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**Official Report
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(Hansard)**

Thursday 17 April 2014

**Journal
des débats
(Hansard)**

Jeudi 17 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 17 April 2014

Jeudi 17 avril 2014

The committee met at 0902 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): As ordered by the House on Monday, April 14, we are assembling here today to resume public hearings on Bill 20, An Act respecting the City of Toronto and the Ontario Municipal Board. Each witness will be offered 15 minutes. Should there be any time following their presentation, the questions will be done on a rotating basis, starting this time with the government, so they will hopefully be here.

Any questions from the committee before we start? Do we have any questions from the opposition, the third party? No? Okay.

**ONTARIO HOME BUILDERS'
ASSOCIATION**

The Vice-Chair (Ms. Soo Wong): Let's get the first witness to come forward, the Ontario Home Builders' Association: Joe Vaccaro, chief executive officer, and Michael Collins-Williams, director of policy. Welcome. Can you please identify yourself on record for Hansard's purposes? You have 15 minutes. Thank you.

Mr. Joe Vaccaro: Good morning. I'm Joe Vaccaro, with the Ontario Home Builders.

Mr. Mike Collins-Williams: Mike Collins-Williams, with the Ontario Home Builders.

Mr. Joe Vaccaro: Good morning. My name is Joe Vaccaro, and I serve as the CEO of the Ontario Home Builders' Association. Thank you for providing the opportunity to speak on the proposed bill to remove the city of Toronto from the jurisdiction of the Ontario Municipal Board. I am joined by Michael Collins-Williams, director of policy at OHBA, who is a registered professional planner.

OHBA is the voice of the new housing, land development and professional renovation industry, and our association includes 4,000 member companies, organized into a network of 31 local associations across the province, from Niagara to Thunder Bay, Windsor to Ottawa, and, of course, Toronto. BILD serves as the local GTA association, and I know they will be presenting to this committee and providing a Toronto-specific perspective.

Our deputation today is going to focus on the role of the OMB and highlight OHBA's comprehensive recommendations to the Ministry of Municipal Affairs and Housing's consultation on Ontario's land use planning and appeals framework.

Mr. Mike Collins-Williams: Thanks, Joe. Before we can even consider this bill, I think that some broader context is required.

Over the past decade, the planning system has evolved significantly. In response, the land development and residential construction industry has undergone a fundamental shift towards intensification and the construction of complete communities.

Since 2001, the province has implemented significant reforms to the planning system which have strengthened the local decision-making process and empowered municipalities with a range of planning tools. Some of the legislation and policy introduced since 2001 include:

- made-in-Ontario Smart Growth (2001);
- the Oak Ridges Moraine Protection Act (2001);
- the Greenbelt Act and Greenbelt Plan (2005), as well as a recent amendment;
- the provincial policy statement back in 2005;
- the Planning and Conservation Land Statute Law Amendment Act, better known as Bill 51;
- the Places to Grow Act, followed by the Growth Plan for the Greater Golden Horseshoe, as well as two very recent amendments;
- the Endangered Species Act;
- the Metrolinx Act, along with the Big Move;
- the Strong Communities through Affordable Housing Act;
- transit-supportive guidelines; and
- a new 2014 provincial policy statement comes into effect in just a couple of weeks, on April 30.

In the immediate future, a number of other land-use-planning related reforms and reviews are anticipated, they being the greenbelt next year and the growth plan the year after.

Fundamental to the shift in the provincial planning approach is the inclusion of a schedule of population and employment forecasts in the greater Golden Horseshoe growth plan. Updated just last year, the forecast states that the region will grow by over 4.3 million people from 2011 to 2041.

For Toronto specifically, the forecast predicts that over 600,000 people and nearly 200,000 additional jobs will be added to the city by 2041.

Mr. Joe Vaccaro: We think it is important for these facts to be included in an informed discussion around this proposed bill but, more importantly, it is in this context that OHBA responded to the comprehensive consultation launched by the Ministry of Municipal Affairs and Housing. OHBA continues to be disappointed that this narrow discussion on the role of the OMB continues to dominate the political agenda when there is a much more extensive public planning process before the administrative justice role of the OMB can be triggered.

We continue to be focused on a single tree and not the entire forest. The land use planning system is much bigger than just the OMB.

OHBA's comprehensive response to the ministry consultation commented on the entire planning system, with recommendations to provide greater transparency and certainty for applicants and the community, for educating the public on why their community is evolving, and, most importantly, to take the politics out of planning.

Every application, regardless if it is from a developer, a not-for-profit social housing provider, a builder of rental housing or a resident looking to expand their current home, makes its way to council for a political vote. If the public interest is to be served and we are committed to transit-oriented communities along with necessary social infrastructure like shelters, then we should be focused on getting things right at the beginning of the public planning process. This will reduce friction between governments, development proponents and community groups, which would also reduce the amount of conflict in planning and ultimately reduce the number of appeals to the OMB.

Instead, we find ourselves here today only talking about the appeals mechanism for those relatively few circumstances where conflicts occur. Unlike the comprehensive consultation under way through the ministry, this private member's bill ignores the rest of the planning system and simply suggests that we can do away with appeals to the OMB in the city of Toronto. Instead of taking the politics out of planning, you are leaving it to the vote at council, which is ultimately going to test the political will of the councillors to act in the public interest.

OHBA recognizes the challenge in a situation where a councillor is faced with a planning report from their own city staff that supports an application against an organized community group which is uninterested in the planning rationale behind the approval.

A good example was brought up by a previous speaker, former Toronto councillor Kyle Rae at this committee, which was the One Sherway project, which received

a positive staff report, but a community group located on the other side of the mall parking lot and on the other side of the 427/Gardiner interchange pressured the neighbouring council members and the Etobicoke community council to oppose the application. It is in these situations where the OMB actually provides a non-political analysis of the planning facts to make a non-political decision.

As Christopher Hume, a Toronto Star writer and a vocal critic of the OMB, stated, "Over and over, people have complained that the OMB is 'undemocratic' and its members unelected. That, of course, is exactly the point. That's why it can make the decisions it does. In theory, at least, it is above the fray and apolitical. It deals with facts, not emotions."

Perhaps the real issue here is that some politicians find it much more convenient to utilize the OMB as a scapegoat. It is a lot more convenient to lay the blame for outcomes they dislike at the doorstep of the OMB rather than to examine why an appeal occurred and what components of the public planning framework supported the OMB decision.

0910

Mr. Mike Collins-Williams: OHBA's recommendations to the ministry consultation focused on getting it right from the start, to reduce conflicts and appeals at the back end of the process.

The province must ensure that municipal zoning bylaws are modernized and conform to provincial policy. This provides greater certainty, resulting in fewer appeals, and would increase public awareness while creating a more efficient planning system that supports provincial goals for strong communities, a strong economy and a healthy environment.

Many municipalities have examples where official plans and zoning do not conform to provincial policy. Some even intentionally underzone to maximize political control over development, but this causes friction in the planning process, as essentially every proposal to redevelop a property requires a rezoning and a political process.

This means that the province must be more assertive in enforcing the Planning Act, which currently has a legislative requirement that municipalities update their official plans every five years and that zoning be updated within the next three years. We need a system where local planning implementation policies actually reflect provincial policy.

Many municipalities across Ontario, including Toronto, have outdated planning policies, and to be blunt, zoning in many Ontario communities is so archaic that it practically means nothing. To this day, we hear opponents of development refer to the Crombie rule 30 years later, or to current zoning regulations which, despite being harmonized a few years ago, haven't actually been updated since that era.

Removing the city of Toronto from the jurisdiction of the OMB could reduce our public planning process down to simply cold, hard, political calculations of local councillors, and OHBA questions if this would actually serve the public interest.

With respect to the OMB itself, the board should remain as an essential piece of the broader planning framework in Ontario. Every applicant—from a developer, to a non-profit agency, to a resident—needs an OMB that is independent and impartial. It must be prepared to make decisions based on the provincial policy statement and the merits of the application itself. The applicant needs a place where the politics of planning do not determine the outcome of the application.

OHBA notes that councillors and community groups need to have greater regard for the professional opinions of municipal planners, as there are many documented examples where planning departments make recommendations in the public interest and in accordance with provincial policy, and those recommendations are ignored by council for political reasons.

I believe the recent academic work of Aaron Moore speaks to his analysis that professional planning staff recommendations are actually fairly consistently supported by the OMB. Where a municipality almost always loses to the OMB is when planning staff support an application that council votes against and then council has to hire outside lawyers to represent the city at the OMB. In those cases, the city almost always loses.

As a registered professional planner, it's disheartening to learn that the professional opinions can be dismissed in a political process. I'm sure that if Toronto's professional planning staff had the opportunity to present here today, they could share their professional perspective with this committee.

OHBA and our members are always open to improvements that could make the public planning process better to reduce the number of appeals; and in cases where appeals do occur, we believe that an enhanced role for mediation could result in better outcomes for all stakeholders involved. Through a mediation process, the board could also provide ratepayer associations with a resource with planning experience. This would encourage greater public participation, as groups would have more equitable access to trained professionals whose role and purpose is to resolve conflict.

Mr. Joe Vaccaro: Before we conclude our remarks, I want to address the myth that the OMB is completely unique. Appellant bodies responsible for appeals of local planning decisions are common across North America.

In Massachusetts, the planning authority for the city of Boston rests with three unelected bodies: the Zoning Commission, the Zoning Board of Appeal and the Boston Redevelopment Authority—different from the OMB, absolutely, but the key is that local planning decisions don't rest with elected councillors.

Vancouver is often held up as a model to emulate, but the key difference there is that council is elected at large and is not nearly as vulnerable to NIMBYism and local politics as our ward-based system.

Just to our immediate west there is the Saskatchewan Municipal Board and the Manitoba Municipal Board, which both hear planning appeals in a court-like manner. In Atlantic Canada, New Brunswick's Assessment and Planning Appeal Board, as well as the Nova Scotia

Utility and Review Board, hear appeals on official plan and zoning bylaw amendments. Each appeal entity is slightly different, but the claim that the OMB is completely unique is a myth.

Let me close by calling on the province to take a stronger leadership role in terms of educating the public with respect to both the planning process and provincial policy, and what the latter means for the local built environment.

The province and municipalities do a disservice to the integrity of the public planning process when they fail to educate and inform the public as to the reasons why their communities are evolving. As I mentioned earlier, the role of the legislated population and employment forecast requires municipalities to actively plan into the future. Without a public education program regarding planning policy and our evolving communities, the current adversarial environment will continue to undermine the goals of provincially led planning objectives.

I'd like to thank you for listening to our presentation, and we look forward to any questions you may have.

The Vice-Chair (Ms. Soo Wong): All right. This round of questions will be from the government side. There's four minutes. Ms. Damerla.

Ms. Dipika Damerla: Thank you, Mr. Vaccaro and Mr. Williams, for your presentation. I'm just going to begin by asking: Do you believe that it's important that communities have a chance to participate in the process before a dispute reaches the OMB?

Mr. Joe Vaccaro: When you look at the entirety of the public planning process—and we use the word “public” because it is a public process—there were a number of amendments made over the last number of years to provincial legislation requiring more public engagement and public consultation. Communities absolutely have a right to be engaged and to share their views and opinions on applications. The challenge and the conflict is where the interests of the community group, whatever they may be based on, run counter to the provincial policy direction.

The provincial government set out a framework that calls for greater intensification and greater land use purposes. The reality is that it will run counter to some communities that feel like their communities should stay as they are. We used the term that communities evolve over time, and that's central to this discussion.

Community groups absolutely have a right to engage, they should be engaged, they must be engaged as part of the public planning process. But there is a reality here, and that reality is that these planning applications have to work within the context of the Planning Act and planning law.

Ms. Dipika Damerla: So you believe that the rationale for the amount of the development charges to be collected should be transparent? How a particular city comes up with what the development charge should be—do you believe that should be transparent?

Mr. Joe Vaccaro: When an applicant makes an appeal to the OMB, the OMB can cover not just land use planning decisions, but also development charges and

other aspects of the planning framework they're working within that municipality. On the development charges specifically, our members utilize the OMB to find a way to get to a clear understanding of what the development charge is actually paying for, the rationale behind it, and to really try to provide some transparency.

We take the position that the development charge is ultimately being paid by those new neighbours. They are ultimately paying for the infrastructure going into that community. They have a right to have a clear understanding of what that charge is paying for.

Our members will utilize the services of the OMB as a way of giving those new neighbours some clarity, transparency and accountability as to what that charge really represents and what it's paying for. Ultimately, the hope here is that the municipality will be responsible enough to let those new neighbours know when those projects come on stream so that community-building can happen together.

Ms. Dipika Damerla: Many of us might disagree on how best to fix the current system, but I think that there might be some consensus that perhaps it could be improved. I'm curious as to what your thoughts would be. If you were in charge of improving the system, what would you suggest?

Mr. Mike Collins-Williams: The Ministry of Municipal Affairs and Housing had a comprehensive consultation on not just the OMB, but the entire land use planning and appeals process. We did provide a submission to the government. We have shared copies with the members in the room—

Ms. Dipika Damerla: Do you want to tell me your top two?

Mr. Mike Collins-Williams: I guess the top one would be getting it right from the start—ensuring that municipalities have up-to-date official plans and zoning. There are some municipalities that are fairly progressive and have kept up to date, but across Ontario, the vast majority are fairly out of date. Official plans throughout the greater Golden Horseshoe have been brought into conformity with the growth plan over the last number of years, but zoning still remains decades out of date.

I think part of the purpose of this bill that has come forward is the concern with the amount of conflict in the planning system. But if we can get zoning and official plans right from the start, that will reduce a lot of the friction, a lot of the conflict between municipalities, development proponents, community groups—

The Vice-Chair (Ms. Soo Wong): Mr. Collins, your time is up. Thank you very much for your presence. Thank you to both of you for coming.

Mr. Joe Vaccaro: Thank you.

BUILDING INDUSTRY AND LAND DEVELOPMENT ASSOCIATION

The Vice-Chair (Ms. Soo Wong): Our next witness is the Building Industry and Land Development Association: Stephen Upton and Gary Switzer. Good morning. Can you identify yourself for the record. You have 15

minutes for your presentation. This round of questioning will be from the official opposition party.

0920

Mr. Stephen Upton: Thank you, Madam Chair. My name is Steve Upton. I am the current chair of BILD, which is the Building Industry and Land Development Association for the GTA.

Mr. Gary Switzer: I'm Gary Switzer. I am chair of the Toronto chapter and CEO of MOD Developments in Toronto.

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

Mr. Stephen Upton: Thank you. As I said, my name is Steve Upton. I am the chair for the Building Industry and Land Development Association. You've already been introduced to Gary Switzer, our chair of the Toronto chapter, who is with me today.

With more than 1,400 members, the Building Industry and Land Development Association was formed through the merger of the Urban Development Institute and the Greater Toronto Home Builders' Association some 10 years ago. We are the voice of the land development, building and professional renovation industry. Our members are all of those who are part of building complete communities across the GTA: home builders, developers, consultants, lawyers, architects, engineers, renovators and all the individual trades. The economic impact of the industry is significant, creating well over 200,000 jobs in the GTA and generating over \$10 billion in job wages.

I take great pride in reminding people that our industry is committed to improving new housing affordability and choice for Ontario's new home purchasers and that our members live, work and play in the municipalities that make up our communities. Our comments should be taken in balance with the fact that we not only do business in the cities, towns and villages of Ontario; we also live and raise our families here as well.

We're all interested and affected stakeholders on issues involving the OMB, as it is a critical component to the planning and development system of our communities. Thank you for the opportunity to speak on Bill 20, An Act respecting the City of Toronto and the Ontario Municipal Board. It is a bill that has sparked much interest to us since it was first introduced in March of last year.

To give you a bit of a quick background on who I am, and then Gary will introduce himself very quickly, when I am not volunteering my time for BILD, I am the vice-president of planning and development for Tridel Corp. I have worked in the industry for more than four decades, even though I look pretty young, I think, still. Tridel is deeply committed to building the highest-quality condos possible, and over the past eight decades has built more than 80,000 homes. We have over 20 new condo communities currently under development in the GTA.

A great volume of our work is in the city of Toronto. This has given me the opportunity to be part of so many celebrated projects in what has become a vibrant and exciting city of Toronto. I've had the opportunity to work with city staff and changing councils in the mix of different policies. One thing that has remained constant and is

still significant is the role of the Ontario Municipal Board.

