ONTARIO STONE, SAND
& GRAVEL ASSOCIATION

Essential materials for building a strong Ontario

Aug 14, 2017

Ontario Municipal Board Review
Ministry of Municipal Affairs
Provincial Planning Policy Branch
777 Bay Street, 13th Floor
Toronto, ON M5G 2E5

Mr. Ken Petersen:

Re: Ontario, Stone, Sand & Gravel Association ("OSSGA")
Comments on Bill 139 – (schedule 3) – the Proposed Building Better Communities and Conserving Watersheds Act, 2017: Amendments to the Planning Act
EBR# 013-0590

Introduction

OSSGA is a not-for-profit association representing over 280 sand, gravel and crushed stone producers and suppliers of valuable industry products and services. Collectively, its members supply the substantial majority of the more than 160 million tonnes of aggregate consumed each year in the province to build and maintain Ontario's infrastructure. OSSGA works in partnership with the public and government agencies at all levels to promote a safe and competitive aggregate industry, contributing to the creation of strong communities.

OSSGA is pleased to provide input on the reforms under consideration in response to the Province's Bill 139 and the proposed changes to the Ontario Municipal Board (OMB). The OMB plays a vital role in our planning system. In light of the importance of aggregates in the development of Ontario's infrastructure and the particular dynamics associated with *Planning Act* and *Aggregate Resource Act* applications to permit aggregate resource extraction, OSSGA has a unique perspective on many of the issues raised in the Bill.

Comments

Limitation on Appeal Rights

OSSGA is concerned that the limitation on appeal rights proposed in Bill 139 will have a significant impact on the ability to provide aggregate resources in accordance with the Provincial Policy Statement.

Bill 139 proposes to severely limit appeals regarding proposed amendments to official plan/zoning by-laws. The rationale for this change is to limit the ability to change policies and

permitted uses of land that have been established in approved official plan/zoning by-laws. As discussed below, this rationale does not apply to aggregate operations.

In drafting Bill 139, it appears that the Provincial government did not take into account the way in which aggregates are planned for in official plan/zoning by-laws. Although, aggregate deposits are mapped by the Ministry of Northern Development and Mines, municipal official plan/zoning by-laws do not pre-designate/pre-zone lands for aggregate operations. Unlike other land uses, aggregate land uses do not get the benefit of pre-designation. Instead, most municipal official plans/zoning by-laws require a site specific amendment to permit a new aggregate operation. Since, aggregate deposits/locations are not identified in official plan/zoning by-laws, and official plans contemplate site specific applications to permit aggregate applications, the rationale for limiting the appeal rights to give deference to approved official plans/zoning by-laws does not exist in regard to aggregate operations.

Furthermore, as we stated in our previous submission (December 16, 2016), in OSSGA's experience, in considering aggregate applications, municipal decision makers can be susceptible to focusing on local interests at the expense of broader Provincial interests. Despite the importance of aggregates to the Province as a whole, individual communities or local stakeholders may prefer that the extraction of such resources take place elsewhere. In these circumstances, appeals of municipal decisions regarding amendments to official plans /zoning by-laws are essential, as the politically expedient decisions of a municipal council or approval authority, may not represent good planning in regard to the Provincial interest in aggregates. Therefore, it is OSSGA's opinion that a substantive right to appeal municipal decisions regarding an aggregate operation is essential to good planning policy.

In limiting appeal rights, the Province has assumed that the municipal process allows for a meaningful debate/examination of the issues involved in an application for amendment to an official plan/zoning by-law. However, this is not the case, especially for aggregate applications which involve complex technical issues. For instance, municipal councils are only required to hold public meetings, not public hearings. Experience in Ontario is that these meetings do not offer the opportunity for a probing investigation of proposed amendments to official plans/zoning by-laws, technical reports, or municipal staff responses which a hearing provides. People can be severely limited in their ability to make submissions, regardless of their merit. This municipal process was acceptable as long as there remained a place (i.e. the OMB) where such a probing examination of the planning merits of a proposal, in a hearing setting, could take place. Once an effective appeal process is removed, the failings of the existing municipal approval process are highlighted. True reform requires that the entire approvals process, including the municipal process, be examined and reformed; not just the appeal process.

