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MUNICIPAL LAND USE CONTROLS

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MUNICIPAL LAND USE CONTROLS

Introduction

I have been asked to provide comments on the nature of the principal instruments of municipal land use control which are the Official Plan and zoning by-law.

I would like to emphasize that these notes are intended as a preliminary aid for persons not familiar with land use law. Those who have more than a passing familiarity with the topic should look to other sources for detailed comments on practice and procedure.

Special Concerns

I would like to emphasize that land use controls are often of special concern for persons living in less affluent neighbourhoods. In many cases, these neighbourhoods are adjacent to retail commercial developments where some degree of land use conflict is inevitable. Significant conflicts are also often experienced between industrial areas and residential areas and

for the most part, at least in the older parts of our communities, industrial areas tend to be adjacent to less affluent neighbourhoods. An example familiar to everyone is the Eastern Industrial Area in the City of Toronto where significant conflicts exist between the activities of various industries and the immediately adjacent residential neighbourhood. Persons with lower incomes also have the special sensitivity that they may be quite unable to cope with the problem by simply moving to another neighbourhood. Finally, it sometimes appears to be the case that persons in low income neighbourhoods find it more difficult to persuade government and other decision makers to take actions to alleviate land use conflicts.

Official Plans

It is my experience that most citizens do not have any real appreciation of the significance of Official Plans. On many occasions that lack of understanding has created significant problems for persons interested in the planning process. The term

is defined in the Planning Act as:

"...a document...containing objectives and policies established primarily to provide guidance for the physical development of a municipality...while having regard to relevant social, economic and environmental matters."
(emphasis added)

I think that you could best describe an Official Plan as a generalized guideline controlling the development or redevelopment of land within a municipality. Many Official Plans are most general indeed and provide only the most basic indication of the intended land use such as "Agriculture" or "Industry" or "Residential". Others will provide reasonably detailed guidelines and include provisions dealing with density, setbacks, height, etc.

The practical significance of an Official Plan arises by virtue of Section 24 of the Planning Act. It is there provided that, subject to certain limited exceptions, no public work is to be undertaken and no by-law is to be passed for any purpose that

does not conform with the Official Plan. Thus, to take a very simple example, if an area were to be designated in an Official Plan as "Residential", it would not be possible for the municipality to pass a by-law permitting industrial uses on the land without first or simultaneously amending the Official Plan. On the other hand, however, the adoption of an Official Plan does not have any effect on land uses established under a zoning by-law. For example, in years gone by it was quite common for rural municipalities to grant "spot rezonings" for industries to be located in farming areas. In some cases, the Official Plan designation for those properties has become Agriculture. The result, leaving aside for the moment the question of zoning, is that no expansion of the existing industry can take place without a change in the Official Plan but nothing in that document prevents the continuation of the existing use.

Zoning By-laws

If an Official Plan may be described as a generalized land use document, the zoning by-law is the detailed instrument of land use control. Section 34 of the Planning Act contains

detailed provisions empowering municipalities to enact zoning by-laws. I have appended a copy of the Section to these notes and you will readily see that the powers conferred on municipalities are quite broad. There is the entitlement to prohibit the use of land and to restrict and control development on any land. I should perhaps note a further land use control which is closely related to zoning by-laws. Section 40 of the Planning Act provides municipalities with broad powers to influence the nature of any particular development through a process known as "site plan control". Thus, there is a hierarchy of increasingly detailed control from the Official Plan through the site plan control process with the zoning by-law serving as the principal legal instrument of land use control.

Procedure at the Municipal Level

One of the principal purposes of this discussion paper is to assist persons and groups who wish to become involved in the planning process at the municipal level. There is ample opportunity for involvement by concerned individuals and citizens'

groups at this level. Furthermore, many municipalities welcome participation by the citizens in the planning process. Finally, as a result of the enactment of a new Planning Act in 1983, citizen participation in the planning process at the municipal level is now a right rather than a privilege as had been the case previously.

It may be worthwhile knowing that under the old Planning Act, it was thought that citizens would have an opportunity to be heard at the Ontario Municipal Board. Thus, there was no general statutory right to be heard by the Council or any committee. In some municipalities, proposals were considered without any meaningful notification to the public or real opportunity for public input until after the enactment of a by-law. When the matter then reached the Ontario Municipal Board, that tribunal tended to presume that actions by a municipality were appropriate unless the contrary could be established by strong evidence. As I will discuss below, it is much more difficult for citizens' groups to make effective presentations before the

Ontario Municipal Board because of the nature of the proceedings and the high cost of obtaining legal counsel and expert witnesses. The result of all this was that citizens were not always given an adequate opportunity to make their concerns known to elected representatives, those representatives were not always given an opportunity to know the reaction of ratepayers prior to adopting a particular course of action and the Ontario Municipal Board was faced with the dilemma of considering whether to reverse the decision of an elected Council which did not have the benefit of hearing the citizen concerns voiced for the first time before the Board. I will discuss the improvements in process achieved by the 1983 reform.

