

## **ABOLISH THE ONTARIO MUNICIPAL BOARD**

### *PLANNING IN THE SHADOW OF THE O.M.B.*

June 2001

#### **ACCOUNTABILITY AND DEMOCRACY**

One of the fundamental principles of democracy is that of accountability. Over the past several years many citizens have become concerned that there has been a loss of accountability in matters of municipal land use planning. The Ontario Municipal Board has become more politicized and citizens perceive that decisions are being made that benefit government friends in the development industry at their and their neighbourhood's expense.

Important decisions are being made about real life issues by non-elected, political appointees who in some cases have already been rejected by voters in their own riding. Other Municipal Board members have never been elected to public office and come from the development industry. The former mayor of a town of 1200 is making decisions about neighbourhoods with four times that population. The Deer Park Ratepayer Group, including members who are Conservatives, resolved at their 2001 Annual General Meeting to abolish the Ontario Municipal Board.

The Planning Act empowers local boards and Councils with the duty of ensuring a range of all housing types. That duty has become nearly impossible for Toronto City Council in the wake of recent Board decisions.

Sweeping changes to the Planning Act are needed in order to restore the confidence of citizens in their municipal government. Who do citizens turn to about development issues? Many local Councils have opposed applications in their original form and stood by their constituencies only to have non-elected Ontario Municipal Board members over-rule them. This must end. Stating that elected Councils cannot make clear, effective and rational decisions about planning is tantamount to saying that a dictatorship is a more efficient and therefore a better form of government.

#### **TAXPAYERS' DOLLARS ARE BEING WASTED**

The amount of money that is spent in processing preposterous applications because of the threat of appeal is ridiculous. In the Rosewell Court case (Eglinton/Lawrence), City staff spent over 18 months negotiating with a developer (First Ontario Realty Corporation, 1160963 Ontario Inc.) to achieve a development acceptable to tenants, the neighbourhood and City Council. In the end, the developer appealed Council's decision to the Ontario Municipal Board and was granted what he had asked for at the outset of the application. Conservative estimates would peg the price for this public policy farce at a minimum of \$250,000.00 before the City's and Residents' Organization

legal fees are factored in.

The Lytton Park Residents' Organization in Michael Colle's Eglinton/Lawrence Riding spent \$90,000.00 on legal and planning fees to have their views completely disregarded by the Ontario Municipal Board.

The North Hill District Homeowners Association has spent over \$100,000 opposing Great Gulf's development proposal at St. Clair Avenue West and Russell Hill Road in Michael Bryant's St. Paul's riding with the decision pending. The City vigorously opposed that application which proposed further demolition of affordable rental housing, the loss of an historic building and unreasonable increases in height and built-form density. Great Gulf offered no suitable arrangement for the displacement of tenants, many of whom were seniors.

Homeowners, Resident and Tenant Organizations are being bled dry of finances by an Ontario Municipal Board that not only ignores them but also constantly insults their intelligence, efforts and their elected Council. Land use planning is not a science. It is open to interpretation. Current Municipal Board members are increasingly pro-development and are making cavalier decisions and bizarre pronouncements.

## **RECENT OMB DECISIONS THAT UNDERMINE PUBLIC CONFIDENCE**

While all of these examples focus on the Toronto experience I am positive that citizens around the Province are experiencing a similar loss of control over municipal planning.

### **I. ROSEWELL COURT – EGLINTON/LAWRENCE**

The decision of the Ontario Municipal Board in the Rosewell Court (435-513 Rosewell Avenue and 164-170 Cheritan Avenue) appeal further reduces City council's ability to protect affordable rental housing as well as its' Zoning By-law and Official Plan. 115 affordable rental units will be demolished and the people in them will have to find accommodation in different neighbourhoods, away from friends and familiar surroundings, doctors, schools and churches. The City of Toronto opposed the application and was joined by the Lytton Park Residents' Organization. The Ontario Municipal Board ruled against the residents, the City of Toronto and in favour of the developer.

From the Decision:

*"It is trite to point out that all designations are but means to an end and not an end." "For all the erudite and hair-splitting interpretations of the Metro Official Plan and whether the subject site lies within the area permitted the Board cannot see why it should be rejected."*

The Board's finding opens the door to developers to argue small rental units are affordable housing and that therefore they have met the City's and Metroplan policies regarding affordable housing. The Board agreed with the 'trickle-down' benefits of any production of rental housing including high end as in the applicants' proposal. This theory has never been proven and is consistently discredited by housing experts. This is a shameful decision.

With that decision in hand First Ontario Realty Corporation has now by-passed further discussions with the City of Toronto for applications on other of his properties (2914, 2932

Yonge Street & 1 Cheritan Avenue). He has now filed appeals to the Ontario Municipal Board without allowing City Council to complete its reports. The Lytton Park Residents Organization will likely be unable to afford this appeal.

