



February 29, 2012

VIA REGULAR MAIL AND E-MAIL: minister.mah@ontario.ca

Hon. Kathleen Wynne, MPP
Minister
Ministry of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto, ON M5G 2E5

Re: Council Request for Removing Toronto from the Jurisdiction of the Ontario Municipal Board

Dear Minister Wynne:

At its meeting of February 6, 2012, Toronto City Council voted to request you, as responsible Minister, 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, Site Plan, Subdivision, and Condominium Plan Approvals, and Community Improvement Plans and appeals under the *Heritage Act*.

While FoNTRA shares many of the key concerns regarding the current role and operation of the OMB put forward by the initiators and supporters of this action, it does not support removing Toronto from the jurisdiction of the OMB since the broader need for significant provincial planning reform is not being addressed by this move. Furthermore, FoNTRA sees the right to appeal City Council decisions to an independent body as being of paramount importance in a public process that is to respect procedural fairness for all actors. Experience has shown that residents are regularly called upon to defend the intent and purpose of City policies and regulations in situations where City Council and/or planning staff fail to do so.

FoNTRA has consistently advocated a series of meaningful planning reforms, which it believes would significantly improve the planning processes in Ontario and OMB's role within it. Below is a summary of FoNTRA's key recommendations for a more comprehensive planning reform:

- 1. The number of appeals going forward to the OMB needs to be reduced significantly:** Official Plans are routinely treated like Zoning By-laws to be amended "willy-nilly" on an ad hoc basis. FoNTRA's suggestions are designed to strengthen both the planning substance and the planning process while complementing the recent planning reforms, which included a mandatory 5-year review of the Official Plan. By limiting Official Plan amendments to the 5-year review process, FoNTRA believes, the number of appeals to the OMB would be drastically reduced since any re-zonings, by law, would be in conformity with the adopted Official Plan. The following changes to the *Planning Act* are required:
 - Official Plans should be required to provide density allocations in order to offer intelligent guidance for site-specific re-zonings; and,
 - Site-specific and ad hoc amendments to the Official Plan by individuals should be eliminated to maintain the validity of public policy in between the mandatory comprehensive updates.
- 2. The various Provincial planning policies, plans, and review/approval processes need to be better coordinated and consolidated:** Historic accidents and coincidences have led to the creation of a curious amalgam of planning legislation, policies, and plans which create layers of requirements addressing similar or identical issues. The *Planning Act*, *City of Toronto Act*, *Places to Grow Act*, *Heritage Act*, *Beltway Act*, *Provincial Policy Statement*, etc. need to be better integrated in order to offer both municipalities and the public more seamless guidance with coordinated review/approval processes.

3. **The OMB needs to function strictly as an appeal body:** The OMB's role should be restricted to that of an appeal tribunal, which does not conduct hearings *de novo* but simply reviews the record of evidence that underlies the decision of the municipal Council. This role would require the OMB to have regard both to the adopted Official Plan and to maintain record keeping procedures at standards comparable to that of the judiciary so that the OMB can be held accountable. Such a more restrictive role would also necessitate stricter requirements for professional qualifications in land use planning of Board members.
4. **The use of Section 37 density bonuses needs to be circumscribed:** The *Planning Act* should specify those conditions for Section 37 under which density bonuses should be granted. Increases in density and height in return for public benefits should be granted only under the following three conditions:
 - The Official Plan or the Secondary Plan establishes for each area the maximum bonus that can be achieved and the public benefits for which a bonus may be given;
 - The public benefit in return for which a bonus may be given directly contributes to increasing the carrying capacity of the particular local area in which the increased density or height is to be accommodated; and
 - The public benefit is of comparable value to the economic benefit achieved by the increased density or height.
5. **The Minor Variance process needs to be clarified:** Section 45(1) of the *Planning Act*, which governs the Minor Variance process, has been inconsistently applied both by the Committees of Adjustment and the OMB. Although the Divisional Court, in its 2005 *Vincent v. DeGasperis* decision, has provided clear and detailed guidance, this Court interpretation has still not reached most of the responsible decision-makers. The government should either expand the *Planning Act* or issue a Regulation to clarify the following key points:
 - Each variance needs to satisfy the four tests and the Committee of Adjustment (or OMB or LAB), in its reasons, has to set out whatever may reasonably necessary to demonstrate that it did so;
 - Each variance has to be minor both in size and importance;
 - Each variance has to be desirable from a public interest perspective for the appropriate development or use of the land, building, or structure;
 - Each variance has to maintain the intent and purpose of the Zoning By-law;
 - Each variance has to maintain the intent and purpose of the Official Plan; and,
 - There is discretion to grant or deny the variances even if all tests are met.

It is FoNTRA's position that removing Toronto from the jurisdiction of the OMB, while enjoying some obvious popular appeal, represents a simplistic solution to a complex problem. FoNTRA would very much appreciate the opportunity to meet with you at your convenience and to review these more wide-ranging planning reform recommendations with you in person.

Sincerely yours,

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Copies:
Mayor and Toronto City Council
Chief Planner and Executive Director, City Planning Division
FoNTRA Members and Other Interested Parties

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of 28 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The 28 residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.