



ONPHA

Ontario
Non-Profit Housing
Association

ONPHA Submission: Land Use Planning and Appeal System Consultation

December 2013



About ONPHA

The Ontario Non-Profit Housing Association (ONPHA) represents 770 non-profit housing providers in 220 communities across Ontario. ONPHA members operate more than 160,000 non-profit housing units and provide housing for approximately 400,000 people including seniors, low-income families with children, Aboriginal people, the working poor, victims of violence and abuse, people living with developmental disabilities, mental illness, HIV/AIDS or addictions, and the formerly homeless/hard-to-house.

Context

Ontario is reviewing its land use planning and appeal system to make sure it is predictable, transparent, cost-effective and responsive to the changing needs of communities. ONPHA's interest in this matter stems from its role as a representative of organizations engaged in the development, acquisition and management of affordable and supportive housing serving the populations noted above.

In Ontario, the design and delivery of affordable housing is a local responsibility, though necessary funding flows from senior levels of government. For communities to be successful in meeting local housing needs, they require a proper array of planning tools and adequate, sustained senior government funding.

Current provincial and federal funding levels are not adequate to meet the affordable housing needs of Ontario communities.¹ MMAH has done a good job communicating the range of available tools that municipalities currently have to create affordable housing,² though the ability to implement inclusionary zoning policies remains out of bounds.³

It is crucial that the land use planning and appeal system be structured to smooth the path for construction of new affordable and supportive housing.

¹ ONPHA, *Where's Home 2013: Looking Back and Looking Forward at the Need for Affordable Rental Housing in Ontario* (Toronto: Ontario Non-Profit Housing Association, 2013), <http://www.onpha.on.ca/whereshome>; ONPHA, *Waiting Lists Survey 2013* (Toronto: Ontario Non-Profit Housing Association, 2013), http://www.onpha.on.ca/AM/Template.cfm?Section=Waiting_Lists_2013.

² MMAH, *Municipal Tools for Affordable Housing*. <http://www.mah.gov.on.ca/AssetFactory.aspx?did=9270>

³ ONPHA has recommended that municipalities be empowered to implement inclusionary zoning policies, including in our response to the Provincial Policy Statement consultations in 2010. This City of Toronto has notably also requested authorization to implement inclusionary zoning: http://www1.toronto.ca/staticfiles/city_of_toronto/affordable_housing_office/files/pdf/hot_actionplan.pdf



The development and acquisition of new housing to serve Ontario’s most vulnerable residents is often subject to discriminatory neighbourhood opposition—more commonly referred to as NIMBYism. It is also at times restricted by discriminatory municipal zoning by-laws grounded in antiquated fears about people living with mental health issues, disabilities, addictions, or who simply require subsidized housing as a result of having low incomes. NIMBYism and discriminatory municipal zoning by-laws often violate Ontario’s Human Rights Code.

ONPHA’s Recommendations

This section contains ONPHA’s recommendations organized as responses to selected questions posed by the Land Use Planning and Appeal System Consultation Document.

9. How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?

Theme A on page nine of the consultation document focuses on the need for predictability, transparency, accountability and cost reduction in the land use planning and appeal process. Theme D speaks to the need for a system which supports the long-term public interest, which the *Provincial Policy Statement* makes clear includes the provision of “an appropriate range of housing types and densities,” including affordable housing.

The long-term interests of the public can be supported and a more predictable, transparent, and accountable land use planning and appeal system can be achieved by providing clear guidelines surrounding the objectives and proper scope of land use planning with regard to residential development. The appropriate parameters can be defined by a simple imperative: “Zone for land use, not for people.” Zoning for land use is a legitimate and vital municipal function. Zoning for people (“people zoning”) violates the Ontario Human Rights Code.

ONPHA’s 2005 report, *The Case for a Systematic Solution to Discriminatory NIMBY Opposition* argued that: “Many municipal decision-makers, and most citizens, do not associate planning decisions with human rights.”⁴ Our report called on the Ontario Government to work with the Ontario Human Rights Commission (OHRC) to focus on human rights in a planning context.

Since that time, the OHRC has taken up the challenge by producing a guide for municipalities: *In the zone: Housing, human rights and municipal planning*.⁵ The task now is to weave these

⁴ Joy Connelly, *The Case for a Systematic Solution to Discriminatory NIMBY Opposition in Ontario* (Toronto: Ontario Non-Profit Housing Association, 2005).

