

November 7, 2016 – General Meeting

Draft Minutes

Present: Gary Sealey (Beaverbrook CA), Klaus Beltzner (Manotick Village CA), Chad Rollins (Action Sandy Hill), Giulio Maffini (MVCA), Mary Hegan (Ottawa Eco-talent Network), Roland Dorsay (Champlain Park CA), John Riardan (Britiania Village CA), Jason Garlough (Ottawa Eco-talent Network), Lorne Cutler (Hampton Jena CG), Eddie Gillis (Old Ottawa East CA), Graeme Todunk (THCA), Gillian Salmond (Wellington Village CA), Carolyn MacKenzie (GCC), Cora Murphy (WNCA), Archie Campbell (Dalhousie CA), Thierry Harris (Lowertown CA), Robert Brinter (Carlington CA), Bruce Lindsay (Greenspace Alliance), David Clark (City View CA), John Stevens (Citizens for Safe Cycling), Erwin Dreessen (Greenspace Alliance), Sheila Perry (Overbrook CA), James McLaren (Heron Park CA), Caroline Crowe (Trend Arlington CA), Peter Farrell (Hintonburg CA), Linda Hoad (Hintonburg CA), Jonathan Morris (Britiania Village CA), Andrea Gay (Councillor Harder's Staff), Don Stewart (Westboro Beach CA), Agnes Harda (COTEN CA), John Herbert (GOHBA), Rod MacLean (Katimavik Hazeldean CA), Dave Grosvenor (Woodroffe North CA)

Guests: Jan Harder, Councillor Ward & John Herbert, GOHBA

1. Welcome

At 7:15 pm the meeting was called to order. Gary welcomed us and invited us to introduce ourselves, which we did.

2. Agenda Motion

On motion by Gary seconded by Chad the agenda was approved no votes opposed and no abstentions

3. Ontario Municipal Board Panel

Gary introduced the panel who will discuss the functioning of the OMB. Dr. Erwin Dreessen, Ph D, Greenspace Alliance will introduce the subject. Then Councillor Jan Harder, Chair of the City's Planning Committee, John Herbert of Greater Ottawa Homebuilders Association and Linda Hoad, former FCA president and community association representative will present their viewpoints of the OMB

4. Welcome to Manotick

Klaus welcomed FCA to Manotick. He indicated that the Manotick population is 5,000 and that the Manotick Village and Community Association has a strong membership of about 600 members. The

major concern of the Association has been to have safety zones set at schools and on the Manotick mainstreet with speeds reduced to 40 kmh. In addition to serious development concerns, Manotick now has a remembrance park in Dickenson Square. Councillor Moffat had asked Klaus to express his regrets at his not being able to attend the FCA meeting.

5. Minutes Received

Minutes of the October 11 FCA general meeting received for future approval.

6. Ontario Municipal Board (OMB) Review – Community Perspectives

Gary stated that the purpose of discussing reform of the OMB is to assist residents to learn about how the OMB functions and to contribute to a submission to the Provincial Government on behalf of the Ottawa's community associations. The procedure this evening consists of panel presentations followed by a question and answer segment and then conclude with group discussions which will produce reports to the meeting.

i) OMB Review Community Perspectives -- Introduction More Complete text is the Annex

Erwin highlighted the proposal that could see the OMB no longer conduct hearings "from scratch" ("*de novo*"). Instead, the Board could act more like a judicial appeals court, determining whether the municipal decision was reasonable, had followed proper process, and was in accord with municipal and provincial laws, regulations and policies. This change would mean that the Board would no longer substitute its own judgement of what constitutes "good planning" for that of Council or Committee of Adjustment. Should the OMB uphold an appeal, then the matter would be returned to Council or Committee of Adjustment for reconsideration consistent with the Board's direction.

Erwin noted that intervener funding is a big issue. He suggested that it should be available to not-for-profit organizations, provided that their appeal is not frivolous, vexatious or for the purpose of delay; the group has no pecuniary interest in the outcome; and the request for funding is reasonable, based on published criteria.

Mandatory mediation should be required especially if the Board finds that the dispute is due to asymmetrical information.

Erwin proposed that the Consolidated Hearings Act be amended so as to permit any party to request a joint Board – Ontario Municipal Board and Environmental Review Tribunal – to hear an appeal so that Planning Act and Environmental Assessment Act requirements can be considered together. This would be more efficient than a separate Part II Order request under the EAA.

ii) OMB Review Community Perspectives - Panel

Councillor Jan Harder pointed out that she and the City staff are very much in agreement with the submission already made by six City Councillors. Furthermore noted that her experience as a member of an AMO task force on the OMB was that many very small Ontario Municipalities do not have much money and do not have a lawyer on staff and so do not see how they are able to defend themselves. Jan feels that the City has good collaboration, cooperation and negotiation with

community associations in achieving the necessary adjustments to planning policies for the City of Ottawa. She acknowledged that when it came to restricting the heights for Infill #2 one is not sure precisely what the OMB decided. This is an example of the issue that arises because it appears that different OMB members will make very different decisions on the same case with the same evidence. She understands this fact may have led some councillors to prepare proposals for City Council consideration when makes its decision on its submission to the OMB.