When Bill 20 was first introduced, BILD was quick to respond to reinforce its support for the essential role that the OMB plays in the development approval process. In our current planning system, an appeal to an independent, non-political, unbiased decision-maker is essential to ensure that any municipality, community, ratepayer association or non-profit agency, along with the landowner, has an opportunity to present and test the merits of an application against sound planning principles. It is the essence of the Ontario Municipal Board's role. The OMB is impartial. It is independent. It is an adjudicating tribunal whose members are appointed. Its members don't sit on any elected council. They are removed from local political pressures. This is the kind of setting that has to exist to assist with the creation of a vibrant city of Toronto, where decisions are made with the sound principles of the Planning Act in mind.

Specifically on Bill 20, we know that, if approved, it says that with or without a local appeal body, the city of Toronto should be free from having the OMB apply to their planning and development process, should be free from being a part of city-building.

Two thoughts come to mind when I hear this.

First, does the city of Toronto really need to be "freed" from the OMB? There is a growing public perception that cities always lose to developers in appeals at the OMB. However, if we look at the facts, the city of Toronto's own staff report states that of all the committee of adjustment applications from 2009 to 2011 that went before the OMB which had originally been refused by the C of A, 72% of the time, the OMB actually upheld the C of A's decision.

Freeing Toronto from the OMB, I would argue, would free them from being a part of city-building. I could point to many fantastic, exciting and celebrated projects that are being enjoyed by residents and neighbourhoods alike that were rendered by an OMB decision.

I think this is where I will hand the microphone over to my colleague, Gary Switzer. He is an architect by profession and has a passion for design excellence and creating a world-class city. Gary?

Mr. Gary Switzer: Thank you, Steve, and thank you, Chair and committee members. As Steve mentioned, I'm the chair of the Toronto chapter of BILD. When I'm not volunteering my time there, I am CEO of MOD Developments, which I formed five years ago. My two most recent projects are 5 St. Joseph, about a block away from here, and Massey Tower down at Queen and Yonge, both of which were projects of the year and both of which have been celebrated for design excellence. Neither one of them went to the OMB.

In my previous life, I was also a planner in the city of Toronto. Then, for 21 years I led the high-rise division—I formed the high-rise division—at Great Gulf Homes. We did a number of celebrated projects like 18 Yorkville, the Morgan, the Hudson and also a project that I'll refer to later that a number of people have mentioned: the one at Sherway Gardens.

It's easy to say that the OMB favours the development industry. This has not been my experience. This board, which is made up of 23 professionals—lawyers, land use planners, a former mayor and environmentalists—facilitates, mediates and adjudicates on a case-by-case basis and, in the end, every decision rendered is in the public interest and has to be explained by sound planning principles.

I'd like to read a quote. The quote says—and this is from the honourable Mr. Marchese: "It should be city planners and the city of Toronto—along with the community—that should decide what's good for them and not some appeal body that's unelected and unaccountable."

The problem, from my experience in almost 30 years in the industry, is that they don't often all agree. What does one do in a case where the planning department has come out with a positive report; the developer has done everything right; it complies with the official plan and it complies with the provincial statements, but council turns it down?

I'll give some examples of where this was the case—planning examples that are now celebrated. First of all, the Kings: the King-Parliament and the King-Spadina areas. Both of those were planning initiatives that ended up at the OMB, which brought mixed-use residential to areas that basically were in total decline at the time.

Individual projects, such as Regent Park: That ended up at the OMB—the Daniels project. The project that people have referred to, One Sherway, which was my project, was a joint venture with Menkes. Again, everything right: fulfilled the provincial policies—in fact, the province had built the highway, the exit from the QEW to go there, expecting higher density. It ended up at the OMB because of shenanigans at council. The Globe and Mail did a celebrated front-page story because of the fact that council could not comply with its own policies. John Barber said, "Even babies need nannies," which I thought was a very apropos comment on what ended up going on there.

In my own experience, 18 Yorkville, which was celebrated as the first point tower public park, revitalizing that section of Yonge Street, ended up at the OMB. In this case, it was the planners who were against it. The residents and the council member were in favour of that project.

To end my comments, even if we go way back to the 1970s, the most innovative planning initiatives that have ever come forward in the city of Toronto, like the Central Area Plan in the 1970s under Mayor Crombie and the reform council at the time, ended up at the OMB.

Just one short anecdote: I remember Howard Cohen telling me that he appeared at the board, and the board member said, "Why would, Mr. Cohen"—and he was a planner at the time—"anybody want to live on Bay Street?" It brought mixed-use for the first time to downtown Toronto in areas that were only zoned for office at the time as a result of the OMB, because council could not see its way to approve that Central Area Plan.

With that, I'll turn it back to you, Steve.

Mr. Stephen Upton: Okay. We have to remember that there are many reasons why decisions are brought to the board. Sometimes it's a lack of a municipal decision. They don't make a decision within the legislated time frame. Sometimes city council could vote to deny an application, even if it's recommended by city planners and conforms to provincial legislation, and the applicants have a right to appeal the decision. Sometimes residents or ratepayers exercise their right to appeal a decision that the city makes. And sometimes matters go to the board because the public just isn't ready for projects that the industry is trying to build to uphold plans or objectives that the city or province have on the table.

Since 2006, when the provincial Places to Grow plan was approved, provincial policy has mandated intensification, and the home building and land development industry has been working hard to implement these policies.

We should also remember that the OMB serves a mediating role. This is very important. The OMB provides a stream to bring everyone together, all those proponents involved in the appeal or application. With mediation, we all roll up our sleeves and get to the heart of the issues and try to solve them to avoid a full hearing.

Just as a quick comment, I have a couple of projects that I've worked on in the last year in Etobicoke and downtown Toronto. Both ended up at the board by either residents or by referral to us, because of the time element. At the end of the day, everyone rolled their sleeves up. Mediation was accomplished. The ratepayers signed off and we had—settlement counsel endorsed it. It was a rather interesting process, so the board really worked very hard for that.

0930

If Toronto is freed from the OMB, we have to consider what other options are available for residents, neighbours and ratepayers alike. The OMB makes dispute resolution easier. It's more accessible, faster and less expensive than the courts. While there are some who believe that the OMB should be replaced by municipal appeal bodies, the OMB has proved essential in the development approvals process within the current planning system.

In the Toronto context, not only would support for a vibrant, world-class city be weakened, but the cost to the taxpayers, or our new neighbour, would significantly increase without the OMB.

In 2010, city of Toronto staff were asked to provide the anticipated costs of creating a local appeal body. It was determined that it would cost about \$1.8 million per year, with an additional \$261,000 in start-up costs. This translated into \$6,200 per application.

It is also very important to note—and I remember hearing this myself—that the city staff themselves were incredibly cautionary to their committee and council about the complex administrative process involved in establishing a local appeals body.

BILD members are critical partners with the province and municipalities in the creation of complete communities—

Interruption.

The Vice-Chair (Ms. Soo Wong): It's okay. Keep going.

Mr. Stephen Upton: —that will support the implementation of the provincial policy statement, the growth plan, and many other significant provincial plans. The OMB is an essential component to assist in upholding the principles of these plans.

Toronto city council should be proactively planning by updating the Toronto official plan, identifying opportunities for transit-supportive communities that will revitalize neighbourhoods and support the principles of the provincial growth plan.

We should all be working together—the province, the city, the industry—to educate residents on the planning process and the realities around the significance of the OMB, instead of sacrificing economic, cultural and environmentally sustainable projects in favour of NIMBY-ism.

Instead of focusing on what some believe we need to rid Toronto of, or free Toronto from, this is the bigger picture that we can all share and work towards in supporting Toronto's desire to create a vibrant, world-class city.

Those are my remarks on behalf of our association. Thank you for your time.

The Vice-Chair (Ms. Soo Wong): Thank you very much. You have three minutes. Mr. McDonnell, do you want to start for your side?

Mr. Jim McDonnell: One of the issues we have with the bill is that there's no alternative, and I think you've talked about some places where the OMB has come into place and whether it has provided a venue versus going to the courts. Can you give us some examples of exactly some of the places where the OMB stepped in to mediate and get a settlement between both sides?

Mr. Stephen Upton: I'll give you one quick example, and I could probably give you two more, depending on our time. As I was mentioning earlier, our Humbertown project over in the Royal York Road and Bloor area—we had a positive staff report that met all the criteria of the official provincial planning policies and the transit initiatives. It met everything you could possibly do, even in urban design. The community—very large—and the Humber Valley ratepayers did not want anything to change, period, even though in the official plan, it was mixed-use, and it warranted it, with a solid staff report.

Community council refused it and so did the big council. We took it to the Ontario Municipal Board, because that wasn't the logic behind refusing an application. The member at the time decided, "Let's have a mediation. Let's get it ready today. Let's figure out what went wrong or what can be dealt with." As a result of it, Humber Valley came to the table. We worked vigorously over about six meetings with them, with the board members. At the end of the day, we ended up with a resolution, a municipal settlement that was signed by the ratepayer group thanks to the mediation process by the board. It went to city council, got adopted, and now we're working through site plan matters. The project is

essentially what it was when staff had supported it, ironically.

The other is another project in Toronto, in Kristyn Wong-Tam's ward. We only took it to the board because time was running. We were in a process for two and a half years, not getting anywhere, so we just referred it to the board to get a placement. As a result, it sparked everyone to come to the table and talk about it. Over three meetings with the board member mediating it, we had the ratepayers agree to a motion on the project that they would support. Staff then supported it, as well as the city solicitor, and we drew up a settlement. The board ratified that at a recent board hearing. That project was what we had planned to do right from the outset, with some changes that were valid changes requested by the community, but it didn't meet what the city thought they wanted it to meet when they first tackled this.

At the end of the day, they agreed to it; even though they didn't agree initially, they agreed in the end. We got it settled and, thanks to the board, we had a good, successful mediation. The project's alive and we're all working in the right direction with the community.

The Vice-Chair (Ms. Soo Wong): One minute.

Mr. Jim McDonell: Okay. I think we talked about places where the zoning was vastly out of date. Any examples where that has created a problem? You said that everybody is in agreement that they should be brought up to date. Any examples you've run into where the zoning is—

Mr. Stephen Upton: Just a quick comment, sir: This is a North York community zoning bylaw in 1952, still in play today, ironically. The zoning is so out of date, it doesn't support anything on any kind of development you can do on the Yonge corridor, where the subway exists and where new developments really should be happening. It's very outdated, and the vision to get it updated is kind of antiquated right now, so that's a challenge.

The Vice-Chair (Ms. Soo Wong): Thank you, Mr. Upton, and thank you, Mr. Switzer, for your presentation.

Mr. Stephen Upton: Thank you.

CONFEDERATION OF RESIDENT
AND RATEPAYER
ASSOCIATIONS IN TORONTO

The Vice-Chair (Ms. Soo Wong): Our next witness is the Confederation of Resident and Ratepayer Associations in Toronto: Eileen Denny. Good morning. Welcome. Can you please identify yourself for the record. You have 15 minutes for your presentation. This round of questions will be from the official third party. You can identify yourself and begin.

Ms. Eileen Denny: My name is Eileen Denny, and I'm representing the Confederation of Resident and Ratepayer Associations in Toronto. I wish to thank you for granting us the opportunity to provide our perspective on Bill 20, concerning the city of Toronto and the Ontario Municipal Board.

CORRA is an apolitical, incorporated not-for-profit association representing member resident and ratepayer groups, both unincorporated and incorporated, from the north, south east and central areas of the city of Toronto.

What brings us here today? Bill 20 is seeking the removal of the city of Toronto from the jurisdiction of the OMB. It is considering the powers granted to the city for establishing one local appeal body to hear appeals of committee of adjustment decisions and expanding them to include all appeals that the OMB would hear, as well as considering more than one LAB to do so.

It has taken the city a full term to consider the issue of the local appeal body to hear appeals resulting from minor variance and consent applications without generating a fresh report or a new feasibility study. The public consultations recently concluded provided the following data:

Projected costs would be approximately \$1.75 million—those are 2010 terms—compared to the OMB at \$7.5 million annually. OMB member salaries are about \$104,000 to \$145,000, full-time. LAB members are estimated to be about \$58,000 on a part-time basis, or they may consider remuneration on a per diem basis or per written decision.

The OMB appeal fee is only \$125. The average LAB hearing cost would be about \$6,000.

The committee of adjustments hear approximately 2,000 to 3,000 applications annually, of which 10% are appealed. Of the 10%, no information was made available as to whether these appeals were developers appealing, or residents or their associations appealing.

A quick summary of this: The ability to appeal would be inaccessible under the LAB for ordinary citizens. The remuneration amount for LAB members would not attract the calibre of individuals needed. The part-time nature of the position would impinge on impartiality and may present conflicts of interest.

The projected cost is not a firm figure. In fact, it may be substantially more, as the processes have not been determined on which a more accurate estimated cost could be calculated. We are concerned with the additional download that Bill 20 would bring as a result.

How does a LAB address the concerns of the OMB? Resident and neighbourhood groups at the public consultations were quick to ask why they were being asked to attend, and what a LAB was going to solve, when the only changes seemed to be that five people from Toronto would be hearing officers, instead of board members from the OMB, and that once a LAB has been established, only the province can dissolve it. The benefits were not enough to convince the residents and associations at those meetings that the ongoing spending of more than \$1.8 million to hear 300 appeals on minor variance and consent applicants was enough.

Is the city able to operate an independent local appeal body effectively? Again, residents and neighbourhood groups highlighted the concerns, from the appointment of members to the permanence once a LAB is set up and the ability of the LAB to remain independent over time.

Residents' thoughts settled on discussions about the committee of adjustment, as development applications are no longer about decks, but involve the wholesale demolition of existing buildings and their replacement, to enlargements across various zone categories in the city.

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The committee of adjustment is also a quasi-judicial tribunal set up to hear minor variance and consent applications and make final and binding decisions, independent of council. Currently, the committee of adjustment panels are not discharging the obligations under the Planning Act, and this is a decision-making process that residents and resident groups want the city to fix.

Here are the issues. Areas where the committee of adjustment is not discharging their obligations under the Planning Act: They're not meeting the minimum notice requirements; they're not deciding applications in accordance with the four tests; they're not providing minutes that record what was said during the hearing; they're not providing written reasons for the decisions made; and occasionally not forwarding full file contents to the OMB upon appeal.

Other areas of operation where due process and procedural fairness may be affected include: the selection and calibre of C of A panel members; not allowing for the review of full file contents prior to the hearing; inconsistent hearing proceedings; minor variance consent applications are decided on the four tests, of which the onus is on the proponent to demonstrate; hearing panels hear about 30 to 40 hearings every two weeks, in one day. For the city of Toronto, the committee of adjustment has become less independent and appears subsumed by the city's planning department.

One of the more critical departures, and I cite this one as an example: providing written decisions, which is a requirement under the Planning Act, is paramount.

Public trust in decision-makers depends upon the ability to render well-reasoned, consistent judicious decisions from an impartial panel. The habit of articulating reasons for a decision will lead to better panel decisions, provide for a body of explanations which would assist in making future decisions more comprehensible and predictable, and lead to a well-developed approach to the interpretation of legislation governing, for example, minor variance.

Another deep-seated concern is the four tests; in particular, what is minor. It is worth emphasizing that the onus is on the applicant seeking the variances to demonstrate that these tests are met. Those opposing need only show that one of the four tests is not met, for the application to fail. How, then, can it be said that the city is capable of operating an independent local appeal body when the committee of adjustment no longer operates as intended and legislated?

Given the present state of the committee of adjustment, the city is not in a position to take on one local appeal body handling minor variance appeals, let alone an expanded slate of appeals and more than one local appeal body. Residents are asking that the committee of adjustment be fixed first.

The importance of the Planning Act as a means to reform: Like the committee of adjustment, the OMB is a quasi-judicial body which makes legal and binding decisions, independent of government. However, the OMB is responsible for hearing appeals on matters concerning planning disputes only. If we are serious about improving the OMB, the public must be central to this rebalance and the overall planning process, of which the OMB is part, and should be subject to the same level of public scrutiny.

Another issue that we are confronted with is that no matter whether it's the city making a decision or whether it is the committee of adjustment or the OMB, it is the Planning Act that needs to be rebalanced and clarified. In doing that, CORRA would volunteer to provide sections that need amendment to the policy advisers responsible for the Planning Act in the province.

CORRA does not support the status quo, but we need to be cautious. We must do our homework before launching into such major changes. That is my submission.

The Vice-Chair (Ms. Soo Wong): Thank you very much. We've got quite a bit of time left for questioning. This round of questioning will go to the NDP side. Mr. Marchese, you have about six minutes.

Mr. Rosario Marchese: Thank you very much, Eileen. It was a very well-thought-out presentation, and you raise a lot of good points, including criticisms of the committee of adjustment that are probably fair and reasonable. You talked about the local appeals body and how much that would cost and what that would cost people who would have to present an appeal, which is quite high. By the way, in that regard, my view would be that, whatever it costs the city of Toronto to take all the planning staff and everybody else that has to go and present at the OMB, all of those costs would simply be passed down to the city so that they wouldn't have to worry about the incredible amount of money that they would have to find to set up a local appeals body.

