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OMB Review - Comments from the Civic Hospital Neighbourhood Association, Ottawa, Ontario

The following represents the Civic Hospital Neighbourhood Association's (CHNA) comments related to the OMB review.

CHNA sees little rationale for the operation of the Ontario Municipal Board in its current configuration. Planning decisions by Municipalities should, in the vast majority of circumstances, be final.  The decisions of elected officials acting on behalf of citizens should not be subject to appeal at a quasi-judicial board where it has been demonstrated that the interests of those citizens to envision and create the community they desire is given little weight.

Should residents feel their views have not been adequately represented by their elected officials, these officials can be voted out of office.  No such recourse is available to residents with respect to the OMB.

In the rare case when a decision taken by elected Municipal officials is so egregious as to require an appeal, a much modified OMB could be the appropriate body to hear such an appeal, but only if it is re-structured to encourage, support and respect public participation.

* **Jurisdiction and powers**:

CHNA agrees with the Greenspace Alliance that "*The role of the Ontario Municipal Board should be significantly modified... In true appeal court fashion, the standard outcome of an appeal should be that the matter is sent back to the municipality, with an appropriate clarification or guidance regarding interpretation. We note that current law (Planning Act, s. 24.3ff.) requires the Board to send the dispute back if new information is brought to bear on the matter that Council had not or could not have considered, but this appears to be interpreted very narrowly. The mountain of new evidence that typically is brought forward in preparation of a hearing, arguing one side or the other, is not considered "new information.*"

In fact,  the OMB has taken upon itself to introduce new evaluation criteria into appeals.  For example, the OMB established that the nebulous term "wow factor" could define what constitutes a landmark building exempt from zoning height restrictions. This was contrary to the City of Ottawa's desire to create "certainty" in zoning heights - something that both elected officials and the citizens of Ottawa who elected them, wanted. Such a definition should have been left in the hands of the municipality and it's citizens.

CHNA also wholeheartedly agrees that "*The OMB's role is far too strong. All parties to discussions at the municipal level take into account 'what the OMB will do.'* " CHNA and other community associations are well aware that some discussions at Municipal Planning Committees and City Councils are undertaken under the understanding that decisions can be appealed to the OMB, which, as Greenspace Alliance aptly and succinctly notes.. "*hampers dialogue, mutual understanding and consensus seeking at the local level. The mountain of evidence that later appears at the appeal hearing should have been tabled as part of the community discussion."*

The decisions of elected officials acting on behalf of citizens should not be subject to appeal at a quasi-judicial board where it has been demonstrated that the interests of those citizens to envision and create the community they desire is given little weight.

* **Meaningful citizen participation and local perspective**:

In 2015, CHNA had a very negative experience with respect to participating in an OMB Process.  CHNA had hoped to participate as a Party to the Proceedings. However, our attempts to be considered as such were discouraged by aggressive counsel for another Party, who insisted that CHNA be represented by legal counsel. We were puzzled that the OMB was conspicuous by its non-participation in a drawn-out e-mail discussion and we were discouraged that the OMB did not come forward to support our participation.

In the end, the intimidation tactics of the counsel for the other Party succeeded and, unable to afford legal representation, we reluctantly agreed to the lesser status of Participant in the proceedings. While we understand that it is the responsibility of legal counsel to aggressively protect the rights of clients, to CHNA it is a further indication that community organizations are at a disadvantage at these proceedings, with limited resources available to adequately support, or even defend, their participation. (*Correspondence related to this matter is available upon request.)*

The OMB, should it continue to exist, must level the playing field between Parties who are hired to represent clients and individuals and groups who volunteer their time to take on an OMB appeal.  These individuals and groups  might have lesser legal capacity but have extensive local knowledge and commitment to the well-being of their communities.  The OMB must always be cogniscent of the fact that it is individual residents and communities who live with the long-term ramifications of its decisions.

* **Clear/predictable decision making**:

When any appeal has been filed with the OMB, the parameters around which the OMB decision will be taken should be clear to all.  This is particularly important for individuals or groups who volunteer their time to participate and who could use some additional assistance in preparing for an OMB appeal.

* **Hearing procedures and practices**:

The OMB should clearly identify criteria for appointments to the Board and demonstrate how the individuals appointed meets these criteria.  Perhaps a public review process for appointments should be considered.

Clearer rules around who is notified when an OMB appeal has been received is also necessary.  CHNA was not informed of an appeal to the OMB about a zoning decision to which it had participated and almost missed the opportunity.

* **Alternative dispute resolution**:

CHNA supports the idea of looking at the viability of other dispute resolution mechanisms, such as mediation, as alternatives to traditional hearings or adversarial procedures as part of the appeal system.

* **Transparency and accessibility (new heading from CHNA)**

CHNA believes that timeliness, transparency and easy access to documentation are crucial to public trust in any  institution. CHNA supports the idea of making all documents related to Board decisions available on the Board's web site. CHNA recently read a Board decision in which the testimony of witnesses was called into question and it would be good to have an opportunity to review exhibits and testimony.

Finally, CHNA would like to point out that Ontario is alone in Canada as having an entity such as the OMB.  Created as primarily a rail transportation and municipal finance oversight entity, its mandate is out of touch with Ontario's current municipal planning environment, and the important role that citizens and elected officials must have in shaping the city in which they live.  Local matters!!!

Thank you for the opportunity to comment.

Sincerely,

Kathy Kennedy

Chair, Planning & Development

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