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**Official Report
of Debates
(Hansard)**

Thursday 10 April 2014

**Journal
des débats
(Hansard)**

Jeudi 10 avril 2014

**Standing Committee on
Finance and Economic Affairs**

Respect for Municipalities Act
(City of Toronto), 2014

**Comité permanent des finances
et des affaires économiques**

Loi de 2014 sur le respect
des municipalités
(cité de Toronto)

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS**

**COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES**

Thursday 10 April 2014

Jeudi 10 avril 2014

The committee met at 0901 in room 151.

**RESPECT FOR MUNICIPALITIES ACT
(CITY OF TORONTO), 2014**

**LOI DE 2014 SUR LE RESPECT
DES MUNICIPALITÉS
(CITÉ DE TORONTO)**

Consideration of the following bill:

Bill 20, An Act respecting the City of Toronto and the Ontario Municipal Board / Projet de loi 20, Loi portant sur la cité de Toronto et la Commission des affaires municipales de l'Ontario.

The Vice-Chair (Ms. Soo Wong): We're going to start the committee. Good morning. We are assembled here today to hold public hearings on Bill 20, An Act respecting the City of Toronto and the Ontario Municipal Board. I believe that the Clerk has set up a committee room down the hall for the overflow. There's a large audience. Just so the members know, committee room 1 has been set up for the extra audience at the hearing.

As ordered by the committee, each selected witness will be offered 15 minutes, and should there be any time remaining following each presentation, the questioning will be done in rotation by caucus, starting with the official opposition.

Any questions from the committee before we start? Do we have any questions before we commence?

**WELLINGTON PLACE
NEIGHBOURHOOD ASSOCIATION**

The Vice-Chair (Ms. Soo Wong): At this time, I call the first witness to the table. From the Wellington Place Neighbourhood Association: Mr. Ken Greenberg. Welcome, Mr. Greenberg. As you know, we have 15 minutes for your presentation. Then, as you heard, the first series of questions, if there's any time within your 15 minutes, will be from the official opposition. Can you please identify yourself for the record? You can commence. Thank you.

Mr. Ken Greenberg: Ken Greenberg. I'm an architect, urban designer and president of the Wellington Place Neighbourhood Association.

Madam Chair, members of the committee, thank you very much for the opportunity to appear here this morning. I come wearing two hats, representing the Wel-

lington Place Neighbourhood Association, but also as a professional in the field, having worked for 10 years as director of architecture and urban design for the city of Toronto under three mayors and for 26 years practising internationally on planning and design matters.

My submission—and I believe you all have copies of the submission that I am working from this morning—is that the Ontario Municipal Board is basically the wrong tool for the job. What we're doing is using a hammer to turn screws. It is a deeply flawed institution and it is poorly suited for the role that it has come to play in a large city like Toronto.

Almost uniquely among jurisdictions, the province of Ontario has adopted the model of a quasi-judicial tribunal called the OMB for the adjudication and oversight of planning matters. The board's decisions are final. Its role, as I'm sure you're well aware, has always been highly controversial, given its undemocratic authority to overrule legally elected municipal councils and increasingly substitute its own decisions for municipal ones.

In fact, what has happened in recent years is that the OMB has become the de facto planning board for Toronto, and it is fundamentally unsuited for this role. A judicial tribunal is exactly the wrong kind of model. It's loosely modelled on a court but without actual trained judges or any basis in common law. It uses an adversarial form of interrogation: examination and cross-examination. It's binary. It's reductive. Whatever the merits of this system in criminal courts or in civil cases, it's exactly the wrong way to have discussions about city building with many complex interrelated variables. Because it looks at each development proposal on a one-off basis in this adversarial environment, it cannot consider the cumulative effects of multiple developments in an area on decision-making or how they impact each other.

What we need, in fact, is something different. We need a multi-party, free-ranging discussion. We need to build solutions and develop consensus among parties, and we need a wide and deep understanding of the issues and the places in question.

It's not surprising that a veritable cottage industry has emerged around this phenomenon of the OMB, including a type of lawyer that doesn't exist in any other jurisdiction and never practises in front of a real court. We have professional witnesses and handlers who do nothing but appear at the OMB. This system has actually severely distorted the planning process.

Smart developers often choose their development teams based on an assumption that they will go to the OMB. They start with lawyers and then they end up choosing designers for their projects based not on their skill in their profession but their ability to appear as witnesses.

In terms of the city, an enormous amount of resources are diverted into appearing and preparing for OMB hearings. A former colleague of mine, a chief planner, estimated—and this was a few years ago—that his staff was spending 14,000 hours annually, 2,000 person-days, just preparing for OMB hearings. What this does is it leaves diminished resources for integrated long-range planning, social planning and neighbourhood and community planning, which is what planning staffs in other cities actually spend their time doing.

To make it worse, what happens is, because city officials and elected politicians know that their decisions are likely to be countermanded by the OMB, they don't take their roles seriously. This is producing in communities a high level of uncertainty, cynicism and alienation, which I know you hear a great deal about.

The problem is, with this tribunal model, the only way to express concerns about a development is to engage in highly technocratic discussions over quantifiable measures of height and density. What this does is it puts people on the defensive. It doesn't allow them to talk about the things that really interest them.

I want you to put this in perspective, knowing that nowhere else in the world—nowhere in the 50 states; nowhere in the remaining provinces of Canada—is there any comparable model. This has become a symbol of the immaturity of a great city like Toronto.

It produces highly inequitable treatment based on access to expensive lawyers. In the litigious atmosphere of the OMB, the wrong issues get discussed. For people who want to talk about qualitative issues—how development affects their neighbourhood, how it is shaped, how it integrates with the existing neighbourhood—it's not possible to do that. The only things that people are allowed to talk about are very esoteric discussions of a kind of pseudo-scientific numerology related to planning.

How is this done in other cities? In other cities, two things happen. One is, the real decisions are vested with the people who are democratically elected. They often have recourse to arm's-length bodies like planning commissions and planning boards. There is a great benefit in doing this because it removes this kind of discussion from the political fray.

These bodies typically have a variety of people on them who have real expertise—architects, landscape architects, planners, urban designers, community people, people in the real estate industry—who know the subject, who know the places intimately. They're not parachuted in from other cities or other jurisdictions.

0910

It's typically a multi-step process. There are no lawyers present. People are allowed to talk freely. There's no such thing as cross-examination, people being humiliated

and intimidated by lawyers. Through a multi-step discussion, good solutions emerge.

The argument is still made by people who somehow favour the presence of the OMB in Toronto that, as bad as it is, it's preferable to allowing the dysfunctional city of Toronto to take over. My counterargument to that is that this is the moment to break the vicious cycle, that fundamentally, this litigious and constrained adversarial dialogue implicit in the tribunal model—which the OMB, uniquely among jurisdictions, has adopted for planning matters—produces the antithesis of the kind of qualitative, multi-party informal dialogue that's essential to produce best practices in city building and should be done away with in favour of any number of more productive models that one can find around the world.

In conclusion, I would say that if we were talking about health care this morning, what we have is a system with very little work on public health or prevention and an almost total reliance on the emergency room. Thank you very much.

The Vice-Chair (Ms. Soo Wong): Thank you very much, Mr. Greenberg.

Just for the committee's sake, the Clerk just told me that Mr. Greenberg submitted his written submission, and we will be receiving a copy this afternoon. I just wanted everybody to know on the record.

This round of questions, Mr. Greenberg, is from the opposition party. Who will start? Mr. McDonell?

Mr. Jim McDonell: Yes.

The Vice-Chair (Ms. Soo Wong): You have five minutes.

Mr. Jim McDonell: Thank you for your submission. I think that everybody is aware of the shortcomings or issues with the OMB. Your choice without it is to fight your battles out in court. What are your feelings about that, or have you seen models that you would like to bring back to us as an option?

Mr. Ken Greenberg: I served for a year and a half as the chief planner in Boston. Boston has a planning and development commission, which is the kind of panel that I just described. Developers and their designers come to the panel and present their projects several times. The community is invited. There's a chair of the panel. There's a free discussion.

I hardly ever saw a lawyer in the room. The only times anything ended up in court, in civil court—and this would be an extremely rare occurrence—were actual matters of civil law: contract disputes, procedural issues. But this is like a one-in-500 occurrence. Actually, the system functions extremely well.

I've appeared before such bodies in jurisdictions in Europe, in many of the United States and other Canadian provinces. I think what's happened is, somehow, people in Ontario have gotten used to this and have come to believe that something that is extremely unusual and dysfunctional is normal. It's not.

Mr. Jim McDonell: Throughout your issues—we don't have your brief in front of us—maybe you could just go over the issue that brought you here today. I

would imagine there's a neighbourhood issue that's showing you how dysfunctional the board is.

Mr. Ken Greenberg: Well, it's not a single issue. The Wellington Place neighbourhood goes back to 1830. It's one of the oldest neighbourhoods in the city. It includes a cemetery where Lieutenant Governor Simcoe's daughter is buried, along with 500 graves. It was the original burial ground for Fort York. It is part of King-Spadina, which is going through a phenomenal transformation, along with King-Parliament—a very intensive redevelopment.

Our association and our neighbouring associations have seen probably more applications come forward for redevelopment than almost any other jurisdiction or any other area in the province. We have seen how the spectre of the OMB, the performance of the OMB, is profoundly disruptive and distorts any good and fruitful discussion around planning matters. So it's not a single issue; it's an accumulation of frustrations that the community has felt over many years.

Working with the local councillors, what we have tried to do is to informally, extra-judiciously—whatever the word is—create the kind of multi-party discussion that I've been describing. When that occurs, it obviously allows the parties, where there are differences, to air those differences in a constructive way.

I'm utterly convinced of the merit of what I'm telling you. I also think that if we did not have the planning staff required to do all this preparation for OMB hearings, we would have one of the finest planning operations on the continent. We have an extraordinary city with a great talent pool. We have many talented developers. Everybody is being forced to go through this phony court system, with people playing Perry Mason and acting in extremely strange ways to discuss issues that cannot be discussed effectively in this manner.

Mr. Jim McDonell: Generally, in your official plans your zoning is in place. Is this an issue with going beyond those limits, or is there disagreement within the bounds of what the official plans are? They're put together and reviewed every five, six years.

Mr. Ken Greenberg: As I'm sure you're aware, going back to my day at the city—I started under David Crombie. At that time, the OMB, at least more so than is the case today, was looking at the official plan and looking at whether decisions complied with the official plan.

As I'm sure you're aware, the OMB now feels perfectly free to make it up as it goes along and to totally ignore the official plan. So you get what are called “minor variances,” where you will have heights that are 300% greater than what the bylaw allows or the kinds of densities that the official plan calls for, which are treated as minor variances. This is entirely at the whim of members of the OMB, who may be parachuted in from North Bay, who may never have stepped foot on the sidewalks where the development is occurring and who are really responding to which lawyer has the biggest pile of documents or the most expensive witnesses. So the reference

to the OMB is completely gone through the official plan—

The Vice-Chair (Ms. Soo Wong): Thank you, Mr. Greenberg. Your time's up. Thank you very much.

Mr. Ken Greenberg: Thank you.

MR. PAWAN JAIN

The Vice-Chair (Ms. Soo Wong): The next witness is Pawan Jain. This round of questions will be coming from the NDP.

Welcome, Mr. Jain. Can you please identify yourself for the record? You have 15 minutes for your presentation. This round of questioning will be coming from the official third party.