That's assuming that's what the city wanted to do, because my bill doesn't say that they shall; my bill enables them to do that, but they don't have to set one up. They could have different bodies; they could decide to have a planning board or design review panel. They could decide to do that differently based on whatever other models exist across Canada and the US, or other places for that matter.

You do raise a lot of good points that are worthy of some discussion. My point—and that's the question to you—is: Do you believe that the city should have the power to do city building, that they should have the power—with local politicians, planners and communities—to decide planning matters, or do you think it should be another body that has the ultimate authority, the ultimate veto power, the ultimate decision-making power to decide whether this plan is good or this plan is bad? Who do you think should have that power, ultimately?

Ms. Eileen Denny: Right now I believe that the city does have much of that power. They have the ability to

amend zoning bylaws. They have the ability to amend the official plan. It's only when decisions are in dispute that it does go to an appellant board.

Where they are common is in the Planning Act. It's the common legislation that governs the OMB, as well as the city and as well as the committee of adjustment. If, in fact, they cannot operate or oversee a body like the committee of adjustment to be independent and to be operating under its legislation—we have difficulty grappling with how the city would manage this independent body as structured, not only today at start-up but across time, and not only from an administrative functioning perspective, but also the commitment of dollars. Good policy can die if you don't enforce, ensure that it's applied and have money put to it.

Mr. Rosario Marchese: So, I'm not disagreeing; I'm pointing out two problems: the cost to set up a local appeals body is a big one for the city of Toronto. It's \$2 million, but many have complained. Is it fair? The wages that we would be paying these people, who would be part-time, is quite low, and who is it that we would be attracting? Are we going to get the best folks to do that job? It's part of that consideration.

But, as I understand it from Adam Vaughan, the city is going to move to do that. Yes, it has taken years, but the city is going to move to deal with that and hopefully fix that particular problem, because most of the appeals that go to the OMB are related to committee of adjustment problems. So they're going to be dealing with that.

My view is that the city should deal with all of these things at once and not wait for this to be fixed until we get to the bigger problems that really cause a lot of headaches to cities, politicians and communities. I think they should deal with all of these things.

We should break that vicious cycle, as Ken Greenberg said, get the city to fix all of these problems, and give them the power to do that. Give them the power to, together, solve these questions. We, the people—we who vote for them—can at least make politicians accountable, but we can't make the OMB folks accountable for anything that they say or do.

Ms. Eileen Denny: I'd like to say that the OMB is quasi-judicial, "quasi" meaning that the elected body does appoint the people sitting on that deciding panel, as does the committee of adjustment. You will be appointing. Elected officials are actually responsible for appointing those members, and "quasi" gives those panel members discretion in making a decision.

I have to caution that discretion doesn't mean changing the law. It doesn't mean changing policy. What it means is that it must be tempered in fairness when you evaluate against the legislation, the law and the context in planning, and that requires a special person. It does not need to be a person located in a local area. What you need are people who understand the law, the legislation and planning, and operate with fairness and compassion in making that decision.

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

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ONTARIO ASSOCIATION OF ARCHITECTS

The Chair (Ms. Soo Wong): Our next witness is the Ontario Association of Architects: Sheena Sharp. This round of questions will be from the government side. You have 15 minutes for your presentation. Can you please identify yourself for Hansard?

Ms. Sheena Sharp: Certainly. Good morning, and thank you for having me here. My name is Sheena Sharp. I am the immediate past president and a current vice-president of the Ontario Association of Architects, the OAA.

The OAA is the licensing body and professional association for Ontario's architects, established under the Architects Act. We regulate the practice of architecture in order that the public interest may be served and protected. We are also charged with promoting architecture and raising awareness in the best interests of the public. This does not only refer to the appearance of buildings but also to the planning of buildings. We have a membership of nearly 3,600 architects and 1,700 practices. As a side note, more than half of our architects live or have practices directly in the city of Toronto. I also live in the city of Toronto and work in Toronto and outside Toronto.

There are two main points that we would like to make. First, this bill proposes to solve a problem that does not substantively exist and ignores a huge problem which does exist; namely, that it is our planning processes themselves that need reform. My second point is that, given the pressures unique to the responsibilities of municipal councillors, we feel that an appeal body, remote from municipalities, is an important safeguard to the integrity of a properly functioning planning system.

The Ontario Municipal Board is not without criticism. The OAA has heard this from our members. We support a review of the OMB that would make it more efficient, effective and accessible. However, the OAA has heard loud and clear from Ontario architects that abolishing the OMB is not the answer, nor is removing the city of Toronto from the OMB's purview. As the OAA recently expressed to the city of Toronto, the OAA supports the existence of the OMB inasmuch as it's an appeal body which ensures that municipalities comply with their own policies and regulations, and that these policies and regulations are clear.

As leaders of the built form, architects are a central component within the planning regime. When municipalities, including the city of Toronto, fail to make clear and defensible policies and regulations, there must be a body to hold the city accountable.

Indeed, the OAA itself has appealed the city of Toronto's harmonized zoning bylaw to the OMB. This is the first time in our 125-year history that the OAA has ever entered such an appeal, but it was clear from local architects that this intervention was necessary. We could see that this bylaw was poorly written and would have great consequences on the built form and architectural

expression within the city. Parts of this bylaw ran contrary to the city's own official plan and to various other municipal and provincial priorities, policies and objectives. We understand that architectural projects that the city of Toronto itself had once given design awards to would now be impossible to build under the new zoning regime. This also goes for projects that the OAA has given design awards to. The concerns of local architects were ignored. The OAA was also ignored when we acted on their behalf during the bylaw consultations to try to improve the bylaw. The ability to appeal the bylaw is of utmost importance to the architects in the province of Ontario, and one that must be safeguarded moving forward.

We would also point to the fact that the city of Toronto, by its own admission, has intentionally down-zoned great areas of the city. This is despite the fact that it contradicts its own official plan and other municipal and planning documents. The end result is that countless applications that should have been as-of-right are needlessly and expensively sent to the committee of adjustment, and some of these go on to the OMB.

Appeal bodies such as the committee of adjustment and the OMB should be used as a last resort, not as a chamber of sober second thought or as a safeguard against special-interest groups: "Just get this through; the OMB will sort it out."

Poorly written municipal plans and policies such as the harmonized zoning bylaw pose a significant obstacle to the practice of architecture and can come at a great cost to the people of Ontario.

The city of Toronto maintains that it is a mature city and should not be subject to oversight through a provincial body. To the contrary, planning decisions that ignore blatant policy contradictions and eliminate as-of-right zoning in favour of lengthy and costly processes which pit neighbour against neighbour—well, this demonstrates that a provincial and unbiased appeal body is needed more than ever for the city of Toronto.

Architects living and working here have repeatedly cited issues of political interference in what is intended to be a straightforward planning and approval process. It is exactly in these highly charged local situations where the OMB, an outside body, plays a critical role in ensuring fairness. The city's own chief planner has expressed serious reservation over the current proposal, saying that she could not support any move away from the OMB so long as the current locally charged ward system still exists.

In her earlier deputation, Councillor Wong-Tam, who is a very sincere person and is fighting for the good of the city, outlined a process she undertakes which can take between two and three years. These processes are not envisioned by the Planning Act, but are popular with municipal councillors of all political stripes. However, a lengthy and inefficient municipal planning process is very expensive. The OAA commissioned an independent study on one portion of the planning process: site plan approval. This independent study found that for a 100-

unit condominium apartment building, each additional month spent in planning would cost: \$193,000, or \$1,930 per month per unit, a cost that is passed on to new homebuyers; between \$160,000 and \$242,000 per month to the municipality and existing community through delayed tax revenues and lost spending; and \$44,000 per month, or \$443 per unit, to end users, the residents, through not being able to get into their unit and start building equity.

Studies from other organizations on other components of the planning process—development charges, for example—have also demonstrated great cost and delay. I'd like to point out that these significant costs are also paid by provincial projects. They are paid by hospitals; they are paid by schools; they are paid by community centres. We have to pay for a planning process; however, we have to understand what it is costing all of us, and you guys have to be the judge of whether or not it's worth it. We have asked the Ministry of Municipal Affairs and Housing to look into this, but we feel that passing this bill would only make the situation worse.

The city of Toronto maintains that its planning decisions should not be able to be overturned by individuals from other municipalities who can't or don't understand Toronto issues. We contest this notion and believe that individuals with planning expertise from other areas of the province are qualified to rule on such disputes. The city of Toronto's own urban design manager serves on the design review panel for the city of Ottawa. This expertise is applicable throughout the province.

Finally, I'd like to take a moment to speak to the argument that the OMB has a pro-developer bias. The OAA has heard a number of individuals, including Toronto city councillors, make this accusation. We can find no evidence for this. The OMB makes decisions based on planning regimes and rationales, and the OAA has repeatedly heard from both architects and developers that when they should have won, they won, and when they should have lost, they lost. There are always exceptions to this, but we have to look at the record of the board in its entirety, not cherry-pick different examples.

Again, the city of Toronto's own chief planner and city solicitor agree that the city has a good track record at the OMB, winning the majority of their cases. The OAA simply does not support the notion that the OMB is biased.

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This is an important point, because the OMB is a public institution with a very important purpose: to ensure the integrity of the planning system. The province should take whatever measures are necessary to ensure wider public confidence in it, and not allow its reputation to be diminished.

In closing, architects are primarily concerned with the creation of the built environment to the utmost quality, in support of the people of Ontario. We believe that the OMB—unbiased and independent—remains the necessary and appropriate appeal body for the whole province. Thank you.

The Vice-Chair (Ms. Soo Wong): Thank you, Ms. Sharp. This round of questions is from Ms. Hunter. There are five minutes.

Ms. Mitzie Hunter: I have three different questions, so I'm going to put them forward and allow you to speak to them. One is just building on your last summary in terms of the unbiased nature of the appeal board. Do you believe that it is important that communities have a chance to participate in the process? And how do we ensure that community groups feel that they have a fair shot when confronting disputes at the OMB?

Ms. Sheena Sharp: Yes, we do. Currently, the community members, ourselves included, have the opportunity to participate in the creation of the official plan, in the zoning bylaw creation and review, and in revisions to the official plan and the zoning bylaw.

What usually happens is that people show up when a project-specific proposal has come forward that is going through site plan approval. The Planning Act doesn't envision that that be a public process. Yes, many applications have to go through a rezoning in order to get there, so that becomes a public process. The Planning Act envisioned that, and it envisioned a limit to that. It's those limits that we are either changing to make greater or removing entirely. I think that that takes away the balance.

It's like saying, "Okay, we're going to fire the cops because we're getting too many speeding tickets." If we do that, yes, we'll get fewer speeding tickets, but I guarantee you, you'll go faster too. You're not solving the underlying problem.

Ms. Mitzie Hunter: So you're saying that the community actually has an opportunity, and it's probably the city's responsibility to engage them much earlier in the process—so when we're going through an official planning process, secondary plans and zoning.

A totally different question, and I'm hoping, from your background and your expertise, that you can comment on this; I've been wanting to ask this question for a while. It's around heritage concerns. Do you see that having an appeal body helps to manage and really preserve some of those considerations as well across the province?

Ms. Sheena Sharp: The association has met with the Minister of Tourism and Culture. Heritage concerns are unique because they have relied for ages on the slowness of the process in order to be able to designate buildings. We know from other places that designation has certain effects on land prices and land use. I think that the heritage concerns are vitally important. We need to preserve our buildings. This is part of the review that we have to have so they have more effective mechanisms, which also goes, by the way—a little suggestion—into looking at the tax structure and how that might help owners preserve our heritage and our culture.

Ms. Mitzie Hunter: That's great. In terms of a potential role of a local appeal body, I'd like you to comment on that, because it is making its way through the city of

Toronto's process; I believe it's at committee right now. Is there a role that you can see for a local appeal body?

Ms. Sheena Sharp: We hope that there is one. The current bill doesn't actually require the city to set one up. Absolutely, we think that there should be an appeal. We think that it should be accessible from a cost point of view. What we're talking about here is an appeal to planning expertise, so we do not understand what this appeal body will offer that the current OMB does not offer, and it will offer it at great additional cost, so—

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

Ms. Sheena Sharp: Thank you, everyone.

MR. LUBOMYR LAHODYNSKYJ

The Vice-Chair (Ms. Soo Wong): All right. Our final speaker for this morning is Lubomyr Lahodynskyj. I hope I said it correctly. Welcome.

Mr. Lubomyr Lahodynskyj: Close enough, ma'am.

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

Mr. Lubomyr Lahodynskyj: All right. Thank you. Hello. My name is Lubomyr Lahodynskyj. I'm a resident at Wolseley, which is near Queen and Bathurst.

I became involved in the planning process due to a condominium that was proposed across the street from me. I've spent the last two years learning more about the planning process than I ever hoped or ever wanted to know. What I'd like to do today is go through my experience in the planning process with the city of Toronto, and I'd like to do that from three perspectives, one of which is planning strategy; another one is the management of planning; and the third is communications.

At the end of the process, I actually did go to the OMB and present there, and spent two days presenting and cross-examining, so I've had some experience at the OMB as well. To be honest, it was the only rational portion of the whole process, but that is, again, my opinion.

I have been actively involved both with the neighbours and the councillor, and with planning. I was on Lynda Macdonald's Sunday morning email list. With community associations, I actively participated in the Bathurst land use study.

I must confess that at the beginning of this I was of the opinion that the OMB was causing all the bad planning in the city of Toronto, but my aim in coming here is based on my experience. I want to offer some suggestions to make Toronto and Ontario a better place.

When it comes to Toronto's city planning strategy, what I expected was that city planning would define how the city is supposed to grow. What I experienced at first, when reading the official plan, was that it has specific rules and guidelines in targeted areas for growth but, upon deeper discussions with city planning, it became clear that the official plan is just a set of guidelines

followed only at the discretion of planning, and that the whole of the city is open to development. My belief is that, when it comes to strategy, city planning signs off on pretty much anything a developer wants, and that's why so few items actually do go through to the OMB.

When I looked at the aspect of managing the planning process, what I expected was that city planning should have forecast growth for specific areas, numbers to track the growth by each area, and a process introduced to manage growth in each area of the city, because managing a process means measuring that process.

What I found was that city planning only takes a count once a year for the city as a whole. It doesn't have any details by area. It uses the census to capture the actual growth and, when it looks at forecasts, it takes all of the development proposals that are in the pipeline and uses that as the forecast. There's no process, when you go through the land use study, which is looking at current zoning—that land use study does not offer any suggestions as to how much growth needs to be captured in that area and how that growth can be accommodated.

When it comes to management and planning, my belief is that specific targets and timely, detailed measurements are crucial to effective management, whereas city planning has no targets and no detailed measurements, so they cannot manage growth. Worse still, using all the development proposals as the forecast for growth just implies that everything that is put forward as a development will be approved.

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The third piece of city planning that I wanted to talk about was communications. What I expected is that city planning would have clear documentation, a process to introduce and manage input from all parties, and a simple way to distribute information in a timely fashion. That way we could all understand what was being done and why it was being done. What I experienced is a labyrinth of documentation and rules that even planning does not understand. The city appears to have a process to manage input from the community, but they can ignore any questions or issues with impunity. Meanwhile, planning appears to maintain a continuous dialogue with development. There is no process to distribute information. Your best bet is to call up planning and ask them, but you have to do that on a daily basis.

I was acting as a focal for our neighbourhood, and I was never contacted about changes to any of the planning. And when you look at city planning's final report that goes to committee, there is no specific as to why a particular proposal or feature of that proposal is approved. There is no reference to a page or a paragraph in a guideline. It's just: "The city says it's okay."

So when it comes to communications, I believe that because there's no planning strategy nor a planning management process, city planning cannot have a successful communications process, because it doesn't have a strategy and it doesn't know how to manage that strategy. The result of that is that it makes it difficult for a community to understand why a development is approved,

which in turn generates all sorts of questions with city planning and the council—and trust me, they've heard lots from me on behalf of my neighbours. It just gives them all sorts of extra work and it causes frustration amongst the citizens.

Again, just to recap my experience, since January 2012 I've been almost in daily contact with somebody, either on the neighbours, city planning or the councillor, including, as I said, two days at the OMB. When I look at Bill 20, that's going to take out the only, in my opinion, rational process. That was the only place where there was active listening, where people actually recorded what was being said. They seemed to have rules and guidelines, and they were actually followed. But I've got a city planning process that lacks a strategy, lacks management control, has a woeful communication process. In my opinion, getting rid of the OMB is like giving a toddler the keys to your car.

