



REVIEW OF THE ONTARIO MUNICIPAL BOARD (“OMB”)

Submission to Minister of Municipal Affairs and to Attorney General
from the Federation of North Toronto Residents Associations

Executive summary

FoNTRA’s submission is based on the belief that municipal councils should be responsible for local planning decisions, not an unelected body that is not accountable to citizens. While necessary as a forum for hearing appeals, the OMB violates this belief in these key respects:

- It frequently overrides the decisions made by democratically elected municipal councils.
- It bases its decisions on *de novo* (“starting over”) hearings in which it can ignore the decisions of municipal councils and evidence presented to them.
- It pays little attention to concerns of affected citizens, having regard principally for evidence presented to it by “expert witnesses” that ordinary citizens cannot afford.

By making *ad hoc* site-specific decisions in response to developers’ applications, it reduces the role of area-wide municipal Official Plans and in so doing too often fails to consider area-wide impacts of major new developments.

FoNTRA’s submission accordingly advocates four key reforms:

1. The role of the OMB should be changed to restrict it to acting as a genuine appeal body, only allowing or disallowing a municipal council’s decision rather than substituting its own judgment for the municipal decision.
2. The number of appeals to the OMB should be drastically reduced by (i) prohibiting privately-initiated applications for Official Plan amendments that have not been approved by a municipal council, and (ii) redirecting appeals from Committee of Adjustment decisions to Local Appeal Boards.
3. The content of municipal Official Plans should be required to provide clear policy guidance for subsequent amendments to the zoning by-law, including clearly-defined limits on the magnitude of such amendments.
4. Residents’ participation in Board proceedings should be made more effective, through measures as intervenor funding and weighting of evidence based on relevant expertise and knowledge rather than credentialism.

Summary of FoNTRA recommendations

The province has asked for comments on topics in five specific areas. FoNTRA’s proposals are accordingly grouped in each of these. (For details, please see full version of FoNTRA submission.)

[1] OMB's jurisdiction and powers

FoNTRA recommendation 1: *Appeals should not be limited on so-called "matters of public interest", such as developments supporting public transit. Citizens' rights of appeal should not be overridden merely because a proposed development "supports transit". The province should use its powers of Official Plan ("OP") approval to ensure that municipal OPs adhere to provincial policies regarding transit support and other matters of provincial interest. Abrogating citizen rights of appeal is neither necessary nor desirable.*

FoNTRA recommendation 2: *The OMB should operate like a genuine appeal body that establishes precedents and no longer conducts de novo hearings. The OMB should function like an appellate court, reviewing the process followed by a municipal council rather than second-guessing its decision.*

FoNTRA recommendation 3: *Appeals should be limited by prohibiting amendments to the Official Plan initiated by persons or organizations other than public agencies. Appeals by citizens or developers should be limited to amendments to the zoning by-law, plans of subdivision, and site plan approvals. The Planning Act should be changed to require OPs to provide density allocations to guide subsequent site-specific rezonings. Site-specific OP amendments should be prohibited in between periodic area-wide OP amendments; the Planning Act should require a regular updating of area-wide OPs.*

FoNTRA recommendation 4: *During transition periods, both provincial and municipal planning rules in existence at the time of an application should apply. The Province needs to ensure effective integration of policies defined at each level.*

[2] Citizen participation and local perspective

FoNTRA recommendation 5: *Access to publicly-funded legal and planning resources should be made available to Parties and Participants on a limited basis. For specifics on how and when intervenor funding should be made available, see the complete FoNTRA brief.*

FoNTRA recommendation 6: *Board hearings should be changed to ensure that public participation is meaningful and effective. Making residents' participation effective will require a change in their status before the Board.*

[3] Clear and predictable decision-making

FoNTRA recommendation 7: *In order to reduce personal biases and overreach, all appeals to the OMB should be heard by 3-member panels of qualified professionals.*

[4] Modern procedures and faster decisions

FoNTRA recommendation 8: *Appeals of Minor Variances or Consents should be heard by Local Appeal Bodies operated by upper-tier or single-tier municipalities. Such appeals should be heard by bodies familiar with local conditions rather than by a province-wide board.*

FoNTRA recommendation 9: *Procedures for appeals of Minor Variances or Consents should differ from those used by the OMB. Such appeals should continue to be judged on the basis of the four tests now used.*

[5] Alternative dispute resolution and fewer hearings

FoNTRA recommendation 10: *Mediation processes should be available strictly on a voluntary basis where all stakeholders agree. Mediation should not be viewed as a substitute for changing the role and purpose of the OMB.*