Mr. Pawan Jain: My name is Pawan Jain. I'm a resident of North York. I live at 17 Marcelline Crescent, and I'm here representing myself. I am basically here to recount a negative experience that I've had with a development directly behind my house.

I'd like to speak in favour of Bill 20. For the record, I completely agree with the previous speaker. What he said is totally consistent with my own experience with the OMB.

I'll have to go over some of the details of this development that happened behind my house. I probably won't get every detail right, but I just want to give you a general sense of where I'm coming from. If you have a handout, you'll see a map on it. I live at 17 Marcelline Crescent, which is right about there. Right behind me is a site which has three office buildings on it. It's 1200 Sheppard, which is on the north side of Sheppard—immediately facing Sheppard. Behind it is 1210 and 1220 Sheppard. They're all on one site. They're all owned by the same developer.

And 1200 Sheppard is directly behind my house. Window to window, we are 300 feet apart—less than 100 metres. I've lived there for 30 years. I've been very happy there. I've had a lot of privacy in my backyard. I have no residents behind me. There is a railway line. I get a train going by once in a while, but that's okay; I'm used to it. But I liked the privacy.

0920

In February 2012, I got some rather disturbing news. The owner of this site, the developer, wanted to destroy the building that was behind me, the commercial building, and instead put up six condo buildings on the site in addition to the two office buildings that were at the back. So we're talking about six condo buildings ranging in height from about 19 storeys to 41 storeys with a total of over 2,000 condos, so you're talking about 5,000 or 6,000 new residents over there, at minimum, assuming that everything is occupied. And there would be a 31-storey building directly behind my house where the office building presently exists. That I found extremely disturbing because nobody, I'm sure, would like to have a 31-storey condo building directly behind their home.

In any event, we went through the whole process of trying to do whatever we could to get this development

refused or cut back. We had public meetings where 220 people showed up. There was a lot of yelling and screaming. The city issued a refusal report and outright said, “No, you can’t do this.”

The developer went back and came up with a new proposal, which is similar to the one you see over here—that’s kind of a pictorial representation of what their second proposal looked like. As you can see, they cut back the number of condo towers from six to five. They cut the height down a little bit; instead of 2,000 condos, they now wanted about 1,700. The city refused that, too. They issued another refusal report.

The developer then went to the OMB. The first day that they could, they filed an application to the OMB to get this project approved. At the OMB, one of the members said that he thought that there was enough room for a negotiation here, and so they went to a negotiation. Frankly, I don’t see what room there was for a negotiation, but that’s what they decided to do.

The negotiation ended up with us still having five buildings but with heights slightly lower. The heights are now 12, 19, 31, 31 and 31 storeys. This is right at the corner of Leslie and Sheppard.

That’s where the matter ended. This was approved by the OMB. It didn’t go to a full hearing. We had to agree to this as residents in that community because, had it gone to a full hearing, it would have cost us \$150,000 and we may have had an approval which was worse than what we could negotiate on our own. But we obviously are not happy with it. I still end up with a 19-storey condo building right in my—you know, very close to my backyard.

What I drew out of all this is this: Because the OMB is so pro-developer, they are so biased in favour of approving developments, developers no longer even feel they have to be reasonable about their demands. They can start with 41-storey buildings and maybe if they have to work their way down a little bit, they will, but really they can ask for the moon and they have a pretty good chance of getting away with it. They know that, so they don’t really have much incentive to deal with anything else.

The second thing I found was that they completely ignored the city. The city was a speed bump on the way to the OMB.

There is a thing called the Sheppard East Subway Corridor Secondary Plan which was negotiated between Councillor Shiner, Mayor Mel Lastman and a whole bunch of other people, at the time when the Sheppard subway was constructed—before it was constructed. This was an agreement between all parties, including the owner of that site at 1200 to 1220 Sheppard, in terms of how much density would be allowed and exactly what the rules would be with development in that neighbourhood once the subway was built.

All that was completely ignored. If you look at the last page, which deals specifically with 1200 to 1220 Sheppard East, it says, “Mixed use areas designation, and a maximum gross density of 2.5 times the lot area” applies

here—a maximum gross density of 2.5. The developer started with a proposal of 5.5 density. His second proposal was around 4.7. What was finally approved was 3.94. It was literally like: Whatever work had been done before didn’t exist. They wanted to go to the OMB as quickly as possible, and whatever was approved was approved. That’s why I really think you need to do something about this, because the system is destroying our neighbourhoods.

The system in general, I found, was totally one-sided. The developer has no incentive whatsoever to do anything that we say. They will go to the OMB, where they’re pretty much certain to get their way.

In terms of development generally, my background is in economics and finance. I’m very pro-free enterprise. I agree with the profit motive. I’ve seen a lot of countries where free enterprise is denied and I’ve seen the lives of generations of people ruined because of that. So I’m not against development generally, and I’m not against free enterprise.

The problem is, you need rules of the road. You have to stop people from hurting each other. That’s why you have traffic rules, laws against selling fake drugs, laws about the crashworthiness of cars—you have any number of laws. The rules that the city planning department comes up with are designed to protect us against abusive land use, and they are being ignored by the OMB. This is already leading to a substantial amount of people being very cynical about development generally. I think that would be a pity if that happens. That’s all I have.

The Vice-Chair (Ms. Soo Wong): Thank you very much, sir. This round of questions is the NDP. Mr. Marchese, you have six minutes.

Mr. Rosario Marchese: Yes. We both have questions, I think. Mr. Pawan Jain, there was a question that was asked by actually the Chair of this committee to the current Minister of Municipal Affairs and Housing. She asked about why we should preserve the OMB. He obliged, of course, and he said, “The OMB makes dispute resolution easier, cheaper and faster for community groups and municipalities than the courts”—because it’s assumed it’s going to go to the court. I’m not sure why, but that’s the assumption they make. “That’s important, Speaker; we need to all remember that. It plays an important role in hearing land use appeals, attempting to balance the provincial planning policy with local planning decisions and community interests.” Is that your experience, based on what you told us today?

Mr. Pawan Jain: No, it is not. Like the previous speaker said, the developers regard the OMB as the only planning department in Ontario. They are not a dispute-resolution mechanism; they are the planning department. Everyone else is just making suggestions. If they can override everything and make up whatever rules they want or come up with whatever justification they want for their decisions, how does it matter what anyone else says? They’re not adjudicating anything; they’re making up the rules.

Mr. Rosario Marchese: Tell me—because the minister says it's easier: How easy was it for you to go to the OMB? What skills do you bring to defend yourself? How much cheaper is that for you, as they claim?

Mr. Pawan Jain: I'm just a resident there. We have a residents' association. We spent the better part of a year and a half trying to collect money—writing up flyers, having meetings and doing all sorts of things, whatever we could think of to try and fight this. We raised, as an association, about \$63,000 over the course of a year and a half. Had we gone to a full hearing, as the developer wanted—they wanted a six-week hearing at the OMB—that would have cost us in the neighbourhood of \$140,000 to \$150,000, money which we didn't have and couldn't raise. So there's no way that we could have anywhere near the same advantage as the developer, even if we worked at it 24/7, which we couldn't. It is a completely one-sided process, and the developers know it.

Mr. Rosario Marchese: I wanted to tell you and to point out to the committee members that the government put out a land use planning and appeal system review. On page 10, they say specifically, "This consultation will not discuss or consider elimination of the OMB; the OMB's operations, practices and procedures," and a few other matters. But the OMB, they said, is not to be discussed.

0930

Mr. Pawan Jain: To me, that's analogous to wanting to make an omelette but not wanting to crack an egg. The whole thing is about the OMB. If you're not doing anything with the OMB or its policies and practices, you're really not doing anything.

I understand there is some other review which is happening in the city of Toronto. They're trying to change the way they are planning, maybe ban appeals for residents but allow appeals for developers. I'm not sure exactly what that is totally about. But, again, it's meaningless as long as the OMB can change anything. As long as that's there and the city is subject to their jurisdiction, they can change their policies all they want, and it doesn't even amount to a suggestion.

Mr. Rosario Marchese: Thanks very much.

I don't know, Michael; do you have any questions?

The Vice-Chair (Ms. Soo Wong): Mr. Prue?

Mr. Michael Prue: I just want to get into the agreement that you finally made with the developer. You felt that you had no choice but to do that?

Mr. Pawan Jain: Yes.

Mr. Michael Prue: And it was simply a matter of money, or was it a matter of expertise or—

Mr. Pawan Jain: It's a matter of money. The agreement was between the lawyer and the consultant we hired for our association, between the city, Councillor Shiner, as well as the planner who was involved for the city, Ms. Lynn Poole, as well as the developer's lawyer and planner.

They hammered it out in an office in the OMB. The reason we agreed to it was partly because of money and partly because we know what the OMB does by reputation. We had very little prospect, we thought, of getting

any kind of a better deal should the matter go before a full hearing. If it did, we could end up with a worse deal, and most people, in fact, have.

The OMB's record is on their website. You can go over it case by case and see how they rule on stuff. I did that as a matter of interest. I went over it case by case. I looked at cases for a year. Every single one of them is in favour of the developer. Maybe where they've postponed something or it's on some minor basis—you know, "Go back and check this," or whatever—in the end, they approve it.

So we really had very little hope of getting anywhere, and we had spent a lot of time and money essentially achieving nothing in the end, had we not agreed to it. It's a negotiation, but it's a negotiation with a gun to our heads essentially.

Mr. Michael Prue: Up until that point, when you were negotiating with the city and the developer and the city kept coming back and saying no to the developer, and the planners were on board, you literally had everybody on board—

Mr. Pawan Jain: Yes.

Mr. Michael Prue: —including the community and, all of a sudden, once it got to the OMB, you found out you were almost defenceless?

Mr. Pawan Jain: Yes, exactly. In fact, we know the city planners. We talk to them regularly. I know Councillor Shiner; they know us. They know the residents of the place. We have a good working relationship with them. But as soon as it went to the OMB, we could sense a change in their attitude right away, like, "Oh, my God, there we go again." They knew what they faced because they face this every day.

The Vice-Chair (Ms. Soo Wong): Mr. Jain, thank you for your presentation.

Mr. Pawan Jain: Thank you very much.

MR. ADAM VAUGHAN

The Vice-Chair (Ms. Soo Wong): Our next witness is Councillor Adam Vaughan, ward 20, Trinity–Spadina. Councillor Vaughan, welcome.

This round of questioning, Councillor Vaughan, is from the government side, and you have 15 minutes for your presentation.

Mr. Adam Vaughan: Thank you. It's nice to see many of you again. Hello.

As you are aware, I am a city councillor from the city of Toronto, and that carries with it quite the reputation sometimes. We're quite often told we're not the centre of the universe and we shouldn't be trying to govern other parts of the province, let alone the country, from a perspective that sees city hall at the heart of all things that we do. However, the OMB reverses that and reverses it in a very dramatic way in the neighbourhoods that I represent.

Before I get into some of the most ridiculous planning policy that has been visited upon the communities I represent, I'd like you to think about the OMB in a

completely different way. If it didn't exist, can you imagine trying to create it? Can you imagine a constituent of yours coming up to you in Sudbury and saying, "We have a really serious problem on King Street in Toronto, and we need to override the decision of local expertise and the local councillor and the local neighbourhood, and we need to appoint somebody from Sudbury to rule and govern the city of Toronto to make sure they make the right decision on planning issues affecting the local community"? That's the most important thing happening in our neighbourhood today.

