

Summary of Minister's Roundtable Discussion: Land Use Planning System June 19, 2012

Part 1 – Summary of Minister-led Roundtable Discussion

The following is a summary of issues and perspectives identified by participants who attended the Minister's Roundtable. The information has been transcribed from the flip chart notes taken during the Minister-led discussion. It does not necessarily reflect the views of the provincial government. The information has been organized into themes of the discussion.

Planning Act Appeal Process

LIMITATIONS ON APPEALS

- Certainty – limit appeals on specific sites for a period of time
- No appeals of minor variances
- No official plan appeals if policies address provincial and municipal requirements
- Not appropriate for official plans to be modified after the lengthy process to get approval in place; therefore, they should remain in place for 5 years
- Planning process must include an amendment process as it is impossible to make an official plan that is forever right

TYPES OF APPEALS

- One size does not fit all types of applications – appeals from minor variances are different from official plan appeals
- Minor variances are more of a Greater Toronto Area / Toronto phenomenon
- Economically significant applications should get approvals in place more quickly without appeals

Municipal Planning and Decision making Process

FREQUENCY OF AMENDMENTS

- Serious concerns with frequency of amendments to current official plan
- Frequent site specific amendments to official plan defies the notion of official planning
- Official plans are amended a lot; in other jurisdictions this is not “generally allowed”
- Need good official plans and need to stick to them
- Need to develop balance between rules and flexibility for changing circumstances
- World is changing (can change quickly) - cannot keep up if rules stay static
- Global and local investment is happening a lot faster than a few years ago

- What are we doing in terms of planning? Lots of money and time being invested to create policies, meetings with stakeholders/ the public, however basically everything can be appealed. Why should all of these appeals be allowed?

PREDICTABILITY

- Need more predictability in process (e.g. qualifiers like “generally” or wide ranges like 4 – 28 stories, make it difficult to ensure predictable results and therefore make official plan policies totally unclear)
- Municipal planning policies should be required to reflect infrastructure investment decisions to ensure certainty for uses that would benefit from that investment

ZONING UP-DATES

- Zoning must be current so that it reflects updated policy direction in official plan
- Modernized zoning by-laws would reduce variances and related appeals
- City of Toronto’s zoning by-law is outdated and not relevant to current needs (i.e. 50 years old)
- Out-of-date zoning enables developers to come in with proposals for anything
- Failure of municipality to update municipal planning documents
- Gap between official plan and zoning by-law is a serious problem especially when zoning does not reflect provincial investments in infrastructure
- Predictability – the zoning by-law is where most matters interface with planning – if not updated it results in uncertainty and creates conflict

DEVELOP TIMELY REVIEW PROCESS

- Need a process that gets approvals in place more quickly
- Decision points throughout the entire planning review and approval process (municipal and approval authority levels) need to occur more quickly

COMPLEXITY OF PROCESS

- Multiplicity of approvals – not just *Planning Act* also Growth Plan for the Greater Golden Horseshoe, Lake Simcoe Protection Plan, etc.
- Over 200 pieces of legislation affect overall land use planning process
- Applicants frustrated with complexity of process (much more than past *Planning Act*)
- Review process is challenged with increased complexity; however, issues not necessarily more complex than 20 years ago
- Improvements to the planning process can keep things away from OMB

INTENSIFICATION NEEDS

- City neighbourhoods become over built and this drives up prices
- People accept change but want good change

- Challenges: how to implement Growth Plan for the Greater Golden Horseshoe; need to accommodate new people; need to get rid of barriers to intensification
- Need to decide where intensification should be focused. That would make it easier to build
- Need a better land supply system to ensure affordability and choice (Whitebelt = urban resource for future development)

EARLY INVOLVEMENT

- Energy should be spent at the front end of the planning process with municipal staff and developer not at the OMB
- Process should be front ended

FLAWED PROCESS

- For some planners it is their goal to avoid going to the OMB. If developers are unhappy with a decision made, they will appeal. If planners approve a developer's plan because they don't want to go to the OMB, we have a flawed system
- Citizens know their neighbourhoods and communities better than municipal planners
- Should not have challenges to official plan policies which are in place (e.g. appeals to subsequent planning applications which implement the official plan)

MUNICIPAL ROLE

- Municipality should take on role to educate and inform ratepayers and public on the local planning review process and OMB
- Local councillors not interested in provincial policies – focussed on local groups (election cycle)
- “Pass on / Pass through” – municipalities don't make decisions; therefore the Board must make decisions especially controversial ones
- Municipality should be required to make decision before the matter goes to the OMB
- Municipalities need to consider outcomes of consultation (e.g. give some weight to community opinions) when making decision
- Northern municipalities have concerns with cost of planning; return on investment is already low for developers when you add costs of OMB hearing, it may make project unviable
- Needs of small town different than large centres
- Councillors do not explain that OMB is part of the public planning process that starts with city planning process
- City process is all about citizen engagement and councilor needs to explain the city planning tests and requirements the applicant must fulfill before application can be presented to city council
- City process provides the opportunity for citizen engagement and response to citizen concerns

