

Summary of Recommendations for Fixing the Ontario Municipal Board

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1. Background

In 2004, at the request of the Federation of Urban Neighbourhoods, I prepared a Position Paper titled **FIXING THE ONTARIO MUNICIPAL BOARD: A STRATEGIC APPROACH FOR CITIZEN GROUPS**. The paper was drafted in March-April 2004, and posted on the Federation's website in May 2004. Several remarks are necessary to provide context for the summary of recommendations that are reproduced from the Position Paper.

First, the Position Paper is available in its entirety at the Federation's website. In my opinion the Position Paper is required reading in order to fully understand and appreciate the strategic approach which I proposed for citizen groups to use in their efforts to fix the Ontario Municipal Board (OMB). I also hasten to add the *caveat* that I do not support reading the recommendations without due regard for the rationale behind their derivation. The Position Paper can be viewed at: <http://www.urbanneighbourhoods.ca/policy.htm>

Second, the decision to write a summary was made after receiving a number of communications about an article on the OMB that appeared in the Ottawa Citizen on April 14, 2009, and then receiving more communications in regard to more media coverage of the OMB issue. The Ottawa Citizen article by Mohamed Adam is titled "Expert sounds alarm over OMB", and can be viewed at <http://www.ottawacitizen.com/business/fp/Expert+sounds+alarm+over+over+Manotick+decision/1492944/story.html>.

It appears clear that there is great interest in what might be termed a check-list of recommendations that members of the media, elected officials from both the provincial and municipal levels, and citizens, can review relatively quickly. However, I am obliged to repeat the *caveat* noted above about reading the full report in order to fully understand the recommendations.

Third, over the five years since the Position Paper was posted, I have received numerous communications from individuals and community associations from many parts of Ontario and elsewhere across Canada and the United States, as

well as from academics and professional planners located in Ontario and elsewhere in Canada, and in the United States.

However, during those same five years not even one inquiry about the content of any part the Position Paper was received from any person representing any agency, board, department, office, bureau, or any other entity of the Government of Ontario. As a result, I am informing readers in advance that I have no knowledge of any kind, none whatsoever, about the disposition of the Position Paper by any person or any entity associated with the Government of Ontario.

Fourth, I have not received even one communication from any person, agency, company, etc., taking issue with any part of the Position Paper in general, or the recommendations in particular. As a result of the lack of challenges sent to me, and the failure to encounter any reason to change any of the recommendations, they appear exactly as they were written five years ago.

Fifth, since the appearance of the Ottawa Citizen article on April 14, 2009, there have been more media stories, with some of them containing comments by elected officials from both municipal and provincial governments. It is my belief that there is nothing in any of the public comments made by these elected officials that affects any of the recommendations.

Further, the comments by elected officials in the media reports are hardly original. Rather, they appear to be strikingly similar to arguments that are regularly advanced by developers and/or their agents, and some of them were in fact examined and discredited in the Position Paper written five years ago. Perhaps the summary of recommendations will induce these elected officials, and their colleagues, to read the original report as a step towards contributing to an informed debate about abolishing/reforming the Ontario Municipal Board, which appears to be the only remaining body of its kind in North America.

Sixth, this is a summary of recommendations made in May 2004, and in no way is it to be construed as a comment on the current OMB situation. Indeed, a separate position paper could be written on the deteriorating state of OMB affairs over the past five years. However, in the absence of a formal, thorough response to the 2004 Position Paper by the Attorney General (currently Mr. Chris Bentley) and the Minister of Municipal Affairs and Housing (currently Mr. Jim Watson), it is a waste of time and effort to add anything more to a detailed document which to my knowledge has yet to receive public comment by the Government of Ontario or its agents.

Seventh, a number of the recommendations made in 2004 were for the benefit of citizen groups seeking advice on how to deal with a provincially-appointed agency that had been causing grief in communities across Ontario for decades.

