

A COMMENTARY ON BILL 26

Proposed Legislation To Amend:

The Planning Act

The Provincial Policy Statement

The Ontario Municipal Board

Submitted by

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

August 31, 2004

The Ontario Property and Environmental Rights Alliance (OPERA), a network coalition of regional and provincial citizen organizations and trade associations, was launched in 1994 under a common mandate “to protect, and entrench in law, the rights and responsibilities of private landowners against arbitrary restrictions and decisions of government”.

OPERA Supporters and Contacts

Voting Member Organizations:

Association of Rural Property Owners	Lanark Landowners Association
Georgian Triangle Development Institute	Ontario Ski Resorts Association
Grey Association For Democracy And Growth	Renfrew County Landowners Association
Halton Federation of Agriculture	York Durham Farmers Assessment Association

Associate Members:

Individuals across Ontario	Westview Farm and Wood Products
Info Results	Wood Producers Association of Ontario
West Carleton Rural Association Inc.	

Network Contacts:

Alberta Adjacent Landowners Association	National Citizens Coalition
Alberta Land Resources Partnership	Niagara Escarpment Commission
Canadian Taxpayer Federation	Ontario Cattlemen Association
Citizen Centre For Freedom And Democracy	Ontario Federation of Agriculture
Competitive Enterprise Institute (U.S.)	Ontario Real Estate Association
Eco-Logic (U.S.)	Western Stock Growers’ Association
Environment Canada	University of Guelph

Planning Reform:

On behalf of its member organizations the Ontario Property and Environmental Alliance (OPERA) is very concerned about the number and implications of legislative changes, made or proposed, that will affect future land use planning legislation. Several modifications appear to overlap and are unlikely to receive adequate review by landowners. Because several other papers are available for consultation, we number only cursory review and comments in this Brief. Our major concerns relate to:

1. **Mandatory Consistency with Provincial Policy:**

This proposed Planning Act change is a reversion to Bill 163 and makes a complete mockery of local planning. The “one size fits all” and “Queen’s Park knows best” philosophies inherent in this counter-productive change means all major planning decisions will be centralized in Toronto and will be administered by urban-oriented planners who generally have no understanding of rural problems. We believe some issues common to all areas might be properly addressed with this approach but planning matters related to rural land is not one of them.

2. **Development Permits:**

We have, for many years, observed the Development Permit System as implemented by the Niagara Escarpment Commission. Against clearly expressed reservations of independent Hearing Officers, this system continues in force although it is routinely demonstrated to be subjective to the point of discriminatory, opaque, inconsistent and devoid of basic principles of common law and natural justice. On the Escarpment it is widely condemned as a process that lacks checks and balances such as the right of cross-examination; the right to present expert evidence; the right to an impartial hearing; and the right to know probable outcomes based on written criteria published in advance. Small wonder that Hearing Officers who conducted the first and second Escarpment Plan Review recommended, on both occasions, that land use restrictions and prohibitions are better administered through local zoning regulations.

3. **Performance Monitoring:**

We strongly support Performance Monitoring as discussed on page 14 of the Planning Reform Document. We believe actual results of various provincial policies and regulations are often understated, manipulated or hidden. Those who invent and implement policies should be responsible for their impacts and consequences. Greater accountability in and by government at every level is to be encouraged. People perform much better when held responsible for their actions. We believe simplistic performance indicators may produce only filed reports that are sent quickly to forgotten storage. A better approach is to measure and publish the efficiency and effectiveness of specific policies and regulations. Program evaluation theories should be employed as a tool rather than a simple counting of outcomes. All outcomes are complex and often result in unintended negative effects. These must be balanced against best intentions and desired effects. The concepts of efficiency and cost/benefit analysis need to be rigorously applied to land use planning.

Provincial Policy Statement:

4. We find the draft Policies outlined in this document to be inadequate because:

- A. The initial background statement identifies five areas of concern but never mentions citizen rights or respect for the security of private property.
- B. Provincial Policy Statements are quasi-legal generalities open to interpretation. They provide no assurance of private landowner’s rights, only an overview of government policy.