Consideration of Official Plan and Amendments

Section 17 of the Planning Act provides for the preparation of an Official Plan by a municipality. Section 21 provides that the provisions of Section 17 also apply to the amendment or repeal of an Official Plan. I have appended to this

discussions paper a photocopy of Section 17. You will see that Subsection 2 requires that the council ensure that, in the course of preparation of the plan, adequate information is available to the public and in that regard there is a requirement for a minimum of one public meeting. Furthermore, there must be at least 30 days notice of the public meeting which is to be open to any member of the public. Finally, any person who attends the meeting is to be afforded an opportunity to speak. I should note that it is customary in many municipalities to impose a limit on the length of time any individual may speak. In most cases those time limits can be extended by vote of the Council or committee thereof dealing with the matter. Council also provides information as to the proposal to various "boards, commissions, authorities or other agencies as the council considers may have an interest in the proposed plan". It is the practice of many councils to circulate proposals to interested citizens' groups who are known to have an interest in a matter. Once the council adopts the Official Plan

or amendment, a record is prepared for submission to the Minister of Municipal Affairs and Housing.

I would suggest that citizens who become aware of a proposed change in an Official Plan which gives rise to concern should take some or all of the following steps:

1. Obtain from the municipality - usually the Clerk's Office - a copy of any documents which may have gone out to the public dealing with the proposal;
2. Speak with the municipal officials and find out which "planner" has primary responsibility for the matter. I should note that a planner is a professional with special training in land use matters. In larger municipalities, planners are employed on staff to advise the Council. In smaller municipalities, planners are often independent consultants who are on retainer, either generally or with respect to a specific proposal. In any event, the planner or planners having responsibility for a particular matter are of great importance in the process;

3. An initial telephone contact should be made with the planner in which the spokesperson for the citizens' group identifies the interest of the group and requests a briefing with respect to the matter. It is important to be polite and reasonable in dealing with a planner. People who feel strongly about a proposal sometimes feel compelled to express those views in such a way that the planner is made to bear the brunt of the anger and hostility. As I will explain later, I believe that this is counterproductive. The role of the planner is a critical one in the process and the object of the citizens' group is to either obtain the support of the planner for their views or to modify, so far as may be possible, the adverse views of the planner. There are few circumstances in which the interests of the citizens' group will be promoted by treating the planner badly;

4. If the planner indicates that there are additional relevant documents, such as background reports and other planning reports, those documents should be obtained and reviewed carefully;

5. The next step should be to have a face to face meeting with the planner and discuss the areas of outstanding concern. Once again, these discussions should take place in a civil atmosphere;

6. One should next contact the local Alderman or Alderwoman. It is usually advisable to meet personally with these individuals who play a key role in the decision making process on most councils. While the rule is not universal, there is a marked tendency for other members of Council to defer to the ward representatives when a matter does not appear to have municipality-wide implications;

7. In certain circumstances, it may be advisable to contact other members of Council and other representatives of the bureaucracy whose departments appear to have an important role to play. It may also be wise to contact individuals in other Government bureaucrcies. For example, if a matter appears to involve taking agricultural land out of production, one would be

wise to speak with representatives of Ministry of Agriculture and Food to alert them to the perceived problem and establish a dialogue in an effort to influence their comments;

8. Once the preliminary steps outlined above have been taken, it is desirable to put the comments of the citizen group in writing and submit them to the appropriate official - usually the Director of Planning. If the comments are received early enough in the process, they will be commented on in writing by the planners in a supplementary report directed to Council and one may achieve a benefit and a more significant status through making such early recommendations;

9. In addition to the "official" submission of the citizens' group, it is most useful to have individuals in and associated with the group make their own submissions to members of Council. I do not think it is useful to have a mass assault on members of staff and indeed it is ususally counter-productive. Politicians, on the other hand, are at the municipal level often

most astonishing easily influenced by even a small number of vocal and determined objectors. Petitions are also helpful at this level although my view is that one hundred letters, even if they follow a standard form or model, will always be far more influential than one hundred names on a Petition because of the well known fact that a significant proportion of our citizenry will sign almost any Petition put in front of them;

