



ONTARIO NON-PROFIT  
HOUSING ASSOCIATION

December 15, 2016

Ontario Municipal Board Review  
Ministry of Municipal Affairs  
Provincial Planning Policy Branch  
777 Bay Street, 13th Floor  
Toronto, ON M5G 2E5  
Sent via email: [ombreview@ontario.ca](mailto:ombreview@ontario.ca)

**Re: Ontario Municipal Board (OMB) Reform - Consultation**

To Whom it May Concern:

The Ontario Non-Profit Housing Association (ONPHA) welcomes this timely review of the Ontario Municipal Board. From Windsor to Cornwall, Toronto to Thunder Bay, our members house more than 400,000 people in 163,000 homes in 220 Ontario communities. Our members are a critical part of the fabric of every community and provide decent, affordable homes to low and moderate income households. Many of our members provide specialized housing and support services for Ontarians who need help to enjoy a successful tenancy.

In the past decade relatively few of our members have appealed or defended a case at the OMB. In our members' experience, most municipal decision-makers recognize the importance of increasing the supply of affordable and supportive housing.

The appeals that do come before the OMB typically come from neighbours who wish to overturn municipal approvals. In many cases, these appeals are not based on legitimate planning grounds, but on fears, biases and stereotypes about the people who will live in the proposed housing. ONPHA has also seen frivolous appeals, such as a developer who hoped to thwart a project so he could purchase the property himself. It is no surprise, then that the OMB has consistently ruled in favour of non-profit housing developers.



However, the costs of defending the appeal – including legal counsel, planning and other experts, and especially, the costs of delays – are a major concern. For example, Toronto Community Housing incurred \$95,000 in direct costs to defend an appeal of a 27-unit housing development for young parents, and an additional \$120,000 in higher construction costs caused by the delay. It also risked losing \$2 Million in Federal-Provincial housing funding had the OMB not refused the appellant’s request to defer the hearing. More recently, a nine-unit development in Guelph, also for young parents, was appealed by a neighbour in apparent retribution for the municipality’s rejection of his own development proposal. The OMB settled the case in half a day, but the project’s non-profit sponsors incurred over \$20,000 in legal and planning fees.

## There is a clear provincial interest in affordable housing

The Province has articulated its interest promoting the supply of affordable and supportive housing in legislation and provincial policy statements. Examples include:

- Section 2 of the *Planning Act* names “the adequate provision of a full range of housing, including affordable housing” as a matter of provincial interest.
- The *2014 Provincial Policy Statement* requires planning authorities to establish and implement targets for housing that is affordable to low- and moderate-income households, and to permit and facilitate housing required to meet the social, health and well-being requirements of current and future residents, including special needs requirements. (s. 1.4.3)
- Ontario’s *Housing Services Act, 2011* states that “it is a matter of provincial interest that there be a system of housing and homelessness services” (s. 4(1)) that addresses the housing needs of individuals and families, has a role for non-profit corporations and allows for a range of housing options.

Every government should try to ensure public resources reach the people they were designed to serve. With this in mind, our comments on three key questions posed in your Consultation Guide are below.



## Limiting appeals on matters of public interest (Q1)

The Consultation Guide has proposed a number of grounds for limiting appeals to protect public interests for the future.

Affordable housing is a matter of public and provincial interest. ONPHA has appreciated OMB members who fast-track appeals – recognizing that delays could prevent affordable non-profit housing developers from meeting crucial funding deadlines. Further limitations on appeals to protect the public interest in affordable housing are recommended.

We suggest an additional change to protect the provincial housing interest:

That the OMB be empowered to dismiss appeals that are “frivolous, vexatious or discriminatory, or made only for the purpose of delay.”

In our members’ experience, the OMB has rarely used its powers to dismiss appeals against non-profit housing, preferring to give appellants an opportunity to make their case. However, we believe it is the OMB’s *obligation* to dismiss any appeal based on discriminatory grounds.

The 2014 Provincial Policy Statement affirms that “This Provincial Policy Statement shall be implemented in a manner that is consistent with the Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms.” (s. 4.6) The Ontario Human Rights Commission (OHRC) has named “discriminatory NIMBY” --- the “opposition to housing projects that are based on stereotypes or prejudice towards the people who will live in them” – as a human rights violation. (OHRC, Policy on human rights and rental housing, 2009, p. 50).

We recognize it can be difficult for OMB members to identify a discriminatory appeal. Opponents to non-profit housing are often advised to re-frame their genuine concerns into conventional planning concerns such as parking, traffic, or the impact on services. OMB members may wish to conduct a pre-hearing review of evidence collected during the municipal public consultation process (including news coverage,



emails, social media commentary, and notes or videos of deputations and public meetings) to discern whether an appeal is rooted in discriminatory grounds.

### Moving away from *de novo* hearings (Q 4)

ONPHA members generally support a move away from *de novo* hearings as not only a boon to democratic decision-making, but as one more way to limit costly and unwarranted appeals. We do not, however, have specific recommendations on the best approach.

### The strengths and limits to mediation (Q 20 – 23)

ONPHA's members have had little experience with mediations at the OMB. However, their considerable experience with Landlord and Tenant Board mediations have amply demonstrated the benefits of mediation for all parties. In encouraging mediation or other ways to resolve land use disputes, it is important to articulate the limits to mediation. In particular, the OMB should state up-front that human rights cannot be compromised. For example, opponents to non-profit housing sometimes say, "We don't mind affordable housing for seniors, but we don't want families (or people with mental health issues, or another Code-protected group)." The OMB is obligated to prevent any discriminatory compromises, just as non-profit housing providers are obligated to act in the best interest of their future tenants.

### Conclusion

With more than 170,000 households on waiting lists for social housing, it is clear that Ontario needs more affordable housing. Encouraging the production of more of it is in government's interest, but costly development delays from frivolous, vexatious or discriminatory appellants can reduce the affordability of a project or delay its opening.

Changes to the Ontario Municipal Board can echo the commitment to increasing access to affordable housing outlined in the province's updated Long-Term Affordable Housing Strategy. It is important to



put in place mechanisms and policies that allow non-profit developers to quickly and efficiently produce affordable housing much-needed in Ontario.

ONPHA looks forward to hearing the outcome of your review. If you have any questions about our submission, do not hesitate to contact Margie Carlson, Deputy Executive Director, at [Margie.Carlson@onpha.org](mailto:Margie.Carlson@onpha.org) or 416-927-9144, ext. 113.

Sincerely,



Meg McCallum  
President