5. In our view, Policy Statements can be used by unelected bureaucrats to justify decisions not covered by regulations or by-laws, thus adding uncertainty to what the rules are and how they impact ordinary citizens. They award excessive power to public servants while providing no protection to the taxpayers that support them. Proper checks and balances are lacking. Provincial policy should respect and preserve the Common Law rights of all citizens. Only then will it offer, and be seen to offer, equal regard for both private and public interests. Security of property should be assured second only to security of person.
6. Like many Ontario residents, OPERA is inclined to question excessive government emphasis on so-called protection of the environment and restricted use of natural resources. We enthusiastically endorse preservation and conservation when those commendable objectives are distinguished by proper management rather than excluding all future use. Resource-based industries such as agriculture, forestry, aggregate, etc. cannot contribute to a strong Ontario economy if constantly threatened by government intervention. Innovative resource management is essential and must be continued. However, government declared parkland, where any resource harvesting can be prevented on the basis of vague principle or unproven science, does nothing for economic activity or social justice from the perspective of individual, corporate or community benefit.
7. The proposed Provincial Policy Statement utilizes the simplistic measurement of Prime Agricultural Lands based solely on the Canada Land Inventory. This protocol was not designed for planning purposes but, instead, for determining on a reconnaissance basis the areas and quality of agricultural land in Canada. It is clearly inappropriate for site specific land use planning because:
 - A. The related maps are scaled at 1:250,000.
 - B. It ignores the economic aspects of farming. An environment in which profits are probable is equally important as land preservation which is, after all, only one input to food production.
 - C. The use of a single criteria, land use capability, means that economic, social and environmental concerns are totally ignored.
 - D. The effects of its application on property rights of rural landowners are ignored.
 - E. The data is reconnaissance in nature, the allocation of soil types to capability classes is imprecise and the relationship among classes is not empirically proven. The result is land designations that are completely different from assessment maps.
 - F. Imprecise maps create property tax uncertainties which allow those responsible for rural land use planning and/or property tax assessments broad discretionary powers in map interpretation.
8. Section 2.1.2.3 states that development and site alteration will not be permitted in significant wetlands, valley lands, wildlife habitat or areas of natural and scientific unless no negative impacts can be demonstrated. A similar prohibition is then applied to all lands “adjacent” to such designated geography.

“Significant” is defined as provincially significant although private landowners affected by these designations are never advised in advance of provincial intention to place what amounts to a government lien on private property.

Similarly, the concept of “adjacent” lands is defined simply as those areas contiguous with those already being unilaterally transferred to the attention and mind set of provincial and municipal planners. This is nothing less than land fraud. Landowners, not to mention real estate agents, bankers, mortgage brokers and potential land buyers, deserve to know in advance precisely how far “adjacent” extends into or outside each rural property. Specific measures, including advance public hearings of necessity, must be provided unless the provincial government intends to lease or purchase outright private assets its various bureaucracies so obviously covet. Future allowable uses typically associated with rural land such as pasturing and crop production are not specified. This is completely unacceptable.

9. Section 2.1.3.1 states that nothing in the policy 2.1 is intended to limit the ability of existing agricultural uses to continue. What this and the definition of “existing technology” actually means is unclear. Land being pastured may or may not be cropped in future apparently because this might constitute a change in existing use. Is wood lot management on private land involving timber and firewood harvesting an existing use? Will spreading animal manure continue to be allowed? Rural landowners in general and farmers in particular need advance answers to such questions thus guarding against later interpretations at the whim or impulse of provincial bureaucrats.
10. Section 2.2 Water is based on the now common planning dogma that suggests whole watersheds are the only ecologically meaningful scale on which to base land use planning. Reduced to simple terms, this means that whatever central government agency is doing the planning controls, in effect, all land in Ontario because no terrestrial real estate exists outside a watershed. OPERA views this legislative Newspeak as a disguised power grab that broadens the mandate of Ontario’s 39 Conservation Authorities from agencies charged with flood plain management to one that controls all land in the province, private and public alike. This quantum leap in regulatory power is not yet widely recognized but will surely create office staffs ill equipped to invoke land-planning initiatives that supercede those of municipal origin. Any agency that controls by statute all the water and all the land controls everything. To award such sweeping authority to unelected individuals in a single, unaccountable agency is both dangerous and unwise. Certainly, the long-term implications associated with that pervasive process are of great importance and concern for all Ontario landowners.
11. The section on Agriculture repeats the shibboleth that prime agricultural areas in Ontario will be protected for long-term agricultural use. But this well-intentioned mantra is completely inconsistent with legislated policies espoused in a discussion paper circulated only a month ago by the Task Force on a Golden Horseshoe Greenbelt. Thanks to centralization of Ontario’s business infrastructure and consequential housing and transportation congestion, there is direct and unrelenting pressure for prime agricultural land to be re-zoned into residential, commercial, industrial, utility or recreational use.

