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Subject AMO Policy Update - Development Charges and Planning Reform

October 14, 2015

# Development Charges and Planning Reform Referred to the Standing Committee

On September 29th, Bill 73, the *Smart Growth for Our Communities Act, 2015* passed second reading and was referred to the Standing Committee on Social Policy.

AMO President, Gary McNamara has requested to appear before the Committee and will be seeking a number of amendments to the Bill – as relates to the Bill's proposed changes to the Development Charges Act and the Planning Act. While the Standing Committee hearing dates are not yet available, we know that municipal governments are also looking to make presentations. Highlights of AMO's proposed Bill 73 amendments follow:

*Development Charges Act*: AMO's proposed legislative amendments to Bill 73:

Status of Existing Agreements

There would be no need for voluntary agreements if the legislation permitted municipalities to fully recover costs of development. Bill 73 must be re-worded to make it explicitly clear that agreements, including voluntary agreements existing before this Bill takes effect, if passed, are to remain in effect and without question. Such agreements have been negotiated in good faith, often initiated by developers. Going forward, prohibiting such agreements may have consequences for development and we caution the government from prohibiting them.

When charges are payable

Section 6 of the Bill makes charges payable upon the first building permit being issued. This policy should be deleted; flexibility is needed to respond to circumstance. The government's proposed change may lock in lower DC rates and permit developers to not follow through on their building time-lines to avoid charges that might rise over time.

Area Specific Charges

Specific area rates should remain a local decision. Proposed Section 2 (3) of the Bill amends the Act to unnecessarily limit local authority and vests that responsibility with the Minister. It should be deleted. Municipalities should have flexibility in determining their use.

Proposed Development Charges Regulations made under the Bill 73:

Although the Standing Committee is reviewing the Bill as a piece of legislation, it is structured in part as an enabling piece of legislation with several regulations to be prepared to come into force at the same time as the proposed legislation is proclaimed. Some of AMO's initial regulatory comments are being made at this time so that Standing Committee can benefit from the larger picture of the changes to the development charges regime.

a. **Regulation on transit and cost calculations**

We endorse a regulatory statute related to transit that would fulfill the long-standing principle that "growth should pay for growth". Only the Toronto-York Spadina Subway Extension (TYSSE) approach covers 100% of the costs. It's an approach that has been used before and it works. Any other approach suggests that the TYSSE was the wrong approach.

Transit is a clear priority of both the provincial government and municipal governments and it needs to be reflected in what the government does in terms of DCAs. As much as developers might publicly protest, they also know that transit is a basic service now and is needed too, if people are going to continue buying homes in areas that will need transit. It supports intensification. It supports productivity. It would also help the province fiscally. It is the right approach for all concerned.

b. **Regulation on waste diversion**

Permitting development charges recoveries for waste diversion is strongly supported by AMO and municipal governments. Turning this from an ineligible service to an eligible service needs to be done in a way that meets current and future service challenges. Diversion must include costs for waste management, not just that which is kept out of landfills. It should also support energy from waste costs.

c. **Regulation on ineligible services**

As a principle, municipalities object to having legitimate municipal services deemed ineligible, either by regulation or legislation. Again, the growth should pay for growth principle would say that the list of ineligible services should be shortened. The legislation defers 'exceptions' to regulation. It is unclear what the government's intent is for dealing with current list of ineligible services.

We do know the "*Community Hubs in Ontario: A Strategic Framework and Action Plan"* of Karen Pitre and her panel made some specific recommendations regarding DCs that in practice speak to the removal of the 10% discount on recreation facilities, libraries and childcare. This recommendation is supported. Such a move would also serve to bring benefits to communities without transit. In addition, eliminating the mandatory ten year historic service standard to the remaining eligible costs would be an important forward looking step. Planning services looking back does not work for the future.

