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To: The Planning Committee
City of Kawartha Lakes

Re: Staff Report PLAN2017-001
- "Bill 73, Smart Growth for our Communities Act, 2015"

The above-referenced staff Report (which is the only substantive item on your January 11th Agenda) purports to provide Council with a briefing on the more significant changes to the *Planning Act* introduced by Bill 73, as well as on implications they will have for municipal processes and procedure.

It is fair to say that this briefing is long overdue. Bill 73, after all, received Royal Assent in December of 2015; and the final set of amendments that it introduced came into force on July 1, 2016. As such, all of the new obligations imposed on both Council and the City – many of which are not even referenced in this staff Report – have been fully in effect for more than 6 months; and many of those changes have been in effect for more than a year. More to the point: They've all been set-in-stone for more than a year.

What is also surprising is that this briefing is being provided by the Director of Development Services, rather than by the City's solicitor. To begin with, Bill 73 also imposes new requirements departments other than Development Services. As it turns out, most of those changes are not even referenced in Report PLAN2017-001.[1] More to the point: In relation to the matters that it *does* cover, the briefing that has been provided to you is filled with inaccuracies and mischaracterizations.

[1] To take but one example: Subsection 42(17) of the Planning Act now requires the Treasurer to prepare an annual financial statement relating to the account in which Cash-in-Lieu-of-Parkland payments are kept. And it further specifies that:

> *(18) The statement shall include, for the preceding year,*
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> *(a) statements of the opening and closing balances of the special account and of the transactions relating to the account;*
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> *(b) statements identifying,*
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> *(i) any land or machinery acquired during the year with funds from the special account,*
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> *(ii) any building erected, improved or repaired during the year with funds from the special account,*
>
> *(iii) details of the amounts spent, and*
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> *(iv) for each asset mentioned in subclauses (i) and (ii), the manner in which any capital cost not funded from the special account was or will be funded; and*
>
> *(c) any other information that is prescribed.*
>
> *(20) <u>The council shall ensure that the statement is made available to the public.</u>*

I don't have the time, obviously, to go through each of those inaccuracies in detail. Nor, to be honest, is it my job to do so. That being said, let me point out just a couple of the more obvious examples:

1. In the middle of page 4 the Report states that:

> ***"No new privately initiated Zoning or Official Plan amendments are permitted within 2 years of the OP being amended unless the municipality passes a resolution to allow applications during the two year period. The intent of this amendment is to provide some certainty and stability to land use after an OP has been recently reviewed."***

In point of fact, the *Planning Act* says nothing of the sort.

Rather, as amended by Bill 73, what it now specifies is that:

(a) No application to amend <u>a new official plan</u> may be initiated by a third party applicant within the first two years after that new official plan is adopted -- unless Council approves a resolution permitting such an application.[2]

(b) <u>In the event that Council at some point *simultaneously* repeals and replaces *all* of the Zoning By-laws in effect throughout the City</u> no application to amend any of those newly-adopted by-laws may be initiated by a third party applicant within the first two years after their adoption -- unless Council approves a resolution permitting such an application.[3]

The upshot is that, contrary to what Report PLAN2017-001 would have you believe:

- The restriction on privately-initiated official plan amendments applies only in cases where <u>an entirely new official plan</u> has been adopted.
- The restriction on privately-initiated zoning amendments applies only in the peculiar situation in which <u>all</u> of the existing zoning by-laws in the City have been <u>simultaneously</u> repealed and replaced.

I believe that it's fair to assume that neither of these triggering events is likely to occur within the term of this (or even the next) Council. (And, given the sheer number of them, it's hard to imagine that all of the City's zoning by-laws would <u>*ever*</u> be repealed and replaced simultaneously.)

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[2] As specified in Subsections 22(2.1) and 22(2.2) of the amended *Planning Act*:

> *(2.1) No person or public body shall request an amendment <u>to a new official plan</u> before the second anniversary of the first day any part of the plan comes into effect. 2015, c. 26, s. 21 (1).*
>
> *(2.2) Subsection (2.1) does not apply in respect of a request if the council has declared by resolution that such a request is permitted, which resolution may be made in respect of a specific request, a class of requests or in respect of such requests generally. 2015, c. 26, s. 21 (2).*

[3] As specified in Subsections 34(10.0.0.1) and 34(10.0.0.2) of the amended *Planning Act*:

> *(10.0.0.1) If the council carries out the requirements of subsection 26 (9) by simultaneously repealing and replacing all the zoning by-laws in effect in the municipality, no person or public body shall submit an application for an amendment to any of the by-laws before the second anniversary of the day on which the council repeals and replaces them. 2015, c. 26, s. 26 (1).*
>
> *(10.0.0.2) Subsection (10.0.0.1) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally. 2015, c. 26, s. 26 (2)*

2. Near the bottom of page 4 Report PLAN2017-001 states that:

> ***"When appealing a decision to the OMB, people are required to provide more detailed reasons and relate these reasons to the PPS and OP"***

Once again, this is a complete misrepresentation. In point of fact:

(a) Bill 73 did not introduce a general requirement for an appellant "*to provide more detailed reasons*".