John Hebert maintained that Provincial cabinet ministers are well aware of the battles that can arise over development projects. He noted that FCA decides who will present its case before the Board. The developer community takes the OMB seriously because it is an independent, non-political and impartial body making planning decisions. While John agrees that at this stage we should identify difficulties, but he believes that fewer changes would be best for a start. Then once we all see how a few changes work out, it would be time to make a few more changes and gradually over time make and keep the changes which contribute to a better functioning OMB. The developer community is basically happy with the OMB as an appeals body. His homebuilders group agrees that the Board can be streamlined and feels that citizens groups support the streamlining. However the homebuilders do not agree with funding community associations. The group believes that increasing the size of the Board staff and ensuring that they have better training.

Linda Hoad proposed that community associations should do whatever it takes to avoid having an issue taken to the OMB. Pre-consultation is important activity to pursue and she feels that formal consultation benefits community groups. Then mediation should be undertaken whether through the City or through the OMB. Evidence is opinion of professionals with letters after their names whereas views of ordinary residents are not really heard or paid attention to. There is no equality before the Board. Further since lawyers and planners may be reluctant to work for community associations, Linda proposes that the OMB needs to organize a pool of experts who will work for community associations. As well she believes that the Committee of Adjustment should be hived off by having its own local appeal body

iii) OMB Review Community Perspectives -- Q & A

Don proposed that from scratch (*de novo*) hearings be applied to small communities but not to large Cities such as Ottawa. **Jan** agreed that very small communities such as those in Eastern Ontario do not have lawyers and planners on staff, but said that funding municipalities is against the Provincial Policy Statement because the communities have water, gravel mining, etc.

Klaus believes that from scratch (*de novo*) hearings have gone awry. The hearings start from scratch and end with the OMB overruling Council rather than continuing where it left off. Klaus asked whether Councillor Harder would accept having the OMB rule on process on Council decision making instead of from scratch (*de novo*) hearings. The Councillor replied that she would have to think about it. She pointed out that Barrhaven has 7.8 years of land for residences within the urban boundary which leads her to believe in rational agreement is needed in dealing with the urban boundary

John supports from scratch (*de novo*) hearings. As an example he pointed out that a few years ago the staff recommended expanding the urban boundary by 450 hectares with Council reduced to

250 hectares. The decision was appealed to the OMB by asking for 2500 hectares which initially authorized 800 hectares that finally became 1100 hectares. Developers contend that the OMB decision means that more affordable housing can be built.

Jan raised the issue of what is a frivolous case. She cited the case of a single couple who took the City to spending \$60,000 because they disagreed with a small point. It is known that Kemptville is almost paralyzed because it fears provoking OMB appeals. Jan contends that building better connections is the means to having better communities.

John contends that the OMB is not political. The Board depends on the professionalism of planners and lawyers

iv) OMB Review Community Perspectives –

Discussion Group Reports

Graeme agreed that planners set precedents from their orientation and training not their personal opinions.

Chad argued that from scratch (*de novo*) does not rely on precedent. Further intervener funding was wrongly reduced. He pointed that objectivity may be found in mediated negotiations.

Don urged that the OMB interpret rather than correct law as set out in the municipal Official Plan and the Zoning By-law

John's view was that mediation not extra cost. Further, the issue is to see the OMB as one appeals body which fits in like local appeals bodies would.

Caroline urged intervener funding be allocated to community associations and acknowledged that the devil is in the details of individual allocations

Guilio Maffini reported that judicial type review is the proper function for the OMB to perform.

7. Other Business

a) Motion on City Planning Advisory Committee

Moved by **Roland** Dorsay and seconded by **Chad Rollins** that "FCA supports the principles reflected in the draft letter to the Mayor and City Council recommending increasing proposed citizen representation in the Planning Advisory Committee so as to make a genuine contribution to the goals of public consultation"

Erwin proposes that instead of consultation the word used should be "engagement". Consultation suggests a onetime event whereas engagement carries the sense of active on-going involvement and participation in decision making. Motion as amended was carried with no opposing or abstaining votes.

