development against Land Use Regulation

Preamble:

Over the past 40 years successive Ontario governments have approved layer upon complex layer of land use regulations allegedly designed in the name of economic vitality and/or the public good. Many of these proscriptions are now officially promoted as fundamental to “sustainable development”, a label that conveniently resonates with public interest in ecological preservation and resource conservation.

Regulated land, economic development and environmental protection might be viewed as necessary, reasonable and equitable until consequences, expected or unintended, of those objectives in combination are reviewed. For example, in Ontario professional lobbyists within the hugely profitable environmental industry routinely advocate provincial legislation that slows and dilutes economic development. Moreover, resulting statutes often unilaterally transfer economic control of privately owned land to the state without compensation, a rank injustice reminiscent of 20th century Eastern European governments now thankfully extinct.

“Partial takings” of private land are seldom distinguished with prior notice to, or formal consent of, individual owners/lessees ultimately affected. But they substantially reduce use, title, mortgage worth and market value of assets in which the Ontario government has no legal propriety or financial rights and certainly no visible interest in paying taxes, much less maintenance costs, on private real estate.

Regulations with draconian penalties for non-compliance enforce these extortions. And the devil lurks in the details of those directives which are never issued with their affiliated statute but rather some months or even years after the legislation has been ratified and initial public objection long forgotten. Given the number of provincial bureaucracies introducing land use policies followed much later by an even greater number of bewildering enforcement dictates, its small wonder frustrated investors, both current and potential, in Ontario’s economy now entertain serious reservations about its future business prospects.

Problem 1:

Communications:

The Ontario government is perceived to regard public consultation largely as an Internet exercise in which all respondents are presumed to own a computer, maintain a high speed Internet connection and possess sufficient time, experience and inclination to find and scroll through countless pages of convoluted bureaucratic rhetoric. For many Ontario citizens whose assets are or will be legislatively compromised by central authority, those presumptions are totally at odds with reality.

Recommendation:

1.

In addition to Internet circulation, all proposed government legislation and related regulations that affect land use and hence economic development should be summarized, as and when issued, for widespread media publication and insertion in annual municipal tax assessment notices supported by advertised public meetings in pre-selected groupings of counties, regions and districts of the province.

2.

Since citizens affected by land use legislation cannot plead ignorance of the law as a defense the Ontario government must make them aware of the law in advance and, before the law comes into effect, provide opportunities for them to review all relevant studies thus assisting them to determine whether or not an official appeal is indicated.

3.

Postpone ratification of provincial designations that decrease mortgage worth and market value of privately owned land until each potentially affected owner/lessee is provided with a detailed cost-benefit analysis so he or she and Canada Revenue can be made properly aware of their contribution to society at large.

Problem 2:

Effectiveness:

Ontario's development permit system is archaic, excessive, lethargic and repetitious. It pretends to entrust local planning issues to municipal authorities directly involved but routinely subjects their recommendations to a plethora of so-called "commenting" agencies and richly rewarded private consultants whose mutual self-serving instincts are revealed in ballooning costs, duplicated staffs, interpretative elasticity, and long delayed or permanently shuffled decisions.

Recommendation:

1.

Terminate cumbersome multi-Ministry planning interventions and appoint a single provincial entity to monitor and comment on all development applications with written acceptance, amendment or denial of same provided within 60 calendar days of filing date failing which all applications not expeditiously processed are automatically approved as presented.

2.

Return autonomous planning authority and relevant funding to those municipalities able and willing to administer provincial policies in accordance with Ontario planning legislation. Require municipalities not so inclined or experienced to seek, without recourse to "outside" consultants, assistance and advice, for local planning issues from a one-window monitoring centre noted above.

3.

Reduce staff in provincial agencies that create, interpret, manipulate or enforce land use decrees in the regulatory quagmire that now engulfs Conservation, Greenbelt, Niagara Escarpment,, Oak Ridges Moraine, Places to Grow, Source Water and Species at Risk legislation and announce this long delayed shrinkage of bureaucracy as tangible evidence that Ontario is indeed open for business.