10. On the day of the public hearing, every effort should be made to produce a large turnout. It is not necessary or desirable that a large number of people speak but politicians again, by and large, tend to be impressed by numbers and tend to suspect that the group which has come out represents only a tiny proportion of the number actually concerned about the issue. It is axiomatic, I suppose, that there is no point in having a large crowd if the Council is not aware of its presence. There will almost certainly be other matters on the agenda and other public meetings so you may find it advisable to inform a friendly member of Council of

the large group with you. Your friendly member may find it advisable to request that your item be given priority on the agenda and in so doing, he or she will almost certainly find an opportunity mention the numbers involved;

11. As for an oral presentation, the rules of common sense apply. Common errors include exceeding the time limits established by the Council or Committee and impugning the motives of the developer, staff and/or Council. Only as a last resort should an open attack be made on Council. One appears before Council in an effort to persuade the individual members to a particular point of view. Very few people can be simultaneously insulted and persuaded. I should note for what it is worth that, in my view, lawyers are more likely to adopt this interesting approach to the art of persuasion than are untrained citizens. Perhaps it's something we learn in law school but I certainly do not recommend the technique;

12. Finally, I should note that it is the custom in most Councils and Committees to give the applicant or proponent both the first and last say. Many citizens find this unfair but it is certainly a well established custom and any effort to further reply to the reply of the applicant or developer is not likely to be well received unless the developer has in some way taken unfair advantage of the right to reply.

The Council does not have the final right to determine whether an Official Plan or an Amendment is to become law. The right of approval is, with certain exceptions not here relevant, reserved for the Minister of Municipal Affairs and Housing. If there are serious concerns about the proposed policy, however, it is my experience that there is usually little to be gained by discussing these matters at length with Ministry officials. The unwritten policy of the Ministry appears to be to exercise restraint in modifying a policy adopted by a local Council unless that policy is in clear conflict with some provincial objective or

unless the local municipality is prepared to accede to the modification. The result in most cases is that only limited discussions with Ministry officials are worthwhile. The purpose of those discussions is to identify the extent to which the Ministry is prepared to become involved in the issue and, perhaps, to attempt to influence the Ministry Planners with respect to the report they will prepare on the matter. Since that report is customarily included in any "referral" to the Ontario Municipal Board, it may be useful to make a modest effort to persuade the planner as to the merits of your views.

Subsections 11 and 12 of Section 17 provide the right for "any person" to request that the approval function be referred to the Ontario Municipal Board. The limitation is that the Minister may refuse the request if it is not made in good faith or is frivolous or vexatious or is made only for the purpose of delay. Only in a handful of cases has the Minister attempted to exercise this power and the power itself is subject to judicial

review in the Courts if it is misused. It should be noted that Subsection 12 contains a requirement that the person requesting a referral provide a statement in writing setting out the reasons for the request. It is probable that these reasons need not be exhaustive of the objections likely to be raised before the Ontario Municipal Board but, since the document will be read by the members of the tribunal, it should be well written and reasonably comprehensive as to the issues likely to be raised.

I might note as well that the right to propose an amendment to the Official Plan is not restricted to public bodies and private developers. Any person may request that the Council initiate an amendment to an Official Plan and, in the absence of a favourable decision, that person may request that the Minister further refer the amendment to the Ontario Municipal Board. This provision is often employed by developers and occasionally utilized by citizens' groups. It could be utilized, for example, to redesignate from Residential to Agricultural excess lands

designated for residential growth during the days of more rapid population growth in the late 60's and early 70's. Many municipalities in southern Ontario have vast tracts of land designated for future residential growth where the designation appears to be far in excess of the probable needs for the foreseeable future. It might not be unreasonable for a citizens' group to challenge such a designation.

Zoning By-laws

The new Planning Act has significantly improved procedures with respect to the adoption of a new zoning by-law.

Subsection 34(12) provides as follows:

"Before passing a by-law under this section, the council shall ensure that adequate information is made available to the public, and for this purpose shall hold at least one public meeting, notice of which shall be given in the manner and to the persons prescribed, for the purpose of informing the public in respect of the proposed by-law."

The principal advantage of this procedure is that Council will not, in the usual case, have adopted any position with respect to

the proposal prior to the public meeting. That is a great advantage over the previous procedure where the matter was an accomplished fact before the public were given formal notice. The words "adequate information" are usually interpreted to mean that members of the public should be provided with a copy of a preliminary report prepared by the planner responsible for the application. In cases thought likely to be contentious, the planners often fail to take a strong position either in favour of or adverse to a proposal so that they may determine in which direction the wind is blowing before making a final recommendation. (I should note that not all planners are conscious of public opinion and the opinion of Council. Some of them render their opinions without regard to these matters.)

Subsection 34(13) provides that the public meeting is to be an open one and that any person who attends is to be "afforded an opportunity to make representations".

