YQNA
York Quay Neighbourhood Association

Suite 2011
55 Harbour Square
Toronto, Ontario
M5J 2L1, Canada

Website: www.yqna.ca
Email: info@yqna.ca

December 12, 2016

Ontario Municipal Board Review
Ministry of Municipal Affairs
Provincial Planning Policy Branch
777 Bay Street (13th floor)
Toronto, ON M5G 2E5

Via email to: OMBReview@ontario.ca

Dear Sirs:

Re: York Quay Neighbourhood Association (YQNA) comments in the Review of the Ontario Municipal Board (OMB)

These are YQNA's comments with respect to the Province of Ontario's current review of the scope and effectiveness of the OMB. We understand these comments must be submitted by December 19, 2016.

By way of background, YQNA was founded some 12 years ago by a group of residents from the Central Waterfront in downtown Toronto. Under YQNA's Constitution, its mission includes protecting and improving the unique character of the neighbourhood, providing leadership and a creating a forum for the exchange of information vital to the quality of life in the neighbourhood, including development-related issues.

The area we represent extends from the lake to the railway corridor between Yonge and Rees Streets. We work with other associations and organizations in the local area and indeed throughout the City of Toronto. We have several committees focussed on specific areas of interest, including a Planning and Development Committee which has prepared this submission.

As you know, the downtown Toronto Waterfront has seen a vast amount of development in the recent past. More is on the horizon. The OMB has played a role. While we are aware that Toronto Council would like to see the OMB abolished, or the City of Toronto removed from its ambit, we recognise that this Review will not consider abolition, but only the OMB's scope (what it deals with) and effectiveness (how it operates).

We have carefully reviewed the public consultation package released by the Ministry in October and also the comprehensive report prepared by City of Toronto planning staff dated November 10, 2016 which was considered by the Planning and Growth Management Committee on November 16, 2016.

It is our view that City staff are in an excellent position to understand the current powers and procedures of the OMB and to propose changes that would better suit the context of the City of Toronto and the level of complexity of planning issues here. We generally support the recommendations of the staff report (PG16.6) as written and as received by the Committee. We recognize that this report will go to Council on December 13, 2016, and that it is possible that amendments may be made.

We agree with the City Staff's comment that the wording of the eventual legislation will be crucial to ensure that the results of this review are correctly reflected. Staff have noted that some recent amendments to the *Planning Act* and the *City of Toronto Act* have left some ambiguity which needs to be addressed.

The City Staff report made a few key proposals, and many of the remaining issues would be resolved or reduced were those proposals to be implemented.

Hearings *de novo*

There should no longer be hearings *de novo* when a Council decision has been made.

An enormous amount of time and effort expended by City staff, consultants employed by the applicants, lawyers, Councillors and citizens is wasted if a comprehensive review and consultation process is followed during the application process, and then duplicated by a hearing at the OMB which goes over much of the same material.

It is Council's *decision* which is appealed, and that decision should be the subject of the OMB deliberations. The OMB should owe the same deference to a Council decision as would a Court on judicial review of the decision of an elected body or expert tribunal; that is, the OMB should apply a "reasonableness" standard of review.

Rather than looking at the matter afresh, the OMB should consider whether the Council decision falls within the range of possible outcomes that a reasonable decision-maker could have reached, having regard for the relevant planning documents and circumstances. Did Council have available to it the proper information and expert opinion on which to base its decision? Was its decision capricious, biased or politically motivated? The OMB should set aside a Council decision only if satisfied that a reasonable decision-maker could not have reached such a decision.

Greater deference to Council decisions is appropriate and in accordance with administrative law principles because Council, assisted by City staff and involved citizens, has expertise and greater electoral accountability than the appointed OMB.

If the appeal relates to the lack of a decision, then the OMB should consider all of the relevant material so that it can reach a considered and fair decision in the place of Council. However, if there is OMB deference to Council decisions as proposed above, there may be a greater incentive to reach a Council decision than there is at present, which would be a good thing.

If the appeal has been triggered by the lack of a decision within the prescribed timeframes, our remarks below about timelines are relevant.

In general, more use should be made of alternative dispute resolution (ADR) techniques, such as mediation, and this may be especially useful where the OMB is essentially the first decision-maker because a Council decision is lacking.

Conduct of Hearings

At present, proceedings of the OMB are dominated by lawyers, and the tribunal operates very much like a court of law with witness depositions, cross-examinations, summary arguments and so on. A more relaxed atmosphere would be gentler for all participants. Today, the hearing member can and does question witnesses, but a more active role on his or her part could be helpful.

More education on planning matters and the mechanics of running a hearing may be useful for board members.

It may be useful to assign board members to particular hearings who have some knowledge of the site and locality at issue, to the greatest extent possible.

Timelines for Application Review

The City report under Recommendation 28 suggests longer review times for complex applications in Toronto. We support this suggestion. The current timelines are too short. If adopted, these timelines would help to reduce the number of appeals based on a lack of a decision within the statutory period available. This would also reduce the workload of the OMB.

Citizen Liaison Office and Transparency

This service definitely needs to be expanded and used more to assist the uninitiated citizen to navigate the process. Intervenor funding would be helpful for people who have to take time off work to attend hearings or to hire experts whose evidence may assist in reaching a fair decision. However, if hearings *de novo* are done away with, much of this kind of expense would not be required. More reliance on ADR and mediation would also help in this regard.

For citizens looking for OMB decisions on the website, it would be helpful to be able to search by the address of the property concerned, or perhaps the municipal OPA or Zoning By-law number rather than the OMB's case file reference.

Transit –Supportive Density

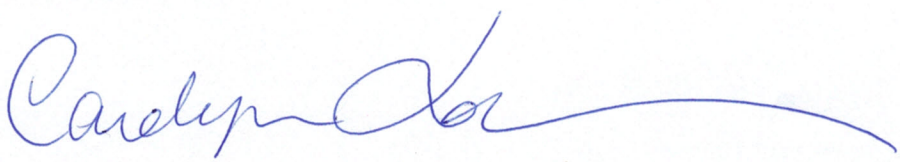
In the area covered by YQNA, most development sites are within walking distance of the TTC subway, the GO Rail system and/or light rail transit. The idea that density is required to support Provincially-funded transit services needs to be carefully considered. Density should not be allowed to trump context and compatibility. The Waterfront is very sensitive, and we have been working hard to make sure that it remains a jewel in the City. We cannot support 88 storey buildings along the lakeshore just because Union Station lies one kilometre away. The City's adopted precinct plans should rule the day.

Transition

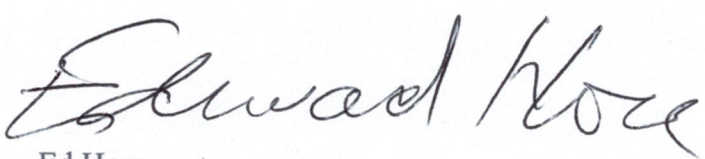
The consultation document asks whether the planning rules in effect at the time of the decision should apply. We say yes. Are there any appeals in the pipeline that date from before 2007? This seems unlikely.

In conclusion, YQNA welcomes this review and the opportunity to provide our comments and suggestions. We would like to receive any updates on the Ministry's process, and also to have an opportunity to comment on the draft legislation in due course.

Yours truly,



Carolyn Johnson
Secretary, YQNA



Ed Hore
Co-chair, YQNA

cc. by email to:
Pam McConnell, Councillor Ward 28, councillor_mcconnell@toronto.ca
Joe Cressy, Councillor Ward 20, councillor_cressy@toronto.ca