(b) What it did do, however, is impose an added burden in those specific cases in which the appellant of an official plan adoption or amendment is intending to argue that the decision being appealed is inconsistent with or fails to conform to:

   a. the PPS (or any other Provincial Policy Statement),
   b. a provincial plan (including The Growth Plan), or
   c. the official plan of an upper-tier municipality (which would not apply to CKL).

In those three cases – but only in those three cases – the Planning Act now specifies that the notice of appeal "*must explain how the decision is inconsistent with, fails to conform with or conflicts with*" the document in question.[4] (Note: Failure to provide that explanation may result in the appeal's being dismissed.)

(c) An appeal of a zoning by-law adoption or amendment is slightly different. The requirement is the same, but in this case it applies to those instances in which the appellant is intending to argue that the decision being appealed is inconsistent with or fails to conform to:

   a. the PPS (or any other Provincial Policy Statement),
   b. a provincial plan (including The Growth Plan), or
   c. any applicable official plan (which *would* apply to CKL).[5]

In sum: The newly-added obligation being imposed on appellants arises only in those instances in which the grounds of appeal include the specified allegations. Otherwise, contrary to what is claimed in the staff Report, there is no obligation either "*to provide more detailed reasons*" than were previously required under the Act; nor is there any obligation "*to relate these reasons to the PPS and OP*".

The upshot is that there is no basis for believing that, as the Report claims, the intention behind these changes was "*to reduce the number of appeals to the OMB*"; nor, equally, is

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[4] In relation to appeals of official plans adoptions and amendments, this newly-introduced requirement occurs in Subsections 17(25.1), 17(37.1), and 17(45)(c.1) – all of which include more or less the same formulation, being:

> *(25.1) If the appellant intends to argue that the appealed decision is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or, in the case of the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan, the notice of appeal must also explain how the decision is inconsistent with, fails to conform with or conflicts with the other document.*

[5] In relation to appeals of zoning by-law adoptions and amendments, this newly-introduced requirement occurs in Subsections 34(19.0.1) and 34(25)(b.1) – both of which include more or less the same formulation, being:

> (19.0.1) If the appellant intends to argue that the by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan, the notice of appeal must also explain how the by-law is inconsistent with, fails to conform with or conflicts with the other document

there any reason to believe that this would be the expected result. Rather, by requiring an appellant to provide those added details in its notice of appeal, the effect would presumably be to thereby limit the scope of the resulting hearing to the specific allegations identified in that notice.

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As I'd indicated earlier, the foregoing represent only two examples; there are many, many more. Equally there are a number of highly consequential changes to which the Report makes no reference at all. And as I'd also indicated, beyond the issue of constraints on my time and energies, it's not actually *my job* either to go through all of the other inaccuracies in detail or to provide Council with a briefing on all of the matters that have been omitted.

In fairness to the Report's author, the task of briefing a municipal Council on the implications of new provincial legislation is not typically assigned to the applicable department head(s), but rather to the municipality's legal staff – whose training, experience and expertise are obviously far better suited to the task. Accordingly in this instance I would respectfully suggest that Council request such a report from the City's solicitor. *[Note: That report would presumably also cover Bill 73's amendments to the Development Charges Act – on which you've received no briefing at all to this point.]*

In the alternative: Last winter most of the province's major law firms produced quite detailed (and completely accurate) summaries of the changes and analyses of the implications resulting from Bill 73's adoption. I have no doubt that most of them would happily provide copies of those summaries and analyses to the Clerk. But if she does happen to encounter any resistance, I myself would be happy to provide her with five or six of them.[6]

In the alternative again: For those of you interested in scrutinizing the actual legislation, I can provide the Clerk with an annotated version of the amended *Planning Act* that I myself prepared more than a year ago, on which I've highlighted all of the Bill 73 amendments (including the incorporation of the prior versions where applicable). *[I can also, of course, supply the Clerk with a similarly annotated version of the Development Charges Act showing the changes introduced by Bill 73.]*

Sincerely yours,

Marty Stollar

Martyn Stollar
Managing Director

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[6] You can also, of course, simply choose to review the document appended to Report PLAN2017-001 entitled "Highlights of Changes to the Planning Acting". In doing so, you will note that the Report's chacterizations do not accurately reflect its contents – which are in fact consistent with what I've set out herein. That being said, I believe that you'll find the law firm's summaries to be easier to follow and more detailed.