



# Bay Cloverhill Community Association

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Tuesday, May 23, 2017

Toronto City Council  
100 Queen Street West  
Toronto ON M5H 2N2

**Re: Agenda Item: PG 20.3  
Prioritizing the Scheduling of OMB Cases Related to Toronto**

Dear Members of Toronto City Council:

Several downtown Toronto community associations have combined to respond to the request of the Government of Ontario for input on OMB Reform. One of our top 5 asks is that appeals of Official Plan amendments should be heard before appeals of site plans.

We strongly support the request of Toronto City Council that OMB Cases be re-scheduled so that appeals relating to Official Plan Amendments be given absolute priority and that this re-organization of the OMB hearing roster for high priority hearings should be enacted immediately.

The current scheduling system for appeals is opaque to users, but we know that individual site appeals are being heard ahead of comprehensive area plan appeals. For example, OPA 183 Phase 2 (dealing with heritage issues in what is now the Historic Yonge Conservation District) has no scheduled hearing date, despite having been on the OMB's scheduling horizon since (at best) December 2016 or (at worst) September 2014 (OMB Case Number PL131355). Meanwhile, individual site plan hearings within the area are proceeding, with the potential to completely undermine the intention of the Official Plan Amendment before the Amendment is even heard.

Attached is our OMB Reform brief which we have discussed with The Ministry of Municipal Affairs, with the Ministry of the Attorney General and with our MPP, the Honourable Glen Murray.

We urge Council to approve the request to the Ontario Government on the topic of prioritizing of Official Plan Amendments with all due haste.

Respectfully,

The Joint Downtown Community Associations  
BCCA, CWNA, BENA, GYRA, GDNA, McGill Granby

CC: Jennifer Keesmatt, Chief Planner, City of Toronto  
Councillor Shiner  
Councillor Wong-Tam, Ward 27  
Councillor Cressey, Ward 20  
Councillor McConnell, Ward 28

Encl: (1), OMB Reform Brief of the Joint Downtown Associations

# BCCA, BENA, CWNA, GDRA, GYRA, MGVRA

Joint Briefing: Ontario Municipal Board Reform



# **BCCA, BENA, CWNA, GDRA, GYRA, MGVRA Re: Ontario Municipal Board Reform**

## **INTRODUCTION**

- Toronto-Centre is being transformed, not by the integrated plan set out by the City's Planning Department and approved by City Council, but by individual, site-specific OMB decisions.
- In effect, the development process in Toronto-Centre (and other downtown Ridings) has been transferred from accountable, elected representatives and their full-time experts (City Planning staff) to unaccountable appointees with no expertise in complex, integrated planning issues and who appear to prefer the evidence presented by paid agents of companies that benefit financially if a development is approved.
- This process is undemocratic, and is alienating citizens from a vital process.
- The OMB Review is an ideal opportunity to create a healthy balance of power between government (Provincial and City), private Citizens and the Property Owner.

Following, we have specific recommendations for a fair and just OMB system that will help to create a healthy, viable and livable downtown.

## **RECOMMENDATIONS**

**Recommendation #1:** Appeals of general By-laws such as Secondary Plans and Heritage Conservation Districts must be heard before site-specific appeals and if required, built into legislation.

**Recommendation #2:** OMB should not hear de novo cases. Instead, it should only review whether:

- The Official Plan has been followed
- Provincial planning policy has been followed
- The process has been fair and timely.

**Recommendation #3:** The time line for the City to complete a review of an Application should be increased to more accurately reflect the time required (in Toronto its' two years for a complex application).

**Recommendation #4:** If benchmarks have already been met, developers should not be permitted to advance intensification arguments for proposals for developments in Toronto-Centre or any other area that has already met the target benchmarks.

**Recommendation #5:** Section 37 Benefits should be outside the scope of an OMB Appeal.

Appended to this overview are backup arguments and charts to support the above top five issues.

# Appendix 1

## BCCA, BENA, CWNA, GDRA, GYRA, MGVRA Issues With the OMB

### Supporting information for our Major Issues with the OMB

1. **(for Recommendation #1) Appeals of general By-laws such as Secondary Plans and HCD Districts are being subjugated to site-specific appeals.**
  - This violates the hierarchy of planning regulations set out in the review documentation:



\*Source: “Review of the Ontario Municipal Board Public Consultation Document” October 2016

- Currently, Site plans are being heard ahead of changes to the Official Plan (e.g. OPA 183), and Developers are using this cadence to undermine the City’s long-term planning efforts. By the time Official Plan changes are litigated through the OMB, all the relevant sites have already been dealt with through Site Appeals. The stable door has been closed after the horse has bolted.
- If the current policies are insufficient to ensure that Developers circumvent the above hierarchy, then consideration should be given to provide a stronger legislated process.
- Current processes do not provide any incentive to the Development Community to resolve the larger planning bylaws.

**2. (for Recommendation #2) The current process is undemocratic, undermines and/or excludes citizen participation.**

- We note the Guiding Principles set out in the Review documentation:

Guiding principles	
Protect long-term public interests	Maintain or enhance access to dispute resolution
Provide transparency in hearing processes and decision-making	Minimize impacts on the court system

\*Source “Review of the Ontario Municipal Board Public Consultation Document” October 2016

- There is no transparency in hearing decision-making, and little in hearing processes:
  - The OMB website is unsearchable, making it next to impossible for citizens to find relevant information. In fact some of the information is inconsistent with the current practices of some of the Members of the Board.
  - Hearing decisions do not follow a regular template, enabling individual Chairs to issue decisions that vary wildly from case to case – there is no predictability to them.
  - OMB Chairs may hear evidence from Participants, but rarely assign them any weight in their deliberations. Only Parties, legally represented and offering up Expert Witnesses, are given any credence. Party status is often unaffordable for your constituents, in money and time terms, and we are therefore often effectively excluded from the current process.
  - Toronto-Centre constituents have seen this pattern repeated so often that they have given up on the process, and regard it as simply a way of formalizing the Developers’ plans.
  - Even if financial support were available, the sheer number of site-specific appeals to the OMB in your Riding means that citizens will not have the time available to participate. We have to find a way of cutting the flood of appeals to the OMB, and the endless repetition by Parties/Participants of known policies (benefiting only those who are paid by the hour).

- The OMB is not staffed or structured to act as a *planning* body.

**We should place responsibility for planning professionalism, timeliness and expertise firmly back with those whom we should hold accountable – City Planning staff reporting to City Council who are responsible to the citizens of Toronto.**

**3. (for Recommendation #3) The time lines for the City to complete a review of an Application should be increased to more accurately reflect the time required for evaluation.**

- That would reduce significantly the number of Out of Time Appeals improving the balance of power.
- Currently, every Application is under the threat of appeal long before the City has even begun to formulate a decision.

**4. (for Recommendation #4) Developers continue to, inappropriately but successfully, use the general intensification targets in the *Provincial Planning Statement* and the *Growth Plan for the Greater Golden Horseshoe* for the already-intensively developed downtown core.**

- Expert witnesses called by developers reference the intensification targets in these seminal documents.
- Because OMB Chairs lack specialized planning knowledge (they understand legal process, but not integrated city planning), and because they weigh developers' expert witness evidence more highly than City staff's evidence, this argument goes unchallenged.
- However, Toronto-Centre has long surpassed the intensification targets and its infrastructure is already groaning under existing population intensity.

**5. (for Recommendation #5) Section 37 Benefits should be outside the scope of an OMB Appeal.**

- These benefits should be outside the scope of the Appeal and sent back for further negotiation and mediation.

February 14, 2017  
LAB/KAH/AH