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Ontario Municipal Board Review

Ministry of Municipal Affairs
Provincial Planning Policy Branch
777 Bay Street, 13th Floor
Toronto, ON M5G 2E5

AWARE Simcoe Comments on OMB Review, December 16, 2016

AWARE Simcoe is a citizens' organization that advocates for protection of the environment, and to achieve healthy and sustainable communities. We monitor local governments for transparency and accountability.

AWARE Simcoe was heavily involved in trying to provide public input to the 2012 revised Simcoe County Official Plan and as Participant in the OMB Hearing File No PL091167 beginning in March, 2013 and not concluding until late fall 2016. Please see our response to Question 24.

During our involvement in this planning and hearing process AWARE Simcoe felt completely stonewalled in our attempts to have our comments genuinely considered by either Simcoe County or the OMB. Please see our response to Question 24. As a result, our confidence in the OMB was severely undermined. Unless the Province makes major changes to how the OMB functions it will continue to be an impediment to good planning in Ontario.

We have reviewed the comments provided by Simcoe County Council Report # CCW-16-366 and generally concur with most of their submission but will add our own perspective below.

THEME 1. OMB'S JURISDICTION AND POWERS

Q 1. What is your perspective on the changes being considered to limit appeals on matters of public interest?

If a matrix were developed to provide a hierarchy of conformity to Provincial Policies, many OMB appeals could be eliminated early in the process. For example, Provincial Policies protecting farmland would rank very high. So if a development was converting farmland to housing it would be eliminated very early. Development proposals that do not provide a Net-Benefit to the community should be eliminated.

We agree that the Province should be able to enforce Provincial Policies, so we were shocked and dismayed when the Minister issued a 'Special Rule' with respect to the Midhurst Secondary Plan. This "Special Rule" negated provincial policies designed to protect farmland and to support sound planning. This action greatly impaired confidence in the integrity of the Government. Therefore we are wary of allowing the Minister to make "Special Rules."

Minor variance appeals should not go to the OMB. Appeals based on environmental issues should be referred to an Environmental Review Tribunal (ERT), not the OMB.

Q 2. What is your perspective on the changes being considered to restrict appeals of development that supports the use of transit?

AWARE Simcoe supports the Provincial initiative toward creating sustainable communities. Public transit and active transportation are key components. Public transit should be utilized to encourage higher densities in settlement areas and provide travel options for travel between urban centres.

Notwithstanding our support for public transit, the transit Environmental Assessment (EA) process is flawed. The current process is a Class process and includes subways, which clearly does not meet the intent of Class EA processes (that kind of site disruption should require a full individual EA). Further, the way this question is posed implies that transit could be allowed into high priority greenbelt or natural heritage sites just to save money. Public transit is generally good but not always good everywhere. Public transit needs a better EA process and even then, there is no reason to stop appeals to a decision only because a development incorporates public transit.

Q 3. What is your perspective on the changes being considered to give communities a stronger voice?

AWARE Simcoe supports giving communities, including residents and citizens groups, a stronger voice in how their communities will develop. At the present time final planning decisions are often made by the OMB which is heavily influenced by landowners/speculators who have the deepest pockets to hire planners and lawyers willing to be hired guns. Our experience is that developers' lawyers and even municipal lawyers try to restrict public input in order to expedite decisions by the OMB.

Q 4. What is your view on whether the OMB should continue to conduct de novo hearings?

As the OMB is the only jurisdiction that includes 'de novo' hearings in making decisions, this decision making process should be abandoned.

Q 5. If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?

AWARE Simcoe believes that all planning decisions should be made based on the most up-to-date planning policies. Many original planning applications are based on outdated planning policies that promote urban sprawl. Neither the province nor the municipalities owe any allegiance to land speculators. The OMB should only be authorized to overturn a decision made by a municipality/approval authority if that decision does not follow current local or provincial policies. The Province must defend its own policies at all OMB and ERT hearings.

Q 6. From your perspective, should the government be looking at changes related to transition and the use of new planning rules?

Giving communities a stronger voice must be accompanied by provincial policies that improve the protection of source water, wetlands, streams, rivers and other waterbodies, and natural heritage. Also, measures to mitigate against climate change need to be required in the planning process.

All applications not already approved should be based on CURRENT planning policies.

THEME 2. CITIZEN PARTICIPATION AND LOCAL PERSPECTIVE

Q 7. If you have had experience with the Citizen Liaison Office, describe what it was like — did it meet your expectations?

AS has limited experience with the CLO.

Q 8. Was there information you needed, but were unable to get?

AS did not feel the limited advice we got was helpful.

Q 9. Would the above changes support greater citizen participation at the OMB?

Hiring more staff to provide easier public access to information and reconfiguring the CLO, including moving it outside of ELTO, to include in-house planning experts and lawyers who would be available to the public would certainly encourage more public participation.

Improving the website to be more user-friendly would be helpful.

THEME 3. CLEAR AND PREDICTABLE DECISION-MAKING

Q 10. Given that it would be inappropriate for the OMB to provide legal advice to any party or participant, what type of information about the OMB's processes would help citizens to participate in mediations and hearings?

A list of ethical planners and lawyers who will represent citizens groups would be of great assistance.

As in Q5 we feel the Province must defend its own policies at all OMB and ERT hearings.

Q 11. Are there funding tools the province could explore to enable citizens to retain their own planning experts and lawyers?