The recommendations selected for this report, by contrast, are those that speak directly to the matter of how to “fix” the agency, with emphasis on the proposition that the Board be excluded from interfering in municipal planning actions, with just one exception to this rule. That is, the Board would be allowed to consider municipal planning actions for which the Government of Ontario declared and demonstrated a provincial interest.

Eighth, and as stated in the Position Paper, it was not known at the time of writing in 2004 whether the Government intended to abolish or reform the OMB. As a result, the strategic design approach of the report had to take that uncertainty into account. (Notice: Note 1 in part 7 at the end of this report replaces footnote 5 in the original.) That was done by means of a three-stage approach which respected the consistency factors noted in the Position Paper, and made both general and particular recommendations, including a selection of operational measures to assist in implementing the strategy.

The remainder of the Summary contains the Position Paper recommendations made in 2004 that I believed should be applied immediately to the benefit of good planning, good governance, and good public engagement in planning and development matters across Ontario. That same belief holds today.

2. Abolish the OMB Option

It was my opinion in 2004 that the Government of Ontario should immediately abolish the Board for reasons that are detailed in the Position Paper. Nothing has happened in the interim to change that recommendation. Indeed, it is my opinion that the evidence in support of that recommendation is even more overwhelming.

3. Reform the OMB Option: Restrict Scope

If the Government of Ontario opts for OMB reform rather than abolition, then imposing the following two general conditions is recommended:

1. The OMB *may* hear matters involving the administration of the Planning Act and related legislation.
2. The OMB *may* hear other Planning Act and related legislation matters *only if* the Government of Ontario has:
 - a) Declared them to be of provincial interest; and
 - b) Has specified the scope, nature and implications of the interest as it pertains to the Planning Act or related provincial legislation.

4. Reform the OMB Option: Provincial Agency Instruction Is Required for OMB Involvement in Local Affairs

If the Government of Ontario opts for OMB reform rather than abolition, then it is recommended that four specific conditions be incorporated in the OMB reform legislation:

1. The OMB *may* hear official plan matters *only if* they are deemed by a provincial agency to contravene the Planning Act or related provincial legislation.
2. The OMB *may* hear zoning by-law matters *only if* they are deemed by a provincial agency to contravene the Planning Act or related provincial legislation.
3. The OMB *may* hear committee of adjustment matters *only if they* are deemed by a provincial agency to contravene the Planning Act or related provincial legislation.
4. The OMB *may* hear other local government matters *only if* they are deemed by a provincial agency to contravene the Planning Act or related provincial legislation.

5. Reform the OMB Option: Implementing the Reform Agenda

Should the Government of Ontario pursue an agenda of reforming rather than abolishing the Board, then it is recommended that the following five changes to the current situation be made in order to achieve the general and specific conditions noted above:

1. Community associations and citizen groups are represented on any OMB-related panels, committees, working groups or other assemblies which also involve representation by developers, lawyers, consultants, planners, elected officials, clerks, city administrators, engineers, or other vested or public interest groups. (Notice: Note 2 in part 7 at the end of this report replaces footnote 6 in the original.)
2. The “Ontario Municipal Board” is re-named to accurately reflect its changed scope, structure and function.
3. A pool of planners (with rural, urban, regional, transportation, ecosystem, etc., expertise is assembled by the Government of Ontario to advise and assist local

governments in matters involving the application and administration of the Planning Act and related legislation.

- 4. An ombudsman function is created within the Office of the Attorney General to deal with complaints about the OMB or its successor agency.**
- 5. An intervenor funding function is created within the Ministry of Municipal Affairs and Housing (MMAH) to financially assist community associations and citizen groups engaged in hearings before the OMB (or its successor) on local (municipal) matters that have been deemed by the provincial government or one of its agencies to be of provincial interest.**

6. Reform the OMB Option: Ways to Engage Ordinary Citizens in the OMB Reform Process

In 2004 it was apparent to me that the Government of Ontario had extremely limited knowledge about how well ordinary citizens actually understood the functionings and malfunctionings of the OMB. And, as a corollary, it was equally apparent to me that the Government of Ontario had extremely limited skills and experience when it came to thinking about how to productively engage ordinary citizens in OMB matters, including the OMB review and reform process.

