“Shall be consistent with”:
Overview

Ontario

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Overview

- Provincial Policy Statement, 2005
- “Shall be consistent with”
- Range of policies
- Type of language
- Minimum standards
- Focus on desired outcomes
- Review
- Wrap-Up

Provincial Policy Statement

- Policy Statements issued under section 3 of the *Planning Act*
- *Planning Act* (ss. 3(5) and (6)) amended to require planning decisions to be **consistent** with the PPS
- Effective date is March 1, 2005

“Shall be consistent with”

Common dictionary definitions:

- Marked by agreement and concord
- Coexisting and showing no noteworthy opposing, conflicting or contradictory quality or trends
- In harmony with
- Compatible with
- Constant to the same principle as
- Not contradictory with

“Shall be consistent with”

- Application of the “shall be consistent with” standard will occur through decisions
- Ontario Municipal Board and planning decisions will help us understand the application of the standard
- Only the courts can interpret legislation

“Shall be consistent with”

- Directory in application
- A higher policy implementation standard

“Shall be consistent with”

Does this mean that the application of “shall be consistent with” to decisions on planning matters leaves municipal decision makers with no ability to address local circumstances?

Applying the PPS Locally

- **PPS policies include a number of elements intended to facilitate local implementation, specifically:**

- the range of policies and geographic scales to which policies apply
- the type of language in the policies
- the minimum standards provided by the policies
- the predominant focus of the policies on desired outcomes
- the role of municipalities in establishing targets (e.g., affordable housing) and standards (e.g., density, population and employment)

Range of Policies

- **Range of policies of the PPS, 2005 relate to:**
  - Specific areas or features
  - Planning objectives within the context of a municipality or planning area

Type of Language

- There are different types of language used in the PPS:
  - Some policies are expressed as a positive direction
  - Other policies set out limitations and prohibitions
  - Still other polices use enabling or supportive language
- Choice of language intended to distinguish between the types of policies and the nature of implementation

Minimum Standards

- **PPS, 2005 policies represent minimum standards**
- **Planning decisions may go beyond minimum standards, provided that this would not create a conflict with any other PPS policy**

Focus on Desired Outcomes

- The PPS focuses predominantly on desired outcomes or end-states, rather than specifically prescribing the process that must be followed
- Focus on end-states provides some discretion on ways to achieve the desired outcomes

Review

Which of the following is correct?

To apply the “shall be consistent with” standard to the
PPS, planning decision makers:

A. Do not have to apply the PPS if justification is provided

B. Must achieve the outcomes of the PPS

C. Must seriously consider the PPS as an important factor but applying it is up to the discretion of the decision maker

D. Must ensure that their official plan policies are exactly the same as the policies in the PPS

Review

The council of a municipality approved the creation of a new farm retirement lot located in a prime agricultural area. The lot is small in scale and is serviced by an appropriate sewage and water system. Could this be interpreted as consistent with the PPS, 2005?

Review

The council of a municipality approved a new plan of subdivision. Adjacent to the development is a significant wildlife habitat. The municipality justified the development with an environmental impact study illustrating that there would be no negative impacts on the habitat. Could this be interpreted as consistent with the PPS, 2005?

Wrap up

- “Shall be consistent with” is not defined in the *Planning Act*
- Interpretation can only occur through the courts
- “Shall be consistent with” is a stronger test than “shall have regard to”
- Effective date of the “shall be consistent with” standard is March 1, 2005