Therefore, if a municipality refuses a site specific application to amend an official plan / zoning by-law to permit an aggregate operation, there should be no limitation on the right of appeal.

Furthermore, OSSGA is concerned about the proposals to eliminate appeals on a broader range of municipal and provincial planning decisions such as approval of OP conformity exercises for

Provincial Plans. There seems to be a presumption that these are straight forward routine exercises where the Provincial Plan or Policy is just written into the municipal plans. This is not the case; these conformity exercises must take into account the overlapping and complicated policy context and the variety and uniqueness of each municipality's policy documents and circumstances. It has been our experience that current municipal and provincial consultation processes have not been sufficient to fully sort out the complexities of bringing municipal policy into conformity and appeals have been required, not to debate the merits of the policy, but simply to get it right and properly interpreted in the municipal context. Appeals should not be eliminated without consideration of a replacement process whereby the reviewers and decision makers are otherwise accountable.

Conduct of Hearings

Bill 139 proposes to drastically change the structure of hearings before the Tribunal. In particular, it proposes that many hearings be conducted in writing. In addition, oral hearings regarding official plans/zoning by-laws will be limited to submissions and the Tribunal would not be permitted to hear evidence or test the evidence through cross-examination.

If these drastic changes to the structure of hearings are implemented, the result will be poorer planning decisions, particularly regarding aggregate applications. In regards to aggregate applications, there is typically a myriad of complex issues that must be addressed including, but not limited to, hydrogeology, hydrology, cultural heritage, natural heritage, endangered species, transportation, dust and noise. The issues are highly specialized and technical and experts often have differing opinions. In making a decision, the Tribunal must be able to determine which expert opinion they deem to be most credible and in the public interest. The Tribunal must have the opportunity to hear the opinions of the experts, have such opinions tested in cross-examination and be in a position to weigh conflicting opinions. In addition, it is through examination and cross-examination that experts can be held accountable for their opinions. OSSGA acknowledges that it may be appropriate to make changes to the existing hearing process to make it more efficient. For instance, the Tribunal should be given the ability to reduce the length of hearings through procedural safeguards, such as time limits.

Mediation / Alternate Dispute Resolution

One of the objectives of Bill 139 is to promote mediation and alternate dispute resolution by the Tribunal. OSSGA agrees that this is a worthwhile objective.

Furthermore, in OSSGA's experience, the OMB appeal process often provides an opportunity for productive dialogue that ultimately leads to better planning policies. Aggregate policy matters are complex and highly technical. The OMB process is often the best way to bring the different perspectives and expertise together to refine official plan policies to appropriately protect aggregate resources, as required under the Provincial Policy Statement, while also taking municipal planning objectives into account. Appeals to the OMB provide a useful platform to allow this constructive process to play out.

However, given the proposed limitation on appeal rights, there will be very little incentive for municipalities to engage in mediation or alternate dispute resolution. Those that can dictate will not agree to meaningful mediation.

OSSGA is suggesting that limitations on appeal rights not be curtailed as this would eliminate the incentive for meaningful mediation and dispute resolution. Fulsome appeal rights are vital to maintaining a system that will result in good planning decisions through mediation.

Conclusion

OSSGA appreciates the opportunity to provide its input as part of the OMB Review. We hope to continue to participate in the process as it unfolds. To that end, we would be happy to discuss any of the issues raised in this letter further.

Thank you again for the consideration of our comments. Should you have any questions or concerns please do not hesitate to contact me at nscheesman@ossga.com or 905-507-0711.

Sincerely,
ONTARIO STONE, SAND & GRAVEL ASSOCIATION

Norm Cheesman
Chief Executive Officer