However, it doesn't mean that there aren't things that could be fixed. When you look at the root causes to the issues that we all seem to bump into, and when you listen to the community—I'm sure you've heard this—the same issues crop up time and time again with every development. I see four things.

We have a planning process out of control. Rules and standards that are applied to development are those when the paperwork is filed with the city and not when the building is finished. City planning does not want to improve building standards, because each municipality has their own code. And six months sometimes is not enough time to review a planning decision. So, based on my experience, those are four issues, and I'll just briefly run through them.

The planning process is out of control because every proposal is an exception. Every developer wants to put forward a big building, because it generates more profit for them. The result of that is that city planning just goes through on all the processing rather than investing time in strategy. What I would suggest is that the OMB limit any review, and therefore city planning is able to limit any review, to something that's within 10% of current zoning. This will drastically reduce the current workload on the city, so they can create real strategy and put in place real controls. In fact, they can actually go, use the land use study to review and revise the zoning, and they can actually put in place measures to control. This will clarify and make visible, for both the developers and the community, the rules and the regulations. Then, if we just make sure that the rules and regulations are actually tagged alongside any decision, it will make it a whole lot clearer for us all.

The issue that rules and standards that apply when the development is first proposed to the city is—the only place I've ever seen this happen is in development. I've worked in a multitude of industries, and you have to follow the rules that are the rules of the day. I mean, I should be able to drive along the 401 at 130 kilometres an hour because I was driving along the 401 at 130 kilometres an hour when I first visited Ontario. Right?

Those are the kinds of strange rules that apply to developers. They favour the developers because it gives them older rules that they need to follow, disadvantages the city because they have to make up the shortfall in one way or another—and I just don't understand why that is. The OMB should do something about that.

The next issue is that Toronto city planning does not want to improve building standards. There are two causes for that. One is that developers complain, because they don't want to follow a new standard code, because it's different if they build it in Mississauga, it's different if they build it up in Barrie, it's different if they build it somewhere else. We should have a common set of standards. If you don't have them at the provincial level, then the development will move out of Toronto into Mississauga or into Markham because it's cheaper.

My suggestion is for province-wide standards on buildings to continuously improve. We're already well behind Europe. The proposal across the street from me gets its green designation because it has a patch of grass on the roof and it captures 25% of the rainfall. That's hardly an outstanding thing that we should be proud of. The benefit of imposing, increasing and improving standards is that it will reduce utility demands on those buildings and will generate work for within Ontario.

The last issue is that six months sometimes is just not long enough. However, if we only have to go through this exception process, if we only have to have planning approve anything that's within 10% of zoning and everything else is automatically kicked off the table, then the six-month rule should be sufficient. Or we can just hold off until city planning has enough staff to handle the six-month process.

In summary, there should be changes to the OMB process, but I think there should be a hard rule to say, "No planning goes through that exceeds 10% of the current zoning." The OMB is to enforce rules and standards that are in place at the time of those rules—how would you feel if you were flying in an airplane in 2014, but the airplane was built in 2000 and only has to follow the guidelines for the airplane in 2000? It doesn't make sense. The OMB is to also add to its mandate improved and consistent efficiency standards across the province and increase those efficiency requirements. And, sometimes, six months is not enough.

The Vice-Chair (Ms. Soo Wong): Thank you. There's two minutes for questions.

Mr. Jim McDonell: Thank you for coming out today. You talked about the zoning. Are you aware of just how old the zoning bylaws would be in Toronto, through your process?

Mr. Lubomyr Lahodinskyj: It doesn't matter. Right? The problem with the zoning isn't so much that it's old; I mean, that's just a distraction. The zoning is the zoning. If you want to change zoning, as I said, just put in a process to review the zoning with everybody concerned. That's what the land use study is all about. So you sit down with the community, with planning, with all the developers who are interested in that area, you go through and you agree on a new zoning.

City planning claims that it can't get more than half a dozen land use studies through in any one year because it spends all its time doing approvals and reviews. So you've got a chicken-and-egg situation. Everybody's going through the OMB because the current zoning is out of date; nobody can update the current zoning because they're always going to the OMB.

The Vice-Chair (Ms. Soo Wong): Mr. Lahodinskyj, we're finished. Thank you for your presentation.

Before we recess back to the House, there is a communication from the Ontario Association of Architects that I wanted to draw to the committee members' attention. The registrar has written to this committee, to the Clerk, with regard to the witness from last week. Remember, we had a witness last week. I want to hear the will of the committee. What is your desire about this particular letter? There is a letter from the Ontario Association of Architects to this committee with respect to one of the witnesses. Mr. Marchese, have you got a copy of the letter? I don't want to read the letter to you because it will take more than five minutes, but there is a concern raised by the Ontario Association of Architects, by the registrar, to this committee. I want to get some direction from this committee. Should this letter be referred to the subcommittee to get some direction? What is the will of this committee with respect to this letter? Mr. Prue?

Mr. Michael Prue: The first thing I think we need to do is to get the transcript of what Mr. Greenberg actually said. My recollection is that he said he used to be an architect or that he was a non-practising architect or something to that effect, but I can't remember verbatim what was said. I think before we do anything, I want to see that, and then I'm willing to make my mind up.

The Vice-Chair (Ms. Soo Wong): There's a suggestion from Mr. Prue to get the transcript. The Clerk has agreed to get the transcript. Are there any comments or questions? Ms. Hunter?

Ms. Mitzie Hunter: Thank you, Madam Chair. I would agree with Mr. Prue. What I heard him say was a reference to a context of his knowledge from the past, not a current practice. I don't think that was the intent at all.

Mr. Rosario Marchese: I don't believe he said he was, so I think we should get the—

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

Mr. Monte McNaughton: I would just like to ask the question: Have we actually checked Hansard? Does anyone know?

The Vice-Chair (Ms. Soo Wong): The Clerk is going to check and get back to the committee this afternoon, so could everybody please arrive at 2 o'clock. We could put this right at the beginning and it won't delay the discussion. Thank you very much. We're adjourned until 2 o'clock.

The committee recessed from 1021 to 1400.

The Chair (Mrs. Laura Albanese): Good afternoon. The Standing Committee on Finance and Economic Affairs is called to order. As you know, we will be

looking at Bill 20. We're here for public hearings. We welcome our first witness. Good afternoon.

Mr. Brian Graff: Good afternoon.

Ms. Soo Wong: Madam Chair?

The Chair (Mrs. Laura Albanese): Yes?

Ms. Soo Wong: Just before we recessed this morning, I raised the issue of the Ontario Association of Architects' letter to the committee. I remember that Mr. Prue asked a question to the Clerk. Can we have a quick answer and then defer this item to after the witnesses so that we won't be behind with all the witnesses before the committee?

Mr. Rosario Marchese: We'll be behind, one way or another. We might as well deal with it, get it out of the way, and then continue with our witnesses.

Ms. Soo Wong: Okay.

The Chair (Mrs. Laura Albanese): As the committee members prefer.

Ms. Soo Wong: Okay. Let's hear from the Clerk. What did he find?

The Clerk of the Committee (Mr. Katch Koch): Committee members, I have laid on your desk the Hansard from Thursday, April 10. This is the verbatim transcript of Mr. Greenberg's presentation to the committee. I guess I'd like to draw your attention to the first page, bottom left corner, when Mr. Greenberg first took the mike. It says there: "I'm an architect, urban designer and president of the Wellington Place Neighbourhood Association." I'll leave it in the committee's hands.

Mr. Rosario Marchese: Ms. Chair?

The Chair (Mrs. Laura Albanese): Mr. Marchese.

Mr. Rosario Marchese: I have some comments about the whole thing. I reviewed the transcripts as well and had a chance to review the letter submitted by, actually, one of the deputants on behalf of the registrar, Nedra Brown. I have to say on the record that after I read the letter by the registrar of the Ontario Association of Architects, I was infuriated by the content of the letter. It's, in fact, ruthless, vicious and very intimidating. This registrar is attacking Mr. Greenberg, and I resent the attack.

The letter says: "I understand that Mr. Ken Greenberg attended and made submissions to the standing committee ... and held himself out as being an architect." That suggests that he isn't or never has been.

Then it says: "Mr. Greenberg is not an architect. He withdrew from the association more than a decade ago. He's not a member of our governing council and does not speak on the profession's behalf."

Not once did Mr. Greenberg, in the submission he made, ever say that he was representing anyone other than himself. While I will leave the severity of this from a parliamentary perspective, that troubles me: the severity of this.

In the second part of the letter, it says: "I would request the committee take into account this serious violation of the Architects Act," and then proceeds to say that

the association will be "taking action in this matter." This is serious, in my view.

Ken Greenberg, from the research that I've done, is an associate member of the American Institute of Architects as well as a fellow of the Royal Architectural Institute of Canada.

I looked up what a fellow is, according to their own guidelines. A fellow is "a member of the institute who has achieved professional eminence or has rendered distinctive service to the profession or to the community at large. Nomination and advancement to fellowship is administered by the college. A member must have been a member of the institute for at least five years prior to nomination as a fellow. Fellowship is bestowed for life and is one of the highest honours the institute can confer upon a member." That's what Ken Greenberg is.

He is also the former director of urban design and architecture for the city of Toronto. He's the recipient of the 2010 American Institute of Architects Thomas Jefferson Award for public design excellence. He's the author of *Walking Home: The Life and Lessons of a City Builder*, which is currently listed on the Sustainable Design Book Shelf page on the Ontario Association of Architects website. He was a registered member of the Ontario Association of Architects for over 25 years but is no longer a member, and as far as I know does not claim to be currently engaged in the practice of architecture in the province of Ontario.

I give this on the record, Madam Chair, and to all the members, as a way of saying to you that this attack by the Ontario Association of Architects on Ken Greenberg is serious. I don't know what motivated this association to do that, but it dismisses, diminishes and discredits Ken Greenberg in a way that I have not seen here in my 24 years as an MPP. I wanted to put that on the record to tell the members that this is an incredible, egregious violation of this person's reputation and rights.

We don't have to do anything, because I believe we don't, but I wanted to put on the record that this has hurt the reputation of someone who is highly regarded by many in his profession and outside of his profession.

The Chair (Mrs. Laura Albanese): Ms. Wong.

Ms. Soo Wong: Thank you, Madam Chair. I was hoping we'd deal with the witness, but it's fine if we're going to discuss this letter.

For me, there is a letter from this professional organization to this committee. Instead of labouring through more conversation or debate, or going through referring this matter to the subcommittee to make some direction for us, I believe that this issue is about the integrity of witnesses before all committees of this House in terms of their character, in terms of accountability.

I spoke to the Clerk after the recess this morning. I'm just concerned, as one member of this committee of finance—but all of us sit on different committees—about what is the history of past practices for committees when witnesses come before the House and express their credentials, or whatever it may be. The question that's

being asked—I need some direction—is, when they come before committee, are they required to be forthcoming, to be honest, with integrity about their credentials? Because right now we have a bill before the House about accountability. We also have to be mindful that although it's not testimony of the witnesses before this committee, it's the integrity of the presentations before all committees. I just need some direction.

But more importantly, because there's a letter from the Ontario Association of Architects to this committee—whether we respond or don't respond, as Mr. Marchese is suggesting—I'd like to see the Chair write to the Speaker and get some ruling about witnesses when it comes to their presentations to committees. There are certain committees that have hearings, so of course their information must be factual, truthful, but when they come before us on different bills, on different matters before committee, are they bound by the same rules or same requirements? Because right now, anybody can say, "I'm so-and-so." Yes, there are regulatory bodies. If there is somebody coming here before a committee about physicians, the College of Physicians and Surgeons—or myself, as a member of the College of Nurses. You cannot say you're a nurse if you're not a member of that college. So I would like to see, Madam Chair, that this letter be referred through you, as the Chair of this committee, right to the Speaker to get some direction, because I'm concerned about all the committees when witnesses come before the committee, that they make sure there is integrity and that the information they have provided is factual, clear and transparent.

The Chair (Mrs. Laura Albanese): Ms. Hunter.

Ms. Mitzie Hunter: Thank you, Madam Chair. I would like to speak to this. Having attended the last meeting and having heard from Mr. Greenberg, I really was surprised when I saw this letter, because I did not, in my understanding of his remarks, assume that he was a current practising architect in good standing with the association. I didn't feel that he represented himself as such. I thought he was giving a sense of his background and context for speaking. He didn't say where he was an architect, or we didn't ask. I am not sure why there's a correlation between his comments that he put forward before the committee and the association's sanction of him as violating a standard.

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It feels as if this is outside the scope of what we have been asked to do and consider based on his comments to us, based on his written submission and based on the question before us as a committee in terms of what we're reviewing, so I'm not sure this is the appropriate place to decide this particular matter.

The Chair (Mrs. Laura Albanese): Mr. Prue.

Mr. Michael Prue: Yes. I'm a little bit appalled by the letter from the professional association. Mr. Greenberg is quite clear. He came here wearing two hats, and he says so: I came here "wearing two hats, representing the Wellington Place Neighbourhood Association, but also as a professional in the field, having worked"—past

tense—"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." It's all in the past tense. He did not state anywhere in the record that I can see that he is a currently practising architect, and I did not take him to be one.

Does he belong to this association? Obviously not. Does it render his testimony one iota less of value? Absolutely not.

What has caused me some question is: How much weight do I give to an organization that launched such an attack? If anyone has been hurt in this, I would suggest it's probably, in my view, the Ontario Association of Architects, because this was dropped on us without any opportunity for us to question them about it, and it was also dropped on us without giving him the opportunity to respond.

I certainly don't want to waste any more time than we already have, so I'm prepared to hear Mr. Graff.

The Chair (Mrs. Laura Albanese): Any more comments? Yes, Mr. McDonell.

Mr. Jim McDonell: Just quickly, I think that there's no reason for us to question. I think, looking through the transcript, he didn't make any such claim that he was a current architect. I think he showed, through his credentials, that he's well recognized in the field. If anything, I guess I'd question the letter that came to us. It does cloud our opinion, possibly, of the architect association. But other than that, I think we should just continue on.

The Chair (Mrs. Laura Albanese): As you have heard, I've been asked to write to the Speaker and I would like to know what the committee's consent is. Are you directing me to do that or—

Mr. Rosario Marchese: Ms. Wong, I'm not quite sure what that will give us, really.

Ms. Soo Wong: Madam Chair, my only question about this intent—just for the background for all the members—is the fact that this will not be the first time or the last time witnesses come before our committee or any other standing or select committee of this House. So the question is to provide some direction for members, but also for witnesses. Are they compelled or are they required—because if committees have hearings, of course they will supposedly swear an oath and blah, blah, blah. But the question here is, when witnesses come to our committee or any committee of the House, are they obligated? Because here is—

Mr. Rosario Marchese: But Soo, we don't compel—people come before us to read something or sign something before they come saying, "You swear that you are so-and-so and that anything you say can be turned against you or that you could face criminal"—I don't think we need to worry about that.

Mr. Michael Prue: And they're not under oath. They're not under oath like a witness in the justice committee; they're made to swear an oath.

Mr. Rosario Marchese: If anything, we should send a letter to the association censuring them for what they've done, because this really is an assault on an individual. It's as if this association uses its weight to crush some-

body in the same way that I've been attacking many of the developers who go to the OMB in terms of the weight they put on that forum. But that's another issue. We don't need to debate that.

Your motion doesn't help us; it really doesn't.

Ms. Soo Wong: Madam Chair, let me put it on the table. Because there was a letter sent to this committee, I think we dutifully say, "We received it." That's it. Acknowledge receipt, and that's it, because what I'm hearing from my colleague is that the merits of this letter do not need further direction, but we just acknowledge receipt. That's it, right? Because we don't want to say we didn't receive it—because it's on record that we received it this morning—and just leave it as it is. They can deal with it accordingly because that's the responsibility.

The Chair (Mrs. Laura Albanese): So therefore no action is required from the Chair or from the committee. Thank you.

MR. BRIAN GRAFF

The Chair (Mrs. Laura Albanese): Thank you for waiting patiently until this matter was debated. I just want to remind you that you will have up to 15 minutes for your presentation. If any time is left over, then there will be questions on a rotational basis from caucus. In your case it will, I think, fall to the NDP. You may begin at any point in time you feel comfortable. Please state your name and your title for our records on Hansard.

Mr. Brian Graff: Okay. Good afternoon. My name is Brian Graff. I'm a resident of the Beach area of Toronto. I've been a Toronto resident all my life and I'm here as an individual.

First, my background: I have a bachelor of environmental studies, a bachelor of architecture, and an MBA in real property and finance. I've worked for architects and, more recently, in commercial real estate, including six years working for Paul Reichmann.

Mr. Rosario Marchese: You'd better be careful.

Laughter.