Can you imagine somebody from Kitchener saying, "Look, we have no hope of responding to an application by the university to build student housing. We really need somebody from downtown Toronto to figure this out for us. Can you please abdicate your responsibility as a local councillor, remove yourself from the process as a local MPP and appoint somebody who hasn't even been to Kitchener from a neighbourhood to come in and decide what should happen in Kitchener as it tries to deal with an expanding university?" Can you imagine selling that politically in the areas that you represent?

Sustaining the OMB as a governing agent over planning in Toronto is exactly what you do when you ignore this member's bill. It doesn't work. It just doesn't work.

I can show you projects that have come in front of the OMB two or three times, been refused two or three times, and then have come back a fourth time, only to be approved. If it's a rational, evidence-based planning body that's supposed to govern according to the conditions and the rules set in front of it and make the right decision because council is unable, how can it make a different decision with the same evidence in front of it based on who the panel member is? How does that happen? It just doesn't make sense.

We have countless examples in the ward that I represent of the OMB wading into policy and changing decisions that are being made and arrived at, even by the OMB, without any rationale that's tied to the Planning Act. We've had to go to Divisional Court, and the best you can hope for at Divisional Court is to go back to the OMB—back to the very source of the problem.

We have a project on King Street which has come in three times now, because the developer just can't seem to get it right each time he makes an application. It was refused by planning and by the city council, and it was approved at the OMB because they liked the architecture. Architecture is not a planning issue. Once you get the approval you can switch the architect, and you still have the planning envelope, approved by the OMB, in place.

Nonetheless, the same project has come back to city hall—in the middle of the OMB hearing—and asked for another floor. Why? Because if they got the approval for one incremental change, a second incremental change would be rational, approachable, maybe even preferable. And no sooner did the first case go off to Divisional Court than the second one was at the OMB, and it was approved. Now, we just got an application from the same developer on the same site with the same architect for

another set of revisions to further increase the height of a building.

It's the third run at this building. The argument each time in front of the OMB is, "It's just an incremental change," and the OMB says, "Yes, it's just an incremental change." If it had come in at the final position instead of the first position, it would not have been incremental; it would have been substantial, and the OMB probably would have refused it. But you've set up a system that allows for repeated approaches, incrementally, to get what they want that they can't get with an honest approach to the planning process. That's unacceptable and it's wrong.

It's a system which is perpetuated by the fact that the provincial government continues to impose what can only be described as a colonial approach to planning in Toronto. I'm not asking for Kitchener or Lake of Bays to be exempt from the OMB; I am asking for the city of Toronto to be.

When we've approached several ministers in the past, they've all said the same thing to us: "If you take responsibility, as outlined in the City of Toronto Act, we will think about it." The local appeals body is one of the issues that you've asked us to embrace. It's currently making its way through committee right now, as we speak. It's a committee which I should be going back to very shortly.

The other issue is the development permit system, also on the books to try to exempt neighbourhoods with very specific planning tools from the purview of the OMB. We're doing that. But at the end of the day, as long as it exists, you will have developers do what one is doing in my ward right now, which is file an application, refuse to meet with planning, refuse to meet with the community, refuse to meet with the local councillor, sue the city for enforcement on the site in question and then go straight to the OMB, because after 120 days, that's the right that's been granted to them. It just doesn't make sense. It's not good public policy, it's not good planning and it doesn't deliver what we need as a city, which is the ability to make decisions, to be held to account for the decisions we make and to build the city that we know will work.

0940

Again, I leave you with the thought: How many of your constituents have ever walked up to you and said, "The porch on Brunswick Avenue is too big; you really have to do something about this if I'm going to vote for you to go to Queen's Park"? None of you get those issues, and yet you've set up a system that governs that very question in our neighbourhoods.

We don't want the OMB; we don't need the OMB. What we need is relief from the OMB, and that's what this member's bill hopes to do. That's why all of the communities that I represent, and most of the city, stand right there asking for this opportunity to grow up, take responsibility, become transparent and accountable, and deliver good planning and a better city to all of Ontario. Thanks.

The Vice-Chair (Ms. Soo Wong): Thank you. You have eight minutes, according to the Clerk, starting with Mr. Del Duca.

Mr. Steven Del Duca: Thanks very much, Madam Chair. Thank you, Councillor Vaughan, for being here.

This is the government side's first chance to ask questions of you. We've had a chance to hear from a couple of other witnesses here this morning. I do appreciate what you said, and frankly, I appreciate what the other folks who've come before you have said as well.

I just wanted to get a sense of the proportion or the scale of the concern because I think, by and large, what we've heard so far this morning—at least the impression I have—is that this is, proportionately, a significant problem at the city of Toronto, that there is a great deal of angst around this. I'm going to ask you to respond to this in a second.

But when I look at some of the information that I was able to find, I've come across messaging and quotes from individuals who I think understand the planning process at the city of Toronto fairly well. I just wanted to get a sense of what I'm seeing in their comments versus what we've heard from you today and from some of the others who have appeared. I wonder if you could, perhaps, react, because I don't know. I don't have a planning background. I don't have great deal of personal experience when it comes to this stuff—

Mr. Adam Vaughan: I might just say, all the more reason for you not to have jurisdiction.

Mr. Steven Del Duca: Sure, but then I could also argue that of the 44, there are almost none of you who have any planning experience either, so maybe you shouldn't have jurisdiction either.

Mr. Adam Vaughan: It's what we do every single day.

Mr. Steven Del Duca: Having said that, your chief planner, the current chief planner for the city of Toronto, Jennifer Keesmaat, says that, "Contrary to what some might believe, the city is not beholden to the OMB, Keesmaat said.... Only 4% of applications end up at the OMB ... a vast majority don't." That's your current chief planner.

She also said that while she's "a firm believer in OMB reform ... she feels doing away with an appeal body is unrealistic" because "it has an important role to play." That's the current chief planner.

Brendan O'Callaghan, a lawyer at the city of Toronto, June 1, 2013: "I win over 80% of my hearings" at the OMB. "I'm pretty happy with the treatment I get at the board."

I'm just wondering why there is that kind of—you understand what I'm asking.

Mr. Adam Vaughan: The 80% costs \$80,000 a day to reaffirm what the city made as a decision months earlier. In the interim, community associations have to raise dollars. The development process slows down, waiting for the OMB to kick in, but if 80% of the decisions of the city of Toronto are not overturned by the OMB, why do you need the OMB?

The 20% that are overturned have a devastating—

Mr. Steven Del Duca: If I could just ask for a clarification, because from your presentation earlier it seemed to me that the issue was one of, "We're not in a position to make decisions and we are consistently and constantly overruled by this agency, this group," whether it's a person from Vaughan or Kitchener or Sudbury or wherever the case may be. And yet, it would seem that your chief planner is saying that only 4% of all of these matters actually end up at the board.

Mr. Adam Vaughan: Okay, let's split out what goes to the OMB and what we win on. We win on the porches nine times out of 10—apparently, eight times out of 10. Those little decisions shouldn't even go to the OMB. In fact, the Local Appeal Body, which assumes that those decisions shouldn't go to the OMB, is exactly the direction we're heading at the city of Toronto.

By and large, what you're doing is, you're creating—at a cost of millions of dollars to the province; \$80,000 a day to the city; thousands of dollars to taxpayers—a layer of red tape that doesn't change a bloody thing. If you don't have other cost pressures to deal with, tell me about it, because we'd love to get some more transit and some more housing built in this province.

But if you're spending millions of dollars to simply rubber-stamp what city council has already decided, certainly that's a waste of money, certainly that's red tape that's unnecessary and certainly it's an unnecessary level of review that doesn't really produce any significant change.

Mr. Steven Del Duca: So your concern is less about whether or not decisions are being overruled—

Mr. Adam Vaughan: Now let's take a look at the decisions that are overturned, because the bulk of the appeals to the OMB are very minor, and I agree. They come out of the committee of adjustment, but the significant ones are the ones that do the damage. The significant ones are the ones that overturn secondary plans. The significant ones are the ones that, in creating a precedent, leave us in a position where we can't negotiate with the developers.

In the King-Spadina area, the building that I cited that came in at 39 metres, went to 41 metres, went to 44 metres, and is now coming back at 51 metres.

When we're in a position where we're looking at OMB precedent being set at 51 metres, in a neighbourhood where we have never approved anything over 36 metres, we're now in a position where the rational decision is, if we can fight it at the OMB, we're going to lose. So what we start to do is settle, and the OMB starts to lead us in a direction we don't want to go and put us in a position where we're not managing the growth responsibly.

What ends up happening is, we end up negotiating with ourselves. To avoid an OMB hearing where you get an even clumsier decision and perhaps an even more irrational decision with no finesse and no recognition of local conditions, you end up settling because you're

afraid of going to the OMB. Do those numbers start to skew in a certain direction? They certainly do.

Mr. Steven Del Duca: You mentioned local appeal tribunals, local appeal bodies—

Mr. Adam Vaughan: The Local Appeal Body.

Mr. Steven Del Duca: Thank you. When did the province provide the city of Toronto and all municipalities with that ability?

Mr. Adam Vaughan: The City of Toronto Act gave it to the city of Toronto and then, months later, the rest of the province.

Mr. Steven Del Duca: So, 2006? Was it 2006?

Mr. Adam Vaughan: I believe that's right, yes.

Mr. Steven Del Duca: Any particular reason it has taken more than eight years now for the city of Toronto to actually move on this?

Mr. Adam Vaughan: There was significant resistance in the city of Toronto because of the cost.

Mr. Steven Del Duca: Because of the cost?

Mr. Adam Vaughan: Because of the cost. The cost, as presented in the current staff report, says it would cost an applicant \$6,000 to appeal a committee of adjustment decision, which, if you're a homeowner looking to put a back porch on your house and you've got neighbours who are contesting it—it's a lot of money for you to decide to go to the Local Appeal Body.

It's a bit of an unfair way to describe the cost. Planning has been very resistant to assume this cost because we're in a position where we have to spend a lot of money at the OMB. We don't have a lot of extra dollars around to spend on things like the Local Appeal Body. I can tell you right now that the previous mayor and the previous council thwarted our attempts to bring it forward. The current chair of planning and the current planning department are moving that agenda forward because we think it's the right way to go.

Mr. Steven Del Duca: Any sense how much longer that might take?

Mr. Adam Vaughan: It's heading toward committee, I believe, in the summer. Hopefully, that'll put us in a position to put it in place. It's something which I support strongly. It's something which I would have put in place in 2006, and, in fact I moved those motions in my first term at council.

Mr. Steven Del Duca: Thank you.

The Vice-Chair (Ms. Soo Wong): Two more minutes.

Ms. Mitzie Hunter: Thank you, Madam Chair. Councillor Vaughan, you talk about people being afraid for projects to go forward to the OMB; therefore, there's an attempt to get people around the table to avoid that.

Mr. Adam Vaughan: To capitulate.

Ms. Mitzie Hunter: To capitulate. But you're saying that it's clumsier and it's not optimal. Can you talk about how we strengthen the voice of the local community associations that will, at the end of the day, be impacted by these developments? What do you see—

Mr. Adam Vaughan: When you leave planning decisions in the hands of council—and councils are elected

not by developers but by local neighbourhood associations—you have just strengthened the hand of the neighbourhood association. When you create democratically constructed accountability, you strengthen the role and the voice of the citizen.

The way to create strong citizen-led planning is to create a strong city council, and the way you do that is, you make the city council like it is in Vancouver and like it is in Montreal, Chicago, New York, Los Angeles, Boston, Calgary and Edmonton too. You make planning decisions at city hall by directly elected officials. You do not hide behind a court system.

