

Planning and Growth Management Committee

(City Council on November 29, 30 and December 1, 2011, deferred consideration of Item PG9.11 to the next regular City Council meeting on February 6 and 7, 2012.)

PG9.11	Action			Ward:All
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Removing Toronto from the Jurisdiction of the Ontario Municipal Board (OMB) and Asking the Province of Ontario to Abolish the OMB - Motion MM11.7 Referred by City Council on September 21 and 22, 2011

Committee Recommendations

The Planning and Growth Management Committee recommends that:

1. City Council request the Minister of Municipal Affairs and Housing to amend the Planning Act, the Heritage Act and the City of Toronto Act to abolish the Ontario Municipal Board's (OMB) jurisdiction over Zoning By-law Amendments, Official Plan Amendments, Site Plan, Subdivision and Condominium Plan Approvals and Community Improvement Plans and appeals under the Heritage Act.
2. City Council send a copy of this resolution to the Minister of Municipal Affairs and Housing, all local members of Provincial Parliament and Greater Toronto Area (GTA) municipalities.
3. City Council support the request of the City of Mississauga to the Minister of Municipal Affairs and Housing for public consultations on these requests, and advise the Minister of its support in writing and offer of assistance to liaise with local stakeholders including business owners, property owners, residents, and individuals and corporations working in land use development and planning.
4. Should during the Ministry and City-lead public consultations, it be revealed that municipal jurisdictions wish to remain subject to OMB hearings, then Toronto City Council and other municipal jurisdictions by a majority vote, be granted the option of removal from the OMB's purview.
5. City Council establish a Councillor-Staff Working Group to develop the structure and an implementation plan for an independent Appeal Panel to hear appeals of Committee of Adjustment decisions on Minor Variance and Consent Applications;
6. City Council request the Working Group to consider the staff and financial resources requirements for the establishment of the Panel; the fee structure for Committee of Adjustment and Appeal Panel applications; the structure and size of the Panel;

qualifications and criteria for appointment of members to the Panel; and

7. City Council request the Working Group to report back in the first quarter of 2012 to the Planning and Growth Management Committee with a draft proposal for the establishment and implementation of the Panel and to seek public comment on the proposal.

Origin

(September 23, 2011) Letter from City Council

Summary

City Council on September 21 and 22, 2011, referred Motion MM11.6 to the Planning and Growth Management Committee.

Municipal councils in Ontario are directly elected by their constituents, and have general responsibility for land use planning in the public interest.

Since the establishment of the Ontario Municipal Board (OMB) in 1906—initially as the Ontario Railway and Municipal Board—it has evolved from an approval authority into an appeal body in matters of land use planning. As municipal councils developed increasingly sophisticated expertise and resources over decades, they have become qualified and better equipped to make informed and prudent decisions.

Toronto City Council is advised and informed by an established and experienced full-time Planning Department staffed with accredited professionals, and is capable of making decisions in the public interest.

City Councillors are eager to adopt the responsibilities their constituents expect of them. Councillors have the benefit of ongoing engagement with the communities they represent, and extensive knowledge of local issues, opinions and needs both large and small, on which they base their decisions.

City Councillors and the planning staff's ability to plan is undermined if applicants calculate that it is in their interests to treat City processes as a mere formality en route to an OMB hearing. Although many applicants are fair and reasonable in their dealings with the City, the OMB appeal process is not conducive to fostering good-faith negotiations and efforts.

The current OMB hearing process is too cumbersome, too expensive, too time-consuming and too legalistic to facilitate wide-ranging citizen participation and is therefore unfair to the local residents as well as the community at large.

The current OMB process is also a drain on City Planning and Legal resources. Great urban planning is about looking forward using planning documents/guidelines/frameworks with the benefit of past professional experience, and this should be what planners should spend their time doing. Instead, much of their time is spent defending appeals based on personal or private interests to the OMB. This situation also creates a disincentive for the City to appeal its own decisions, even where they are correct and in the public interest. All these matters impinge on the City's ability to meet its obligations to its constituents, including applicants expecting responses to their proposals.

The OMB tends to act as an arbitrator between the public and private interests, a function more suited to the Courts, which are a more appropriate venue for legal disputes.

The Planning Act treats appeals of municipal planning decisions to the OMB as de novo hearings and allows the OMB to substitute its decisions for those taken by democratically elected councils, generally having little regard for the public interest as expressed through these councils.

The Ontario Divisional Court held in the decision *Minto Communities Inc. v. the City of Ottawa* that the OMB's powers on appeal of municipal planning decisions have not been altered by the requirement that it consider municipal decisions.

The Ontario Divisional Court has stated that a "more clear and specific expression of legislative intent" would be required to change the traditional role and practices of the OMB.

Certain planning matters respecting land severance applications and minor variances heard by the Committee of Adjustment, as well as heritage designations established by Council, are also subject to appeal to the OMB.

It is manifestly undemocratic for an appointed board such as the OMB to substitute its opinions for the considered judgment of elected councillors and professional city staff on matters affecting municipalities in which the councillors and city staff will continue to live and in which the OMB has no ongoing presence.

Furthermore, on June 22, 2011, the Council of the City of Mississauga voted unanimously to abolish the OMB.

