

GREENBELT ACT SIGNALS FURTHER EROSION OF LOCAL DECISION-MAKING

By: Shari Elliott and Marshall Green

On February 24, 2005, the Government of Ontario passed the *Greenbelt Act, 2005*. The Act would apply to about 1.8 million acres in total including one million acres of newly protected land consisting of environmentally sensitive and agricultural land in the Golden Horseshoe. It will allow the provincial government to establish a Greenbelt Area, and a Greenbelt Plan to spell out land use policies within that area to protect against urban development and sprawl.

Overview

The Golden Horseshoe is one of the fast-growing regions in North America. While this growth will bring many economic benefits, it will also create significant challenges. This legislation is being enacted to assist the Golden Horseshoe's growth to be planned, thoughtful and managed.

The legislation aims to make sure that: the environment, including its water system, remains healthy and able to support both the people and wildlife; encourage growth in cities and towns outside the Greenbelt, while supporting vibrant rural communities in the Greenbelt; support agriculture; and provide outdoor recreational and leisure opportunities to the rapidly expanding population.

The protection of the environment is proposed to be achieved by prohibiting new urban development on wetlands, forests and rivers in the Greenbelt. The tragedy that occurred with Walkerton's water source has influenced this legislation with protection of water resources from development and contamination as a key goal. Focus is also on the preservation of shorelines and strengthening of the river valley connections with the Oak Ridges Moraine, the Niagara Escarpment and Lake Ontario.

Agriculture is to be protected through the prevention of urban development on specialty-crop lands (like the Holland Marsh and the Niagara Peninsula Tender Fruit and Grape Lands), and prohibitions on use of prime agricultural lands for uses that do not support agriculture.

Growth of rural communities is contemplated through modest expansions of town and villages every 10 years where local water and sewer services are appropriate. Recreation and tourism are encouraged through the establishment of parkland, open space and trail strategy.

Consequence of Act

The ultimate result of this Act will be less development in the Golden Horseshoe, an area from Niagara Falls to Rice Lake near Peterborough. With decreased supply comes increased cost. Higher housing prices in the Greater Toronto Area will be a direct consequence. Not surprisingly, areas north of Toronto, like the Towns of Innisfil, Bradford-West Gwillimbury and New Tecumseth, the Township of Essa and the City of Barrie will see an influx of people wanting a manageable commute with better housing prices. Few will have travelled the 400 series or read municipal publications without noticing the marketing campaign of Barrie's mayor declaring "Barrie Means Business". Meanwhile, communities to the south rush to keep their infrastructure up to the demands of a mushrooming number of interested developers. Innisfil and Bradford-West Gwillimbury, for example, have just completed a landmark agreement to share Innisfil's lake-based water treatment plan. And the Metrus Corporation has announced plans for a huge development in Innisfil that will bring with it new infrastructure. All of this plays out against a province that is busy studying "appropriate" growth for the South Simcoe (north of the Greenbelt) region.

The implementation of the Greenbelt Plan and the resulting shift in where the population resides will mean that items that were previously required to accommodate the commuting public will become higher priority items for these municipalities, including GO train services and funding for essential municipal services.

Provisions for Conflict and Discretion

It is noteworthy that the Act gives priority to the provisions of the provincial greenbelt legislation in the case of a conflict between it and a municipal official plan, zoning by-law or even a statement under the Provincial Policy Statement (PPS). Once the growth plans are approved, every decision made thereafter under the *Planning Act* by a local decision-making body must conform with the provisions of the growth plan that applies to that growth area.

While the *Greenbelt Act* contains provisions that require the minister to give notice of the proposed plans to the public and to the municipalities and to receive submissions on the plan, as well as provisions for the appointment of a hearing officer to conduct hearings and make recommendations to the minister, the minister has the discretion to recommend to Cabinet a plan that he or she determines appropriate. Consequently, this Act provides no form of quasi-judicial proceeding to resolve competing interests between government policy and owners' rights. In fact, section 19 of the Act states that no private cause of action arises as a direct or indirect result of actions taken under this legislation and there can be no claim for damages.

Shifting of Control and Standards

This legislation, the *Places to Grow Act, 2004*, and the PPS all make it clear that the provincial government is resuming its control over land use planning controls. Not long ago, the government seemed positioned to decrease the authority of the Ontario Municipal Board in resolving land use planning disputes between municipalities and its residents, as the board was viewed as being insensitive to local decision making. This legislation can be viewed as yet further erosion of local autonomy and local decision making.

Further, the standard previously used when implementing the policy statement was “shall have regard to”. The new standard signals a return to the historical use of the “shall be consistent with” standard imposed to ensure that the provincial interests are given priority in land use planning decision making. Therefore, when exercising any authority that affects a planning matter, decision-makers must ensure that their decisions are consistent with the new provincial policy statement and not just “have regard to it”. Consequently, any local official plans must be made to conform to the Greenbelt Plan or any growth plan that may be established, signalling considerable erosion of local autonomy and local decision making.

Reshaping Municipal Authority

It is interesting to observe how provincial legislators keep reshaping the authority of municipalities with each new piece of legislation. In 2001, the new *Municipal Act, 2001* was being heralded as the dawn of a new era for municipalities in Ontario. This legislation was promoted by the provincial government of the day as providing enhanced flexibility and broad authority to municipalities. A background release issued on October 18, 2001 stated that the “proposed *Municipal Act* would, if passed by the legislature, enhance flexibility for innovative municipal service delivery, improve accountability to the public and promote safe, well-administered economically health municipalities”.

At the time the *Municipal Act, 2001*, was enacted, it was noteworthy that the Act itself contained a number of explicit restrictions on municipal powers. The Act reaffirmed the existing legal principle that municipal by-laws are without effect to the extent that they conflict with provincial or federal statutes, regulations or instruments issued under such authority.

Clearly, there were no illusions that the province was giving up any of its authority. However, for a period of time, it did appear that municipalities were being given leeway with regard to matters of a local nature. In fact, at the same time, the courts were demonstrating a willingness to grant municipalities greater discretion in terms of regulatory purview. However, it is likely that this recent Act and others, as well as the PPS, will affect the way that municipal powers are viewed in the future.

Conclusion

Before the new Provincial Policy Statement and the passing of the *Greenbelt Act* it was thought that municipalities' powers over the environment were expanding. However, both the PPS and the *Greenbelt Act* make it abundantly clear that the provincial government is, and will continue, enacting legislation governing land use planning, and that this legislation will have priority in all local decision making.

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