There are councillors who will say no to anything and wink at the developer and say, "Go to the OMB." There are councillors who will say yes to everything to avoid the OMB. But what you end up with are blurred lines as to who's making the decision and how to execute a plan.

It works in the opposite direction as well. When we brought in, along Sheppard, a new set of zoning regulations and a secondary plan to pay for transit and to operationalize and cover the cost of operating transit on Sheppard, it was immediately repealed by the local community. As a result of that, what ended up happening was, you ended up with a transit deficit.

Ms. Mitzie Hunter: Right.

Mr. Adam Vaughan: If you could impose a transit plan and planning simultaneously and remove it from appeal and remove it from being tinkered with constantly for political reasons without clear lines of accountability, you may find a way to actually pay for transit as an operating phenomenon in this province.

The Vice-Chair (Ms. Soo Wong): Thank you, Councillor Vaughan. Thank you for your presentation. We're finished with you. Thank you for the day.

GREATER BEACH NEIGHBOURHOOD ASSOCIATION

The Vice-Chair (Ms. Soo Wong): Our next witness is the Greater Beach Neighbourhood Association. I believe it's Jan Hykamp.

Mr. Jan Hykamp: Jan Hykamp and Jeff Levitt.

The Vice-Chair (Ms. Soo Wong): And then Jeffrey Levitt? Am I correct?

Good morning. Can you say your name on the record? You have 15 minutes for your presentation. This round of questions will be by the official opposition party.

0950

Mr. Jan Hykamp: Right. Madam Chair and committee members, thank you for listening to us. My name is Jan Hykamp. I'm a co-founder and current president of an umbrella association of neighbour groups in the Beach area in Toronto by the name of the Greater Beach Neighbourhood Association, or GBNA.

With me is Jeff Levitt, who is a vice-president of GBNA and who will be presenting to you.

Mr. Jeffrey Levitt: Thank you, Jan. Also, thank you to the committee for the opportunity to make a presentation on Bill 20 on behalf of the GBNA, our organization.

Our organization has provided some written submissions to the committee. We're not sure if these have been circulated.

The Vice-Chair (Ms. Soo Wong): Yes, we have it.

Mr. Jeffrey Levitt: Thank you very much.

Our purpose today isn't to repeat what is in our submission but to summarize the key points and in particular to convey to the committee just how strongly our community feels about restoring accountability of Toronto city council for land use planning decisions by removing the pervasive oversight of the Ontario Municipal Board, picking up on the point made very well by the previous witness, Councillor Vaughan.

I'll very briefly introduce GBNA, explain to the committee why we felt it important to be here and then briefly summarize our position on the bill.

Information about our organization is presented in section 3 on pages 8 and 9 of the written submissions. Basically, GBNA is an umbrella group of multiple resident associations in the greater Beach area of the city of Toronto. We currently are composed of seven member organizations. The objectives of GBNA focus largely on land use planning matters. We're concerned with land use planning policies as they impact our area. We're involved at the level of individual developments in ensuring that they're consistent with applicable planning legislation and policies. We're also involved in encouraging public participation in local land use policy issues.

I'd like to explain now why GBNA felt it important to be here at the committee. I'll summarize what is explained more fully in section 2(a) of our submission, at pages 2 and 3. Basically, as I've indicated, GBNA is involved on behalf of the local community in land use planning issues in our area, including involvement with a number of recent redevelopment projects. We have found through this experience that the role played by the OMB in the land use planning process has been extremely frustrating for residents. As you have heard from previous witnesses, the extensive appeal rights to the OMB of city planning decisions mean that the OMB casts a very long shadow over the entire process of the city's consideration of land use planning development proposals.

As well, as you've also heard from previous witnesses, the extremely high cost of effective participation in OMB appeals means that participation is, for all intents and purposes, beyond the capacity of resident associations. The result of all of this is that the focus of the approval process for new developments effectively becomes the Ontario Municipal Board and not city council. We have a corresponding lack of perceived accountability of council for these land use planning decisions.

Bill 20 addresses this issue of accountability of city council for land use planning decisions straight on. That's why we're here to present our perspective and the perspective of residents.

To explain briefly our position on Bill 20, an overview is provided in the executive summary in section 1, on pages 1 and 2 of our written submissions. Basically,

GBNA strongly supports the two important principles of Bill 20. The first is the need to ensure accountability for decisions in the land use planning area by making city council the ultimate authority for these decisions except where council determines that an appeal is appropriate. The second principle we support is that the city is fully capable of carrying out the regulation of land use planning without pervasive OMB oversight. As well, having reviewed the Hansard at second reading, GBNA agrees with the many members who spoke out about the fact that the appeal process has led to great frustration on the part of their residents and needs reform.

Moving to our position on Bill 20, I think we can summarize it by saying that GBNA supports the goal of Bill 20, which is to make city council the ultimate authority for land use planning decisions in the city. We take this position for two reasons. The first one is that the pervasive rights of appeal to the OMB lead to the focus being shifted to the municipal board. The second reason we take this position is that we support the view that the city is fully capable of taking on this responsibility.

You've heard already from previous witnesses how the pervasive rights of appeal of the OMB lead to the perception that city council is not, in fact, the ultimate decision-maker on land use planning matters. This is discussed more fully in section 2(c) on pages 3 and 4 of our submission, but just to summarize, it has been our experience—the reason we believe that the OMB is the focus is because on appeal, the OMB can change council decisions, as was the experience in the last two developments we had in our area. City council never even had a chance to make the decision; it went straight to the OMB. There was no issue there of us trying to influence council because it went straight to the OMB upon the expiry of the statutory period for making a decision.

Third—and I'd like to again emphasize what the previous witness, Councillor Vaughan, had said: that decisions may, on paper, appear to have been made by council, but they were made under threat and duress of an OMB appeal, resulting in compromises being made by the city that they might not otherwise have made.

All of this leads, then, to the feeling that councillors in our city do not really have full control for planning decisions. The locus of the decision is, in fact or in essence, the Ontario Municipal Board, and that is the reason that we support the removal of OMB appeals for land use policy decisions and authorizing city council as well to determine appropriate appeals, as this will make clear that the responsibility for these decisions is with city council.

What we are really looking for is a situation where the city council can truly put out the sign "The Buck Stops Here" as far as land use planning decisions are concerned, and we will hold them appropriately accountable. That's not the situation today, but that would be the situation with Bill 20.

Very quickly, moving to the second aspect of Bill 20, it's predicated on the fact that the city is fully capable of exercising these land use planning policies without

pervasive OMB oversight. We have discussed this in more detail in section 2(d) on pages 4 and 5 of our materials, but we believe that the city is capable of this responsibility for two reasons. The first one is consistent with the City of Toronto Act and the second one is the experience in other jurisdictions.

As far as the City of Toronto Act is concerned, on page 5 of our submission we've reproduced an extract from the preamble to the City of Toronto Act. I will read just one of the sentences from that preamble: "The assembly recognizes that the city is a government that is capable of exercising its powers in a responsible and accountable fashion." GBNA agrees fully with the assembly on this point. The city, as a government, makes many important decisions across the board without oversight from appeal to a tribunal such as the OMB. We believe that the city is also capable of exercising its land use planning powers without pervasive oversight of the OMB.

The second reason that we believe and are confident that the city is fully capable of operating in the land use planning area without OMB pervasive appeals is the experience in other jurisdictions, which you have heard about already from previous witnesses. We have some examples ourselves in footnotes 9 and 10 on page 5, but for our purposes, we think the best way to sum up this issue—we'll limit ourselves to quoting from the remarks in second reading debate of Bill 20 by Minister Murray, the former mayor of Winnipeg. These are reproduced on footnote 8 on page 5, but I quote from his remarks in the debate:

"I have ... lived in ... and been the mayor of the city that is the capital city of the next province over. Miraculously, we don't have an OMB. We didn't have an MMB. And the world didn't fall apart. Development happened. Developers were happy. It wasn't anti-development."

Quite simply, our position is that if other municipalities in Canada are capable of operating and making land use decisions responsibly without OMB oversight, surely the city of Toronto is equally capable.

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Finally, I would just like to address the issue of the role which the OMB plays, particularly from the perspective of resident organizations. We noticed, in reading the debate on second reading of Bill 20, that virtually all of the members who spoke—virtually all of them—expressed the view that the current OMB appeal system has led to a great deal of frustration on the part of their constituents, and needs reform. Many of the members who spoke also expressed the view that in their experience and that of their constituents, the OMB results in an uneven playing field that favours parties with deep pockets.

Some of these views are reproduced on page 6 in footnote 12. We have expanded in section 2(e) on our reasons why we agree completely with the views expressed by, again, virtually all of the members in the second reading debate, because they have been effectively made before, particularly in terms of the cost of OMB

appeals being completely out of reach of resident associations. We will rely on testimony you have heard and which, no doubt, you will hear, and our written submissions. But we would like to reaffirm our view that the system of review and appeal of municipal land use planning decisions in the province definitely needs reform. We believe that a very good start on this reform comes with Bill 20, which gives the city the ultimate authority for land use planning decisions, and gives the city the authority to decide what decisions should be appealed.

Those are our comments. Thank you very much again for the opportunity.

The Vice-Chair (Ms. Soo Wong): Thank you. You now have three minutes for the official opposition to ask you some questions. Mr. McDonell.

Mr. Jim McDonell: One issue we have with this bill is that it abolishes the OMB without a legal solution. So it forces decisions to go to the courts. The whole idea of the OMB is to try and reduce costs, even though it is expensive. Any idea on that?

Mr. Jeffrey Levitt: I guess the answer to that might be to repeat the testimony, some of the previous remarks, that what you're describing must be the situation in many other provinces, and apparently it doesn't seem to be the problem that people think it would be. In any event, Bill 20 does allow the city to selectively choose where appeals are appropriate. So in some ways, I might answer your question by saying that you're presenting a problem which experience in other jurisdictions has shown doesn't exist. If anything, the problem is the reverse: having the OMB.

Mr. Jim McDonell: There's no question there needs to be some work done on this. There needs to be a proposed solution. It always gives the ability to go to courts. That's something that the City of Toronto Act doesn't circumvent. Certainly that would become a very common option if the OMB is abolished. It makes it very expensive, and I think that is a concern.

Mr. Jeffrey Levitt: Whether or not it would be a common occurrence is probably a factual question, and we have heard testimony that factually, it's not in fact a common occurrence. There's a supposition that it might be, but I would submit that the evidence indicates the opposite; that in fact it is not a common occurrence.

Mr. Jim McDonell: So would there be some idea that there needs to be some work done beyond this bill? I think we need a solution. We need something that's well thought out. We just have a little concern if you abandon a system without a solution. I think something as important as the planning of the city of Toronto is worthy of some consultation, working with the—

Mr. Jeffrey Levitt: I guess I would just answer that I hope that I haven't been unclear in the remarks. We think the solution is giving the city ultimate authority without pervasive supervisory oversight, as is the case in many other jurisdictions.

The Vice-Chair (Ms. Soo Wong): Thank you, Mr. Levitt, for your presentation. Thank you, Mr. Hykamp, for your presentation.

MIMICO RESIDENTS ASSOCIATION

The Vice-Chair (Ms. Soo Wong): Our next witness is from the Mimico Residents Association: Mary Bella. Welcome.

Ms. Mary Bella: I've got a letter to distribute.

The Vice-Chair (Ms. Soo Wong): The Clerk will distribute that, please.

You have 15 minutes for your presentation, Ms. Bella. This round of questions will be by the official third party. Welcome.

Ms. Mary Bella: Thank you.

The Vice-Chair (Ms. Soo Wong): You can start.

