

Toronto to place planning power in local hands

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A black sign with orange letters covering the boarded-up entrance to a quaint, if lonely, clapboard house screams: Private Property No Trespassing. Next door, there is an identical warning, and a white picket fence for good measure. The modest abodes also bear clinical notices in black sans serif type of "an application to amend the official plan" that betrays nothing of the local rancour it has stirred or the bake sales it has prompted.

This is Kingston Road, but it could be any number of streets in the city of Toronto that are battlegrounds for developers, neighbours and the municipality, all of whom often have different notions of how a community should grow.

Inevitably, disputes end up at the Ontario Municipal Board, a tribunal that wields extraordinary power when it comes to land issues in cities and towns across the province.

The OMB is persona non grata in many circles, derided by critics as a "rubber stamp" body that overturns council decisions often in favour of developers and has little regard for local considerations; others say it's a convenient villain and scapegoat for elected officials who are spared the difficult planning decisions that would incense their constituents.

And so, there's a movement afoot at Toronto City Hall to wrest some power from the OMB, and put more decision-making power in local hands. City council will consider asking the province to abolish the OMB, after a motion from downtown Councillor Kristyn Wong-Tam received unanimous support at the planning and growth committee. Mississauga council endorsed a similar motion earlier this year.

Toronto council will also consider studying the merits of setting up a "local appeals body" to handle minor planning disputes that end up at the OMB, an ability it has had for several years, and that Kathleen Wynne, the Minister of Municipal Affairs, encouraged this week.

The future of the OMB, however, is up for discussion.

"It's irresponsible to hide behind the OMB on planning issues," said Councillor Adam Vaughan, who says every day at the OMB costs the city \$80,000 in lawyers' and planner's time. (City officials cannot confirm his numbers but report that Toronto spends more than 1,400 "lawyer days" at or prepping for board cases).

"It's irresponsible economically, politically, and from a planning perspective," he says, because "we

surrender our ability to actually design and create a city."

Originally named the Ontario Railway and Municipal Board, the OMB assumed its initial responsibilities in 1906 to oversee municipalities' accounts and to "supervise the rapidly growing rail transportation system between and within municipalities," according to its official history. Its name changed in 1932, and over the years its powers have expanded so that now it hears appeals and applications on a long list of municipal and land-related matters, such as official plans, zoning bylaws, subdivision plans, development charges and land compensation, for an administrative fee of \$125. An applicant can appeal an OMB decision to the Divisional Court of Ontario.

The Ontario government appoints members, of which there are now 25, to the OMB for up to five-year terms. Its Bay Street head office holds public hearings, but members will also take the tribunal on the road, holding hearings in courtrooms or community centres close to the land in question.

A decision is pending for Upper Beach residents who faced off against the city and a developer at the OMB over the Kingston Road land overlooking a beloved ravine. It is home to hawks, owls and an eclectic collection of 1950s-era houses nestled at the base, making the enclave seem a lot farther than it is from the hustle and bustle of the main road above.

The proposal for a six-storey, 47-unit condo development spurred on the Friends of Glen Davis Ravine, who have baked goods, and hawked crafts, art and a calendar of the ravine in order to cover the \$100,000 it cost to fight the case at the OMB.

"Without some sort of intermediary between the residents and the developer it would be the wild, wild west," said Kent McCaskill, president of the Friends of Glen Davis Ravine and a handy man by trade. "I'm not an advocate of throwing the thing out unless I see something else that is going to drop into its place that adequately provides people some defence. I'm concerned these guys create a set-up that has even less value and the people they put in charge of it are even more sway-able."

A paper presented at the Canadian Political Sciences Association Conference in 2009 entitled "Passing The Buck: The Ontario Municipal Board and Local Politicians in Toronto, 2000-2006" found that when developers and the city faced off at the OMB over that time period, developers emerged victorious 64% of the time.

While there are other tribunals set up to hear appeals for specific types of land disputes in other provinces,

none has the breadth or power of the OMB. In most other places, a party that wants to challenge a municipal council's decision can take its case to the courts.

Most of the Toronto cases that end up at the OMB are appeals through the city's committee of adjustment, a body appointed by city council that deliberates on minor planning issues, from adding a deck to a property to applying for minor zoning changes in order to erect a taller building.

Toronto's committee of adjustment deliberates over 3,000 to 3,500 variance or consent applications a year. About 10% of those are appealed.

The idea being floated now is to have those cases heard by a "local appeals body" appointed by city council. But it would also come with a cost. In a report last year, city staff estimated that it would cost about \$1.86-million a year to run a local appeals body, in addition to \$261,050 in start-up costs. In order to fund that completely with fees, each application would have to cost \$6,200, the report says.

Councillor Vaughan believes a local appeals body would speed up the process, make planning more accountable, and bring more savings in the long run.

"There are councillors who will say no to everything and be local heroes for saying no, and then know when it goes to the OMB that someone else will make the tough call," he said.

Councillor Josh Matlow, a proponent of quashing the OMB, thinks "the more local a body is, the better. Many members are making decisions and they have no idea where those streets are, how to pronounce them, what the buildings look like."

Adds Paul Bedford, a former chief city planner for the city of Toronto and a Ryerson University professor: "You don't need your mother to spoon feed you anymore. We've got the largest planning department in the country. If the council can't make intelligent decisions about where the city is going and the direction it wants to be in then I think that's pretty sad commentary."

Experienced land-planning lawyers, however, caution against assuming that a local body will improve the situation. Adam Brown, who has represented developer interests in many high-profile applications, questions the logic in replacing one appointed appeal body with another appointed appeal body. The key is to make sure the judicial body is independent of council, he said.

"At the end of the day, I'm a true believer in the system. If the city ends up setting up its own OMB, they are going to make the same types of decisions," he said.

There is also an element of "be careful what you wish for" with a local appeals body, argues veteran lawyer Ian Lord, since it's the "minor variances" that provoke the most visceral disputes between

neighbours, and become the most politically charged.

The OMB declined to comment on efforts to dismantle it. "What I can tell you is that the OMB plays a critical role in Ontario's land-use planning process, ensuring that there is an independent, public body to settle land-use disputes. The OMB process provides a forum for disputes to be resolved in a less formal, less costly and timelier way than the courts," Karen Kotzen, communications consultant for the OMB, wrote in an email.

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