

Land Use Development Planning – The Ontario Municipal Board and Citizen Involvement

E. L. Mercer and J. M. Shepherd
September 10, 2007

Introduction

- **The authority of the OMB in the land use development process should be reduced.**

There is wide public interest in the workings of the Ontario Municipal Board (OMB) and a growing public consensus of the need for a change to its mandate. Indeed current campaign literature makes reference to reducing its power. While Bills 51 and 53 are a step in the right direction, they are not enough.

Based on our recent experience (see our “Proposed Development at Alvin and St. Clair” report, which is attached), we wish to make recommendations with respect to the interrelationships between the OMB, Toronto City Council, the City Planning Department, the Developer/Applicant and Neighbourhood residents, all of which result from a Developer’s application for by-law revisions that are required to accommodate his project.

- **An Ontario Residents’ Support Office (ORSO) should be established.**

We see an urgent need for the Provincial Government to provide tools that will enable residents, who become members of Residents Working Groups on short notice, to learn quickly their rights and of the rules of the process. At present the majority of volunteer residents participating in such discussions are novices. They are simply not on an equal footing with the City Planners and the Developer’s paid professional staff in regards to knowledge of the approval processes, development issues, governing ordinances and indeed the politics.

The establishment of the ORSO would be a step towards reducing the imbalance.

Our Exposure to the Issues

A development proposal was made late in December, 2006 to build a very large condominium complex in our immediate neighbourhood. We were asked to be members of the Working Group of local residents, established to facilitate community input on the proposal. The group held six meetings.

Prior to these meetings, we had had no experience in the process. During our meetings, we became aware of three issues:

- The first thing that became evident was that the Developer had the services of paid professional staff and consultants that had worked together on this and other projects over a long time. On the other hand, many members of the Working Group had not met before, and most of us had had no experience whatsoever with the process. While we struggled to understand what was going on, the Developer's professionals breezed through their presentations in a manner that did always make it easy for the novice resident representatives to grasp the implications of what was being proposed. We came to believe that if we could not offer speedy opinions on details, as they were presented, our silence could later be construed as agreement. At the same time, we were told that if we arrived at an opinion about the design, prior to the end of the Developer's presentation, this could ultimately be construed, at a subsequent OMB hearing, as having reached set opinions prior to hearing all of the presentation. We were advised to withhold criticism even though we stated that our written opinions were based on the information presented to date and that they could change as more information became available.
- Our second realization was that the Developer's application to City Council for a by-law change would almost certainly be appealed to the OMB if the Developer did not get the approvals that were sought. It was evident that an appeal would be launched even though the application would have been filtered through the Planning Department and City Council. It is commonly believed that 80% of developer applications are successful at the OMB. As we have since heard it expressed, planning takes place in the shadow of the OMB.
- Our third realization was that although the Developer was hearing our concerns, he did not have to act on them. (It is easy for a Developer to include some aspects of obviously bad design in his initial proposal and to revise them when the residents object. This may be then used, at the OMB, as an example of his listening to the residents and respecting their concerns.)

The two major objections that we have to the Developer's proposed project at Alvin and St. Clair are its density and height.

The City already had in place the St. Clair Secondary Plan and a newer plan that is not yet in effect, that are supposed to regulate density and many other aspects of new projects in the area. The City also has a policy, which we support, of encouraging "densification" in some areas that are close to local subway stations. However, the degree of densification is not quantified, leaving a tremendous loophole for the Developer. It is incomprehensible to us why these regulations leave it up to the Applicant to propose a densification factor. Furthermore, we do not understand why the OMB would not have required the City to close this loophole in the Plan.

As mentioned above, attached is our report, "Proposed Development at Alvin and St. Clair", which we have circulated to neighbours. It is based upon Working Group

meetings with the City Planner and the Developer. It will help to explain why we have arrived at the views expressed in this report.