Ms. Mary Bella: My name is Mary Bella, and I'm here as a director on the board of the Mimico Residents Association, the MRA.

We request your support for the private member's bill sponsored by MPP Rosario Marchese, namely Bill 20, the Respect for Municipalities Act.

The extremely tall and high-density building developments in the Humber Bay Shores area, just east of Mimico, were approved by the Ontario Municipal Board without community consultation. They far exceeded the guidelines established in the secondary plan for that area. There was a maximum 24-storey guidance in only two specific locations in the secondary plan—the rest of the locations were shorter buildings than that—but many more, and much higher—40 to 66 and more storeys—development applications were approved.

The MRA, on behalf of local residents, is very concerned that the recently completed secondary plan for Mimico-by-the-Lake could be similarly affected by OMB decisions. We fear justifiably that the height restrictions will continue to be exceeded in development applications. It is amply demonstrated that exceptions to community and city plans are routinely granted by the OMB without community consultation.

The MRA hopes that exempting Toronto from the OMB jurisdiction as per the conditions described in Bill 20, and the formation of a local appeal body, will help uphold city planning frameworks, policies and community improvement plans.

Most importantly, appointees to these bodies should go through the public appointment process and not be arbitrarily picked on a political or lobbied basis.

Bill 20 could contribute to ensuring that approved development plans are appropriate to the infrastructure and built form of the surrounding area and could provide further opportunities for community consultation on special allowances in height and density.

Thank you.

The Vice-Chair (Ms. Soo Wong): Thank you very much for your presentation. We have, for this round of questions—we have 12 minutes. Mr. Marchese.

Mr. Rosario Marchese: Thank you, Mary, for your presentation. You're hearing some of the objections because—and the objections come from many sectors, in fact, including developers, I think, who like the current system.

My bill does say exactly what you just said: that the city can set up a local appeals body. It enables them to do so. They don't have to, but they could have the court system as the other option, which, by the way, in my view would be an acceptable process as well, because if the city has a good planning process—which they're bound to respect all the provincial policy, the policy plan—good heavens.

Interjections.

Mr. Rosario Marchese: The provincial planning statement. The Planning Act. They're bound by law to respect that; they have to conform to that. So if they have a right process, if they have to obey the law, in my view, I think the politicians and the communities would be respected and will follow a process that I think is something that everybody can agree to. Is there something about that that you think is complicated?

Ms. Mary Bella: No. I know that in Mimico we went through a very extensive consultation process for our secondary plan for Mimico-by-the-Lake. It took years; it took a lot of money and planning and a staff of people that dealt with that secondary plan. I think what we're fearing now is that the OMB will come in and basically it will be null and void because the developers can go to the OMB and get exactly what they want.

Mr. Rosario Marchese: You see, the argument that some of us make is that to go to the OMB is not an easy process. They might argue that all you have to do is pay a small fee and that it's easy. Many have told us that it's not an easy process, that it's a highly litigious place, and that you really have to have lawyers there to defend your interests; otherwise, if you're there on your own it's going to be pretty tough. It can be incredibly expensive, as you've just said and as another deputant said. So it's not cheap for residents when they want to defend themselves.

1010

Do you believe that accountability is better placed in the hands of a city council, where you have a role to play in terms of having a say there, versus this other appeal system at the OMB, where it's hit and miss, where developers have deep pockets to hire the best planners and the best lawyers? Where do you think the community interest is best served?

Ms. Mary Bella: Well, obviously, with the elected council. That's their job: to represent us and to set up systems where we can actually have a say in what happens with development.

Mr. Rosario Marchese: Thank you, Mary.

The Vice-Chair (Ms. Soo Wong): Mr. Prue?

Mr. Michael Prue: I have a number of questions. The Mimico Residents Association: Have you ever been forced to go to the OMB on past developments?

Ms. Mary Bella: At this point, our neighbourhood is in transition, so we haven't had a lot of development applications come forward yet. So, no. There have been a couple that have gone to the OMB, and so far I believe one building was granted 11 storeys in the avenue that was meant to be five to nine storeys. So the precedent has started to be set on Lake Shore Boulevard, which is part of our Mimico secondary plan already granted by the OMB.

Mr. Michael Prue: You said that it took years to develop a secondary plan, and you're fearful that the OMB is just going to not pay any attention at all.

Ms. Mary Bella: Correct.

Mr. Michael Prue: This has been my experience in the Beach, and you just heard the people from the Beach. They have a secondary plan. They have a brand new plan that the city has developed and keeps working on historical plans and everything else, and the OMB pays absolutely no attention to it because they don't have to, because the law is very clear. When the government passed this law, they have to pay attention to—I think that's the word—

Mr. Rosario Marchese: Have regard to.

Mr. Michael Prue: Have regard to, which means nothing. Is that what you anticipate is going to happen: that they will have no regard to the city at all?

Ms. Mary Bella: That's our main concern, yes.

Mr. Michael Prue: Your association: Have you started collecting a war chest to fight all of this?

Ms. Mary Bella: Well, this is the issue.

Mr. Rosario Marchese: Good luck.

Ms. Mary Bella: Yes. Exactly. We're not blessed with a demographic in our area, like Humbertown area, where there is a very wealthy density of people who can gather together and gather funds and get legal counsel. We are a very mixed community, so we're doing our best, but we're not going to have the means to hire lawyers and do traffic studies and wind studies and all these things that developers can have access to.

Mr. Michael Prue: Now, this secondary study that was undertaken suggested that height restriction should be at what, along the motel strip?

Ms. Mary Bella: I believe 24 stories was the maximum. There is now a development that has been approved at 65 stories, which has been—we got, actually, an advertisement in our Globe and Mail last spring that said “breathtaking.” It certainly did take my breath away. Sixty-five storeys, and apparently it's the tallest waterfront condominium in Canada, if not North America.

Mr. Michael Prue: Okay. Why was the secondary plan, of which you were a part—why did they come in at 24 storeys? Was that to preserve the neighbourhoods?

Ms. Mary Bella: The Humber was 24 storeys, but, actually, in the Mimico secondary plan, I believe the tallest is 25.

Mr. Michael Prue: Okay. Why was this fought for by the residents? Is it to preserve the skyline so you can actually see some of the lake?

Ms. Mary Bella: Well, yes.

Mr. Michael Prue: What was the reason behind the—

Ms. Mary Bella: Well, a lot of it is also the density within the area—the concern that the area can't support 10,000 or 20,000 more residents streaming onto Lake Shore Boulevard, especially in Humber Bay Shores. The projections now are that they're going to be 24,000 residents in the Humber Bay Shores area, where right now there may be 2,000 or 3,000. So it's 10 times the amount of residents coming on to an on-ramp to get onto the highway. Just that alone is a huge concern. Of course the infrastructure, the schools, the libraries, all the parks—there's just a huge concern that there doesn't seem to be a balance between the needs of the residents in the surrounding area and what's happening with these developments.

Mr. Michael Prue: With the Etobicoke—I think it's the Etobicoke York Community Council—

Ms. Mary Bella: Yes.

Mr. Michael Prue: Yes. These would be the councillors—for those outside of Toronto—from the former city of Etobicoke plus the former city of York. I guess there would be maybe eight or 10 of them in total. Are they on board with the official plan or the secondary study?

Ms. Mary Bella: With the secondary plan? Yes, I think so. There is some concern that there's still a wide gap between the residents that wanted five to 10 storeys and the developers that want 40 or 50. I guess they think they've found some middle ground that hopefully there will be enough incentive for development.

Mr. Michael Prue: Okay. That middle ground, though, does not appear to be at all to the liking of the developers, who want to build the 65-storey, breathtaking view?

Ms. Mary Bella: No; exactly.

Mr. Michael Prue: And your position and your opinion is that the OMB will go running to them?

Ms. Mary Bella: They'll go running to the OMB.

Mr. Michael Prue: Well, they'll go running to the OMB and the OMB will go running to embrace them.

Ms. Mary Bella: Correct, yes.

Mr. Michael Prue: Have I got any time left?

The Vice-Chair (Ms. Soo Wong): You've got four more minutes.

Mr. Michael Prue: Four more minutes. I want to ask a question, because I sat here—I think, in this very seat—and you were sitting in the very seat of the former OMB chair when she came to defend the Ontario Municipal Board before a committee of this Legislature. I will never forget what she had to say that day. I asked her, “What do you think your primary role is?” Her response was, “My primary role is to facilitate development and developers.” I never forgot that

Ms. Mary Bella: That's revealing.

Mr. Michael Prue: That's revealing.

Interjection.

Mr. Michael Prue: A good answer, you say?

Mr. Steven Del Duca: No. I said, do we have a Hansard of that?

Mr. Michael Prue: Oh yes, we have a Hansard of that. We have a Hansard—

The Vice-Chair (Ms. Soo Wong): Let's not crosstalk. This is questions for the witness.

Mr. Michael Prue: Okay, but we have a Hansard of that.

She is gone. There's a new one. But do the residents feel that she captured—is that what you think the OMB does?

Ms. Mary Bella: It certainly seems that way. In Mimico and Humber Bay Shores, because it's very prime waterfront property—maybe this isn't the case in districts that are further away from this really desirable land, but certainly in Mimico, it seems that there is shoehorning as many taxpayers as possible into a small area. In Humber Bay Shores, there wasn't quite the resident base in that particular area of involved residents the way we have in homeowners in Mimico. There wasn't quite as much vocal opposition at the time.

We're being as vocal as we can, but the OMB doesn't give us a voice. That's the main issue.

Mr. Michael Prue: Have any developers ever threatened yourself or your membership or your organization or other people you know with SLAPP suits if you oppose their application?

Ms. Mary Bella: We're certainly aware of that possibility. We took out liability insurance two or three years ago just for that concern.

Mr. Michael Prue: How much does that liability insurance cost you?

Ms. Mary Bella: It's basically our whole budget.

Mr. Michael Prue: Your whole budget. The reason I ask that is—

Mr. Rosario Marchese: Which is what?

Ms. Mary Bella: It's \$1,000 a year. We don't have a big budget.

Mr. Michael Prue: Okay, so your whole budget for your association is taken up with liability insurance—

Ms. Mary Bella: Pretty much.

Mr. Michael Prue: —because you are fearful of being slapped with a suit?

Ms. Mary Bella: Yes, I would say that's one of the main concerns. We have to be careful also with events and things like that, that we're not liable.

Mr. Michael Prue: Okay. Because they do happen. I am currently the subject of a SLAPP suit for having the temerity, the unmitigated gall, of taking the developer at my cottage to the OMB for a one-day hearing.

The Vice-Chair (Ms. Soo Wong): Mr. Prue, one minute.

Mr. Michael Prue: I recognize what you're saying. I think that's all the questions. Do you have any?

Mr. Rosario Marchese: I think we had enough.

Mr. Michael Prue: I think we have. Thank you so much for your contribution.

Ms. Mary Bella: It's my pleasure.

The Vice-Chair (Ms. Soo Wong): Thank you, Ms. Bella.

Can I just remind the committee: We have a long list of witnesses this afternoon. Can we please come promptly at 2 o'clock, because we may have to recess a bit for a vote this afternoon? So please return for 2 o'clock. We are now recessed until 2. Thank you.

The committee recessed from 1019 to 1401.

The Vice-Chair (Ms. Soo Wong): We're going to start the meeting, because timeliness is important. We're resuming the Standing Committee on Finance and Economic Affairs, dealing with Bill 20, An Act respecting the City of Toronto and the Ontario Municipal Board.

