



Ontario's Land Use Planning and Appeal System

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Municipal Law Section



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The OBA.....	2
Overview.....	2
Comments.....	2
Achieve predictability, transparency and accountability in the planning / appeal process and reduce costs	2
Up-to-Date Planning Documents and Amendments to Planning Documents.....	2
Collaboration and the Sharing of Information.....	3
Limiting Rights of Appeal	3
Appeals for Non-Decision.....	3
Development Permit Systems.....	4
Support greater municipal leadership in resolving issues and making local land use planning decisions.....	4
Resolving land use tensions locally	4
Local Appeal Bodies.....	5
Pre-Consultation Process	5
Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions and support for job creation and economic growth	5
Appeals of official plans and zoning by-laws implementing matters that are provincially- approved.....	5
Conclusion	6



Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide comments on the Ministry of Municipal Affairs and Housing Consultation Document, Fall 2013, relating to Land Use Planning and Appeal System (the “Consultation Document”).

The OBA

The OBA is the largest voluntary legal organization in the Province representing nearly 16,000 lawyers, law professors and students. In addition to providing legal education for its members, the OBA has assisted governments with many legislative and policy initiatives – both in the interest of the profession and in the interest of the public.

This submission was prepared by the OBA Municipal Law Section, which has more than 350 lawyers who are leading experts in land use planning matters, representing proponents for and against policy documents and development applications, municipalities and the public before tribunals and the courts, including the Ontario Municipal Board (“OMB”).

Overview

As the Municipal Law Section of the OBA is comprised of lawyers representing developers, municipalities and ratepayers, our primary objective is to ensure that the review of the land use planning and appeal system results in a more efficient and streamlined process while ensuring that accountability and transparency are maintained. Overall, it is our view that, subject to minor modifications, the existing land use planning and appeal system works well and, further, that the OMB is the appropriate body for adjudicating most land use planning disputes.

Comments

Achieve predictability, transparency and accountability in the planning / appeal process and reduce costs

Up-to-Date Planning Documents and Amendments to Planning Documents

The OBA is supportive of the intent to ensure that official plans and zoning by-laws remain up-to-date and reflective of current provincial plans and policies. To that end, it is important not to limit opportunities for stakeholders to make applications to amend municipal planning documents. Such opportunities for amendment (coupled with appropriate public engagement) are an important component of ensuring that municipal planning remains up-to-date. Further, the ability to amend



planning documents results in planning documents that are flexible and therefore relevant. Amendments to planning documents, whether publicly or privately initiated, allow for a timely response to changes in the planning environment including changes in market conditions and consumer demand, economic opportunities, and legislative reform.

Collaboration and the Sharing of Information

In reviewing the land use planning and appeals system it is critical to ensure that any changes to the process of amending a planning document is predictable, timely and transparent from the outset. As between applicants and municipalities, the pre-consultation process appears to be an appropriate way to ensure that all information a municipality reasonably needs to evaluate a potential development application or proposed policy amendment is provided.

To ensure that the public has the greatest opportunity to engage in the process and be fully informed, municipalities should be required to post all submitted materials on their website as it relates to a particular development application or proposed policy amendment.

The same is true for municipal initiated amendments to planning documents or new official plans or zoning by-laws. All studies prepared in support of a municipal initiated amendment should be posted on the website and made readily available to the public. Ensuring that stakeholders have ease of access to all relevant information will contribute to an improved level of public awareness and engagement.

Limiting Rights of Appeal

With respect to questions regarding appeals to plans or by-laws in their entirety, the existing appeals process provides the necessary balance as it relates to decisions on land use matters. When a whole plan or whole by-law appeal is filed, the OMB has a wide range of tools to ensure that appellants define their appeal and conduct themselves appropriately throughout the appeals process. The OMB should be encouraged to use these tools to ensure that the appeals process is efficient.

Appeals for Non-Decision

One area where the Province could consider amending the *Planning Act* (the "Act") is to address the gap relating to the time period to appeal from non-decisions of municipal councils or other approval authorities. There is currently no time limit in which to file an appeal which may be problematic in instances where there are multiple appellants.