I would make the same comments about the preparation and submissions that were made above with respect to Official Plan matters.

If the Council sees fit to enact a by-law, notice is given to all persons who received notice of the public meeting. Once again, "any person" has the right to appeal the decision to the Ontario Municipal Board. There is a misconception that the right to appeal is limited to those person who received a copy of the notice. That is not accurate. I do not know the limits likely to be applied by the Courts in interpreting the very broad words "any person", but it is clear that any one having any identifiable personal concern with respect to a by-law would have the status to appeal.

Proceedings before the Ontario Municipal Board

The Ontario Municipal Board performs many important functions both with respect to land use planning and the general supervision of municipalities. To provide an example of the

latter, a municipality by law cannot enter into a debt arrangement where payments are to be made beyond the term of the present Council without the permission of the Ontario Municipal Board. In planning matters, that tribunal exercises a close scrutiny of decisions by the elected Councils.

My first general comment is that many people have an impression that the Ontario Municipal Board is favourably predisposed towards objections by citizens' groups. I think many people formed this impression of the tribunal during the hey-day of the late Chairman Mr. Kennedy who was described as "the best friend a ratepayer ever had". Most counsel practicing before the tribunal today would share my feelings that the days of Mr. Kennedy are well and truly gone. It is a purely subjective opinion on my part, but I believe that many members of the Ontario Municipal Board regard ratepayers as a bit of a nuisance. An exception is probably the better organized and financed groups which appear frequently before the tribunal. All of this is not

to suggest that the Ontario Municipal Board members do not politely receive submissions from citizens. It is to suggest, however, that by and large the tribunal members give greater weight to the submissions of professionals such as land use planners.

I would also comment in a preliminary way that anyone working with a citizens' group should beware the possibility of technical objections being raised at any stage of the proceedings. For example, the Planning Act sets out time limits within which certain things must be done. There is no jurisdiction in the Ontario Municipal Board to extend those time limits. For example, Subsection 34(18) requires that an appeal from the passing of a by-law take place within 35 days from the decision of Council. An appeal on the 36th day will fail utterly. Similarly, an appeal by ABC Ratepayers Association, an unincorporated citizens' group will also fail and I should note that that particular failing is a common occurrence. Perhaps all of this should lead to a more

general point: the Ontario Municipal Board functions in many ways like a slightly informal Court. The proceedings are by and large quite dignified, orderly and ponderous. In virtually all cases of significance, lawyers will represent the principal contending parties. I have again and again heard people express surprise that a hearing before the Ontario Municipal Board does not involve the informal exchange of views but rather the formalized cases presented by lawyers through professional witnesses. For better or for worse, that is the way the tribunal functions in most cases and a party hoping to achieve success before it must be prepared to respond in kind.

With respect to making presentations before the Ontario Municipal Board, my view is that one should either engage a solicitor who has prior experience before that tribunal or at least obtain the advice of such a solicitor before proceeding. For those who have not had the pleasure of appearing before the tribunal, it may be useful to attend the Board's Toronto chambers

at 180 Dundas Street West, 8th Floor and watch the proceedings in several cases which appear to deal with the same general types of issues. I think a reasonably brief exposure to the practice before the tribunal would be of great assistance. As for a ratepayer appearing without benefit of counsel, my own view is that such an exercise is likely to be a futile one unless the appearance is in support of the municipality or some other organized and represented entity. In any event, the Ontario Municipal Board members customarily ask at some point in the proceedings whether there are unrepresented individuals who wish to be heard. My own suggestion is that rather than waiting for the member to make such a request, one should speak with counsel for the municipality and request that that individual raise the matter of citizen representations with the tribunal. Most members of the Board will make an effort to hear from the public at a convenient time although I should note that in my experience the tribunal never sits at night or on weekends. It is largely a

10:00 a.m. to 4:30 p.m. operation which probably sounds like nice work if you can get it.

Costs

The topic of awards of costs by the Ontario Municipal Board has assumed increasing importance over the past decade.

In the Courts, costs are awarded in most cases to the successful party although they are occasionally used to penalize improper conduct on the part of either party. The practice before the Ontario Municipal Board is not to use costs to reward the successful party but rather is a means of expressing disapproval for conduct by one or more parties. In that regard, there is something of a different standard for those represented by legal counsel. Quite appropriately, citizens unrepresented by counsel are permitted a wider scope of conduct than are others. Awards of costs against citizens, represented or unrepresented, are likely to occur only if appeals or referrals are withdrawn at the eleventh hour or if no serious attempt is made to present

concerns before the tribunal. In my view a citizens' group will not be likely to be penalized for failing to present expert evidence. For example, in many cases, evidence such as that from a traffic engineer would be critical to the matter under consideration by the Ontario Municipal Board. Many citizens' groups find it quite impossible to raise the funds to retain such an expert. If it does not prove possible to obtain a witness through use of subpoena, the result may be a case doomed to failure from the beginning. The Ontario Municipal Board will not further penalize the citizens' group by awarding costs as a penalty for presenting a near-frivolous case. On the other hand, if the borderline is crossed and it is clear that the citizens have not even attempted to marshal the facts and arguments available to laymen, then the tribunal may consider at least a nominal award of costs to note its displeasure.