MS. ROS FELDMAN

The Vice-Chair (Ms. Soo Wong): We have the first witness here at 2 o'clock: Rosalind Feldman. I think this round of questions is to the government side. I hope they're ready. Mr. Del Duca? The government side.

Mr. Steven Del Duca: We're up next?

The Vice-Chair (Ms. Soo Wong): Yes.

Mr. Steven Del Duca: Thank you, Madam Chair—

The Vice-Chair (Ms. Soo Wong): No, no, no.

Ms. Feldman, you have 15 minutes for your presentation. At the end of your presentation, if time permits, it's the government side that will ask you questions.

Ms. Ros Feldman: Okay.

The Vice-Chair (Ms. Soo Wong): Welcome. Can you state your name for the record, please? Thank you.

Ms. Ros Feldman: I will. Good afternoon, Madam Chair, ladies and gentlemen, and members of the public. I appreciate being allowed to speak to you today. You have heard a lot about Toronto. Unfortunately, Toronto has not been the only city to be held hostage to the whims and bad decisions made by the OMB.

My name is Ros Feldman, and I am speaking to you today on behalf of Mayor Fennell, the city council, the region of Peel and, most importantly, the residents and members of Stop Heart Lake High-Rises.

I have lived in the village of Heart Lake, and Brampton, for 37 years. It's a lovely place of approximately 8,000 beautiful, well-kept single-family homes. We have no building taller than three storeys. We have a small, two-sided strip mall—each side owned by a different developer—a lovely little library and a recreation centre.

We also have a nine-acre lot that was originally supposed to house a school, until it was discovered that it flooded in the winter and the land was unstable. It fronts onto Loafer's Lake, which at least three or four times a year overflows its banks, making walking around it impossible without your wellies.

Some 30 years ago, a developer wanted to put four high-rises on this piece of land. We—city council and the residents—fought the proposal, but the land was re-zoned for two 18-storey high-rises of 419 units. However, the developer decided not to build on the land. The land lay fallow, and life went on.

Fast forward to February 8, 2007: A developer presented to council a plan to have the land rezoned again so he could build one 32-storey high-rise, two 26-story

high-rises, three 20-storey high-rises, one 18-storey high-rise and a seven-storey commercial building and surround it all with 42 work-live townhouses—all this on nine acres of land. The density was so large that it was ridiculous.

Before council or the planning department could even send the plans back to the developer with a decision, it was taken out of our hands when the developer went to the OMB. An appeal was instigated on January 24, 2008. Brampton council, naturally, were furious. I'm not going to tell you how we, the residents, felt because I'd be bleeped out of here. Hearings were held under the auspices of Madam Seaborn of the OMB. We, the residents, were given one morning to speak to this disaster.

Ms. Wong, we do not have the infrastructure to support this monstrosity in the centre of our village. We do not have the roads, as there would only be one entrance and one exit out of this high-rise conglomerate onto a very busy main road, as one side leads out to a lane and the back leads into the water, the Etobicoke Creek and Loafer's Lake. We do not have the schools, hospital space, fire department, police department or stores to accommodate this massive influx of people.

We, the residents, appealed to the Premier but were blocked from seeing or meeting with him by our own MPP, Linda Jeffrey. However, we did have friends: Mr. Marchese and Mr. Prue of the NDP and Mr. Chudleigh of the PCs. With their help, we put together a thick book showing the area, the roads, the schools with the portables already on the land and various other pictures along with a petition signed by over 14,000 households, as not just our neighbours signed, but the surrounding areas knew what the massive project would mean to the road—the only road out of Caledon, Georgetown and Heart Lake—the 410.

We invited Vice-Chair Madam Seaborn to visit Heart Lake before making her decision: "Come and see where we live. Speak to the people. Take a walk around. Then tell us that this monstrosity is not a mistake and that it fits in." Did she take us up on our offer? No. Did she listen to our appeal? Well, maybe with half an ear, as it became painfully obvious that she was nothing more than a rubber stamp for the developer. Oh, she made one big decision. She cut the tallest building down to 26 storeys from the 32 original and the total units from 1,142 down to 934, which was really nice of her.

We held rallies. We were written up in all the newspapers. We marched on Queen's Park. We took out ads against this over-intensification of our tiny village. But after nine weeks of hearings, what was the impression that was taken away by Madam Seaborn? Nothing. She gave the go-ahead to destroy our village.

Madam Wong, Brampton has a growth plan and a wonderful planning department. We live in the 21st century, not in the 18th century when no city had a planning department, and had to trust the OMB to do the right thing. Things have changed. How, in this day and age, can one person overrule the wishes of everyone who lives here? How can she claim that there is no difference

between two 18-storey high-rises and seven multi-storey high-rises?

The OMB has gotten out of hand and seemingly anything a builder says is okay with them while the wishes of, and the effects it has on, most of us aren't even taken into account. Brampton people must be allowed to make Brampton choices and not be dictated to by outside forces that do not even live here.

1410

I want to thank you for the opportunity to put forward our side of the story. We are fully in favour of Bill 20 and the dissolving of the OMB. Thank you.

The Vice-Chair (Ms. Soo Wong): Thank you, Ms. Feldman. There are seven minutes for the government side. Ms. Hunter, are you going to take the lead?

Ms. Mitzie Hunter: Yes. Thank you, Madam Chair, and I want to thank Ms. Feldman for appearing in front of the committee today.

I wanted to ask you if you had had an opportunity to participate in the Ministry of Municipal Affairs and Housing land use planning consultation. Did you have an opportunity?

Ms. Ros Feldman: Yes, we did. We had one morning. Of nine weeks of hearings, they gave us one morning.

Ms. Mitzie Hunter: Okay. In terms of the voice of the community, what do you believe should be the appropriate way that that is brought forward in a development context?

Ms. Ros Feldman: We have a planning department. We have a very good planning department. We have a growth plan for the area that wasn't even taken into account. That land, as I say, lay fallow for 30 years. It is zoned for two high-rises, and we are all in favour of these two high-rises. Personally, I would rather see an old-age home put in there, which is what we badly need, or townhouses or something of that effect that fits into the area.

This was so intense and so pushed together that it was just ridiculous. Of nine acres, there's actually only seven acres that you can build on, and on seven acres, they wanted to put seven high-rise apartment buildings, which left three spaces above ground for visitor parking, two of which are mandated that they have to be for disabled parking, so there's one space. Where are people going to park? At the mall, at the rec centre and the library.

Ms. Mitzie Hunter: When disputes arise, because we're talking about the needs of the community and perhaps a private developer wanting to maximize their opportunities, what would be the process that you see in resolving those disputes?

Ms. Ros Feldman: Some people have come up with the idea of having a separate body that the developers can go to and the people can go to, that has an overall effect. Unfortunately, with the OMB, it's a quasi-judicial body that has got no oversight. Nobody seems to know who the hell is in charge of it, because when you try and find out, everybody passes the buck. You need to have something where people have got a voice—where the people have got a voice, where the developers have got a voice

and where city council and the planning department have a voice. We don't have that at the OMB. We're literally cut off. The developer goes to the OMB. He decides or she decides what is going in. What is the point of us paying for a planning department when it can be overridden by the OMB? What is the point?

Ms. Mitzie Hunter: So you believe that there needs to be a body that helps to resolve these disputes—

Ms. Ros Feldman: Actually, no, I don't. I said that other people seem to think there should be a body. I think it should be left to city council, who we can vote out if we don't agree with them.

Ms. Mitzie Hunter: Okay. What would be the role of community groups in that?

Ms. Ros Feldman: I think the community groups have a major role. Let's face it. We all have to live together. We all have to live in a community, and communities are built around the people. Okay? You cannot put seven high-rises plunked down in the middle of a small village. You just can't do that. The intensification is ridiculous. If she had turned around and said, "No. Let's bring it back down to something that is manageable," we would probably have gone with it, but she didn't. She has basically rubber-stamped everything that the developer asked for, and that's wrong.

Ms. Mitzie Hunter: I just want to confirm, because I thought you had said that there should be a separate appeals body—

Ms. Ros Feldman: No. I said other people feel that there should be a separate appeal—

Ms. Mitzie Hunter: So you don't believe that there should be a separate appeal body?

Ms. Ros Feldman: If that's what they need, I'm willing to go along with that. Personally, my point of view, it should be the planning department and the council of where you live that should make the decisions.

Ms. Mitzie Hunter: Are you aware if Brampton has an official plan?

Ms. Ros Feldman: Absolutely, we have an official plan. We have a 10-year plan and we have a 25-year plan. Which plan do you want?

Ms. Mitzie Hunter: The official plan.

Ms. Ros Feldman: Okay. Well, as I say, we have two plans. We have a 10-year plan and a 25-year plan that mean nothing when the OMB gets a hold of it.

The Vice-Chair (Ms. Soo Wong): Two more minutes, Mr. Del Duca.

Mr. Steven Del Duca: Thanks very much, Madam Chair. Just out of curiosity, do you happen to know off the top of your head what percentage of the issues or cases from Brampton end up at the OMB? And I'll tell you why I'm asking that question. Earlier today, there was someone else who was here before committee and I had the chance to ask the question, because this is actually a bill—I'm not sure if you're aware or not—that only deals with the city of Toronto. It doesn't affect Brampton or Vaughan.

Ms. Ros Feldman: It should. That's why I'm here.

Mr. Steven Del Duca: Just so we're clear about that. That's number one. Number two, what I asked the gentleman who was here earlier today was: When the city of Toronto's own chief planner says that only about 4% of cases actually make it to the OMB in a city like Toronto—I'm just curious if you happen to know how many cases in Brampton, as an overall percentage—

Ms. Ros Feldman: About 6%.

Mr. Steven Del Duca: About 6%? So 94% of all issues don't actually end up at the OMB in Brampton.

Ms. Ros Feldman: Exactly. We manage to work it out ourselves. The one thing that the OMB did do—

Mr. Steven Del Duca: Actually, if I can just ask this question.

Ms. Ros Feldman: Sure.

Mr. Steven Del Duca: From a proportionality standpoint, what you're seeking is to be here to support a measure that would dramatically change the way the system works for 6% of all planning matters in the city of Brampton.

Ms. Ros Feldman: Yes.

Mr. Steven Del Duca: Okay. I just wanted to make sure that was clear. And in this bill's case, it's not a particular bill that will affect your municipality.

Ms. Ros Feldman: I think it should affect all the municipalities.

Mr. Steven Del Duca: But this one doesn't. The one you're here to speak to today doesn't touch your municipality, right?

Ms. Ros Feldman: But that's what I'm saying: I think it should.

Mr. Steven Del Duca: Perfect. Thanks very much, Madam Chair.

The Vice-Chair (Ms. Soo Wong): Thank you very much, Ms. Feldman, for your presentation.

Ms. Ros Feldman: Thank you.

MR. KYLE RAE

The Vice-Chair (Ms. Soo Wong): The next speaker is Mr. Kyle Rae. While Mr. Rae is coming forward, I just want to remind the committee: There may be a vote this afternoon—I'm just watching this piece—so we need to be mindful.

Mr. Rae, welcome.

Mr. Kyle Rae: Thank you.

The Vice-Chair (Ms. Soo Wong): Can you identify yourself for the record, please? You have 15 minutes for your presentation. This round of questioning will be coming from the official opposition party.

Mr. Kyle Rae: I am Kyle Rae, and I just thought I would pass on that we've just been seeing a recording of the fact that Jim Flaherty just passed, one of your previous members.

The Vice-Chair (Ms. Soo Wong): Yes, he just passed away.

Mr. Michael Prue: What?