A number of activities came to mind in 2004 as likely elements of a non-trivial OMB review in which ordinary citizens, including groups such as the Federation of Urban Neighbourhoods could participate. The following 15 activities are among those that came to mind in 2004 as the kinds of participatory contributions that ordinary citizens could make to the OMB review and reform process, and I recommend them to the Government of Ontario should it choose to reform rather than abolish the OMB.

- 1. Drafting a Ministerial directive on OMB hearing practices and procedures pending adoption of OMB reform or abolition legislation.**
- 2. Conducting OMB oversight pending adoption of OMB reform legislation.**
- 3. Drafting terms of reference for the OMB review.**
- 4. Drafting terms of reference for the OMB review consultation process.**

5. Designing and implementing an OMB review research program.
6. Designing and implementing an OMB reform research program.
7. Designing and implementing an OMB review hearing program.
8. Designing and implementing an OMB reform hearing program.
9. Developing OMB reform legislation.
10. Implementing OMB legislation.
11. Conducting a Planning Act Review.
12. Conducting a Conservation Act review.
13. Conducting reviews of other OMB-related legislation.
14. Drafting Planning Act, Conservation Act, or other legislation to incorporate OMB abolition or reform decisions.
15. Selecting planners to serve on the Government of Ontario's Planning Advisory Board.

In closing Part 6 of the summary it is emphasized that on a number of occasions over the years the Government of Ontario of the day and its representatives, as well as political parties in opposition and their representatives, promised to abolish or substantially reform the Ontario Municipal Board. As the evidence demonstrates, those promises were not kept. Consequently, while I believe that ordinary citizens have a critical role to play in reforming the OMB, and I strongly recommend their engagement in the process, I must qualify the recommendations in Part 6.

Ordinary citizens commit substantial amounts of time and energy to improve the well-being of their communities, and I have the highest regard for them as individuals. As a result, in good conscience I am obliged to refer to the Position Paper and caution them about becoming engaged in a process which, based on previous failures, could be yet again an exercise in futility, whether by accident or by design.

It is my closing recommendation, therefore, that at the first sign of insincerity by the Government of Ontario, citizens who value their time should immediately withdraw from the OMB review process.

7. Notes

1. Footnote 5 in the Position Paper contained an important statement about the rationale behind the design of the report, so it is repeated here in the interests of ensuring that the record is crystal clear for those wishing to relate the situation in 2004 to that in 2009 or subsequent years:

“It may be that the Liberal government intends to do little or nothing about the OMB, regardless of promises made and “pledges given”, and that it is a gross error in judgement for the Federation and the Policy and Research Advisor to regard *Growing Strong Communities* as anything more than political blather. However, in the spirit of the proactivist strategy presented in the Position Paper, I am undertaking this task on behalf of the Federation in a positive frame of mind: that is, candidates, Ministers and MPPs are taken at their written and spoken word as honourable people, and the Position Paper is prepared on the expectation that promises made about abolishing or significantly reforming the OMB will be kept in the manner and spirit expressed in *Growing Strong Communities*.”

2. Footnote 6 in the Position Paper contained an important statement about the Government of Ontario having due financial regard for the time and expertise provided by community association representatives to an OMB review process. It is repeated here in the interests of ensuring that the record is crystal clear for those wishing to relate the situation in 2004 to that in 2009 or subsequent years:

“Community association representatives volunteer many dozens to hundreds of hours of time to public service over a year, often for many years, for which they receive no financial remuneration, and for which they cannot claim expenses, income tax deductions, or *pro bono* credits. The work that I am proposing for community association representatives is not of the “freebie” variety. In my opinion, both citizens and governments need to treat this as a paid engagement which is assigned the same payment schedule as used for lawyers, consultants, professors and other “experts” serving on OMB-related commissions, study groups, advisory bodies, etc.”

8. Notice of Disclaimer.

The contents of this document are solely the views of the author, Barry Wellar.