I would comment generally that the possibility of an adverse award of costs ought not to pose a serious barrier to

pursuing a matter to the Ontario Municipal Board. There are very limited precedents at present for awards of costs against citizens and, in most cases, there was clearly such bad behaviour as to justify some sort of wrist slapping. Nothing in the decisions of the Board would discourage a well-motivated and properly prepared citizens' group from exercising its rights and requiring that tribunal to review a planning decision by a municipality.

preparation
of official
plan

(2) A planning board shall prepare a plan suitable for adoption as the official plan of the planning area, or at the request of any of the councils mentioned in subsection (1), prepare a plan suitable for adoption as the official plan of the municipality of which it is the council. 1983, c. 1, s. 14.

Upper-tier
municipalities;
planning
functions

15. The council of a county or of a regional, metropolitan or district municipality, on such terms and conditions as may be agreed upon with the council of a local municipality that for municipal purposes forms part of the county or that forms part of the regional, metropolitan or district municipality, as the case may be, may,

- (a) assume any authority, responsibility, duty or function of a planning nature that the local municipality has under this or any other Act; or
- (b) provide advice and assistance to the local municipality in respect of planning matters generally. 1983, c. 1, s. 15.

PART III

OFFICIAL PLANS

Contents of
official plan

16. In addition to the objectives and policies referred to in clause 1 (h), an official plan may contain a description of,

- (a) the measures and procedures proposed to attain the objectives of the plan; and
- (b) the measures and procedures for informing and securing the views of the public in respect of a proposed amendment to, or of a proposed revision of, the plan, or in respect of a proposed zoning by-law. 1983, c. 1, s. 16.

Preparation
of official
plan by
municipality

17.—(1) The council of a municipality may provide for the preparation of a plan suitable for adoption as the official plan of the municipality.

Information
and public
meeting

(2) The council shall ensure that in the course of the preparation of the plan adequate information is made available to the public, and for this purpose shall hold at least one public meeting, notice of which shall be given in the manner and to the persons prescribed.

Time for
meeting, etc.

(3) The meeting mentioned in subsection (2) shall be held not sooner than thirty days after the requirements for the giving of notice have been complied with and shall be open to the

public, and any person who attends the meeting shall be afforded an opportunity to make representation in respect of the proposed plan.

(4) Where an official plan contains provisions describing the measures for informing and securing the views of the public in respect of amendments that may be proposed for the plan, the provisions of subsections (2) and (3) do not apply to such amendments if the measures are complied with.

Alternative
procedure

(5) The council shall provide to such boards, commissions, authorities or other agencies as the council considers may have an interest in the proposed plan adequate information, and before adopting the plan the council shall afford them an opportunity to submit comments in respect of the plan up to such time as is specified by the council.

Comments
by agencies,
etc.

(6) When the requirements of subsections (2), (3), (4) and (5) have been met and the council is satisfied that the plan as finally prepared is suitable for adoption, it may by by-law adopt the plan and submit it to the Minister for approval.

Adoption
of plan

(7) When the plan is adopted, the council shall cause to be compiled and forwarded to the Minister a record which shall include,

Record

- (a) a certified copy of the by-law adopting the plan;
- (b) a statement by an employee of the municipality certifying that the requirements for the giving of notice and the holding of at least one public meeting as mentioned in subsection (2) or as described in the provisions of the official plan mentioned in subsection (4), as the case may be, and, for the giving of notice as mentioned in subsection (8), have been complied with;
- (c) the original or true copy of all written submissions or comments and accompanying material received prior to the adoption of the plan; and
- (d) such other information or material as the Minister may require.

(8) Where the council adopts the plan, the clerk of the municipality shall, not later than fifteen days after the day the plan was adopted, give written notice of the adoption of the plan to the Minister, to each person who filed with the clerk a written request to be notified if the plan is adopted and to each

Notice

body that submitted comments under subsection (5) and that in writing requested to be notified if the plan is adopted.

