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Submission Re The Ontario Municipal Board

Should the Ontario Municipal Board (OMB) be abolished? The Federation of Urban Neighbourhoods (F.U.N.) believes that it should be retained, as alternatives would be more expensive and difficult to use. What is needed are major reforms that address the concerns of the community.

The OMB was established at a time when Ontario municipalities had no effective land-use planning. Now all larger municipalities have planning departments, which should be leading the way, while the smaller ones continue to struggle with limited planning resources. Any changes should recognize this distinction.

The comments below apply to appeals from the larger municipalities.

What are the major concerns of communities with the OMB process?

- The major concern is that the OMB overrides planning decisions that councils have passed. People expect that the rules (Official and Secondary Plans, Zoning Bylaws) will be followed and they get justifiably upset when the rules are broken. Thus the majority of appeals that cause community distress are site specific. If the OMB kept their decisions in line with municipal planning, as enacted by elected councils, much of the criticism would go away.
- The practical operation of the OMB is fundamentally flawed due to the gross inequality of resources between developers and communities. Developers almost always have “deep pockets” to pay lawyers and planners, while community groups must work with very limited means. In addition, the developer writes off the cost as a business expense, while the community must pay with after-tax dollars, contributed by individuals.
- The weight given to “experts”. Because someone has an official designation, their input often overrides well thought out input from non-experts. And experts cost money, favouring deep pockets.
- The municipal site planners often support a development application that violates the planning rules developed by their department. This contributes to the frustration of failed expectations and supports the developers. It also encourages developers to ask for more.
- Because developers provide the lion’s share of business to land-use lawyers and planners, it can be difficult for a community association to find the appropriate representatives, even if they can muster the funds to pay them. This is because many lawyers and planners fear being blacklisted if they are successful in opposing developers.

In reviewing these concerns, one can see that many of the OMB issues could be resolved by changes to the planning process. The goal should be to have the planning rules decided at the time of policy creation, with appeals to the OMB also done at that time. Once the rules are in place, a strong justification should be required to have an exception. This will level the playing field for

communities and developers and manage the expectations of both parties. Many developers would like to have reasonable rules they all must follow; eliminating variance applications and OMB appeals gets projects completed sooner and reduces costs.

What are the solutions?

- When municipalities submit their official plans to the ministry for approval as required by the Planning Act, they should include secondary plans and zoning bylaws as a complete package. This will eliminate the argument that zoning is not current with the official plan and it will establish a consistent set of rules.
- Add to the Provincial Policy Statement the requirement that the municipality is expected to consistently support its planning rules. If the site planner wishes to support an exception that is clearly not a minor variance, then it must be detailed why this particular property is an exception to the bylaws for the area and identify other properties to which this exception might apply. This will mean the planning department must ensure consistency in its policy and implementation. Also it will mean, in most cases, that the city planner would have to appear in support of the city policies, lowering community cost.
- Make mandatory mediation part of the process, before the full appeal is heard. This will bring the parties together and may lead to a solution acceptable to both sides, without the need for a quasi-judicial hearing process.
- Change the OMB into an appeals body, where the burden is on the appellant to show that the decision being reviewed is in error. No new evidence should be allowed to be presented, unless agreed by all parties in the hearing.
- Provide funding or a source of legal/planning support to incorporated community associations. Provisions can be made to prevent abuse of this support. The Ontario Human Rights Legal Support Centre has a proven track record in providing assistance to financially disadvantaged groups and individuals, so this would be a good model to use in providing this support.
- No appeal should be allowed until the municipality has rendered a decision on the proposal. Penalties may be required to pressure municipalities into making decisions within the permitted timeframes.
- The Planning Act should be amended so the OMB "<u>shall</u> have regard" rather than "should have regard" to municipal decisions.
- Currently many OMB Commissioners treat expert testimony as fact rather than opinion. This attitude favours those who can afford to hire professional experts with certification. However, when both sides have "experts", they can present opinions that totally contradict each other. Thus expert testimony can be tailored to the ends of the one paying for it. Commissioners should be directed to recognize almost all testimony is opinion and treat it accordingly. This is important, because it reduces the Community Association expense and allows them to take advantage capable people available to them.
- Require the OMB to consider all aspects of the Official Plan of the municipality relating to the proposal when making decisions. Currently it appears that only intensification matters - factors that make a livable community are ignored.
- Hearings should be recorded and the recordings made available on the OMB web site. This will permit a review of exactly what was said should the need arise.
- OMB chairs must be open to diverse points of view, not just to the opinions of "experts". A better balanced perspective will help communities get a fair hearing.

- There appears to be little interest in establishing local appeal bodies to replace the OMB. This would mean extra expense for the municipality to have a body appointed by the same politicians that appoint the Committee of Adjustment.
- The OMB is an administrative tribunal, not a court of law. Those presenting evidence should be treated with respect. Too often they are subjected to adversarial questioning which can be intimidating for those who do not regularly appear. The procedural guidelines should be changed to eliminate adversarial conduct.

The above recommendations should lead to fewer hearings at the OMB, reducing the opportunities for dissatisfaction with its decisions. Furthermore, they will establish a more level playing field for hearings. Fewer hearings will also reduce the cost of the OMB. And municipal planning departments will be required to have plans that are acceptable to both communities and developers, helping to eliminate the OMB as the agency to “fix” their problems.

F.U.N. urges the province to proceed with meaningful reforms that will make the OMB a more effective body that will be regarded as fair and effective by all Ontarians.