Our Two Proposals

- **Reduce the power of the Ontario Municipal Board in Land Use Development Planning.**

We are aware that there have been a number of well-considered proposals to abolish the OMB. For example, the Deer Park Residents Group resolved to abolish the OMB at its 2001 Annual General Meeting

Citizens lack confidence in the planning process overseen by the Board. Municipal councillors are appalled by the tax dollars spent processing applications, the most significant of which will be appealed. Costs of fighting appeals by both the City and residents, coupled with the arbitrary nature of some OMB decisions serve further to undermine confidence in the process. City and Developer costs are ultimately reflected in property taxes or prices. Residents are always out of pocket if they are represented before the OMB.

There appears to be reluctance on behalf of Government to abolish the OMB.

An alternative to its abolishment is to change its authority in regards to municipal land use planning.

The essentials of our proposal are:

- That the power of the OMB be limited to sending an Application appeal back to a City, together with its Decision and Order
- After receipt of the returned Application and consideration of the OMB Decision and Order, a City Council could reaffirm its original ruling, providing that it does so with a two-thirds majority vote. There would be a fixed time limit before the City ruling could go into effect. Should the Council vote be less than two-thirds, the OMB Decision and Order would stand.
- Where there has been a two-thirds majority vote, the City would immediately notify the Attorney General of its reaffirmation. If the Government does not agree with the Council's reaffirmation, the Government could notify Council before the time limit expiry and then table legislation to address the issue.

The checks and balances of this procedure are readily apparent.

- **Establish the Ontario Residents' Support Office**

- The purpose of the proposed Ontario Residents' Support Office (ORSO) would be to provide resources to assist residents, who become involved in matters of municipal land use planning, to become better informed and effective.

ORSO would complement the new OMB Citizen Liaison Office. Possibly the two offices could be combined.

A member of ORSO would be available to meet with the Working Group at the start of an application process, to go over procedures and terms of reference. The ORSO member would also continue to be available to answer questions from the Group. Although it can be assumed that members of a Group have a great interest in the proposed project, it cannot be assumed that they have any knowledge of the bureaucratic rules and nomenclature that may apply

- ORSO would prepare and publish a general reference document that would describe the objectives and method of operation of Working Groups. It would explain the process and the relationships between all of the parties. The contents of the document should be in straightforward language, supplemented by flow diagrams indicating relationships and hierarchies between parts.

ORSO would maintain a web site, that would, along with other relevant information, contain links to all relevant Provincial and Municipal by-laws, Planning Acts, directives, procedures, etc. pertaining to land use planning.

The reference would also recommend minimum documentation that should be given to Residents' Working Groups by an Applicant, via the City Planner, and at what time. It would recommend that if a City, or one of its Boards, has previously entered into an agreement with the Developer in respect to a project, this information be made available. Group members should not have to learn the intricacies of searching for such information on government websites, without knowing whether such agreements even exist.

The ORSO document and web site would be of great assistance to anyone volunteering to serve on a Residents' Working Group and to citizens interested in civics generally.

- ORSO would establish guidelines for city planners supplying Residents' Working Groups with supplemental documentation specific to

Applications. The guidelines should recommend the use of websites, specific to each project, to which up-to-date documents may be posted.

- ORSO would be authorized to provide limited funding for technical consultants to assist Residents Working Groups in appeals to the OMB. Such funding would be solely at the discretion of ORSO. The reasons for the appeal would have to be credible to ORSO.

Residents generally will never have the financial resources to match those of the Developer, nor will they be able to assemble a team of technical experts like the Developer. The latter will have been working on the project for a long time before the residents are introduced to it. It is likely that the project will not be the first for the Developer but very likely will be the first for the just created Residents' Working Group.

Conclusion

Even though Bills 51 and 53 are now in effect and the City has increased powers to regulate Height and Density, we still believe that these recommendations for Land Use Development Planning are valid and should be implemented.

Prepared by:

Edward L. Mercer
62 Heath Street East
Toronto, ON, M4T 1S3

John M. Shepherd
66 Heath Street East
Toronto, ON, M4T 1S3