## **II. CITY OF TORONTO'S SECTION 37 POLICY – CITY WIDE**

Last year the Greater Toronto Homebuilders Association appealed the City of Toronto's decision to seek contributions to its' Capital Revolving Fund for Affordable Housing through Section 37 of the Planning Act. That policy required cash contributions in exchange for density bonuses. Those monies were to be allocated to the development of affordable housing by the City of Toronto and partners in the private sector. The policy was a creative approach to spur the creation of housing options for the most vulnerable people in our society. Recent demographics show that Toronto is increasingly becoming a City of poor people. One of Toronto's strengths has always been the mix of income levels within stable neighbourhoods. There have been significant numbers of social housing developments in neighbourhoods of high-income single-family homes. Without a Provincial or National housing strategy, Toronto's Section 37 policy was one of the few hopes for the development of affordable housing. Again, the Ontario Municipal Board ruled against the City of Toronto and in favour of the developers. The Tweedsmuir case in early 1999 allowed slum landlords to demolish sizeable affordable rental apartments in favour of condominiums. A package for tenants was offered to the most senior of tenants, however those who could not be accommodated in the new development were offered very little. Offers of "right of first refusal" mean little to those tenants who spend more than 50% of their income on housing or are too old to defend their interests. Qualifying for a mortgage is nearly impossible and at any rate, many tenants want to rent and not own their own property. Again, the Ontario Municipal Board ruled against the City of Toronto and in favour of the developer.

## **III 310 & 320 TWEEDSMUIR AVENUE AND OFFICIAL PLAN AMENDMENT #2 – ST. PAUL'S**

The Ontario Municipal Boards' granting of Goldlist Properties' appeal of Toronto's Official Plan Amendment 2(OPA2) demolished Council's housing protection policies. That Amendment was ruled ultra vires of Toronto City Council's powers and contrary to the spirit of the Tenant Protection Act (1997). That decision is currently before the Courts, with the City of Hamilton and the City of Ottawa joined with the City of Toronto. Demolition controls are essential to the protection of affordable rental housing and those controls were taken away from Municipalities when the Tenant Protection Act was introduced. Again the Ontario Municipal Board ruled against the City of Toronto and in favour of the developers.

## **IV. CONTEXT DEVELOPMENT – 1947 BLOOR STREET WEST – PARKDALE/HIGH PARK**

This Ontario Municipal Board decision quotes Shakespeare, Jeremy Bentham, U.S. Supreme Court Judge Oliver Wendell Holmes and the Human Genome Project in a decision that allows encroachment on a ravine on the edge of Toronto's most significant parkland. A jewel in the midst of the City that keeps temperatures moderated and provides an escape for City-bound residents. How enjoyable is a park when a Condominium rises on its edge. Again, the Ontario Municipal Board ruled against the City of Toronto and in favour of the developer.

## **V. 207-217 ROSLIN AVENUE DECISION – DON VALLEY WEST**

On a heavily treed site at the end of a quiet cul-de-sac in North Toronto bordering on a ravine, the Ontario Municipal Board permitted the erection of 14 townhomes replacing 3 semi-detached, tenanted homes. The entire neighbourhood was opposed with an evening session of the Ontario Municipal Board attended by over 300 people. Given that the meeting was held in the middle of the summer, it was clear that citizens did not want to see such over-development in their neighbourhood. While such opposition can be cited as NIMBY, to do so under-values public planning knowledge and undermines public confidence in government. The City of Toronto opposed the application. Again, the Ontario Municipal Board ruled against the City of Toronto.

## **PLANNING IN THE SHADOW OF THE ONTARIO MUNICIPAL BOARD**

The City of Toronto is currently considering an application to permit a 55 and 47-storey skyscraper condominium project near the intersection of Yonge Street and Eglinton Avenue. This proposal would contain over 1000 units of which more than 700 will be one-bedroom units. Some in the City's Planning Department feel they cannot refuse this issue outright due to the threat of appeal by the developer to the Ontario Municipal Board. The same can be said for some City Councillors. The public feels a sense of powerlessness because those accountable for change in their neighbourhoods, namely local politicians, claim they are not in control and pass the buck for bad decisions onto the Ontario Municipal Board.

Currently applications for the conversion to condominium of significant amounts of affordable housing are being made with the applicants threatening to go before the Ontario Municipal Board. Council has vociferously opposed applications to convert affordable rental units to condominium due to the state of the rental housing market in Toronto.

Toronto's Urban Planning Department no longer has the ability to give deep consideration and professional assessments of applications. The Official Plan has become a bargaining chip, with policies such as intensification being used to the detriment of prized neighbourhoods. In Toronto, speculators threaten to undermine the stability of residential neighbourhoods throughout the whole City, not on the grounds of good planning, but to make a buck. And the Ontario Municipal Board has become the trump card for developers.