Providing funding for access to planners and other experts like engineers would greatly assist citizens. Excluding lawyers as much as possible would reduce costs significantly. The provision of advice in methods of fundraising for citizen groups would be helpful.

Q 12. What kind of financial or other eligibility criteria need to be considered when increasing access to subject matter experts like planners and lawyers?

Perhaps the greatest inhibitor to public participation is the threat of costs being awarded against citizens groups. Eliminating or limiting this option for costs awards would be a great incentive for the public to participate more fully.

Q 13. Qualifications for adjudicators are identified in the job description posted on the OMB website (Ontario.ca/cxjf). What additional qualifications and experiences are important for an OMB member?

Adjudicators need to have formal legal or planning training. We consider that having been a former elected official is not an adequate qualification to be an OMB adjudicator. All OMB members and chairs need to have

recent training in what constitutes good planning. Currently they are entirely dependent on the opinions of planning consultants who often say what they are paid to say by land speculators and developers.

Q 14. Do you believe that multi-member panels would increase consistency of decision-making? What should be the make-up of these panels?

Yes. Having a lawyer and a planner on each panel would allow for better, more consistent decisions. We have observed a lack of legal confidence from OMB panelists and chairs, and an excessive reliance on the lawyers appearing before them - since citizens generally can't afford lawyers, their views are not represented, and the panelists rely on the municipal and developer legal representatives. This would be addressed if panelists were assisted by their own lawyer.

Q 15. Are there any types of cases that would not need a multi-member panel?

More complex cases would need two panelists.

Q 16. How can OMB decisions be made easier to understand and be better relayed to the public?

Decisions should be written in layman terms and not laced with legal terms (e.g. de novo) or planning terms not readily understood by the public.

THEME 4. MODERN PROCEDURES AND FASTER DECISIONS

Q 17. Are the timelines in the chart above appropriate, given the nature of appeals to the OMB? What would be appropriate timelines?

The timelines should be extended to one year.

Q 18. Would the above measures help to modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?

Yes, AWARE Simcoe believes the measures outlined would help modernize the OMB. To aid in ensuring transparency all OMB and ERT hearings should be video recorded and available to the public.

Q 19. What types of cases/situations would be most appropriate to a written hearing?

Perhaps hearings with no public participation could be written only. Some members of the public may be at a disadvantage with a written hearing.

THEME 5. ALTERNATIVE DISPUTE RESOLUTION AND FEWER HEARINGS

Q 20. Why do you think more OMB cases don't settle at mediation?

The planning applications for larger developments have huge financial consequences for land speculators and developers and they are usually successful in getting their way at the OMB.

Q 21. What types of cases/situations have a greater chance of settling at mediation?

AWARE Simcoe's experience with mediation at the SCOP OMB hearing was that the Parties "experts" (i.e. planners) held in-camera discussions from which the Participants were excluded. We had no opportunity to review agreements made behind closed doors and no opportunity to comment. It was extremely frustrating for the Participants, who felt completely shut out of the whole process.

Q 22. Should mediation be required, even if it has the potential to lengthen the process?

If mediation lowers costs, especially for citizen groups, and leads to settlements we think it would be a positive change. Funding for citizen groups should be available.

Q 23. What role should OMB staff play in mediation, pre-screening applications and in not scheduling cases that are out of the OMB's scope?

The OMB staff could play an impartial role as the mediator.

Q 24. Do you have other comments or points you want to make about the scope and effectiveness of the OMB with regards to its role in land use planning?

The OMB is not the only problem with the planning process. Municipal planners and lawyers can also make it difficult for the public to participate.

The experience of AWARE Simcoe in dealing with the Simcoe County Official Plan review process has been entirely negative. Before we even got to the OMB, AWARE Simcoe asked the County to hold new public meetings for what was essentially a NEW official Plan. Notwithstanding the dozens of changes made in 2012, the County argued that the 2012 OP was merely a revision of the 2008 OP and therefore the 2008 public meetings were sufficient to satisfy the Provincial Requirements for public meetings.

Only following the election of a new Warden, who had supported holding new public meetings, did the County relent and hold two public meetings. These meetings however turned out to be so restrictive (e.g. allowing one minute per question and cutting off the microphones after 60 seconds) that they proved to be nothing more than window dressing. AWARE Simcoe was required to submit our questions two weeks in advance. We received written answers which were nothing more than patronizing. No comments by AWARE Simcoe or other citizens resulted in any changes to the SCOP.

At the OMB hearing there were two chairs, both were former Ontario mayors. The chairs relied almost exclusively on the Simcoe County lawyer to give them legal guidance and even draft the decisions for the chairs to rubber stamp. One of the chairs treated the Participants with little patience.

The hearing was so extensive that it was divided into five phases. During each phase there was an experts' meeting in-camera, from which the Participants were excluded. Numerous changes were agreed to during these meetings.

Perhaps the most ludicrous aspect of the hearing was that Participants were allowed to speak just once during the entire hearing, in spite of the fact that changes were being made to the OP at each phase. We believe the

Participants should have been allowed to voice their opinions at the end of each phase before the final decision was made by the panel.

As a result of our severely restricted role we feel that the Participants' role at the OMB is virtually meaningless unless they are allowed to have more input.

Thank you for the opportunity to provide comments to the OMB Review. We are looking forward to seeing major changes to the OMB and how it operates.

Sincerely,

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