Bill 20 - Brian Graff Presentation

Standing Committee on Finance & Economic Affairs
April 17, 2014

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Good Afternoon. My name is Brian Graff, and I am a resident of The Beach area of Toronto. Toronto has been my home for all my life.

First, my background. I have a Bachelor of Environmental Studies, a Bachelor of Architecture and an MBA in Real Property and Finance. I have worked for architects, and more recently in commercial real estate, including 6 years working for Paul Reichmann. I am not licensed as an architect.

Since 2011, I have been deeply involved in local planning matters, but from the community side, as part of several local groups, including the Beach Residents Association of Toronto (BRAT). In the last 3 years, I have filed OMB appeals, participated in hearings, and helped other people or groups regarding many 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 sceptical about this bill, in the 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 by the separate City of Toronto Act. Toronto is a single tier government, though rezonings are voted on twice – by a local Community Council, 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, 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 on.

Abolishing the OMB all across the province would be reckless. Smaller communities may have planning staff and elected officials who need additional oversight or review.

The recent review of planning matters the provincial government has undertaken does not touch on the OMB itself – so no major reforms of the OMB will occur in the near future. So if no province wide change will deal with the OMB, then please lets just do something for Toronto alone.

If Toronto is removed from the OMB's jurisdiction, and it works well, then other cities like Ottawa or Hamilton could be allowed to follow, then Peel and York Region, and so on. It may be that as we move down towards smaller municipalities, fewer of the OMBs 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 and repeal it, and to 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 only to Committee of Adjustment matters.

I am confident that Toronto would set up a full LAB if Toronto were removed from the OMB, and this in itself would provide a means of testing different rules or reforms could eventually be applied to the OMB itself.

As-of-right zoning is too easily changed

I have heard a number quoted that only 4% of applications go to the OMB – in other words, over 96% of applications result in an 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 density or height – like Shoppers Drug Mart or LCBO stores on mainstreets where those retailers don't want condos above.

So nearly every major project requires a lengthy and complicated rezoning process that typically takes longer than the 4 or 6 months allowed in the Planning Act. This means that developers can go straight to the OMB before the City's planning department has finished a review, and Council doesn't have a say because the OMB has "taken carriage".

The fact that "as-of-right" zoning is rarely enforced in turn means that, when the City of Toronto does a planning study, the City's planners and politicians alike are afraid to rezone land. The City would rather wait for the rezoning applications to come in on a property-by-property basis, rather

than rezoning larger areas all at one to implement recommendations. No matter what maximum height and density is determined to be perfect, inevitably developers will try for even more, by 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 is no way for the city to ever be certain that any “maximum” is permanent.

Now if a homeowner wanted to double or triple density, they would be refused, while on most other property types, the city planners have no problem with such large increases. It is a double standard.

So the current system means that some areas are “under-zoned” for height and density, while others are zoned appropriately – but there is no clarity. Residents assume that current zoning is can and should be enforced, developers always assume that land is under-zoned.

A key problem with the OMB is that it hears each case “de novo” and with no direct reference to other OMB cases, and there is no consistency between the OMB’s own decisions. A developer will 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 being an “exception to the rule”, and it was not intended to be a precedent.

Removing Toronto from the OMB would let the City pass the 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 appeals to the OMB.

Accountability

Politicians in Toronto say that they would prefer to vote against a development, but their “hands are tied” because of the OMB - they can “pass the buck”.

But what is never mentioned is that the current process also gives too much power to unelected planners on the City's staff. If staff recommend approval of a project in their final report, the elected politicians are caught in the middle.

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

City Councillor Janet Davis described this 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.

So essentially elected politicians in Toronto blame the OMB, and the councillors have less power than the staff that are only supposed to be "advising" Council. Somebody with a 4 year university degree and a couple of years of work experience should not have that power to tie the hands of elected officials – urban planning is not a science, and opinions are highly subjective.

What is worse is that even if Planning Staff write a report to refuse a rezoning and it goes 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 has essentially lost its appeal, merely because of the "opinion" of that one planner on staff, whom they 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 Queens Park is when its 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....

So, this Bill, if passed, this 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 and starting from scratch, unlike a normal appeal in the courts where the Judges look for errors. The same power the OMB exercises does not apply to other matters before Council.

But why does Ontario need the OMB? Why is there such distrust of our municipal politicians when it comes to planning, unlike in other provinces or countries?

No other province has a tribunal with the same powers and ability to interfere in planning matters as the OMB has here in Ontario. Consider for a moment Paris, France. If Paris was in Ontario, there would be 80 storey condos overlooking the Eiffel Tower, the Louvre and other landmarks.

The cost and lack of fairness when fighting development at the OMBis a major problem

No point in applying to 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.

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 use to ensure that the testimony is proper and is in fact "fair, objective and non-partisan". 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 one of possible "regulatory capture" – which is that city planners tend to see their job as facilitating development, rather than being sticklers for enforcing rules, and every rule or policy can be bent.

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 is always in their client's favour. Urban planners in private practice dare not "bite the hand that feeds them", or they will son 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 a potential financial interest in the outcome.

What is worse is when the city hires outside planners to do a study, then after the study was passed by Council, the outside planners hired themselves out to the private sector to undermine their own study, using their authorship to trump the city's staff's opinions.

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 mere "participant" my opinions have counted for little or nothing at the OMB, despite my expertise and many hours of hard work.

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, and an opponent of the 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 the its own powers to intervene like this again, it is only fitting that it give power back to other elected representatives 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 council and experts will prevail.

The OMB is not well understood by potential 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 (changes to the OMB in 2006 curtailed this), or because they have not followed the rules to get on the record at the public meeting, or groups fail to incorporate. Rules put in place have limited rights of citizens more than the proponents (developer), and there is no certainty that if you want to participate in a hearing that you will be granted "party status", and instead given mere "participant status" which does confers few meaningful rights.

And then there is the issue of costs against people who appeal to the OMB. There is a private members Bill 83, on SLAPPs – Strategic Lawsuits Against Public Participation, and it does not cover OMB matters if I am correct.

I know of 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) of an OMB ruling which favoured the developer.

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

I myself have had a developer apply for costs against me, though I will skip the details partly due to lack of time.

"Good" is not good enough?

What we build today could be there for hundreds of years. Planning should be based on the precautionary principle – "good planning" practice is not enough – need to strive for "best", rather than "good enough".

The OMB typically gives a thumbs up or thumbs down decision – like Siskel & Ebert. All or nothing.

The Eaton Centre took nearly 2 decades to get built, with many re-designs. Even then, what was built killed the portion of Yonge Street opposite, as many opponents had predicted. The Eaton Centre has been changed since the 1970's to make that part of Yonge Street vital again. Other planning mistakes are not easily corrected.

If a proposed law is rejected by a Provincial or Federal legislature, it cannot be appealed to the courts. Yet, when it comes to real estate property rights and the desire to increase the permitted height and density, we allow property owners to appeal refusals to pass a bylaw, or even to appeal 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, but until we come up with something other than the OMB, I am content to leave it to City Council or an LAB to have the final word.