Problem 3:

Balance:

Generally speaking, private use and ownership of land, a cornerstone of economic development, is incompatible with the basic tenets of centralized state control and the impractical extremities of social engineering. Thus, investment and stability in land-based sectors of Ontario's economy is negatively impacted by left-leaning government dictates supported, if not initiated, by powerful Non-Government Organizations (NGOs) who enjoy both political favor and massive transfusions of public funds.

Recommendation:

1.

In addition to Internet distribution, preface all proposed land use legislation and related regulations with 4 weeks of media advertising followed, in sequence, by public meetings with officials of affected municipalities and individual consultation with potentially affected owners/lessees/investors.

2.

Publicly identify by corporate name and mandate all environmental NGOs and background lobbyists who have filed written submissions regarding proposed land use legislation/ regulations together with the total of all government funding awarded to each such group or individual within the past 5 years.

3.

Redress voting imbalance in provincial commissions, committees and advisories linked in any way to land use legislation by naming one Ontario citizen-landowner to each such group for each appointed NGO representative, government delegate, academic pundit and Aboriginal envoy.

Problem 4:

Accountability:

Whether large or small, potential or established, domestic or foreign, investors in Ontario's economy are often initially unaware of statutory limitations that could influence their decisions with respect to use, value and development of property on which their investment is or will be based. In that context, there is no official and/or media reference to the fact that recent land use legislation specifically denies to all investors two major attributes of a free and democratic society - the right of appeal against controversial government sanctions and the right of compensation for proven losses arising from those sanctions.

Recommendation:

Identify all Ontario legislation that directly or indirectly denies the right of appeal and compensation relative to provincially-inspired "partial takings" of privately owned land with a view to forthwith removing therefrom all such flagrant abuses to the rule of law and the principles of natural justice.

Problem 5:

Fairness:

Provincially imposed regulation of private property, especially when aided and abetted by special interest groups oblivious to, or contemptuous of, landowner common law rights, is justifiably perceived by its targeted rural recipients as urban-oriented, highly discriminatory and patently unjust. One need only read Ontario's Species at Risk Act (composed by a cartel of five NGOs) in its entirety to recognize how far and how fast this province has descended into what might be charitably described as diminished democracy. Stripped of its soaring rhetoric, SARA legislation compels legal owners/lessees of private land to act as unpaid custodians of allegedly endangered wildlife on or near their property and unpaid managers of habitat reserved for all such migratory guests. All this on pain of "strict liability" criminal charges for non-compliance and, on conviction, fines of up to \$1 million and/or jail terms up to 5 years.

Recommendation:

1.

Refer to an independent analysis entitled “The Ontario Endangered Species Act: Understanding the Incentives, Implication and Alternatives” published in September, 2010 by the George Morris Center (Internet search George Morris Center, click on Publications, scroll to above title, click PDF page).

2.

Critically review SARA legislation as now written from a standpoint of how this and similarly clumsy statutes discredit and publicly embarrass otherwise well-intentioned programs such as the Open for Business Initiative thereby discouraging urgently needed private investment across Ontario..

3.

Rescind biased and counter-productive SARA clauses, restore Magna Carta appeal and compensation rights to Ontario legislation and remove enforcement threats based on so-called “strict liability” and “due diligence” legal parameters as well as on conviction muscle and penalty limits better suited to a European government declared a criminal conspiracy by a world court 65 years ago.

Conclusion:

Given the thrust and direction of current land use statutes in Ontario and the draconian regulations they subsequently generate, public mistrust of central government programs is virulent and growing in this province. Hence voter-taxpayers whose lives and property are demeaned and devalued on Queen’s Park whim or impulse are unlikely to express much faith and confidence in the Open for Business Initiative.

Ontario is over-governed and over-regulated and its economy is facing long term strain and pressure that can’t be solely attributed to the advent of global recession. Indeed, however passionate its assurance that Ontario is “open for business”, the province continues to teeter on the brink of economic melt-down because successive provincial regimes have routinely ignored the principle of government for the people, of the people and by the people. Instead they have, over the past 40 years, traded integrity for expediency, accountability for deception, fiscal prudence for union peace, deserved welfare for social engineering and bottom-up governance for top-down manipulation.

With apologies for its length and structural imperfections this submission to the Open for Business Initiative is respectfully submitted on behalf of those Ontario citizens whose private property is potentially convertible to public resource by government decree.

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