⁵ Ontario Human Rights Commission, *In the Zone: Housing Human Rights and Municipal Planning* (Toronto: Ontario Human Rights Commission, 2012).



guidelines for housing, human rights and land use planning into Provincial direction for the land use planning and appeals system. In many cases, this does not imply altering final land use outcomes. Rather, it means making the system more predictable, cost-effective, and efficient.

Dealing with community opposition, discriminatory municipal zoning by-laws and vexatious appeals is an all-too-common aspect of affordable and supportive housing development. One common form of discriminatory zoning by-law is the “distancing requirement.” Such by-laws stipulate that group homes, residential care facilities, rooming houses, or other forms of housing must be a certain distance from one another, e.g. 500 or 1000 meters. While restrictive in all cases, in smaller communities, distancing requirements can have the effect of severely limiting the total amount of housing available for people with disabilities, mental health diagnoses, or addictions. Appeals generated by community opposition are also common.

ONPHA’s 2005 analysis found that:

...discriminatory opposition – opposition we believe violates the Ontario Human Rights Code – is almost always overturned at the Ontario Municipal Board. But the costs of these appeals are huge for both the housing proponent and its funders. And many housing proponents, frightened by the appeal costs, abandon the project or make compromises that are not in the interests of their tenants.

The federal, provincial, and municipal governments fund construction of limited quantities of affordable housing through the Investment in Affordable Housing. Non-profits financed by government often build the housing. At times, public funds must be spent on fighting appeals, neighbourhood opposition and discriminatory zoning by-laws. In other words, the land use planning and appeal system can frustrate the implementation of Ontario’s affordable housing policy.

Expensive and counter-productive land use planning tensions around affordable and supportive housing development can be pre-empted. Doing so will ensure more efficient use of government funds and greater focus on building affordable and supportive housing, instead of fighting for the right to build. The Province must make clear: people zoning is not an option.

Opportunities for the Province to re-orient the system are multiple. For example:

- Additions can be made to the *Planning Act* requiring municipalities to repeal discriminatory residential zoning by-laws.
- Part V of the *Planning Act* “Land Use Controls and Related Administration” could be modified. Clause 35.2 “No distinction based on Relationship” could be amended to “No distinction based on Relationship or Human Rights Code-Protected Status.”



- The “Grounds for dismissal without hearing” of OMB claims outlined in the *Planning Act* could be clarified. Claims can currently be dismissed without hearing if they lack “any apparent land use planning ground” or if they are “vexatious” or are found to be “an abuse of process.” The Province could use the various tools at its disposal to communicate that claims geared toward achieving people zoning will be considered as all of the above.
- Following the recommendations of the OHRC, “protecting human rights” could be added as an objective in the preamble of the *Provincial Policy Statement*.

5. Should steps be taken to limit appeals of entire official plans and zoning by-laws? If so, what steps would be reasonable?

Zoning by-laws in their entirety can violate Ontario’s Human Rights Code. The ability to challenge such by-laws should not be diminished. The Province should lead efforts to repeal them.

14. What barriers or obstacles may need to be addressed in order for citizens to be effectively engaged and be confident that their input has been considered (e.g. in community design exercises, at public meetings/open houses, through formal submissions)?

Part of ensuring that citizens are effectively engaged, consulted and that their input is considered is explicitly defining the legitimate parameters of consultation and engagement. For example, if citizens are under the impression that they have a right to influence which other citizens are permitted to live near them, they may find public engagement processes around a new affordable or supportive housing development in their neighbourhood to be frustrating.

The Province should continue to explore ways to improve citizen engagement while clarifying that land use in a residential context refers to the structure of built residential forms, not the perceived character of intended residents or array of services they may or may not consume.

Conclusion

ONPHA thanks MMAH for the opportunity to provide input to this review of the land use planning and appeal system. Our overarching recommendation is for the Province to use all tools at its disposal to create a land use planning and appeal system that supports the development of affordable and supportive housing. Many existing barriers in the present system result from an unfounded belief that the land use planning and appeal system can be legitimately used to achieve “people zoning.” We would be pleased to further discuss our input with Ministry staff.