Mr. Steven Del Duca: He passed away.

Mr. Michael Prue: Oh, my God.

The Vice-Chair (Ms. Soo Wong): Can we do the presentation? We have 15 minutes. Thank you.

Mr. Kyle Rae: This is a highly personal perspective of the planning process, and as such, it often feels like I'm talking about inside baseball as well as a little bit of whistle-blowing. So I apologize in advance for these comments being maybe a little bit obtuse or polemical; they're not. Usually, I wouldn't read my notes, but given how complex planning issues are, I thought it would be better to read this.

Despite my remarks in this presentation, where I speak about the necessity of the OMB, I have frequently disagreed with the decisions of the OMB. Even prior to being elected in 1991, I was well aware of the relationship between city council, the planning department and the OMB, as I was very much involved in a very controversial project at 95 Wood Street. From December 1991 to 2010, I was heavily involved in the planning approval process. Prior to amalgamation in 1998, I was a two-term member of the land use committee, which dealt with all applications across the old city of Toronto. After amalgamation, I dealt with planning issues on the Toronto and East York Community Council, which I chaired for two terms.

In addition to being involved in the approval process for 19 years, the constituency I represented in downtown Toronto experienced an enormous amount of development over the years—affordable and co-op housing until 1996, numerous condos after 1998 and commercial as well as institutional development, such as five new faculty properties at Ryerson University.

The planning process is a delicate balancing of interests. Municipalities desire private sector investment and housing in their communities. The planning department applies its professional knowledge and experience in evaluating the planning applications it receives. Residents organize and comment on the plans that are submitted for approval. Councillors deal with all three—residents, planning staff and developers—to determine the appropriateness of a given project. Pressure is brought to bear on council by both developers and residence associations, or constituents. While the planning department may feel assured about the efficacy of a project, the department realizes that the councillor will do as she or he has determined to do.

Over the years, I have witnessed councillors decide that the vocal position of their constituents is the safest and easiest course of action, even if the planning staff have written a positive report. Whether or not the councillors support the application, even if the councillor's colleagues are fine with the project, it is my experience that members of council frequently will appease their constituents rather than support the professional opinion of staff and their own personal judgment. I cannot tell you how often I have watched from the floor council tactics employed by my colleagues to manage the expectations of their constituents. I guess it is understandable. After all, they are elected.

1420

I have watched as projects supported by a positive staff report would be opposed by the ward councillor, but that same ward councillor would have quietly given a green light to other councillors that they should not support his refusal motion. Councillors in the room would, by word of mouth, let each other know that it was okay not to support the councillor's refusal motion. All this theatre makes it appear to the opposing residents that their ward councillor is doing as he has been directed.

I have watched as councillors have, in an almost kamikaze fashion, opposed a project that has overwhelming support of the planning staff and meets the goals of the official plan and the zoning bylaw. A ward councillor armed with a roomful of angry residents can rally his or her colleagues to support a valiant opposition to a staff-supported application.

In the case of one such debate, which was the One Sherway place, which is frequently referred to in Aaron Moore's *Planning Politics* in Toronto, the councillor from the neighbouring ward took up the cudgel against the project with a roomful of traffic-fearing constituents and swayed city council to support his refusal motion, despite strong planning support and support of the local councillor. The result of the vote surprised many on council. In conversation with my colleagues, I found that they did not think the project was a bad one. In fact, they could have supported it. Most telling, though, many of my colleagues just shrugged their shoulders and said that with a positive planning report and the support of the local councillor, the application would be approved at the OMB as the city council refusal could not be justified. So I ask you: Without an OMB to review such council decisions, how will sound planning proposals get approval?

Can you imagine how many affordable housing, supportive housing and co-op housing units would not have been built in the 1980s and 1990s in the city of Toronto if it had not been for the OMB overruling city council's refusals based on opposition of residents' groups? They would not have been built. Housing the city desperately needed and still needs today—I'd like to make my point: It's disgraceful that we still do not have an affordable housing program in this province. I would watch as councillors would assist their constituents, gut affordable housing applications in their constituencies—

The Vice-Chair (Ms. Soo Wong): Mr. Rae, can we just suspend the committee? Because I believe there is a—

Mr. Kyle Rae: I understand.

The Vice-Chair (Ms. Soo Wong): —a moment of silence in memory of Mr. Flaherty.

The committee observed a moment's silence.

The Vice-Chair (Ms. Soo Wong): We'll resume. Sorry, Mr. Rae. Thank you.

Mr. Kyle Rae: Let's see where I should go.

The Vice-Chair (Ms. Soo Wong): Sorry.

Mr. Kyle Rae: I do not know how many social housing applications were supported by the planning department, refused by council and then approved at the OMB,

but I suspect it was very numerous. We should be thankful that the OMB could intervene to provide affordable housing, albeit in the last century.

It is a pity that the research in this field has failed to capture a very important facet of this planning process. It is my impression that a development that has a positive planning report, despite resident opposition, is refused by the council and then appealed by the applicant, often gets approval at the OMB. It makes sense. Whereas residents seem to feel that the OMB has succumbed to the developers' lawyers, I would submit that the city planning staff evaluation of a given project is the crucial evidence that determines the outcome of the hearing. It is not the development lawyers who sway the board members, but rather it is sound evidence being tested. I would argue that planning evidence is inconsistently tested at city hall.

Along with the OMB's crucial role in realizing federal and provincial policies for the supply of affordable housing in the last century, I would also like to refer to other policies which I think are amongst the most important legacies of the McGuinty government, and they are the provincial policy statement and the growth plan for the greater Golden Horseshoe area. These policies figure prominently in the professional planning reports that are generated by the planning staff. Every planning report says that city council planning decisions are required to be consistent with the PPS or the growth plan for the greater Golden Horseshoe. Rarely, though, are those two documents referred to in council debate. What we hear in council debate are fears about type of tenure, height, density, loss of privacy, the recent touchstone of ugliness in the neighbourhood, traffic and a heritage building being down the street. These are all used in an effort to deny development.

I would argue that the role of the OMB is essential to ensure that provincial policies are being given proper regard at city council. Without this oversight, despite all professional planning staff attempts to highlight these issues, council decisions will be swamped by the emotional issues listed above. Without knowing that sound, professional planning advice will have a venue for serious evaluation, not solely review in a highly parochial council arena, there will be a serious deterioration in the professional planning advice that is provided by staff. In cases where planning advice is cavalierly handled by council, at least there will be a sound review before lawyers and residents' associations at the OMB.

In my opinion, the problem is that residents' associations and ratepayer groups are failing to realize that the municipal planning staff have the greatest influence in the planning process, as they evaluate applications against provincial and municipal policies and criteria. These groups, in frustration, hope that the OMB will fix their problem with the planning staff; however, I would argue that this expectation is misplaced. Their energy should be focused on understanding the rationale of the planning department and applying provincial and municipal policies.

I've got several recommendations. One is that, especially in the old city of Toronto, there should be a compulsory review of the zoning bylaw every five years—a quinquennial review. There is one for the official plan; there is not for the zoning bylaw. The old city of Toronto's zoning bylaw was passed in 1986, in the last century. In fact, that was the year the film Ferris Bueller's Day Off was in movie theatres.

That is the zoning bylaw that we are working with in the city of Toronto. Despite the fact that we've been told it has been harmonized, it is only definitions that have been harmonized. The substance of it has not changed, I would say, since the 1970s, when the work was done for that zoning bylaw. It's a disgrace, and it really confuses constituents, because they think that the zoning regime from 1986 is what we should be dealing with in this century. I think that that misleads them, and it also offers councillors a great opportunity to extend and aggrandize section 37s, because the zoning threshold was so much lower back in 1986.

There should be a review of the city's processes in deciding to appeal the OMB. I can't tell you how many members of council, especially budget chiefs, have said, "We're throwing money away going to the OMB and losing there. We should have a better process of determining whether or not we should go." Perhaps a supermajority of council should be making a decision, rather than just a simple majority. However, the reciprocity issues that appear in approving or refusing a project will reappear in whether or not you go to the OMB.

I think the planning department does an admirable job of trying to be fair in dealing with applications, but I think that there could be improved consultation with residents' associations between the time they've written their final report and when that final report is heard at the statutory hearing at community council.

Finally, I would just like to say that I do believe that it would be of great use to the OMB if the members who heard the cases before them lived in the region where they were adjudicating. There needs to be a far better relationship and understanding of the constituencies that they are making decisions in.

The Vice-Chair (Ms. Soo Wong): Thank you, Mr. Rae. We have three minutes for the opposition party to ask Mr. Rae any questions. Mr. McDonell.

Mr. Jim McDonell: Yes. Thanks for coming before the board today. We have one issue with this: that there's no alternative. I think that's what you're saying as well. There needs to be firm consultation. Maybe there need to be some changes made, but we can't have no form of oversight.

Obviously, there needs to be some work. You talked about the city of Toronto zoning bylaw. I guess, in this day and age, you do have to review the OPA every five years. That just seems to make sense—not every five, but certainly every decade, I'm sure, would be fair.

Any comments on the process, and what you'd like to see changed if there are some modifications or things that aren't working well?

1430

Mr. Kyle Rae: Well, again, I would say that the residents seem to put all their hope in seeing the OMB make—turning it around, but I think by the time an issue gets to the OMB, there is a sizable amount of documentation from the planning department and the applicant, and the residents should have had their kick at the can all through the consultation hearings in working groups. They've had an opportunity—and I've gone through years of this. Right? Sometimes residents get it into their head that they should be able to stop something rather than looking at the application and saying, "How can I improve it? How can we amend it so that it fits?" Try and work through that, and that's what the working group system that I used was really helpful in doing.

But there are people in residents' associations who are not really interested in that process. They're more interested in feeling that they have the right to say no to what somebody does on their property. So it's a balancing. There is neighbourhood building. I find it interesting that the PPS talks about building communities. It's not about protecting neighbourhoods.

We need to build this city out to a greater extent. We know that the density here is insufficient, and in fact in many places it makes it very difficult for us to justify intensification of transit because density is so low. We have an opportunity to change that, and I think many residents' associations are not willing to see change.

I can remember back in the 1990s when the city of Toronto tried to do the main streets, which was—it's just now called the "avenues"—to try moderately intensifying along main streets. City council threw it out on a one-vote difference. The avenues, which members of council have been dealing with for the last 10 years, is a struggle in neighbourhoods. The neighbourhoods that are behind those main streets don't want four-storey, five-storey buildings behind them.

The Vice-Chair (Ms. Soo Wong): Mr. Rae, thank you very much for your presentation.

MS. KRISTYN WONG-TAM

The Vice-Chair (Ms. Soo Wong): Our next witness is Councillor Kristyn Wong-Tam, ward 27, Rosedale. Welcome.

Ms. Kristyn Wong-Tam: I will be joined by my colleague Councillor Josh Matlow.

The Vice-Chair (Ms. Soo Wong): Can you both identify yourselves for the record for Hansard? This round of questioning will be coming from the NDP. You have 15 minutes for your presentation. Welcome.

Ms. Kristyn Wong-Tam: Yes. Thank you very much, Madam Vice-Chair. My name is Kristyn Wong-Tam, and I'm the city councillor for an area in Toronto called Toronto Centre–Rosedale, known as ward 27. May I begin my deputation?

The Vice-Chair (Ms. Soo Wong): Yes, you can.

Ms. Kristyn Wong-Tam: Thank you again for the opportunity to appear before you today and share the

concerns that I have heard over the past few years as a new city councillor in Toronto.