Mr. Brian Graff: I am not a licensed architect, and I really object to what the OAA did, from what I've heard, because Ken Greenberg is well respected.

Since 2011, I have been deeply involved in local planning matters, but from the community side as part of several groups, including the Beach Residents Association of Toronto, which is nicknamed BRAT. In the last three years, I have filed OMB appeals, participated in hearings, and helped other people or groups regarding OMB matters. I support Bill 20 and urge that it be passed with few changes, before any provincial election occurs.

Toronto has to be the first step in abolishing or reforming the OMB. I wish we had the opportunity to devise a replacement, one which was based on what other provinces have put in place and which built upon the best practices of those other provinces' ways of handling urban planning matters without a powerful, unelected and unaccountable body like the OMB.

I was initially skeptical about this bill, in my belief that MPPs and citizens from outside of Toronto might resist the idea of giving Toronto special treatment that exempts us from rules that apply everywhere else. Of course, Toronto is governed separately by the City of Toronto Act. Toronto is a single-tier government, though rezonings are voted on twice: by a local community council and then by the full 45-member city council. So trying something here is easy to implement, and there can still be a second review of any planning decision at city council, even without the OMB. So Toronto is uniquely positioned to be the best place to do a pilot project, to try something different here first, which might then lead to wider reforms across the province once we have some actual hard evidence and experience to build upon.

Abolishing the OMB all across the province would be reckless. Smaller communities might not have adequate planning staff or elected officials and they might need additional oversight or review.

The recent review of planning matters that the provincial government has undertaken does not touch upon the OMB itself, so no major reforms of the OMB will occur in the near future. If no province-wide change will deal with the OMB, then, please, let's just do something for Toronto alone.

If Toronto is removed from the OMB's jurisdiction and it works well, then other cities like Hamilton or Ottawa could be allowed to follow, then Peel or York region and so on. It may be that as we move down towards smaller municipalities, fewer of the OMB's powers should be removed, with only the smallest municipalities being subject to all of the current powers of the OMB. If this bill is passed and then serious problems emerge, no doubt the government would rush to intervene, repeal it and restore the status quo.

In addition, the bill contains provisions for Toronto to set up a local appeal body, or LAB for short. Currently, the city of Toronto has the power to set up an LAB, but has not done so, in part because of the costs, and that an LAB would be limited to committee-of-adjustment matters. I'm confident that Toronto would set up an LAB if Toronto were removed from the OMB. This in itself would provide a means or a forum for testing different rules or reforms that could then be applied to the OMB itself.

As-of-right zoning is too easily changed: I heard numbers quoted that only 4% of applications go to the OMB. In other words, over 96% of applications result in the application being approved without an OMB appeal.

The as-of-right zoning on a property in Toronto is meaningless and little more than a fast-track for developers if for some reason they don't want extra height or density—like Shoppers Drug Mart or LCBO stores on main streets where those retailers don't want condos overhead. So nearly every major project requires a lengthy and complicated rezoning process that typically takes longer than the four to six months allowed in the Planning Act. This means that developers can go straight to the OMB before the city's planning department has

even finished a review, and the city council doesn't have a say at all because the OMB has "taken carriage."

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The fact that as-of-right zoning is rarely enforced in turn means that when the city of Toronto does do a planning study, the city's planners and politicians alike are afraid to rezone land. The city would rather wait for rezoning applications to come in on a property-by-property basis than rezone larger areas all at once to implement recommendations. No matter what maximum height or density is determined to be perfect, inevitably developers will try for even more, treating those maximums as minimums.

The cost of a rezoning and OMB appeal is worth the risk, given the odds of success. Height and density can always be ratcheted up, and there's no way for the city to ever be certain that any maximum is permanent. If a homeowner wanted to double or triple density, they would be refused, while on other property types, city planners have no problem with such large increases. It's a double standard, and it leads to a lot of confusion.

This current system means that some areas are under-zoned for height and density, while others are zoned properly, but there's no clarity. Residents assume that current zoning is and can be enforced. Developers always assume that land is under-zoned.

A key problem with the OMB is that it hears each case *de novo*, with no direct reference to other OMB cases. So there is no consistency between the OMB's own decisions. A developer can argue that property X is an exception to the rule, and the OMB will approve it. But then another developer will come along and argue that site Y next door should have the same height and density as property X, ignoring all the reasons why property X was approved as an exception to the rule, and it was not intended to be a precedent.

Removing Toronto from the OMB would let the city pass appropriate heights and densities instead of having under-zoned land, which is what happens now for fear of future over-intensification under the current planning process, which includes the OMB.

Accountability: Politicians in Toronto say that they would prefer to vote against a development on many occasions but their hands are tied because of the OMB. They can pass the buck. What is never mentioned is that the current process also gives too much power to unelected city planners on city staff. If city staff recommend approval of a project in their final report, the elected politicians are caught in the middle between the planners and the OMB.

In May 2012, at the Toronto and East York Community Council statutory public meeting on the Lick's development at 1960 Queen Street East, there was massive community opposition to this project. The councillors defended why they were reluctantly voting for the project, despite their feeling that it did not fit into an area which Adam Vaughan had said was screaming out to be a heritage area.

City councillor Janet Davis described the situation as one where, with a city planning staff report in favour of

the project, it would be a David-and-Goliath fight that would be a hard slog to win at the OMB, given that city staff would be called by the developer. This would require the city to call outside planners to provide an opinion, which would obviously cost extra money.

Essentially, elected politicians in Toronto blame the OMB and the councillors have less power than the staff, who are only supposed to be advising council. Somebody with a four-year university degree and a couple of years' work experience should not have the power to tie the hands of elected officials. Urban planning is not a science; opinions are highly subjective.

What is worse is that, even if planning staff write a report refusing rezoning and it does go to the OMB, if the developer makes a compromise offer at the last minute or during the hearing and the planner for the city is willing to accept that compromise, then the city itself has essentially lost the appeal, merely because of the opinion of one planner on staff, whom they had entrusted.

Adam Vaughan said this about the need for the province to change the rules:

"And, you know, the ability to say 'no': There's not a councillor around this horseshoe that would not like to assume that power and be held accountable for every brick that's placed in our neighbourhoods. Trust me; if I could snap my fingers and the only time I even think about running for a seat at Queen's Park is when it's thinking about reforming the planning process.

"Why no MPP has ever tackled that issue is beyond me. Every one of their constituents screams at us to get it done...."

If this bill is passed, it will answer what members of Toronto council have expressly asked for: to be held accountable.

The OMB micromanages planning matters and hears cases on a *de novo* basis, essentially ignoring council decisions and debates, starting from scratch, unlike a normal appeal in the courts, where judges look for errors. The same power that the OMB exercises does not apply to other matters that come before council.

Why does Ontario need the OMB? Why is there such distrust of our municipal politicians when it comes to planning, unlike other provinces or countries? No other province has a tribunal with the same powers and ability to interfere in planning matters as the OMB here in Ontario. Consider for a moment Paris, France. If Paris was here in Ontario, there would be 80-storey condos overlooking the Eiffel Tower, the Louvre and all the beautiful sites of Paris.

The cost and lack of fairness when fighting the OMB is a major problem. There is no point in appealing to the OMB unless you can afford a lawyer and planning experts. Residents do not profit if they win, lack financial resources and often have but a couple of months to prepare, unlike the developer, who has had several years and has everything all set up.

The OMB largely bases its rulings on so-called "expert" opinion, but there is no policing if the experts are not impartial, and no recordings or transcripts with

which to ensure that testimony is proper and is, in fact, fair, objective and nonpartisan. My experience is that experts for the city have no incentive to oppose development other than to be consistent with what their department supports. If anything, my experience is possibly one of “regulatory capture,” which is that the city planners tend to see their job as facilitating development rather than being sticklers for enforcing rules—and every rule and policy can be bent. I’m dealing with that, actually, this week.

Meanwhile, at the OMB—or before it gets that far—experts on behalf of developers never go against the financial interests of their clients. Their opinion on any grey area or interpretation always seems in favour of their client. Urban planners in private practice dare not bite the hand that feeds them, or they’ll soon be out of business.

Some experts, like architects and engineers, hired by the developer—more so than planners—stand to gain financially if the project is built. Can they really be impartial if they have potential financial interest in the outcome? What is worse is that when the city hires outside planners to do a study, after the study is passed by council the outside planners themselves hire themselves out to the private sector to undermine their own study, using their authorship to trump the city’s own staff.

If you are not sworn in as an expert, your testimony essentially counts for little or nothing. This is not true before an elected body, like this very committee. I certainly have the background to be sworn in as an expert, but unless a “party” chooses to have me testify, as a “participant” my opinions have counted for little or nothing at the OMB, despite the expertise and many hours of hard work I’ve put in.

We have to remember that planning is not scientific and is largely subjective. Planners are often wrong, and people forget that Jane Jacobs, perhaps the name most associated with good planning, was a journalist, not a planner, and was an opponent of orthodox planning opinions of her day.

Similarly, it was planners who wanted the Spadina Expressway built. It took political interference in the planning process by Bill Davis to stop it. The province has taken away its own powers to intervene like that again; it is only fitting that it give power back to other elected officials at the municipal level to ensure that there is some accountability to the electorate.

The OMB is an intimidating institution. The materials the OMB publishes to help citizens fail to adequately convey the obstacles and rules of the OMB, which are often applied in ways that discourage participation. Even if it is a minor matter between two neighbouring homeowners, a person with more funds to hire proper legal counsel and experts will prevail.

The OMB is not well understood by opponents, including neighbouring landowners. Some people do not appeal because they are not well informed and succumb to threats that the OMB will approve something even

bigger than what is before council, despite changes in 2006 to the OMB rules; or because people have not followed the rules to get on the record; or groups fail to incorporate—if you’re not incorporated, residents’ groups generally won’t be accepted.

Rules put in place have limited the rights of citizens more than the proponents—developers. There is no certainty that if you want to participate in the hearing, you will be granted “party” status, and could instead just be granted mere “participant” status, which confers few meaningful rights.

Then there is the issue of costs against people who appeal to the OMB. There is a private member’s bill, Bill 83, on SLAPPs—strategic lawsuits against public participation—but as far as I know, it does not cover the OMB. I know developers who have threatened people with costs if they appeal to the OMB or have threatened appellants with costs to prevent any court appeal, or section 43 appeal, if an OMB ruling favoured the developer.

My own experience is that the threat of costs or threats of getting something worse than the application that was before council have caused some people to stop fighting a rezoning. They just give up and not appeal and fight beyond council itself.

The Chair (Mrs. Laura Albanese): You have about 30 seconds left.

Mr. Brian Graff: Okay. I have myself had an application for costs against me.

Finally, good is not good enough. What we build today will be there for hundreds of years. Planning should be based on the precautionary principle that good planning practice is not enough, that we need to strive for the best rather than good enough. The OMB gives thumbs up or thumbs down, like Siskel and Ebert. The Eaton Centre took two decades to get built, with many redesigns, and it still is not right.

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If a law is rejected by a provincial or federal Legislature, it cannot be appealed to the courts. Yet, when it comes to real property rights and the desire to increase permitted height and density, we allow property owners to appeal refusals to pass a bylaw, or even a lack of speed in reaching a decision. I would prefer a bill which would only allow the right of appeal if a municipality passed a bylaw. Until we come up with something with an OMB, I am content to leave it to city council or a LAB to have the final word.

The Chair (Mrs. Laura Albanese): Well, thank you very much for your presentation before the committee today. We really appreciate your time and your patience.

MR. NICK ELSON

The Chair (Mrs. Laura Albanese): I will now ask for our next witness to come forward: Mr. Nick Elson. Good afternoon. Please make yourself comfortable. You will have up to 15 minutes for your presentation. Should there be any time remaining following the presentation, the questioning will be done on a rotation by caucus. In

this round, it would be the government side asking questions. You may begin at any point in time. Please state your name and your title. The floor is yours.

Mr. Nick Elson: Yes. My name is Nick Elson. I coordinate a network of people concerned about the OMB, based mainly in Toronto but with representation from various other municipalities in the province. Our perspective is province-wide, as we believe it needs to be.

Thank you for the opportunity to address the committee. I have circulated my remarks, which may be in front of you. I'm going to speak today in fairly broad strokes because, although my home base is the St. Lawrence Neighbourhood Association, where we have many issues that have provoked a lot of people's concern about the OMB, I'm speaking today in fairly broad strokes.

We urge this committee and the parties represented here to support the passage of Bill 20. Ideally, we seek the complete removal of the OMB as an appeals body in planning decisions in the province, but regard Bill 20 as a good first step towards that goal. To borrow from the title of Bill 2, it's time to return planning accountability to local municipalities.

It is our view that it is well past time for the city of Toronto to be removed from the jurisdiction of the Ontario Municipal Board. This is an unelected, unaccountable, politically-appointed body which has served no useful purpose since 1906, when it was required to adjudicate transportation issues between municipalities.

Those who speak in support of the OMB frequently refer to it as an objective, neutral body. This is a fiction, as illustrated by a reading of its history and its decisions. It has demonstrated repeatedly its willingness to make its own policies, normally the purview of elected representatives.

You will have heard, in the course of these proceedings, from organizations representing builders and developers indicating that the OMB is crucially important to their successful operation, and indeed it is. To quote from an earlier statement from the Building Industry and Land Development Association, "BILD continues to support the essential role the Ontario Municipal Board plays in the development approval process."

This committee must consider why there is considerably less enthusiasm for the OMB from municipalities and community groups. We suggest that this points to a fundamentally flawed system. Merely tinkering with the OMB is not the answer. The recent exercise carried out by the Ministry of Municipal Affairs and Housing on the land use planning and appeal system has made this clear, as did earlier modest changes made to the OMB in 2007. Even though, for reasons that are unclear, discussion of the OMB was specifically excluded from that recent consultation, the reports of those hearings make it quite clear that those participating brought it up anyway, and in mostly negative terms.

As long as the OMB continues to function, discussion of serious reform of planning issues is pointless.

We recognize that instances can be cited where the OMB has made decisions that work in favour of a

neighbourhood and against developers. Unfortunately, as the record indicates, the majority of OMB decisions favour developer proposals. Although it may well be the case, as many argue, that this is because developers are simply better resourced to hire lawyers and planners to appear on their behalf, this is only part of the story. An equally important factor is the manner in which the OMB operates. As a quasi-judicial body, the OMB has no sense of local conditions and circumstances. Members never visit sites affected by proposals and have no sense of, or interest in, how a proposed development might actually impact on a neighbourhood in real terms.

As a result, the OMB can approve buildings with heights and densities many times greater than those allowed in the official plan. As you've heard from many other speakers, once such a development is approved, it is regarded as a precedent, and the next proposal can point to that as the reason why it should receive even greater density or greater height.

We have had developments which have been negotiated between the city, the community and the developer, and the result has been a project that has reflected and responded appropriately to the community and its surroundings. Unfortunately, these tend to be exceptions. The more typical development is one which is sprung upon the community with little advance notice from developers who see themselves as having no obligation to consult or consider the context within which they want to build. Each unimaginative glass box is announced with fanfare more suited to the building of the Louvre than one more cheap condo.

We do not entirely fault the developers. While obviously we would like to see more sensitivity to location and community, their job is to make money and maximize the return on their investment. If asking for 40 more storeys than the zoning allows for helps to assure this, that is what they will do. Such is the confidence that they will get approval that it is now becoming increasingly common for the developer to open sales offices well before approval for the project is obtained.

Ironically, as members of this committee have no doubt heard, while the OMB was at one time seen as a cost-effective alternative to the regular court system, the cost of presenting a detailed argument with legal and expert representation is now prohibitively expensive for most community groups and even municipalities. It does seem that those with the largest pile of drawings, studies, legal documents and legal representation win the day at the OMB. Some wonder if the court system might in fact, in some cases, be even cheaper and certainly fairer.

It is interesting to note that one of the persistent themes in the reports on those recent Ministry of Municipal Affairs planning review hearings was the call for financial support for citizens wishing to appear at the OMB—clearly an attempt to level the playing field and make that body more accessible.

Developers, on the other hand, can simply incorporate their OMB hearing costs into the price of the condos they are selling. It is increasingly the case that, at the first hint

of questioning of a project proposal by the city or by community groups, developers move directly to the friendly arms of the OMB. A trip to the OMB is now simply a cost of doing business.

The result for downtown Toronto has been particularly damaging. The historical Old Town area is well on its way to becoming the proverbial forest of condo towers, and original historical buildings are being demolished. In effect, as you have heard from other speakers, developers have taken over city planning. Each time secondary plans are overturned at the OMB, the city loses more control over planning.

Another argument will raise the question “With the OMB gone, what will we replace it with?” We have described already the problems caused by the OMB. The argument that Ontario municipalities cannot resolve planning disputes at the local level through open consultation and discussion among those involved fails for the simple reason that, taken to its extreme, OMB-type bodies would logically determine all issues affecting our lives.