Approval,
refusal to
approve or
modification
of plan by
Minister

(9) The Minister may confer with municipal, provincial or federal officials, with officials of commissions, authorities or corporations and with such other bodies or persons as the Minister considers may have an interest in the approval of the plan and, subject to subsection (11), may then approve, or, after consultation with the council, refuse to approve the plan or, if modifications appear desirable to the Minister, he may, after consultation with the council, make the modifications to the plan and approve the plan as modified.

Approval of
plan in part

(10) The Minister, instead of approving the whole of the plan, may approve part only of the plan and may, from time to time, approve additional parts of the plan, provided that nothing herein derogates from the right of any person or other body to request the Minister to refer any part of the plan to the Municipal Board under subsection (11).

Referral of
plan or part
thereof to
O.M.B.

(11) The Minister may refer the plan or any part of the plan to the Municipal Board and where the council or any person or other body requests the Minister to refer the plan or any part of the plan to the Municipal Board, the Minister shall refer the plan or such part to the Board, together with the statement mentioned in subsection (12), unless in his opinion, such request is not made in good faith or is frivolous or vexatious or is made only for the purpose of delay.

Reasons

(12) Where a person submits a request to the Minister under subsection (11), he shall include therewith a statement in writing setting out the reasons for the request.

Explanation
for refusal to
refer

(13) Where the Minister refuses to refer the plan or any part of the plan to the Municipal Board as requested under subsection (11), he shall provide a written explanation for the refusal.

Parties

(14) The parties to a referral are the person or other body, if any, that requested the referral, the municipality and any person or other body added as a party by the Municipal Board.

Adding of
parties

(15) The Municipal Board may add as a party to the referral any person, including the Minister or other body who applies to the Board to be added as a party.

Represent-
ations by
person not a
party

(16) Despite the fact that a person is not a party to the referral, the Municipal Board may permit the person to make representations at the hearing.

(17) On a referral to the Municipal Board, the Board shall hold a hearing of which notice shall be given to the parties to the referral, and to such other persons or bodies as the Board considers appropriate.

Hearing and notice thereof

(18) The Municipal Board may make any decision that the Minister could have made.

Decision

(19) Where the plan or any part of the plan is referred to the Municipal Board under subsection (11), the Minister, if he is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the plan or the part thereof, may so advise the Board in writing not later than thirty days before the day fixed by the Board for the hearing of the referral and the Minister shall identify the part or parts of the plan or the part or parts of the part of the plan, as the case may be, by which the provincial interest is, or is likely to be, adversely affected.

Where provincial interest adversely affected

(20) Where the Municipal Board has received notice from the Minister under subsection (19) the decision of the Board is not final and binding in respect of the part or parts identified in the notice unless the Lieutenant Governor in Council has confirmed the decision in respect of the part or parts.

Decision where provincial interest

(21) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Municipal Board in respect of the part or parts of the plan identified in the notice and in doing so may direct the Minister to modify the part or parts of the plan. 1983, c. 1, s. 17.

Power of Lieutenant Governor in Council

18.—(1) Where a plan is prepared by a planning board, the plan shall not be recommended to any council for adoption as an official plan unless it is approved by a vote of the majority of all the members of the planning board.

Recommendation of plan

(2) When the plan is approved by the planning board, the board shall submit a copy thereof, certified by the secretary-treasurer of the board to be a true copy,

Submission of plan to council

- (a) in the case of a plan prepared for a planning area, to the council of each municipality that is within the planning area; and
- (b) in the case of a plan prepared at the request of a single municipality, to the council of that municipality,

together with a recommendation that it be adopted by the council.

Standards
for health
and safety
remain in
force

(14) The provisions of any general or special Act and any by-law passed thereunder respecting standards relating to the health or safety of the occupants of buildings and structures remain in full force and effect in respect of residential property situate within an area of demolition control.

Certain
proceedings
stayed

(15) Subject to subsection (14), an application to the council for a permit to demolish any residential property operates as a stay to any proceedings that may have been initiated under any by-law under section 31 or a predecessor thereof or under any special Act respecting maintenance or occupancy standards in respect of the residential property sought to be demolished, until the council disposes of the application, or where an appeal is taken under subsection (4), until the Municipal Board has heard the appeal and issued its order thereon.

Application
of
R.S.O. 1980,
c. 51, s. 5

(16) Where a permit to demolish residential property is obtained under this section, it is not necessary for the holder thereof to obtain the permit mentioned in section 5 of the *Building Code Act*, 1983, c. 1, s. 33.

PART V

LAND USE CONTROLS AND RELATED ADMINISTRATION

Zoning
by-laws

34.—(1) Zoning by-laws may be passed by the councils of local municipalities:

Restricting
use of land

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.