Background Information (Committee)

(September 23, 2011) Member Motion regarding the Ontario Municipal Board
<http://www.toronto.ca/legdocs/mmis/2011/pg/bgrd/backgroundfile-41974.pdf>

Communications (Committee)

- (October 26, 2011) E-mail from John and Nora Freund (PG.New.PG9.11.1)
- (October 26, 2011) E-mail from Joan Dirstein (PG.New.PG9.11.2)
- (October 26, 2011) E-mail from Geills M. Turner (PG.New.PG9.11.3)
- (October 26, 2011) E-mail from Michael Bock (PG.New.PG9.11.4)
- (October 26, 2011) E-mail from Michael Bock (PG.Supp.PG9.11.4)
- (October 27, 2011) E-mail from Chris McLeod (PG.New.PG9.11.5)
- (October 27, 2011) E-mail from Emerson Stephens (PG.New.PG9.11.6)
- (October 27, 2011) E-mail from Patricia Jensen (PG.New.PG9.11.7)
- (October 27, 2011) E-mail from John N. Turner (PG.New.PG9.11.8)
- (October 28, 2011) E-mail from Lorne Morphy (PG.New.PG9.11.9)
- (October 28, 2011) E-mail from Roslyn Harris (PG.New.PG9.11.10)
- (October 28, 2011) E-mail from Mary Helen Spence (PG.Supp.PG9.11.11)
- (October 28, 2011) E-mail from Hartley Levine (PG.New.PG9.11.12)
- (October 31, 2011) E-mail from Alexander Mair (PG.New.PG9.11.13)
- (October 31, 2011) E-mail from Oliver Collins (PG.New.PG9.11.14)
- (November 1, 2011) E-mail from John Plumadore (PG.New.PG9.11.15)
- (November 1, 2011) E-mail from Helena Tetley (PG.New.PG9.11.16)
- (November 3, 2011) E-mail from Jim Barr (PG.New.PG9.11.17)

(November 3, 2011) E-mail from Shirley Morriss (PG.New.PG9.11.18)
 (November 3, 2011) E-mail from Joan Boggs (PG.New.PG9.11.19)
 (November 4, 2011) E-mail from Donna Wakefield, Deer Park Residents Association (PG.New.PG9.11.20)
 (November 6, 2011) E-mail from Geoff Kettel and Peter Baker, Co-Chairs, FoNTRA (PG.New.PG9.11.21)
 (November 6, 2011) E-mail from Andrew Horberry (PG.New.PG9.11.22)
 (November 4, 2011) E-mail from Suzanne Kavanagh, President, St. Lawrence Neighbourhood Association (PG.New.PG9.11.23)
 (November 7, 2011) E-mail from Janet Mairs (PG.New.PG9.11.24)
 (November 5, 2011) E-mail from Alan and Joan Dubros (PG.New.PG9.11.25)
 (November 7, 2011) E-mail from Gee Chung, President, The Greater Yorkville Residents' Association (PG.New.PG9.11.26)
 (November 7, 2011) E-mail from Richard Warner, North St. James Town Working Group (PG.New.PG9.11.27)
 (November 7, 2011) E-mail from Norman Waite, Bay Cloverhill Community Association (PG.New.PG9.11.28)
 (November 7, 2011) E-mail from Richard MacFarlane (PG.New.PG9.11.29)
 (November 7, 2011) E-mail from Susanne Palmer and Wayne Drewry (PG.New.PG9.11.30)
 (November 7, 2011) E-mail from Lydia Levin, Co-Vice Chair, Eglinton Park Residents' Association (PG.New.PG9.11.31)
 (November 8, 2011) E-mail from John Burt, The Bloor East Neighbourhood Association (PG.New.PG9.11.32)
 (November 7, 2011) E-mail from Michael B. Lowe, Version International Inc. (PG.New.PG9.11.33)
 (November 7, 2011) E-mail from Larry Webb, Corktown Residents & Business Association (PG.New.PG9.11.34)
 (November 8, 2011) Submission from Robert Fabian (PG.New.PG9.11.35)
 (November 8, 2011) E-mail from Eileen Denny, Teddington Park Residents Association Inc. (PG.New.PG9.11.36)

Communications (City Council)

(November 17, 2011) E-mail from Richard Warner (CC.Main.PG9.11.37)
 (November 25, 2011) E-mail from Geoff Kettel and Peter Baker, Co-Chairs, FoNTRA (CC.Supp.PG9.11.38)
<http://www.toronto.ca/legdocs/mmis/2012/cc/comm/communicationfile-27633.pdf>
 (November 28, 2011) Letter from William H. Roberts, Chair, Confederation of Resident and Ratepayer Associations in Toronto (CC.New.PG9.11.39)
 (November 28, 2011) Letter from Eileen Denny, President, Teddington Park Residents Association (CC.New.PG9.11.40)
 (November 30, 2011) Submission from Councillor Gloria Lindsay Luby, Municipal World Article, entitled "Proposed City of Toronto Local Appeal Body" (CC.New.PG9.11.41)
<http://www.toronto.ca/legdocs/mmis/2012/cc/comm/communicationfile-27636.pdf>

Speakers (Committee)

Chris Keating, Deer Park Residents Association
 Donna Wakefield, Secretary, Deer Park Residents Association
 Naomi St. John, Director, Eglinton Park Residents' Association
 Robert Fabian
 Jayme Turney, Executive Director, Toronto Public Space Initiative

Joan Dubros, Deer Park Residents Association

Jeremy Gawen, Jeremy Gawen, Moore Park Residents' Association

Eileen Denny, President, Teddington Park Residents Association Inc.

Virginia Baldwin, Resident of Yorkville, Greater Yorkville Residents and Ratepayers Association

Mike Coll

Councillor Josh Matlow

Councillor Kristyn Wong-Tam