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We are realistic: We recognize that removal of the control of the OMB will not solve all the planning and land use problems facing the city of Toronto. While the city is perfectly capable of establishing an appropriate appeals body that will be accessible and able to consider all sides, there will of course be people who are unhappy with some of the decisions that body makes. This is inevitable. But to suggest that the largest city in Canada is unable to establish a suitable appeals body takes us back to the days of the Family Compact. More importantly, the removal of the OMB returns planning accountability to the city and elected politicians, where it belongs.

There will be arguments that Bill 20 should fail because it singles out Toronto. While, as noted earlier, we believe that the OMB should be eliminated completely, Bill 20 establishes an important precedent, and a simplistic argument to dismiss Bill 20 because it focuses on Toronto should not be taken seriously. One response to that objection, of course, would be to amend the bill to cover the entire province.

We note, as others have, that the OMB is unique in its scope and powers in Canada, and yet somehow other municipalities outside Toronto seem able to manage their own appeals on building and land use issues, and Toronto should be able to do the same.

Proponents of the OMB have a tendency to accuse anybody opposed to a development proposal of NIMBYism, as if this were somehow an unassailable counter-argument. But lazy accusations of NIMBYism obscure the fact that there are fundamental and legitimate reasons why citizens most impacted by development, who walk the streets of a neighbourhood, who shop at its businesses and meet in its parks, should raise questions about a proposal by a developer that shows no understanding of context or community. If citizens had no care or concern for the quality of life in their neighbourhood, there would be no objections to development. Developers generally

do not live in the areas they build in and hence do not live with the traffic-generating, sun-blocking and wind-tunnelling effects of their buildings.

The passage of Bill 20 would signal a shift in responsibility and direction for the city that will, in the long run, make the city a better place to live and help to stop its current decline as a livable city. With respect and thanks.

The Chair (Mrs. Laura Albanese): Thank you for your presentation. We have about four minutes left. To the government side: Ms. Hunter?

Ms. Mitzie Hunter: Thank you, Madam Chair.

Thank you very much for your presentation and the thoughtfulness you’ve put into providing a written submission. I wondered if you could talk about where disputes between the parties would be resolved. In your view, where would they best be addressed? Oftentimes when you have these types of tensions, there needs to be that neutral place where they have to be explored and talked about.

Mr. Nick Elson: Well, I have faith in the democratic and community process. I think that the movement which has begun towards a locally based appeals body in the city of Toronto is a model of how the resolution for this might very well play out. I know the spectre is raised that we’re all going to go off to court if the OMB is somehow done away with. I think that shows a fundamental lack of faith in the democratic process. Democracy is not pretty. People are often upset and unhappy about decisions which are arrived at, but the essential strength of the planning process, the essential process by which communities become vibrant, responsive and livable communities, is by decisions made at the local level, not by an abstract body with an adjudicating function that looks strictly at letters of what it perceives to be the law and not at what the situation is on the ground.

So my faith is in the establishment of local appeals bodies with expertise and representation from all parties affected, and a considerable amount of faith in people’s ability to arrive at agreement on solutions. At the moment, that process is undermined and skewed by the relative ease with which parties can go to the OMB and the OMB can make decisions on behalf of people who should be making the decisions themselves.

Ms. Mitzie Hunter: I just want to quote from the current city planner, Jennifer Keesmaat, who says, “Contrary to what some might believe, the city is not beholden to the OMB. The city can create its own appeal body,” which it’s in the process of doing now; it’s at committee.

Mr. Nick Elson: Yes.

Ms. Mitzie Hunter: There are costs involved in that as well, to set it up as well as for ongoing management.

She also goes on to say that only 4% of applicants end up at the OMB; a vast majority do not. And “we win”—she’s referring to the city winning—50% of those that do go forward for appeal.

Mr. Nick Elson: You know, I think those numbers deserve to be looked at quite closely, because different areas are impacted in different ways. A very high percentage of cases which are decided favourably for the

city are truly minor variance issues: small issues of fence height, deck-building and things like that. We're less concerned about that.

What we are concerned about, and perhaps this is included in the 4%, is those decisions which allow a 55-storey building in an area which is zoned for eight or 10. This is simply happening too infrequently. So you can't just take the numbers as a statement even for the whole city, never mind the province. Impacts differ significantly depending on where those developments are taking place. We have developments—

Interjection.

Mr. Nick Elson: Almost finished. We have developments in our area which would be much more appropriate at the 401 and the Don Valley Parkway than they are in the historical area of the city, and yet we are besieged in that area by developer applications, every single one of which requires a major variance from the zoning.

The Chair (Mrs. Laura Albanese): Thank you very much for appearing before our committee this afternoon. We appreciate your testimony.

Mr. Nick Elson: Thank you, Madam Chair.

TORONTO ARCHITECTURAL CONSERVANCY

The Chair (Mrs. Laura Albanese): I will now call on our next witness, the Architectural Conservancy of Ontario. Good afternoon.

Ms. Catherine Nasmith: Good afternoon.

The Chair (Mrs. Laura Albanese): Ms. Nasmith?

Ms. Catherine Nasmith: Yes. I just want to clarify: I'm here speaking on behalf of the Toronto branch of the Architectural Conservancy of Ontario, which is a branch local to the city of Toronto, without getting into the structure.

The Chair (Mrs. Laura Albanese): Okay. So, as you've heard, you will have up to 15 minutes for your presentation.

Ms. Catherine Nasmith: Thank you. I'm here as the president of the Toronto branch of the Architectural Conservancy of Ontario and as someone who has been active as a citizen and an architect in Toronto planning for 30 years. I am a registered member of the Ontario Association of Architects; in fact, I was given the Order of da Vinci for my work in the profession. I am well known for my expertise in traditional urban fabric.

The ACO celebrated its 80th anniversary last year.

I was involved in founding the Doors Open program in Toronto, Ontario, and Canada. With many others, I worked to strengthen the Ontario Heritage Act in 2005.

I'm a past chair of the Toronto Preservation Board and a past president of the Architectural Conservancy of Ontario. I am currently the Ontario representative on the Heritage Canada National Trust board, and was a founding member of the Main Streets Advocacy Group and the Friends of Fort York.

I make my living, such as it is, as the principal of a micro-architectural practice specializing in small-scale

building projects and heritage planning. I've completed several heritage conservation district plans in the city of Toronto.

My contributions to the field have been recognized with both the Queen's Jubilee and Diamond Jubilee medals. I am also a recipient of the Jane Jacobs Prize for my contributions in the field of heritage. In my spare time, I publish Built Heritage News, an e-newsletter with about 2,000 subscribers across Ontario and Canada.

Sorry for the long bio. All of that was to establish that I have hard-won expertise in how the OMB interferes with planning in Toronto and other parts of Ontario. Today I will focus on Toronto.

Heritage conservation is not just about the historic fabric—the built form—but about the way of life that that fabric supports. In spite of a strong Ontario Heritage Act, the Ontario planning system militates against heritage conservation in several ways.

OMB decisions contribute to problems but are not the only factor in the loss of heritage property and, with it, the loss of historic patterns of life. The OMB plays a significant role in the block-busting of neighbourhoods and the destruction of our traditional urban fabric. The previous witnesses spent a great deal of time outlining how that happens, so I won't repeat that.

Older Toronto is eminently livable and walkable, built at a density that supports streetcars. OMB-approved replacement buildings at completely inappropriate densities are overwhelming Toronto's transit and sidewalks and creating awful wind and shade conditions. Precedents have been set for the "new normal" of 40, 60, 80 storeys, even by OMB decisions that specifically claim that they are in no way setting a precedent, such as the one permitting 36-storey towers next to Fort York. I was very heavily involved in that OMB case.

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Small entrepreneurs and businesses are being forced off main streets, replaced by endless condos and larger corporate retail. Where will small businesses start? Already Toronto is seeing mass migration of our artists and creative entrepreneurs.

The OMB distorts Toronto's planning processes. A large proportion of the city's planning and legal resources go into OMB hearings, leaving the city with insufficient ability to actually plan its future, including the future of its heritage buildings. That creates a vicious circle of escalating densities wherein the city is continually trying to make sense of OMB decisions that completely alter plans on which it and its residents had spent years. No wonder the city of Toronto is begging the province to get off the merry-go-round.

OMB members may have limited expertise in planning, let alone expertise in Toronto or heritage matters, and rarely take advantage of the ability to have representation from the Conservation Review Board when an application involves heritage.

I'll just touch on some other factors that contribute to heritage losses. Other factors under provincial control

contribute to heritage losses, some of which are also factors in destructive OMB decisions.

The Places to Grow Act: According to the Places to Grow Act, heritage shall be conserved where feasible."This is very different language from the language of the PPS, which states straightforwardly that heritage "shall be conserved"—period. This change has led to heritage being given second place in redevelopment decisions which end up at the OMB.

Conflicting policies in PPS: The heritage "shall be conserved" clause in the PPS is routinely trumped by the PPS intensification policies, which at a minimum are creating out-of-scale development in historic areas and, at worst, obliterating huge tracts of Toronto.

OMB decisions lead to inflation of property taxes. MPAC makes its tax assessments based on recent planning decisions in an area, including those made at the OMB, not on the basis of existing zoning or buildings. Evaluations based on "highest and best use" are making it impossible for long-standing businesses, particularly ones renting premises, to survive. Often, "highest and best use" is speculative, based on OMB decisions in an area. You'll have read this last week the story of a mom-and-pop corner store at Roxborough and Yonge that was forced out of business by tax hikes that are based on potential for OMB-approved redevelopment.

My friend Margie Zeidler, the owner of 401 Richmond, Toronto's haven for artists and incubator businesses, spoke recently against the Mirvish-Gehry proposal, fearing that a new normal of 80 storeys would make it impossible for her to keep rents affordable. Her concern was about the impact of this constantly escalating development on tax bases.

Another point I want to raise here is cabinet failure to declare a provincial interest. This came up in the case of 21 Avenue Road and the impact on the views of Queen's Park, which I had a large hand in arguing for. Cabinet failure to declare a provincial interest in the 21 Avenue Road case contributed in a major way to the OMB-approved development that will have negative impacts on the views of Queen's Park from the ceremonial route along University Avenue. The failure to declare a provincial interest in the case left the Speaker to defend those views with no greater powers than any other citizen of Ontario. The ACO is still asking this government to pass a bill protecting that clearly provincially significant viewshed and cultural heritage landscape. I realize that's not the subject of this hearing, but I never miss a chance. The city of Toronto has subsequently put limited views protection into its official plan, but here's the rub: No matter what policy the city of Toronto might put in place, they are open to challenge at the Ontario Municipal Board. Sooner or later, the developer with the right lawyer and facing a pro-development OMB member will dismiss that protection.

Two reasons the committee should support Bill 20: Bill 20 is not a fix for all the issues that originate in provincial policy facing Toronto heritage, but freeing Toronto from the OMB would be a step in the right

direction. It would let the city of Toronto develop a complete local planning system tailored to its unique needs as Canada's largest city. To be respected locally, it would have to include expertise in planning, architecture and heritage law, and be organized to level the playing field between development and community interests.

And the most important reason: It's the overwhelming wish of the city of Toronto to manage its own affairs, as expressed through the council vote of 34 to 7. Thank you.

The Chair (Mrs. Laura Albanese): Thank you very much. We have about six minutes for questions. Mr. McDonell.

Mr. Jim McDonell: Okay. One issue that we have with the bill is that it doesn't propose a solution other than the courts if we abolish it. It removes the right for many groups to actually oppose developments because it can make it too expensive to actually bring it to court.

Ms. Catherine Nasmith: I would put to you that the city of Toronto is a grown-up place. If that became the case, the city of Toronto has the power to set up a body that works for the city of Toronto, which would address that issue and which could also address some of the other things that just are not working in the current model.

Mr. Jim McDonell: I also hear that some of the problems with the system today are that the zoning bylaws are out of place. I would think, as a former mayor, those types of things are critical. If we want to be determining our own future, we have to make sure our documents are up-to-date instead of letting, as you say, an unelected board make decisions based on, I guess, our inability to put a guiding document in place.

Ms. Catherine Nasmith: Well, plans being out of date: That has many sides to it. For example, the case at the Ontario Municipal Board around the Fort York heritage area: The plan was five years old. I mean, that was not out of date, but it was overturned. In the case of the zoning along a main street, maybe 10 years ago the city went through a really, really long and involved exercise looking at the downtown main streets, which are largely full of two-and-a-half-storey to three-storey coverage, mixed commercial and residential. Everybody agreed that was pretty good and that we wanted to keep that. So the zoning was set not to create incentives to destroy things that were already working.

The argument that is being made now is that if you haven't reviewed it or changed it in the last five years, i.e. up-zoned everything, the city is failing. I don't think that argument makes a lot of sense. Particularly for the city of Toronto, a five-year window for reviewing plans is just not realistic. The whole idea of planning is to plan for the future, for a long time out. That's a lot further than five years. So I'm not sure how out of date zoning can be.

Mr. Jim McDonell: I guess I might suggest that your official plans are not five years out; they're actually much farther out than that. But you have a chance to update them every five years. We've heard stories of—

Ms. Catherine Nasmith: It takes five years to do that.

Mr. Jim McDonell: —zoning amendments being more than 50 years old. I would think a lot has changed in 50 years.

I certainly think that studies should be done here. I question the OMB overruling documents. I shouldn't be lecturing, I guess. But we have to make sure documents are up-to-date so that they can make a fair decision.

Ms. Catherine Nasmith: To that point, I think if the city were to, every five years, go through and say, "Yes, that's okay; we like that, and we don't need to change that," that would probably satisfy it.

But one of the things I've observed is that if you call the planner on anything, they're at the OMB. So much of the resources and time of staff is spent at the OMB that there isn't actually time to do on-the-ground planning.

This week, for example, I attended a planning meeting on the future of College Street. The city is trying to put into place appropriate zoning for College Street. I think, when we go through that exercise, we would conclude that—and we're doing that in the face of a current OMB application. College Street is like this. It's the edge of the university. It has great dignity to it. We're sitting on it in this building. We're facing something like this that's at the OMB, and the city has fought really hard.

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The OMB process gets so far ahead of the realistic rhythm of planning that the city should be, could be and would like to be implementing that I would guess the results of the current planning exercise on College Street are going to say, "Well, the existing zoning is pretty good. We might need to change it on six or seven properties that are vacant," but the developer is going to go to the OMB and say it's busted: "There's no plan here, because it's five years old."

Mr. Jim McDonell: My understanding is that the OMB is trying to enforce provincial policy statements put together by this government, but, of course, they haven't given the opportunity for the cities, for instance, to be able to take those new policy statements and actually have a chance to incorporate them into their plans. That seems to be an issue.

Ms. Catherine Nasmith: Yes. Certainly a lot of municipalities are playing catch-up.

Mr. Jim McDonell: And so decisions are being made based on new policy statements where the plans haven't caught up. Any comment on that? If the official plans were actually reissued so that the city could decide how they will work with the new policy statements—

Ms. Catherine Nasmith: I think Guelph and Oakville are the two cities that I can think of that have done a really good job in getting ahead of that and figuring out, "That goes there; that goes there; we're keeping this." They've gone through that process and have got really good documents in place.

In the city of Toronto, there's just so much development pressure. Some of you in this room are old enough to remember the 45-foot bylaw that Crombie did. That wasn't really about saying it's going to be 45 feet; it was

just like, "Give us a break. We need time to plan." I think that's the situation the city of Toronto finds itself in.

The Chair (Mrs. Laura Albanese): Well, thank you, Ms. Nasmith, for appearing before our committee this afternoon.

Ms. Catherine Nasmith: You're welcome.

WEST QUEEN WEST BUSINESS IMPROVEMENT AREA

The Chair (Mrs. Laura Albanese): I will now call on the West—Queen West Business Improvement Area.

Mr. Rob Sysak: West Queen West, just to let you know. Thank you.

The Chair (Mrs. Laura Albanese): West Queen West. Correct?

Mr. Rob Sysak: Yes.

The Chair (Mrs. Laura Albanese): Mr. Sysak?

Mr. Rob Sysak: Correct. Thank you very much.

The Chair (Mrs. Laura Albanese): Good afternoon. So, as you've heard from the other participants, you will have up to 15 minutes for your presentation. Should there be time left over, that will leave some room for questioning.

Just state your name and your title, and you may begin anytime. Thank you.

Mr. Rob Sysak: I will, thank you. My name is Rob Sysak, and I am the executive director of the West Queen West Business Improvement Area, the 17th-most-stylish neighbourhood in the world.