**Asset Management Plans and Financial Statements**

Integrating development charge studies with asset management plans is valuable provided all assets are included. Municipalities believe existing reporting requirements offers thorough openness and transparency regarding financial statements. Any new approaches to asset management planning should be consistent with existing provincial asset management guidelines and not be prescribed. Provincial support is needed, not greater requirements.

***Planning Act*: AMO's Proposed Legislative Amendments to Bill 73:**

**Predictable Planning Process**

There are a number of provisions in the Bill which we support that will limit appeals creating greater stability and thus predictability in the planning process. Specifically, prohibiting appeals to the Ontario Municipal Board (OMB) where the municipality has amended its planning documents to comply with provincial requirements is a much needed change. The change that lengthens the review period of a new Official Plan to 10 years will be helpful.

Further, the instruction to the OMB to have regard for municipal decisions while considering an appeal plus the additional instructions to those who appeal to provide greater detail for the basis of their appeal will help create greater clarity and a more efficient process. The opportunity for greater time and means to settle appeals is also welcomed. The upcoming review of the OMB can strengthen the success of these

initiatives of Bill 73. All of these initiatives will work together to bring more stability to the land use planning process and stimulate confidence in the system.

### Two Year Freeze

The notion of a two year freeze for official plan amendments, except as brought forward by council can be positive, especially in urban settings where there is anticipated growth. However, this is not the case for low or no growth municipalities. Rural municipal governments are dependent on applicant initiated/plan amendment process to deal with new economic activity. Simply having a rural council become the 'applicant' for a specific lot proposal is unreasonable. The Bill needs to be amended to allow an applicant process to continue in such rural municipal governments while preventing instability in urban and growth areas as the proposed language intends. This is a situation where the rural lens is applicable.

### Inclusionary Zoning

A key interest for municipal governments is to expand the use of planning tools to facilitate the development of affordable housing. An additional optional tool that could be provided to facilitate affordable housing development is inclusionary zoning. However, there needs to be some local discretion on how this approach is implemented given servicing conditions. Any intensification has an impact on infrastructure/asset management/financing capital plans as well as health/safety considerations. It should be noted that inclusionary zoning should not be considered a panacea solution for all new affordable housing development.

### Cash in Lieu of Parkland

Generally, municipal governments find that the changes to the calculation for "cash-in-lieu of parkland" stipulation unacceptable and should be reconsidered. The proposed change may not have the desired outcome but rather may further hamper municipal government's ability to manage to provide alternatives within a park plan.

### Harmonizing Timeframes

The timeframe to appeal conditions of a plan of subdivision is longer than the appeal for the plan of subdivision itself. This has created some problems in communities and it is suggested that the legislation be changed so that these time-lines be harmonized.

### Public Engagement

Public engagement is integral to the planning process and municipal governments have extensive successful experience with this process. There is concern that the proposed reporting requirements in this Bill may evolve into administrative requirements which would further strain municipal capacity and reporting may be a new point of contention and legal action. The mandatory requirement for an upper tier planning advisory committee (PAC) with at least one member of the public is not seen as improving public engagement – it will add to process with new costs and potential for confusion. The current discretionary within the Planning Act that permits a council to establish a planning advisory committee approach makes sense.

### Defining "Minor" Variance

Defining "minor" has long been the role of the decision-makers based on local circumstances as well as the OMB and courts. It is important that proposed changes do not create confusion or new grounds for appeal. We strongly caution the Province from taking a regulatory approach. Any guidance should be grounded in existing case law and should not create a more complex framework for local committees of adjustment to interpret.

AMO encourages municipal governments to make submission or request to appear before the Committee to speak to how the development charge and planning reforms within this Bill relate to local circumstances

and needs. For more information regarding the Legislative Committee, please contact the Clerk, Valerie Quioc Lim at 416-325-7352 or vquioc@ola.org.

AMO thanks the Municipal Finance Officers Association (MFOA) for their valued contributions to the proposed development charge reforms.

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