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Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

243 Queen Street W., 4th Floor, Toronto, Ontario M5V 1Z4, telephone (416) 977-2410

SUBMISSION TO THE CITY OF TORONTO LAND-USE COMMITTEE CONCERNING THE COMMISSIONER OF PLANNING AND DEVELOPMENT'S PROPOSED AMENDMENT TO THE ONTARIO MUNICIPASL BOARD

Prepared by Frank Giorno
Research Director
Canadian Environmental Law Association

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expert legal and planning advice at a tremendous cost. Second, s.96 of the Ontario Municipal Board Act gives the Board the power to award costs to the losing party.

In a submission to the Civil Procedure Revision Committee in 1978. We stated: "The high costs of the public obtaining access to the courts and tribunals makes participating in the governmental process prohibitive to middle and low income people. Moreover there is always the worry that even if they can get representation, that there is a danger of costs being awarded against them if they are unsuccessful. These people are intimidated by the high costs of justice and afraid to assert their rights."

In the Scotia Plaza case, threats were in fact made by the developer that substantial costs would be sought against the objectors after the hearing was completed.

It is ironic that at a time when most courts and tribunals are putting more effort into encouraging settlements and participating in mediation attempts, the City's Planning Commissioner is advocating retrogressive and punitive measures against actions which save the public purse tens of thousands of dollars.

The Planning Commissioner's recommendation is designed to prevent groups or individuials from using the appeal process to extract or blackmail from another party concessions which would benefit them financially. Everyone agrees that it is reprehensible for anyone to abuse the appeal process for personal gain. That's not the issue in the Scotia Plaza situation. The agreement provided for the developer to provide assistance towards the construction of low-income housing. The agreement hopefully will help to retrieve some of the low income housing which the city's by-law would have reduced. The objectors all were concerned about the reduction of low income housing units

The Canadian Environmental Law Association is a legal aid clinic which provides free legal services to low income members of the community on environmental and planning matters.

We have represented low income citizens groups and individuals before administrative tribunals such as the Ontario Municipal Board and the Environmental Assessment Board. Through our involvement in these cases, we have observed directly the great difficulties citizens have in obtaining sufficient funds to participate effectively in hearings. Despite receiving free legal service, if they can obtain representation from clinics such as CELA, citizens incur enormous expenditures retaining expert witnesses, and consultants.

Based on our experiences we have written a number of submissions to various legislative bodies on the topic of costs.

We have also commented extensively on the procedure before the Ontario Municipal Board and the new Planning Act.

The revised Planning Act kept as its cornerstone the policy of access to the Ontario Municipal Board although as we have stated earlier access to the Board can be costly.

We are opposed to any measure which further deters members of the public from participating in proceedings, under the Planning Act. Therefore we would like to register our disapproval of the planning commissioner's recommendation that the Planning Act be amended to provide the Board with the discretion to award costs to the municipality if a party withdraws its objection.

Such a proposal, we are convinced is not required as there already exist enough deterrents for citizen participation. First of all, objectors, if they are to be effective, must retain

The Planning Commissioner is concerned that time and money were expended by the city's legal and technical advisor preparing for the hearing. Presumably it is for this reason that he is calling for costs to be awarded to the municipality. But why should costs be awarded to the city upon withdrawl of an objection? The city of all the parties usually suffers the least financially. It has at its disposal a salaried legal staff and technical advisors. How much time and effort does city staff spend on reports or by-laws that never are approved or implemented by council or in some cases never go beyond the committee stage? No one has yet complained about this expenditure of time and taxpayers money.

Another perspective for viewing the withdrawl would be to consider the saving of the city staff's time which would otherwise have been devoted to a lengthy hearing. The agreement after all gave the city and the developer what they wanted. In addition there is a commitment on the part of the developer to provide some assistance to projects aimed at creating low income housing.

If the appeal of zoning by-law had been withdrawn without the negotiated agreement with the developer would the Planning Commissioner be making such a proposal? We submit not, because the City would be getting its by-law approved without the bother of a time-consuming hearing.

The Canadian Environmental Law Association urges members of the Land-Use Committee to reject the Planning Commissioner's recommendation that would allow withdrawl of an appeal of a zoning by-law only with the consent of the Ontario Municipal Board, after hearing from other parties to the appeal, and also to give the Board the discretion to allow a withdrawl on the condition that the appellant reimburse the municipality for its costs.

proposed in the deal between the city and the developer that led to the by-law. So there was no personal gain for any of the objectors. We cannot agree with the Planning Commissioner that the system was abused.

The Planning Act has sufficient safeguards to protect against abuse of the process. A request for a referral on a matter concerning an official plan amendment may be refused by the Minister of Municipal Affairs and Housing under section 46(11) if in the Minister's opinion the request is not made in good faith or is frivolous or vexatious or is made only for the purpose of delay.

If the appeal concerns a zoning by-law amendment, the Board under section 34(26) may dismiss the appeal without a hearing, if in the Board's opinion the objection is insufficient.

Objectors who appeal to the Board must give a written explanation of their reasonings for objecting to the by-law. Screening of the reasons enables the Board to determine if an objection is frivolous.

If a frivolous objection cannot be determined and a hearing is heard there is always the possibility under the Ontario Municipal Board Act of costs being awarded against an objector. Nowhere has the Planning Commissioner established the fact that the Board cannot prevent abuse of the process under the current Act.

In most administrative tribunals negotiated settlements are part of the process and if they can lead to the resolution of differences without convening a lengthy and costly hearing they are encouraged. In fact the Environmental Asasessment Board has formalized somewhat the use of negotiations or mediation in its process.

With respect to the requirement that the Minister consult with the municipality before taking back an Official Plan refereral, we believe that this is unnecessary, since at the present time all referors must consent, and the municipality in any event, is receiving approval of what it had originally requested.