Good afternoon, Madam Chair and committee members. I want to thank you for allowing me to speak here this afternoon. I'm not going to speak for long, because I'm quite sure that all the things that have needed to be said have probably been said, but I did and I do believe that it's very important to come today to support Mr. Marchese's bill, because I believe it's a very important bill, and I believe I'll be speaking from a perspective that could still be very helpful.

As I mentioned, I'm from the West Queen West Business Improvement Area. We run on Queen Street West from Bathurst to Gladstone Avenue, and we're known as the art and design district.

Simply put, a business improvement area is an organization of commercial and industrial property owners and tenants in a designated district who have joined together with the approval of the city to form a self-help program to help stimulate business in their area. BIAs started in the city of Toronto in 1970, and in fact are Toronto's largest export to the world. I think that's kind of awesome.

The city of Toronto is the fourth-largest city in North America: Mexico, New York, Los Angeles, then us. But what's amazing about that fact is that, even though Toronto is the fourth-largest city, it's still known as a city of neighbourhoods. The BIAs make up those neighbourhoods: all 77 of them, and all 47,000-plus members.

The incredible success of the BIA model actually results from the fact that local issues are best dealt with

by the parties that are knowledgeable about and involved in those local issues. With respect to BIAs, it's the BIA members, the residents, the councillors and the developers, not the OMB.

There are countless examples of how successfully it has worked, but since Councillor Layton will be speaking later, I thought I would use this example:

One of our West Queen West members, the Dark Horse café—it's a coffee shop—had applied for a patio. There was some opposition from the local residents. After three months of deferral at council, and on a Sunday, no less, the residents, the business owners and Councillor Michael Layton came to the West Queen West office. After two hours of discussions, a plan was put in place. This was able to happen because everybody involved in that discussion was knowledgeable about the issue and, more importantly, was accountable to everybody in that room.

I'm quite sure the term—and I've heard it already this afternoon—"accountability" has come up often. I think that's very important to pay attention to. The chair of the West Queen West is Phillip Carter. He's a quite well-respected architect. He designed the Lillian H. Smith Public Library—the one with the griffins; not far from here—at 239 College Street. He has been an architect for more than 40 years, so obviously he has dealt a lot with the OMB. Like many others who have spoken to you folks, he does say that the high cost and the lack of accountability at the OMB is an important reason for this bill to move forward. But he also believes that one of the best benefits from this bill is that it's going to bring in place—here's that word again—accountability where it belongs.

The city of Toronto has an official plan. They have hired expert planners, and these city planners have knowledge of the local issues. These planners go over a developer's plan to make sure it fits with the city's plan. But no matter the decision that the planning department makes, the local experts, the folks who know this stuff, there's always the option of the OMB. Since the OMB is not accountable to any of the parties involved, a lot of the time the decisions are unfair and, I'm not afraid to say, illogical. They don't make sense.

So by removing the OMB, you're going to place the responsibility and the accountability on the folks and where it should be: the city of Toronto and the councillors. Again, the planning department, the experts hired by the city, who know the local issues and who are part of the community, are the ones to make the decisions. So if you remove the OMB, now if a councillor wants to oppose the decision of his or her own experts, they have to come up and explain to their fellow councillors and constituents the reasons for that decision. So if there is no OMB, again, the city of Toronto and its councillors are responsible and accountable.

Actually, last week something was brought to the attention of the West Queen West: that the Alcohol and Gaming Commission of Ontario had informed the city officials that it would no longer enforce a litany of condi-

tions currently attached to liquor licences in Toronto. An AGCO spokesman said it would now be up to Toronto's municipal inspectors to police issues not directly covered under the Liquor Licence Act.

The province has passed on to the city a responsibility of quite an important matter, a matter that was previously enforced by the province. So you folks, the province, have confidence in the city's ability to manage its own affairs. West Queen West shares that confidence.

Again, local issues are best resolved by the parties that are both knowledgeable and involved in those local issues and again, most importantly, accountable to the parties there. The city of Toronto and its council are a very capable group. Give them the responsibility. Make them accountable.

Just before I finish, it was mentioned earlier that the studies are a little bit out of date. There is a West Queen West planning study covering from Simcoe Avenue all the way on Queen Street to Dufferin. But the problem is the lack of resources. I'm not necessarily blaming the province, but to get those plans updated at the city will take some resources.

Again, I say, put the responsibility on the city. Make them accountable, please. Thank you.

The Chair (Mrs. Laura Albanese): Thank you very much. We have about seven minutes for questions. Mr. Marchese?

Mr. Rosario Marchese: Thanks, Rob, for coming.

Mr. Rob Sysak: You're welcome, Mr. Marchese.

Mr. Rosario Marchese: I'm not sure there's anything we disagree on, so it's hard to ask questions of someone who agrees with you. But one of the things that I share with you and others who have spoken, particularly Nick Elson, is my belief in the city to have the responsibility and the power to be able to do its own planning. I know there's conflict. There's going to be plenty of it; there always is. It doesn't matter what structures you have. We know that there are people who may not like the decision a planner has made. We know there are people who don't like a decision that a city councillor may have made. We know that there are people, developers in particular, who don't like communities that oppose their development proposals. There's always going to be disagreement.

My belief, like Nick's, is that we deal with that. That's what city councillors, planners and communities do. It doesn't mean all the problems will go away, but at least we say we have faith in that process to iron out the problems. Do you disagree with any of that?

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Mr. Rob Sysak: No; I agree completely because, again, that word "accountability" matters, because when it is on a councillor and whatever method that they come up with to have an appeal process, you'll be able, whether you're a developer or the residents or the BIAs, to make sure the people who are accountable are accountable. They're going to have to explain to you. Now, no offence to the councillors; if the decision is not their way, they can kind of side with the residents or side with the developer, knowing it's going to go to the OMB. That

makes it easier for them. I think when they have the accountability and they're completely capable—I deal with them all the time. I think it's important to do that; yes.

Mr. Rosario Marchese: Let me cite another example of another problem that other members have talked about. Mr. McDonnell, in particular, raises the courts and talks about how it might be good to have the OMB because they're neutral, they're fair, blah blah, and they obey the law, blah blah. The example I often use, quite apart from Ottawa—there are so many other examples, but the one I like to use is the one in Kitchener-Waterloo, because the region created a plan and worked with the communities for 10 years to have an official plan that they all agree with and to intensify, which is consistent with the Places to Grow Act, a reference that Mr. McDonnell made. The point is that they said, "We want to put aside 88 hectares of land for the intensification of these lands and in line with Places to Grow." The developer came and said, "We don't like that plan," and they put forth 1,000 hectares of land, which talked about urban sprawl. That defies the Places to Grow Act. It is inconsistent with the Places to Grow Act that the OMB ruled in favour of the developer.

Here's an example where they did not obey the law, in effect. They, in fact, defied it. But people still refer to the OMB as a place where you go and you get neutrality and a fair opinion, and where good planning happens, blah blah. How do you feel about that as an example of how it might work against you?

Mr. Rob Sysak: As I mentioned earlier, Phillip Carter, the chair of the West Queen West BIA, has dealt with the OMB. I was polite with the terms he used. He said that some of the decisions from the OMB—and he did not insult the people involved at the OMB. They're professional, but again, they're not involved in the local issues. Sometimes, if it was between—not a great example—20 and 10, the OMB would decide 15, completely not fitting into the thing but just to make deals, sometimes going against what is not only best but what is legal in certain areas, for sure.

Mr. Rosario Marchese: The other point is that across Canada, we are the only province that has an OMB. As far as I know, those cases are not taken to the courts. There is something that the other provinces do in their planning that does not have people rushing to the courts. Is it automatic, as Mr. McDonnell says, that somehow my bill, even though my bill is enabling—it allows them to have a local appeals body—automatically means that where there is disagreement they would go to the courts? What do you think?

Mr. Rob Sysak: No, I disagree. Again, as I mentioned earlier, you folks—the province—have given that responsibility of that AGCO part to the city, so you trust them already. I don't think they're going to go to the courts. Also, Toronto is larger than a lot of the provinces. They are responsible folks. Give them that responsibility. Give them the accountability and they won't be going to the courts; I guarantee it.

Mr. Rosario Marchese: Thanks very much, Rob, for coming—oh, Michael has a question.

The Chair (Mrs. Laura Albanese): Mr. Prue.

Mr. Michael Prue: I have a couple of questions, yes. Your organization—have you ever had to take a developer or the city to the OMB?

Mr. Rob Sysak: The BIAs or ABCs of the city—associations, boards and committees—we are not allowed to oppose anything that the city does. So if the city is not taking someone to the OMB, our members cannot do that. But there are developments in our area where the OMB does come. Councillor Layton is part of it, and Councillor Ana Bailão. We've been to a lot of meetings where our members aren't necessarily on board. It's a difficult issue for the BIA. We can't oppose an OMB thing if the city is not against it.

Mr. Michael Prue: Okay. But if the city is against it, have you been there, to the OMB?

Mr. Rob Sysak: No, but I've heard from Phil Carter and a few other folks.

Mr. Michael Prue: That they have?

Mr. Rob Sysak: Yes.

Mr. Michael Prue: I just wonder: Does your organization ever have to worry about the costs? I know you haven't gone. But we had a group in here last week. They had an approximately \$1,000-a-year budget for their local homeowners' association. The entire \$1,000 budget, every single penny, went to insurance for them should they have to go to the OMB. They virtually have no money to spend other than insurance.

Mr. Rob Sysak: Again, Phil Carter and Paul Oberst have mentioned that. They are heritage architects, and sometimes they've made a living in years just going to the OMB to speak heritage, because it costs that much. The fear is that, if you're a residents' group that is coming up against something or a business group that's outside of the BIA, you don't have the resources to defend your position, for sure.

Mr. Michael Prue: Okay. I thank you.

The Chair (Mrs. Laura Albanese): Well, thank you very much for your testimony this afternoon.

Mr. Rob Sysak: Thank you.

DR. AARON MOORE

The Chair (Mrs. Laura Albanese): Our next presenter will be joining us via conference call. We'll be talking to Mr. Aaron Moore. Good afternoon.

Dr. Aaron Moore: Good afternoon.

The Chair (Mrs. Laura Albanese): You can be heard by all the committee members. You will have up to 15 minutes for your presentation. Should there be any time left over, that will be used for questioning by the committee members.

You may begin any time you feel ready.

Dr. Aaron Moore: Okay. I'll begin now, then. I have something prepared, but before I delve into that, I just want to address something one of the previous presenters mentioned. I've only heard a bit of the conversation, but,

in fact, every province except British Columbia has some form of appeal body. Where the Ontario Municipal Board is distinct is in how it makes its decisions.

In most jurisdictions, the decisions of the appeals bodies are based on the existing official plan and whether, in fact, the zoning bylaw adheres to the official plan, whereas obviously that's not the case in Ontario. I just want to stress that fact, that they do in fact exist elsewhere.

Anyway, now I'll come back to what was my initial intention in presenting today. I'd first like to thank the committee for allowing me to speak today and for accommodating me despite my obvious locational issues.

Just as background on myself: I'm an assistant professor in the political science department at the University of Winnipeg and a fellow at the Institute on Municipal Finance and Governance at the University of Toronto. I am also the author of the book *Planning Politics in Toronto: The Ontario Municipal Board and Urban Development*, which was published by the University of Toronto Press last year.

My submission today is based on the research I conducted for that book, as well as later research I have conducted, as well as numerous discussions I have had with various stakeholders in the politics of urban development in Toronto. With regard to Bill 20, I am limiting my remarks to provisions that would strip the OMB of powers over planning in Toronto; I'm not talking about other things it would be responsible for.

I believe there are two separate issues at play in Toronto with regard to planning politics. The first issue or problem revolves around the perception that the OMB is biased toward developers or that it severely restricts the meaningful participation of residents in OMB hearings. This issue obviously applies across the province; it is not exclusive to Toronto.

The second issue pertains specifically to the opaque nature of the planning practices in the city of Toronto and the frustration this causes among residents and even some developers. While this issue is often attributed to the OMB, I believe that it is an issue that is particular to the way the city of Toronto conducts planning.

I will address both of these issues, but first I would like to state that, as it's currently written, I do not think Bill 20 addresses either of them. First, the bill removes Toronto from the jurisdiction of the OMB. However, it does not address any of the problems associated with accessibility for residents residing in municipalities that will continue to fall under its jurisdiction. Second, the issue of lack of transparency and the seeming randomness of planning in the city of Toronto is a product of the current planning practices in the city and the prevalence of antiquated zoning bylaws. Removing the city of Toronto from the jurisdiction of the OMB will not address these issues.

I'll begin by addressing the issue of lack of accessibility for residents at the OMB and the perception of bias. This is based on my research of appeals relating to major zoning and official plan amendments from 2000 to 2006, which was what my book focused on.

I can attest that most appeals to the OMB were procedural appeals from developers due to the city's failure to make decisions in the prescribed time. The vast majority of those were settled before an OMB hearing took place, so the OMB didn't actually render decisions on them. It is my understanding, although I don't have all the numbers related to this, that since the province extended the period of time municipalities have to make a decision, the number of such appeals has declined.

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Of the cases that actually resulted in OMB hearings during my period of study, where city council supported city planners' rejection of a proposed amendment, the city won about half of the time. So, so long as council is actually supporting a decision of city planners to reject a proposal, they actually did reasonably well at the OMB. The only indication of a bias in favour of developers was when city council chose to ignore recommendations of city planners and refused an application for an amendment, often on behalf of residents opposed to the development. Those cases are actually fairly rare. They counted for less than 10% of the appeals that I looked at during my study. So I found no substantive evidence that the OMB was biased in favour of developers.

What I did find was that the board based the majority of its decisions on the testimony of planning experts. It is this focus on planning expertise that limits residents from being effective at the board. So residents are at a disadvantage at the board relative to municipalities and developers because they lack the resources to hire the expertise necessary to win an OMB decision.

Now, while removing the city of Toronto from the jurisdiction of the board may alleviate Toronto residents' sense of marginalization at board hearings, doing so obviously does not address this issue as it pertains to the rest of Ontario municipalities. This lack of accessibility, in my mind, is a product of limited direction from the province to the board on how it should render decisions and consider testimony from non-experts. The board has created its own common law system, basically, of what it considers to be best planning practices. If the province wants to address the lack of accessibility, it needs to direct the OMB on how to address the interests of residents in making its decisions. I don't think this, though, does that.

Just as an aside, it's really unclear to me, if the city were to create its own appeals body, how it would make decisions different from the OMB. I think that's something that really needs to be clarified when people talk about that, because if it's making similar decisions based on planning rationale and it's not clear what the planning rationale is, it could have the same outcome as OMB hearings. So the second issue is the lack of transparency in Toronto planning.

I believe the OMB acts as a useful scapegoat, particularly for local politicians, for what is otherwise a broken and stressed planning regime in Toronto. As I'm sure you're all aware, because you are in Toronto, Toronto is currently undergoing an unprecedented boom in

development led by the construction of condominiums. This has been taking place since at least the mid- to late 1990s. So, really, the boom began around the time of amalgamation. Aside from the introduction of a new official plan that really didn't come into force until 2007, Toronto has not kept up its zoning bylaws with the pace of new development. So in some parts of the city, you actually have zoning bylaws that are over 60 years old. As a result, the city is making zoning amendments on a site-by-site basis rather than implementing wholesale changes to existing zoning policy. I would say section 37 only further adds to this approach and provides an incentive to maintain the status quo, which is antiquated zoning bylaws and the necessity of making site-specific amendments.

At the same time, we have the new wave of development which is often encroaching on established neighbourhoods. Not surprisingly, residents in these neighbourhoods, which are armed mostly with just outdated zoning bylaws, are becoming frustrated with a process that seemingly lacks transparency and opportunity for real citizen input. They are, I believe, being left out of the loop even though city planning and councillors, to an extent, are trying to create more consultation with residents. But they are being left out of the loop precisely because they don't know what type of development will be permitted where in the city, because there are no laws on the books right now that they can rely on.

Now, since the OMB has been responsible for making final decisions on some of the more controversial developments, much of the residents' frustration is directed at the board. I think sometimes local elected officials don't really do much to dissuade that. In practice, though, the OMB has little to do with the pace of construction in the city and with the city's inability or unwillingness to implement a more transparent system of planning.

So I believe the purpose of the bill—and I'm not the one who wrote it, so I can't attest to this—is to address residents' frustration. I think this is a commendable thing to do. However, I also believe that residents will quickly learn that this frustration would remain if the OMB were to be removed in Toronto.

The OMB, I would say at this point in time, is not a particularly useful venue for many residents to successfully oppose development. It is one of the few venues that actually exposes the current planning practices in Toronto. At the very least, I would say that it acts as a check on council's tendency to rubber-stamp city planning recommendations, because the vast majority of decisions on planning are council just okaying whatever city planning has decided.