Ontario Municipal Board Process

LITIGIOUS PROCESS

- It is a litigious process and has become more so over time
- A litigious system is a bad system to design a city
- OMB process has become legalistic (lawyers, professional witnesses)
- There is a lack of predictability of the outcome of OMB decisions

LOCAL APPEAL BODY

- Local Appeal Body – no take up
- Local Appeal Body – no assurances it will address provincial interests
- Local Appeal Body = local OMB – increased municipal costs for a process that is already provided by the Province
- Need independent appeal body

ROLE OF OMB

- OMB second guesses municipal decisions
- OMB's role should be defined more clearly and decisions should determine if:
 - Matter meets provincial policy
 - Matter meets municipal official plan
 - Process was fair
- OMB is not the appropriate place for decisions on design, height, etc. – those matters need to be decided earlier in the planning process
- OMB is not meeting mandate – to be fair and to have a transparent process
- Many developments that are good would not have happened without the OMB
- Zoning decisions should stay local

OMB'S REGARD FOR MUNICIPAL DOCUMENTS

- Official plan process includes extensive citizen and other stakeholders involvement; therefore the official plan is reflective of municipal and public interest; however, OMB can disregard official plan
- Secondary plans are not being respected

CITIZEN INVOLVEMENT

- Need to develop a level playing field as it is presently unfair for groups without “deep pockets” – cases can cost millions of dollars
- Threat of costs against appellants and the lack of predictability of the Board's decision keep citizens from going to Board
- Board hearings should start on the site (of the application) so the hearing would be more connected to community
- OMB should be less onerous
- OMB needs to be accessible (currently you need a lawyer and the resources)
- The OMB considers opinions of planners hired by developer valid; while opinions of planners living in a neighbourhood doing work pro bono are not respected / given sufficient weight by the Board

- OMB is a “wild card” favouring the rich
- OMB creates chilling effect in the planning process (and distorts process)
- Developers’ opinion is favoured more
- For some people (i.e. lawyers, planners, developers) it is part of their job to go to the OMB (they get paid to be there); the citizen groups who appeal decisions are not being paid; they are community activists trying to do what they think is in their community’s best interest (different reasons for people being at the OMB/ appealing)

SCHEDULING

- Some OMB cases can be quite lengthy ~15 months, however most are about 3 weeks – it is an extremely expensive and lengthy process
- Too much time is required to get to OMB, to schedule hearing and to get a decision; perhaps the OMB should consider longer hearing days

EDUCATION AND TRAINING

- OMB decisions are very complex (yet issues aren’t that much more complex than in the past)
- There needs to develop a better understanding of the OMB and the land use planning processes e.g. residential groups

MUNICIPAL COSTS / FEES

- OMB represents huge costs to small and northern communities (to defend their decisions)
- Cost of appealing too low (\$125 fee) – cost to appeal must be higher to deter frivolous appeals (but still needs to be accessible)

MEDIATION

- OMB mediators were used in the 1990’s and should be used now on a go-forward basis (mediation should perhaps be mandatory). This may resolve more disputes without hearings

Other Comments

- Inappropriate application of Section 69 where municipal fees should only address processing of applications (re: not possible cost of OMB appeal) (Note: Section 69 of the Planning Act provides that municipalities may by by-law establish a tariff of fees to cover only the anticipated cost of processing each type of planning application)
- Need long term economic vision / plan
- Ontario is diverse – process must respond to and be appropriate for diversity
- We need democratic accountability

Part 2 - Summary of Breakout Sessions

The following reflects the notes and flip charts prepared by each of the four breakout groups. It does not necessarily reflect the views of the provincial government. One table of participants dealt with Question 1 and one table considered Question 3. Two tables of participants considered Question 2.

Question 1:

How can the citizen's role in the planning process be enhanced and made more effective?

Table Notes:

- Citizen vs. ratepayers
- ABCs of Planning Process
 - Role of:
 - Participants
 - Developers
 - Planning staff
 - Political
 - Developers, planning staff and political representatives all interact
- Better organization of citizens; non-government organizations have same interests they all can learn from each other
- Ratepayers should get some response from OMB regarding their concerns
- Local residents are better educated
- Process needs to meaningfully engage citizens
- Supports Needed:
 - local citizen advisory committee
 - "planning equivalent of legal aid"
 - education of citizens
- The what:
 - e.g. City of Ottawa "Saturday Sessions" (planning primers);
 - Toronto (website);
 - recent changes Bill 51 (2007)
 - enforcement of site plans (municipal complaints process)
 - Guidelines
- Citizen training, education, ABCs – need municipality to help in this process
- Local citizen advisory / planning aid (OMB is expert and law driven)
- Better organized citizens mean better decisions
- Ratepayer need to be involved early in the process where questions about the "studies" and applications can be responded to
- Expectations of the process vary: Developer expectations vs. Planning; and Planning vs. Ratepayers
- Bill 51 – where is it at?