Restricting
erecting,
locating or
using of
buildings

2. For prohibiting the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway.

Marshy
lands,
etc.

3. For prohibiting the erection of any class or classes of buildings or structures on land that is subject to flooding or on land with steep slopes, or that is rocky, low-lying, marshy or unstable.

Construction
of buildings
or structures

4. For regulating the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the municipality or within any

defined area or areas or upon land abutting on any defined highway or part of a highway, and the minimum frontage and depth of the parcel of land and the proportion of the area thereof that any building or structure may occupy.

5. For regulating the minimum elevation of doors, windows or other openings in buildings or structures or in any class or classes of buildings or structures to be erected or located within the municipality or within any defined area or areas of the municipality. Minimum elevation of doors, etc.
6. For requiring the owners or occupants of buildings or structures to be erected or used for a purpose named in the by-law to provide and maintain loading or parking facilities on land that is not part of a highway. Loading or parking facilities
- (2) The making, establishment or operation of a pit or quarry shall be deemed to be a use of land for the purposes of paragraph 1 of subsection (1). Pits and quarries
- (3) The authority to regulate provided in paragraph 4 of subsection (1) includes and, despite the decision of any court, shall be deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the density of development in the municipality or in the area or areas defined in the by-law. Minimum area and density provisions
- (4) A trailer as defined in clause (a) of paragraph 95 of section 210 of the *Municipal Act* and a mobile home as defined in clause 45 (1) (a) of this Act shall be deemed to be a building or structure for the purposes of this section. Interpretation R.S.O. 1980, c. 302
- (5) A by-law heretofore or hereafter passed under paragraph 1 or 2 of subsection (1) or a predecessor of such paragraph may prohibit the use of land or the erection or use of buildings or structures unless such municipal services as may be set out in the by-law are available to service the land, buildings or structures, as the case may be. Prohibition of use of land, etc., availability of municipal services
- (6) A by-law passed under this section may provide for the issue of certificates of occupancy without which no change may be made in the type of use of any land covered by the by-law or of any building or structure on any such land, but no such certificate shall be refused if the proposed use is not prohibited by the by-law. Certificates of occupancy
- (7) Land within any area or areas or abutting on any highway or part of a highway may be defined by the use of maps to Use of maps

be attached to the by-law and the information shown on such maps shall form part of the by-law to the same extent as if included therein.

Acquisition
and
disposition
of non-
conforming
lands

(8) The council may acquire any land, building or structure used or erected for a purpose that does not conform with a by-law passed under this section and any vacant land having a frontage or depth less than the minimum prescribed for the erection of a building or structure in the defined area in which such land is situate, and the council may dispose of any of such land, building or structure or may exchange any of such land for other land within the municipality.

Excepted
lands and
buildings

(9) No by-law passed under this section applies,

(a) to prevent the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for that purpose; or

(b) to prevent the erection or use for a purpose prohibited by the by-law of any building or structure for which a permit has been issued under section 5 of the *Building Code Act*, prior to the day of the passing of the by-law, so long as the building or structure when erected is used and continues to be used for the purpose for which it was erected and provided the permit has not been revoked under section 6 of the *Building Code Act*.

R.S.O. 1980,
c. 51

By-law
may be
amended

(10) Despite any other provision of this section, any by-law passed under this section or a predecessor of this section may be amended so as to permit the extension or enlargement of any land, building or structure used for any purpose prohibited by the by-law if such land, building or structure continues to be used in the same manner and for the same purpose as it was used on the day such by-law was passed.

Appeal to
O.M.B.

(11) Where an application to the council for an amendment to a by-law passed under this section or a predecessor of this section is refused or the council refuses or neglects to make a decision thereon within thirty days after the receipt by the clerk of the application, the applicant may appeal to the Municipal Board and the Board shall hear the appeal and dismiss the same or amend the by-law in such manner as the Board may determine or direct that the by-law be amended in accordance with its order.

(12) Before passing a by-law under this section, the council shall ensure that adequate information is made available to the public, and for this purpose shall hold at least one public meeting, notice of which shall be given in the manner and to the persons prescribed, for the purpose of informing the public in respect of the proposed by-law.

Information
and public
meeting

(13) The meeting mentioned in subsection (12) shall be held not sooner than thirty days after the requirements for the giving of notice have been complied with and shall be open to the public, and any person who attends the meeting shall be afforded an opportunity to make representation in respect of the proposed by-law.

Time for
meeting,
etc.

(14) Where there is an official plan in effect in the municipality that contains provisions describing the measures for informing and securing the views of the public in respect of proposed zoning by-laws the provisions of subsections (12) and (13) do not apply to such proposed by-laws if the measures are complied with.