I'll just wrap things up with a few final thoughts. There is a potential, I think, for a made-in-Toronto solution to many of these issues, and it's in the works right now. If you go to the city's website, it's called Reset TO, and it's the introduction of the permit system in the city. Assuming there are enough resources and political will to implement it, it should in the long run begin to address these issues with planning in Toronto. If and when the

system is largely in place, and the city demonstrates that it has moved away from the practices of ad hoc planning, which the permit system would hopefully achieve—and I think this is actually something that city planners have been committed to do for some time—I think we can return to questions of the OMB's role in Toronto.

However, given the current planning regime in the city, which is ad hoc, I believe removing the OMB could actually, despite what the previous speakers are saying, lead to increases of court cases, if there is no appeals body. I can attest to a number of jurisdictions in the US that have no appeals body—Illinois particularly is a good example—where they have court cases that can last for decades. Outside of British Columbia, which is an unusual case in terms of planning, most provinces at least have something in place to act as a barrier between courts.

My fear is that without any barrier whatsoever, and particularly given how the city makes decisions, what developers could do in Toronto is say, "Well, each time the city makes a site amendment, that's precedent-setting, and if they're making decisions that support one developer's proposal and not ours and it's similar enough," then they can challenge that in the courts as suggesting that the city is actually being biased in favour of other developers. That's my potential fear. I don't think that removing the OMB is necessarily—I don't think it will make things better, and there is a potential that it could actually make things worse, at least in the short or mid-run.

Again, in the future, if we see introduction of the permit system in Toronto being effective and the reduction in the number of site-specific amendments, I think that we could revisit the question of the need for the OMB in the city. But right now, I don't think that's something we should do. That's my comments today.

The Chair (Mrs. Laura Albanese): Thank you for that presentation.

We do have about three minutes left for questioning, and this round will go to the government side. Ms. Wong?

Ms. Soo Wong: Thank you, Dr. Moore. Thank you for participating in this conversation about Bill 20. We have heard previous witnesses share with the committee about the zoning bylaws in the city of Toronto as being a problem. We also heard this morning that the committee of adjustment needs to be improved. In your expert opinion, Dr. Moore, can you share with the committee which is more of a priority, the zoning bylaw or the committee of adjustment?

Dr. Aaron Moore: I honestly don't know quite as much about the committee of adjustment. I know it to an extent. My understanding is that it will matter mostly for the frustration that people have when it comes to issues of small or minor zoning, in theory. I think the bigger issue in what's causing the most frustration has to do more with the issues of rezoning amendments, so that I think adjusting the zoning bylaws in Toronto would matter more.

Ms. Soo Wong: Because of the time, can you just answer yes or no: Do you believe that there should be an independent appeal process to deal with planning to support the city of Toronto?

Dr. Aaron Moore: Yes.

Ms. Soo Wong: Okay. Thank you.

The Chair (Mrs. Laura Albanese): Any further questions from the government side? Ms. Hunter.

Ms. Mitzie Hunter: Thank you so much for your presentation. Really, in listening to you, looking at both sides of the issues, I wonder if in our last remaining moments you could talk about strengthening the voice of those residents, because I think that you've acknowledged that while there might be a good intention in putting forward Bill 20, it might not necessarily resolve that sense of frustration that local residents have in terms of the planning process.

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Dr. Aaron Moore: Yes, it's a very difficult question to answer, and it's something I've actually discussed with a number of individuals. I don't have a perfect solution to it.

The one thing would be to consider looking at changes to how the OMB makes decisions. As I mentioned, in other jurisdictions, once an official plan is in place, you have bodies that will actually use the official plan as the litmus test for whether a zoning bylaw can be passed. That would certainly simplify things, and it would make it easier for residents to use the existing official plan to argue from.

Other than that, I think it's really the province's responsibility to sit down and determine what they want the OMB to do and how it should make its decisions. I'm not sure that the province has really done that. Obviously, the OMB has been around for a long time, so maybe that's a dialogue that needs to begin now.

Ms. Mitzie Hunter: Thank you.

The Chair (Mrs. Laura Albanese): Thank you very much for your time this afternoon. The time at our disposal has unfortunately expired.

Dr. Aaron Moore: Okay. Thank you.

MR. MIKE LAYTON

The Chair (Mrs. Laura Albanese): We'll now call on our next witness: Councillor Mike Layton. Welcome to our committee. Make yourself comfortable. As you will have heard from previous presenters, you will have up to 15 minutes for your presentation. Should there be any time left over, there will be a round of questioning that will come, in this case, from the Conservatives. You may begin.

Mr. Mike Layton: Sure. Thank you very much. I promise to be as brief and as to the point as possible. I realize I'm the final deputant, holding you all away from your constituencies and your families for what I hope will be a long and exciting weekend for all of you.

Madam Chair and committee members, thank you for the opportunity to speak to you here today. My name is

Mike Layton. I'm a Toronto city councillor for ward 19, Trinity-Spadina. For those of you who don't know, I represent west of Bathurst to Dovercourt, which is where a lot of those cranes are that you see in the sky, that are employing all those many people and creating all that great housing. I also hold a graduate degree in urban planning from York University.

I represent a downtown neighbourhood that is under significant development pressure. My constituency includes neighbourhoods like King Street West, Liberty Village and Fort York. Large parts of these neighbourhoods were once industrial parks and are now home to tens of thousands of people. Families, children and seniors are building homes there.

While the Places to Grow Act and the provincial policy statement correctly encourage intensification along key transportation routes, the densities that are being experienced in some neighbourhoods have choked local transportation lines and strained other public amenities like parks, community centres and schools.

I am here today to ask for your assistance: your assistance to make sure we can continue to build a vibrant city; your assistance to make sure we can continue to build a livable city. I am here to ask for your assistance to make sure the Ontario Municipal Board does not continue to overturn city decisions on planning matters and instead allows a greater local voice in planning decisions.

I would like to make three points to you today: first, that the current OMB regime is forcing municipalities to rush into making ill-advised decisions; second, that the OMB is not a democratic institution—it is not a publicly accessible body, because of the expertise and resources required to effectively participate in the proceedings; and finally, that the OMB discourages good planning and instead encourages a patchwork approach to what is a delicate planning process.

The OMB is more than a planning appeals body; it is a dagger hanging over the heads of every city community, every city planner, every city politician and every resident of all of our municipalities. City planners are constantly rationalizing approvals at community meetings, at council meetings, in phone calls with constituents and in planning reports because of the threat of an OMB decision on the outcome. We are approving projects in part because we have the OMB hanging over our heads.

Let me make this point as clear as possible: City planners routinely make decisions and grant approvals to projects not because they are good planning, not because they are supported by the local community or the local councillor, but in part because of the likelihood of a positive board decision in favour of the applicant and against the interests of the community and the municipality.

Such an approach often results in bad planning. A city planner should not feel pressured to recommend the approval of a project or an aspect of a project because it would be overturned at the board. As long as cities are in

conformity with provincial policies, a city's underlying bylaws and guidelines should be at the heart of the planning decisions being made.

In addition, often the requirement to respond to a development application within a prescribed timeline—particularly in the case of downtown Toronto, with the number of applications that we have—is unrealistic; and the threat of a board hearing limits our municipality's ability to properly study and respond to zoning applications.

I often make the comparison between MPs, MPPs and city councillors that we, in fact, have to knock on fewer doors because we go to more community meetings, and that's because we're in our constituency. But I've got to tell you, when I have 15 or 20 development applications open for buildings larger than 15 storeys that I'd like to have more than one public meeting on, it makes booking those meetings rather difficult. So it's not just the number of planners we have in the city; it's the ability for me, as the local elected official, to go out, be at those meetings and listen to my constituents.

Perhaps it's an unfair comparison. You guys are brought far away from your families and your homes, and we respect that and appreciate your effort.

Altogether, city planners are put in the position of making recommendations for an application that take into account a likely position of the board, rather than focusing squarely on what is in the best interest of the community.

I would like to clarify a point that was brought up by a member of the committee regarding the chief planner's remarks. We got this directly from the chief planner in an email recently because of some of our concerns on how the remarks were being interpreted. When we talk about 4% of decisions going to the board, that's within the reality that we negotiate and deal with a lot of applications before the board so that we don't have decisions at the board. We heard from the previous speaker that often we don't meet the required timeline and we settle before the board. Well, that doesn't necessarily mean we settled for what was the best planning. It often means we're settling because we're settling on something that could be worse. The idea that we have a 50-50 win percentage at the board is actually in fact because, out of fear that we could get a worse decision at the board, we negotiate them before it goes to the court.

To my second point, on the institution, that the OMB is inherently undemocratic: While members of the public are not barred from participating at the board, the hearings themselves are far from accessible and fair. If a member of the public wishes to participate effectively, they need to pay a lawyer and an independent planner to represent them. We have had many examples of instances where applicants with deep pockets have outgunned community groups at the OMB by hiring highly paid experts to represent their position, while the community was unable to build a suitable case due to their resources. Coincidentally, later this summer I will be attending a fundraiser, as their auctioneer, for a neighbourhood asso-

ciation whose members went into personal debt to fund a fight at the OMB. Residents, through no fault of their own, are on the hook for legal expenses that they have no control over.

Think about it. Your neighbour decides to build a small apartment building on his lot, but it will block your windows. He applies for a minor variance, which is rejected. He appeals to the board. All of a sudden, you are required to pay thousands of dollars for a lawyer and a planner to represent you at the board, if you want to have any chance of defending yourself and your property. You are entirely out of pocket, at no fault of your own.

Accessibility and fairness are at the heart of our democratic institutions, but unfortunately, this one has failed us.

On to my final point, on how the OMB encourages a patchwork approach to planning: Cities put enormous amounts of resources into official plans, zoning bylaws and various planning guidelines, but once an application is made to the board, the weight and importance of many of these rules are lost.

Board members have an enormous amount of material they are required to review to reach a certain decision. No doubt they are presented with conflicting information, facts and theories as evidence from various municipalities and applicants on a regular basis. Think about trying to apply the same rules in one rural municipality as for a downtown area of 20,000 to 30,000 people. Some municipalities might use one set of bylaws that suit their unique circumstances and others might use a conflicting set. Who's right? Is it up to the board member or the municipality who wrote them? The board member might not share the local understanding and context in which the decisions are made.

A good example of this is the case of 1030 King Street West, a residential condominium with retail at grade. A crucial question around parking was put to the board member, a concern shared by all sides—the community, the developer and the city. The city solicitor argued that the city's standard for residential parking and visitor parking should apply. This was supported by the community. The applicant argued for a lower set of standards.

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Instead of going with one set of standards or the other, the board member invented a completely new set of standards for residential and visitor parking—in fact, the same total amount of parking but a different distribution of the two—but that's really critical when you're actually trying to figure out how to use the space.

Since that board decision, the city and the applicant have worked for a year to try to fix the results of the decision that were brought about by the board. We're actually right now close to avoiding yet another board hearing from changing back some of the mix in parking.

I'd like to add a fourth point that was brought up, that has to do with our zoning bylaws as a tool for growth. It has not yet been recognized that Toronto city council, in fact, has lots of planning tools at our disposal. We have avenue studies that we go through and regularly do when

we have areas and streets that are under particular pressures for development. They follow the principles of the Places to Grow Act and what the provincial policy statements say. We want development along those routes, and we develop plans for midrise buildings so that they have appropriate transition to the neighbourhood.

These are consistent with the provincial policy statement, they've been put into effect by the city of Toronto and we judge applications accordingly, but what developers do is they rarely come in with anything but the maximum. In fact, what they normally come up with is above the maximum. This is why it's really important that we keep a set of bylaws that don't just in fact hand it all over to developers, because then, all of a sudden, what is a significant increase they might turn into a minor variance. Then, all of a sudden, we don't have some of the same checks and balances.

As I've tried to outline in my statement today, I believe that, in order to have a fair system that leads to good planning decisions, we need a planning appeals body that is accessible to the public, that respects municipalities and that has better understanding of the local circumstances surrounding planning applications. I'm not here to advocate whether or not the final decision rests on elected officials or another appeal body, but I think that we do need some change, and we need to open up the dialogue for this change. Thank you very much.

The Chair (Mrs. Laura Albanese): Well, thank you very much for your presentation. Mr. McDonnell, we have about four minutes for questions.

Mr. Jim McDonnell: Okay. Thank you. I think that one issue we've heard throughout today is a couple of things; one is that the province hasn't given clear direction to the OMB, so we're seeing decisions that are not following local plans.

I would contend that the city—in this case, the city of Toronto—does have control over planning, and that's through their official plan and zoning bylaw. It's essential that those are—whether it be through avenue plans, as you were saying—brought up to the wishes of the city and that they also follow the provincial policy statements. Then the OMB should only be able to interpret development based on those plans. But there needs to be more work on that. Would that be where you're looking to go, or what would you think of those?

Mr. Mike Layton: I think that, at a minimum, that might address some of the concerns that I have with the board; that is, the local circumstances and how much control the board has over overturning what the municipal direction has been.

I think that's the right way to do planning: You have experts advise the elected officials about how things should go, consistent with what the larger policy positions are, like the Places to Grow Act—again, a good piece of legislation in a lot of respects. This idea that you put density on larger transportation nodes is, I think, consistent with good planning, and I don't think any politician at the municipal level would disagree. But when you have them so offside in a lot of their decisions, I think that's a mistake. If the provincial government can

give more direction to them, I think that's a first step, but then we're still not reaching this idea—it's not really an accessible platform to have this discussion, and it really does turn its head away from what the municipality wishes.

Mr. Jim McDonnell: Just a quick comment on that: That's where the direction comes in the province. I think we heard that they haven't been doing it, but the accessibility is key.

Mrs. Gila Martow: The member from Vaughan lives in the same city as myself. I live in Vaughan as well. It has been suggested in the local papers many times that there is a certain amount of game-playing and maybe—I don't want to use the word “collusion.” But it has definitely been suggested a few times that a developer will go to a councillor and say, “I know it's zoned 10 storeys; I want to build 14 storeys,” and somehow all of a sudden they're asking for 20 storeys, figuring that the OMB usually just sort of compromises between. Then the councillor can say to the residents, “You see? I talked him down to 15 storeys. He wanted 20 storeys.” Do you get that sense in Toronto, which we keep hearing about in the local papers up north?

Mr. Mike Layton: All the time. I had a developer walk into my office with an eight-storey building. By the time we got to the community meeting, it was a 10-storey building. I'm pleased to say it's back down to around eight, but that was the little game we played, and all the while folks were saying, “Well, we've got to get a decision now, councillor, or else once the end of the year hits, then we have a four-month break and we're going to probably be off to the board.” That's putting us under intense pressure to host additional public meetings in a very short window of time.

But that is not infrequent that—we see it first-hand. The public isn't fooled by it anymore. They see it and they say, “Well, they came in with this because they really want this.”

Mrs. Gila Martow: Right. The city of Vaughan recently stated—and forgive me if my numbers are off, but I believe they predicted \$150,000 to take something to the OMB, so they felt they'd rather just give in. They say that the residents should actually be happy because they're saving them \$150,000.

What is usually the nature—say just a condo development that's zoned for 10 storeys. They're asking for 20, maybe it will be settled for 15—who knows—but what would be the cost? Because it does affect everybody. Even if it's the city's budget, the taxpayers are paying. I think that's why the taxpayers are frustrated: They're paying both sides. They're paying the city to defend the city's position, and then if they want to present their side of it, they have to hire lawyers. So they're paying both sets of lawyers.

Mr. Mike Layton: Yes. I should know this number because our mayor often gets up and votes against every decision to go to the Ontario Municipal Board, despite what the impact might be, because of the additional cost. It often depends on whether or not city staff are supportive of it, but the elected officials aren't or the community

isn't—but it can range up there for anything from a minor variance, so the \$10,000, \$20,000 range to pay our own lawyers; and then, if we have to hire outside planners and lawyers, depending on how complicated the case is, it's upwards of \$100,000.

We have sometimes gotten better negotiating positions because of the cost to the developer, where the developer has just said, “This isn't worth the”—because they have to hire people also to defend them. Normally, their consultants are even more highly paid than our city staff. They end up saying, “Well, you know what? A \$500,000 board hearing is worth about two storeys, so we'll give you them.”

Mrs. Gila Martow: Right—

The Chair (Mrs. Laura Albanese): Thank you. I'm sorry, but the time—

Mrs. Gila Martow: Yes, I know we're past the time.

The Chair (Mrs. Laura Albanese): Yes, the time has expired. Thank you, Councillor Layton.

The committee is adjourned to Thursday, May 1, 2014, for clause-by-clause consideration of Bill 20. Thank you very much to all the members. Have a great long weekend.

The committee adjourned at 1547.

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