Development implicitly involves use of agricultural land adjacent to sprawling urban areas for non-agricultural purposes. The only questions are when will the transition occur and who will own the land at that time. Despite noble intent and countless planning decrees, economics will prevail. Returns from agricultural lands are much lower than from almost any other use so, in the end, the business of farming simply cannot compete.

Protection of prime agricultural land by statute does little to save Ontario farmers who must compete with their highly subsidized European and American peers. Designating farmland in Ontario is a simplistic, counter-productive solution. It doesn't protect farmers but only reduces their net worth because government designation impairs both market value and collateral worth of their most significant asset.

Re-designation of farm lands, even those in Classes 1, 2 or 3, should be encouraged if the properties are located in residential, estate residential or recreational areas. If the parcel is too small for normal farm operations or has been inappropriately designated under Canada Land Inventory guidelines, it should be exempt from Minimum Distance Separation requirements. Specialty croplands deserve protection but it must include financial support for those prepared to farm those lands. Support should include tariffs, industry assistance, crop insurance, property and income tax concessions and the right to sever unneeded houses when specialty croplands are being consolidated. Rural building lots of record must be treated by date of original lot creation, not on the basis of later regulations unless the provincial government wishes to purchase them at full market value. Provincial agencies must not be allowed to down-zone land in order to later acquire or expropriate it at a lower price; see *Hauf vs. City of Vancouver* and *A Streetsville Landowner vs. the Credit River Conservation Authority*.

12. We find little in the overall Planning Reform documents to allay legitimate fears that:

- A. Rural landowners are under systemic attack by ever increasing government regulations that have both direct and indirect costs for landowners who generally have no way to alleviate such costs or pass them on.
- B. Bureaucratic and regulatory overload are a growing impediment to wise land use and, indeed, to the preservation of free enterprise in a democratic society.
- C. Local taxpayers and the Ontario electorate at large are being increasingly burdened by restrictive land use policies that have few, if any, proven benefits.
- D. Land use regulations are being written by unidentified civil servants who are perceived to have no interest in, experience with or appreciation for the results of their command-and-control decisions.
- E. Rural Ontario is reaching an economic, social and political breaking point. Rural initiative and production are being stifled by statute. Rural citizens now indulge a smoldering resentment of urban-oriented intervention in their lives and livelihood. Many believe they no longer have any meaningful control of their future prospects much less government respect for their history and culture. Small wonder that, across Eastern Ontario, hundreds of rural citizens now flock to the defiant banner "This Land Is Our Land – Back Off Government".

Ontario Municipal Board Reform:

13. OPERA offers general observations on the Ontario Municipal Board system as follows:

- A. Special interest groups that have no financial investment or right of tenure should be excluded from OMB hearings on land use issues. Environmentalists now routinely intervene in the process without any such legitimacy. This substantially adds to the costs and complexity of decision making.
 - B. Decisions affecting use of private property by non-elected as well as elected government agencies should be appealable to higher authority at public expense.
 - C. Elimination of “de nova” hearings should not be permitted because the original regulations may be in error or patently unjust. This is particularly true where land use is dictated by development permit as on the Niagara Escarpment.
 - D. OMB members should be recruited to provide the widest possible pool of capability and experience. Individuals from large metropolitan areas should not, on principle, hear rural cases and vice versa. Rural citizens cannot be expected to unquestionably embrace rules initiated and interpreted by urban planners. Moreover, rural advocates and politicians seldom comment on how Toronto manages itself. But many urban politicians, added and abetted by urban-based special interest groups, consistently meddle in rural land use imperatives despite their ignorance of locally relevant social, economic and environmental factors.
 - E. Performance review of OMB appointees should be mandatory. Given their degree of power and authority, the occupational record of these individuals should be annually examined by an independent civilian committee.
 - F. OMB member training is extremely desirable but much of what he or she needs to know does not come from professional studies. When dealing with land, particularly rural land, one is involved in a complex issue rooted in owner identity and sense of worth as well as in a core asset created and improved over several generations, not to mention an inarticulate connection to a special heritage. For many hardworking Canadians their land is all that separates them from cultural oblivion, economic ruin and under funded retirement. Demonstrated talent for business, science, politics or civil law that most OMB hearing officers bring to that appointment do not automatically guarantee adequate understanding of the implications that flow from their decisions concerning rural land use.
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OPERA concludes these comments with sincere thanks for this opportunity to express them.