- OMB has chilling effect on Councillors – it can be a case of “take the deal or lose it all”

Question 2:

What is the proper balance between certainty and flexibility in the planning process?

Table 1 Notes:

- Target setting e.g. environmental target
- What provides certainty – a general official plan or a prescriptive one?
- Zoning implements the plan
- 5 year limit
- Industry likes more certain outcomes
- Market economics determines approach e.g. real estate talks
- Policy framework determines land use
- Some developers look for maximum uptake – potential for high rise
- Restricted supply of land drives economics
- Developers respond to demand
- Industry frustration with lengthy process
- “Local” vs. “general” public interest
- Generally higher density applications cause problems e.g. New York zones for neighbourhood and produces certainty; e.g. once policies for transit oriented development (based in a 2/3 year study) are completed – no site specific appeals are allowed for a period of time – use of market density clauses – use of development permit system
- Review the plan in a timely manner
- Resource planning in the right way
- Involve people upfront to get buy in
- Appeal rights occur at plan and area zoning level (not at site specific level)
- Balance along the continuum – more discussion / flexibility at front end; more precise (fix position) at end
- No matter which approach utilized, people will object
- Issue of scoping should occur at OMB level as well – more direction set from the chair – effect of Bill 51
- Clarity is as important as flexibility and certainty
- Planning documents are not “user friendly”
- Need more visual aides to help educate
- What about the certainty / flexibility of uses along corridors – e.g. transit nodes
- Investments by province or city in infrastructure should be reflected in official plan policies to provide certainty for uses that would benefit from that investment (e.g. uses around transit corridors should be clearly defined to ensure optimal return on investment)

- Sometimes development / economic cycles take longer than 5 years
- Different time lines for municipal comprehensive reviews and official plan reviews
- Reaction planning vs. inaction in planning

Table 2 Notes:

- Stuff happens - how do we cope?
- Due to the time it takes to create an official plan, it is hard to keep it timely
- There is a difference between “predictability” and “assurance”
- Avoid hard numbers in official plan
- Official plan should have a chance to run its course which is limited by statute
- Once official plan is in place, only municipal amendments should be allowed
- Remove wobble words like “may” or “generally” from official plan documents
- Remove breaks in the chain of responsibility; leadership (especially elected and municipal planners) are not leading on development
- Transition between high/low density areas is a major challenge
- Should be clear about the relationship between an official plan and its secondary plans
- Although money underlies everything at the OMB (e.g. economic viability of proposal), it cannot be discussed; therefore when determining zoning the economic viability of the development proposed (e.g. density) must be calculated
- Official plan, zoning and other elements must be updated regularly; there must be enforced updating
- Cities don’t appear to take planning seriously

Question 3:

How can the planning process and the appeal process be simplified and made more efficient?

Table Notes:

- There should a different kind of appeal process for “small” municipalities vs. “large” municipalities since issues are very different; or,
 - What types of matters go the Board? – by size; by type of application
- Modernize zoning by-laws to reflect Growth Plan for the Greater Golden Horseshoe
- In new development areas, “pre-designate and pre-zone”
- Make appellants “more responsible” for their appeal action (ensure that it is not frivolous)
- OMB should ensure it has a “high test” to winnow out frivolous applications
- Mediation should occur as early as possible – before sides are further galvanized. However, there can be irreconcilable differences requiring decision (greenfield vs. infill developments)

- Look at a “small claims” type of process to ensure applicants are tasked with accountability for smaller matters
- OMB is not getting good citizen advocacy because it is unaffordable
- OMB improvements are only half the picture – also look at roles and responsibility of municipal councils, and planners
- OMB costs everyone too much
- OMB members should be encouraged to be more active in probing compared to preponderance of active listening
- Get firm on provincial and municipal plans; no ambiguity (get rid of “weasel” words)
- Plans have to stop being so specific – densities, land uses don’t have place in the official plan
- If municipality does not make a tough decision, the OMB has to
- Development permit can offer more flexibility, but they can be voluminous
- Residents want predictability – plans should reflect what will be – stable in transition, more growth centred
- Residents are confused on basic planning matters – official plan, zoning by-law, etc. What are they? What is the most important process to focus on? What is a minor variance?
- OMB is wrong forum for major environmental decisions (hydrogeological matters, prime agricultural land, inefficient infrastructure). These matters should go to the Environmental Review Tribunal
- For First Nations, is the provision of basic notice adequate?
- Tie new development proposals to higher standards of energy water conservation
- Require Board hearings to begin on the property – Board, appellant(s), applicant – three dimensionality of planning, more efficient understanding of the substantive matters issues, better / earlier identification of frivolous appeals
- OMB hearings should not be de novo. They should truly be an appeal; and as in US courts, limit on size of submissions, limits on time required for cross-examination (Bill 51).