Consideration could be given to amending legislation to expressly permit the OMB to establish time limits for appeals following, for example, the first pre-hearing conference in connection with an appeal arising from a non-decision. Irrespective of the approach that the Province may take on this matter, what is critical is how notice would be provided to potentially interested parties to ensure that they have the opportunity to file an appeal or seek party status as appropriate.

Development Permit Systems

Development permit systems should be encouraged as an option for communities to implement as it may result in a more effective and efficient means of development approval. It is suggested that the Province better educate stakeholders on the benefits of the implementation of a development permit system.

In the interest of transparency and accountability, it is important that the requirements to implement a development permit system are maintained, including the requirement for an official plan policy to authorize the implementation of a development permit system. It is also important that the right to appeal the development permit by-law and the right to appeal a non-decision on an application for a development permit remain.

Support greater municipal leadership in resolving issues and making local land use planning decisions

Resolving land use tensions locally

Cooperation and collaboration could be fostered by encouraging municipalities to take a leadership role in identifying issues the municipality and community groups have with a proposed development application or proposed policy amendment prior to the first open house or public meeting. This would provide an opportunity for proponents to attempt to address issues before positions are entrenched. Given the nature of the existing land use planning system, once positions are entrenched it can be difficult to compromise to arise at an optimum solution.

Consideration could be given to opportunities to encourage the mediation of issues in dispute even before an appeal is filed. This would require municipalities to clearly articulate their concerns with a planning application early in the process.

Alternatively, consideration could be given to legislative reform that would require mediation assessment for all OMB appeals that are likely to result in hearings that are scheduled for more than



5 days. Such assessment may determine whether the dispute will benefit from mediation to assist in either narrowing the issues and/or settling the appeal.

Local Appeal Bodies

Local appeal bodies may not be an appropriate solution for many municipalities. There appears to be significant inefficiencies in operating local appeal bodies in each municipality in lieu of one tribunal serving all municipalities.

Additionally, there are a number of concerns with the expansion of powers for local appeal bodies, including:

- The potential for different sets of rules and procedures, which could make access more difficult for the public;
- Consistency of decisions between local appeal bodies on similar issues;
- The provision of appropriate and necessary training of appeal body appointees on principles of natural justice, including the conducting of fair hearings; and,
- Concerns with whether a local appeal body is truly independent and has members with sufficient knowledge and experience to adjudicate the issues before it.

As a result of these concerns, and given that there has been no municipal uptake in the existing local appeal body process thus far, the powers of local appeal bodies should not be expanded at this time.

Pre-Consultation Process

Any decision as to whether or not to require pre-consultations should be left to the individual municipalities.

Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions and support for job creation and economic growth

Appeals of official plans and zoning by-laws implementing matters that are provincially-approved



It is suggested that the elimination of any rights of appeal that currently exist would require a substantial overhaul of the land use planning and appeal system. The appeals process is intertwined with the land use planning system and to make such a dramatic change to one side of the process without significant study of the entire process as a whole could result in an inappropriate outcome.

Specifically, with respect to amendments to official plans and zoning by-laws to implement provincial plans, each municipality is charged with translating provincial policy, where applicable, into the municipality's own language. That translation can have extraordinary impact on property owners, investors, ratepayers, municipalities and the economy, and therefore must be subject to review and correction where necessary. It is this stage of the planning process, the translation of provincial policy into the local context, where the impact of the policy-led regime is most profound and immediate, and the need for accountability and transparency as reflected through appeal rights is critical. To alter this regime would require a fundamental redesign of Ontario's land use planning system.

Conclusion

Overall, the OBA's view is that the current land use planning and appeals process works reasonably well. We urge the Province, in considering any changes to the land use planning and appeal system, to ensure that maintaining transparency and accountability are foremost, while at the same time ensuring that there is sufficient flexibility to reflect local circumstances.

The OBA looks forward to continuing discussions with the Ministry of Municipal Affairs and Housing and other key stakeholders regarding the potential changes to the land use planning and appeals system.