The area that I represent spans a significant section of the downtown and midtown core, from Moore Avenue and St. Clair to the north, Queen Street to the south, University and Avenue Road to the west and Sherbourne to the east. There are over 100 development applications that are currently under review or recently approved in ward 27 alone.

Toronto has more high-rise buildings under construction than any other North American city. This development represents a potential increase of over 25,000 new residential units alone in this section of downtown Toronto. In 2013 alone, the city of Toronto's planning department received 5,887 planning applications.

We have a division that is staffed by 350 full-time persons in the city planning division with expertise in urban planning, heritage preservation, urban design, housing policy and transportation.

In addition to reviewing the thousands of applications, the city planning division is actively engaged in public consultations with over 384 non-statutory community consultation meetings held alone last year.

In addition to this work, last year alone there were 21 city building-initiated studies reviewing neighbourhoods across Toronto and providing recommendations on the future growth of our neighbourhoods.

As a local councillor, I work very closely with the ward's 14 distinct residential neighbourhoods and, correspondingly, we are also reviewing many applications together along with city staff.

I strive to create, as much as I can, within the community, respect within the planning context. The planning process at the city of Toronto is a thorough, comprehensive review involving multi-city divisions that occur before any response to a planning application.

For the majority of rezoning and official plan amendment applications, the process is a collaborative one between city planners and the developer, as well as the community. The Planning Act allows the applicants to appeal the city's non-decision after 120 days. Given the volume of applications that the city receives, this is simply not enough time for a comprehensive review to take place. If city planning were to respond to all applications within this time frame, most of the time we would say no at the early submission. However, given sufficient time, the city planners are able to work with the applicants to shape their applications and their development so that it falls within the guidelines of the city's planning regime.

Consultation with the community, including businesses and residents, is an incredibly important part of what we do. It is the local residents and businesses that ultimately feel the impact of development, and their concerns have to be taken seriously. In 2011, I initiated a working group process for over 15 planning applications.

Any comment that there is not adequate review at the city of Toronto or opportunities to collaborate with residents as well as other stakeholders is simply not true. The goal of these working groups is simply to provide an

opportunity for the developers, the community and the stakeholders to come together to resolve outstanding issues. They are not often easy conversations, but they are conversations that are necessary in order for us to build out Toronto.

In many situations, we have spent an inordinate number of hours working with developers in good faith towards an improved application, only to then have the applicant appeal this process to the board. Now, because we are not able to respond within the 120-day appeal option, this is an extreme abuse of the Planning Act and a complete disregard of the planning process, and a complete disregard of our time and resources, which the city of Toronto has in limited fashion.

The OMB has authority to disregard those community-driven planning processes and treat an appeal as de novo and completely disregard the amount of work and input that has gone into the planning process. Many of the local residents have completely lost faith in the Planning Act and the planning processes because of the constant abuses by certain developers—certainly not all of them, but some of them—around the OMB appeal.

The OMB is an unelected quasi-judicial body that has no accountability to the local community. How do I answer questions of the residents when they're asking me, "How does the OMB—a single member—get away with doing what they were able to do to undo the work of one-, two-, or three-year application reviews?"

Local residents make up volunteer members of the community. They are not paid to do this type of work. The costs of an OMB appeal are often built into the budget of a developer's proposed project, and they are then fought by expensive lawyers and expert witnesses. More and more, I hear from residents—not just in the ward that I represent, but from across the city—since Bill 20 emerged, that they are feeling marginalized by the OMB, and they are getting very angry. Toronto residents are demanding to know why the province insists on imposing such an appeal body over Canada's largest city with its 140 neighbourhoods.

In speaking with the city planning staff, the first question I ask about an original submission is, "Does this application represent good city planning?" Oftentimes, the answer is no, because it is the initial submission. But rarely do any of those applications meet those guidelines because they are the original submission.

The second question I ask is, "Is this winnable at the OMB?" The OMB remains omnipresent in every single planning discussion at the city. City planning in Toronto takes place with a constant threat of the Ontario Municipal Board. It hangs over the planning process like a dark storm cloud. It is used as a negotiating tool and a threatening presence by certain members of the development industry should things not go their way.

The question is, why does the province allow this to exist? The development industry should not be given the OMB to be used against the city's solid planning work done by our municipal planning departments and locally elected council. If the province continues to resist the

request from Toronto for OMB reforms, we are left with the conclusion, sadly, that the OMB's purpose is to solely serve the powerful development lobby and that the OMB's purpose is to facilitate development.

OMB decisions vary by members. There is no consistency to OMB decision-making. City planning policies and guidelines are reviewed by a local planner in consultation with the area planning manager, the director of community planning for the district and ultimately the chief planner before going to city council, effectively giving five levels of accountability and consideration. The OMB has none of that.

The city of Toronto has an official plan, contrary to some beliefs, and we do have a harmonized zoning bylaw that has gone through years of comprehensive review and consultation. According to the Planning Act, the Ontario Municipal Board is only required to have "regard" for these policies and bylaws when they review an appeal. There is no requirement for them to ensure that their decisions are consistent with the intent of Toronto council's approved policy.

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The Ontario Municipal Board needs to have respect for the decisions, policies and bylaws created by skilled planning staff and elected municipal councils. If the OMB is to overturn the decision of a council, disregarding a planning and consultation process that has been in place for years, in many cases, the onus should be on the appellant to demonstrate why council's decision should be overturned and not the other way around, which is what it is currently.

The province of Ontario, through the City of Toronto Act, acknowledged that the city of Toronto should have autonomy over itself. As the sixth-largest government in Canada, the city of Toronto should be able to set the vision for its urban planning. From the waterfront to revitalizations of low-income neighbourhoods, the city of Toronto should have the independence to develop its communities without the constant threat of an OMB appeal.

When I asked one of our most senior planning lawyers at the city of Toronto her thoughts about removing Toronto from the purview of the OMB, her first response was that we would have even better planning at the city of Toronto. When probed and asked why, she said that the city of Toronto would become even more accountable to the planning decisions if it was not possible to appeal those decisions to the Ontario Municipal Board. Ontario remains the only province in Canada and the world that has this type of quasi-judicial body that can overturn local planning decision-making.

One of the challenges that the city of Toronto has is that city-initiated official plan amendments and zoning bylaws, which are studied and created to proactively shape the development coming into city neighbourhoods, get tied up at the Ontario Municipal Board time and time again. After expending significant resources on research and consultation, city staff must spend even more time defending these policies at the Ontario Municipal Board,

to someone who is unfamiliar with the planning context of the area. Board members lack in-depth understanding of the local context and are unable to make qualified, informed decisions affecting local residents. The ease of appeal by developers has diluted the central role of the official plans, zoning bylaws and secondary plans, and the local democratic process to determine appropriate planning initiatives is also undermined.

The city of Toronto is currently undertaking the review of two new planning tools—first, the local appeals body, which is an independent body comprised of residents of Toronto who will oversee a committee of decisions. This is a very important first step. The province gave us this expanded power. Large redevelopment applications in projects, though, will not be appealable to this local appeals body, so that remains outstanding for us.

The second tool that we're currently considering is a development permit system, which will see comprehensive re-zoning of an area, with full community and stakeholder input, to make it appropriate for each specific location. The city of Toronto recognizes that planning tools and processes need to be in place to ensure that the planning process is objective, fair and consistent, and is actively taking the steps to guarantee this.

I'm going to give you three examples, and only three. I can pull out several others, but I will give you three examples that I have observed in my short period of time in council since 2011 where the OMB has played a significant role, and to the detriment of the city and to the local community.

The North Downtown Yonge Planning Framework: In response to the downtown tall building study and to address the quantity and type of new development occurring in the area, city planning undertook a study of the area and initiated a community consultation. In total, seven business improvement areas and neighbourhood associations participated in this study; 350 participants were involved. Out of the planning framework, urban design guidelines and an official plan amendment were passed by council with area-specific policies.

Despite all this work, 17 appeals to the Ontario Municipal Board were filed once this was passed by council. The official plan amendment was recommended to strengthen the work of the planning study because city planners and city lawyers have consistently reported that the city's urban design guidelines were not respected by members of the board. Yet when the guidelines were strengthened through an OP amendment, they appealed them and argued that they were simply too restrictive.

Number two, 365 Church Street: The McGill-Granby area is a heritage-rich neighbourhood nestled in downtown Toronto. In 2011, a developer applied for a rezoning application to build a tall tower in the heart of this neighbourhood. I worked in good faith with the developer, the local residents and city planning through a working-group process for over a year to shape the application to make sure it could fit into the neighbourhood so we could get to a positive outcome for the developer and the community. What happened was, the developer de-

cidated that he was going to disregard the negotiated changes that we made through the working group process and appeal to the board. That was in absolute disregard to everything that we worked for.

Sadly, the Ontario Municipal Board ruled in favour of the developer against the city of Toronto and the local community. The OMB member approved the developer's original application and submission and disregarded all negotiated changes achieved through the working group process, the city and the local community, and section 37 was then removed—all at the whim of one OMB member.

The third example, and one that affects you, is the view protection of Ontario Legislative Assembly. Under the threat of the Ontario Municipal Board, there was a decision to allow tall towers on Avenue Road that would invade the historic postcard view. I worked with the local community to form the Ontario Capital Precinct Working Group after failed requests for support from the provincial government by former speaker Peter Milliken and current speaker Dave Levac.

I spent close to two years working directly with the community and the city planning regime to advocate for an official planned amendment to ensure that the development would be controlled so that we can protect the interests of the province and protect the view of the Ontario Legislative Assembly. Once council approved the OP amendment, we saw the development industry fire back with three OMB appeals of the decision.

Not only is the Ontario Legislative Assembly building one of the most important heritage buildings in Toronto, it is also the meeting place of Ontario's provincial government. Jurisdictions around the world protect the iconic views of their important houses of government out of respect for significant histories and symbolic cultural value. Decisions made by local governments to protect their democratic houses should not be subject to appeal for private interests. If the province is not interested in protecting the OLA, then allow Toronto to do so without the threat of the Ontario Municipal Board.

In closing, the province cannot continue to allow the OMB to direct city planning policies for the city of Toronto. Over the years, Toronto city council has formally requested that the province of Ontario, on three occasions—

The Vice-Chair (Ms. Soo Wong): Councillor Wong-Tam, we are adjourning the committee on the order of the House. This committee is suspended until next week, I believe. Am I correct? Next week, we'll get some direction.

To all the witnesses who are here for this afternoon's hearing: Because of the unexpected death of a former finance minister of Canada, the House is adjourned for the day—the entire House, including this standing committee.

So I do apologize. I know you've been waiting patiently to participate, but this is the order. We will be in touch with you through the Clerk.

Mr. Prue.

Mr. Michael Prue: I just want some clarity: Does that mean that we will be coming back next Thursday with the remaining witnesses?

The Vice-Chair (Ms. Soo Wong): No. She already finished her 15 minutes.

Mr. Michael Prue: No, not this witness.

The Vice-Chair (Ms. Soo Wong): The other witnesses, absolutely.

Mr. Michael Prue: The other witnesses will be next Thursday, and then we will come the following Thursday after—

The Vice-Chair (Ms. Soo Wong): We will be working with the subcommittee. We're going to work it out with the Clerk.

Mr. Michael Prue: We're going to work it. But they will all be invited back.

The Vice-Chair (Ms. Soo Wong): Absolutely.

Mr. Michael Prue: Okay, thank you.

The Vice-Chair (Ms. Soo Wong): I just wanted to thank the witnesses who are waiting patiently for attending. I do apologize.

The committee adjourned at 1446.

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