Alternative
procedure

(15) The council shall provide to such boards, commissions, authorities or other agencies as the council considers may have an interest in the proposed by-law, adequate information, and before passing the by-law the council shall afford them an opportunity to submit comments in respect of it up to such time as is specified by the council.

Comments
by agencies,
etc.

(16) Where a change is made in a proposed by-law after the holding of the meeting mentioned in subsection (12), the council shall determine whether any further notice is to be given in respect of the proposed by-law and the determination of the council as to the giving of further notice is final and not subject to review in any court irrespective of the extent of the change made in the proposed by-law.

Further
notice

(17) Where the council passes a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11), the clerk of the municipality shall, not later than fifteen days after the day the by-law was passed, give written notice of the passing of the by-law in the manner and in the form and to the persons and agencies prescribed.

Notice of
passing of
by-law

(18) Any person including the Minister or agency may, within thirty-five days from the date of the passing of the by-law, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.

Appeal to
O.M.B.

When by-law
deemed to
have come
into force

(19) When no notice of appeal is filed under subsection (18), the by-law shall be deemed to have come into force on the day it was passed except that where the by-law is passed under circumstances mentioned in subsection 24 (2) the by-law shall not be deemed to have come into force on the day it was passed until the Minister has approved the amendment to the official plan as mentioned in subsection 24 (2).

Affidavit re
no appeal,
etc.

(20) An affidavit or declaration of the clerk of the municipality that notice was given as required by subsection (17) or that no notice of appeal was filed under subsection (18) within the time allowed for appeal shall be conclusive evidence of the facts stated therein.

Forwarding
of
record, etc.,
to
O.M.B.

(21) The clerk of the municipality, upon receipt of a notice of appeal under subsection (18), shall compile a record which shall include,

- (a) a copy of the by-law certified by him;
- (b) an affidavit or declaration duly sworn certifying that the requirements for the giving of notice as mentioned in subsection (17) have been complied with; and
- (c) the original or a true copy of all written submissions and material in support of the submissions received in respect of the by-law prior to the passing thereof,

and the clerk shall forward the notice of appeal and the record to the secretary of the Municipal Board and shall provide such other information or material as the Board may require in respect of the appeal.

Parties

(22) The parties to an appeal are the appellant, the municipality and any person or agency added as a party by the Municipal Board.

Adding of
parties

(23) The Municipal Board may add as a party to the appeal any person including the Minister, or agency who applies to the Board to be added as a party.

Representations by
person not
party

(24) Despite the fact that a person is not a party to the appeal, the Municipal Board may permit the person to make representations at the hearing.

Hearing

(25) On an appeal to the Municipal Board, the Board shall hold a hearing of which notice shall be given to the parties to the appeal, and to such other persons as the Board considers appropriate.

(26) Despite subsection (25), the Municipal Board may, where it is of the opinion that the objection to the by-law set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing but before so dismissing the appeal shall notify the appellant and afford him an opportunity to make representations as to the merits of the appeal.

Dismissal of appeal without hearing

(27) The Municipal Board may,

Powers of O.M.B.

- (a) dismiss the appeal; or
- (b) allow the appeal in whole or in part and repeal the by-law in whole or in part or amend the by-law in such manner as the Board may determine or direct the council of the municipality to repeal the by-law in whole or in part or to amend the by-law in accordance with the Board's order.

(28) Where an appeal has been filed under subsection (18), the Minister, if he is of the opinion that a matter of provincial interest is, or is likely to be adversely affected by the by-law, may so advise the Municipal Board in writing not later than thirty days before the day fixed by the Board for the hearing of the appeal and the Minister shall identify the part or parts of the by-law by which the provincial interest is, or is likely to be, adversely affected.

Where provincial interest adversely affected

(29) Where the Municipal Board has received notice from the Minister under subsection (28) and has made a decision on the by-law the Board shall not make an order under subsection (27) in respect of the part or parts of the by-law identified in the notice.

Procedure

(30) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Municipal Board in respect of the part or parts of the by-law identified in the notice and in doing so may repeal the by-law in whole or in part or amend the by-law in such manner as the Lieutenant Governor in Council may determine.

Power of L.G. in C.

(31) Where one or more appeals have been filed under subsection (18), the by-law does not come into force until all of such appeals have been finally disposed of whereupon the by-law, except for such parts thereof as are repealed or amended in accordance with the direction of the Municipal Board or as are repealed or amended by the Municipal Board or by the Lieutenant Governor in Council as mentioned in subsections (27) and (30), shall be deemed to have come into force on the day it was passed. 1983, c. 1, s. 34.

When by-law deemed to have come into force