b) Committee Reports

v) Operations Committee -- Chad reported met a couple of weeks ago when it worked on terms of reference prepared a list of action items to be tabled at an Executive Committee meeting. The committee members are: Graeme, Lorne Chad, Maria Luisa, Bob and Gary

vi) Communications -- Thierry Harris stated that the Committee has prepared its terms of reference which will be submitted to the Executive Committee Nov. 14th meeting. Essentially Communications is to work with other committees, sit in on other standing committees, prepare press releases, and be a bridge to the community associations, transportation and planning advisory committees as well as to sharing best practices with community associations

vii) Planning Advisory Committee -- Sheila reported that Coach Sheila press release was the basis of CBC probing questions that produced the two year reporting requirement and interest in impact of coach house foundations. It was noted that some differences raise a question on the actual facts of the debate. Basically the function of the PAC is to assist in helping each other. Putting resources together is seen in the concern for the site plan for a 15 storey building in Heron Gate. Action item is the OMB and R4 Zoning which has a Nov 19 deadline. The Committee members are Heather, Bob, Chad, Ruth, Maria Luisa and Sheila. Imagine Ottawa is good place to publicize FCA reports. Finally members should check out the planning workshop on the Committee of Adjustment.

8. Other Business – Open Mike

viii) Gary drew attention to Dinner Theatre in Manotick on Nov. 19 and Nov. 26 that Klaus noted that it is fine Community Dinner Theatre catered David Smith. Norm Foster double Dodd Two Plays on Nov 18 & Nov 25 at \$15.per person.

ix) Mary Egan outlined the role of Eco-Talent Network that is to have a roster of clever environmental experts who will provide *pro bono* assistance to community associations **Jason Barlow** is the one paid person in Eco-Talent who is most willing to work for what we as organization want to achieve in environmental matters. C A's are advised to check linked-in, universities & colleges for environmental sustainability.

x) Roland stated that police reductions beginning with community officers were being reduced from 15 to 10 and reduced response times to check calls about crimes. He urged C A's to send individual letters to their ward councillors

xi) Don was pleased to inform us that last year's pilot on Sir John A. MacDonald cross country skiing on the Westboro side of the Parkway will be repeated this year.

xi) Erwin advised us of the November 22 meeting of the Planning Commottee will be considering a question of employment lands from the April 28, 2014 that may impact significant woodlands within Ottawa.

xii) Sheila stated that the theme for the December 8th Overbrook Meeting will be a Panel on Transportation not just the proposed Truck Tunnel.

xiii) Archie moved that the meeting adjourn at 9:10 pm

Annex
OMB Review Community Perspectives –
Introduction by Erwin Dresser

Erwin, in introducing the topic, pointed out that the Province is not at all interested in abolishing the OMB despite whatever Ottawa community associations may feel. He highlighted the proposal that could see the OMB no longer conduct hearings "from scratch" ("*de novo*"). Instead, the Board could act more like a judicial appeals court, determining whether the municipal decision was reasonable, had followed proper process, and was in accord with municipal and provincial laws, regulations and policies. This change would mean that the Board would no longer substitute its own judgement of what constitutes "good planning" for that of Council or Committee of Adjustment. He suggested that, as a result, fewer and shorter hearings would be likely. Should the OMB uphold an appeal, then the matter would be returned to Council or Committee of Adjustment for reconsideration consistent with the Board's direction.

He suggested next that we may propose that a local appeal body be created to hear appeals from the Committee of Adjustment, thereby reducing appeals to the OMB by about one-half. Local appeal boards are permitted by current legislation. Further stability would be achieved by prohibiting appeals of secondary plans for two years and by eliminating appeals of interim control by-laws. Moreover the Board could be required to return an issue to Council for reconsideration if it is presented with new information.

Erwin added that other reforms could include ending grandfathering of pre-2007 applications; reassessing the working of the Citizen Liaison Office, possibly giving it independent planners and independent lawyers and possibly having it maintain a searchable data base of Board and Court decisions; and clarifying Section 17(50.1) of the Planning Act such as to ensure that only municipal decisions are subject to appeal rather than also anything that was considered and rejected.

Erwin noted that intervener funding is a big issue. He suggested that it should be available to not-for-profit organizations, provided that their appeal is not frivolous, vexatious or for the purpose of delay; the group has no pecuniary interest in the outcome; and the request for funding is reasonable, based on published criteria.

Erwin suggested a number of other process reforms ranging from making the evidence available in advance on a shared drive with hard copies provided not-for-profit groups; making transcripts or synopsis minutes, again with hard copies to not-for-profit groups; pre-hearing conferences for all appeals; exhibits to be included with the Decision if the Decision refers to them; encouraging 'active adjudication'; and improving the search function on the OMB website.

Mandatory mediation should be required especially if the Board finds that the dispute is due to asymmetrical information.

Finally, **Erwin** proposed that the Consolidated Hearings Act be amended so as to permit any party to request a joint Board – Ontario Municipal Board and Environmental Review Tribunal – to hear an appeal so that Planning Act and Environmental Assessment Act requirements can be considered

together. This would be more efficient than a separate Part II Order request under the EAA.

As for next steps, he noted that the Provincial town hall on OMB reform will be held on Wednesday, November 9th from 5:00 pm to 9:30 pm at St. Anthony's Banquet Hall off Preston Street. FCA could organize a workshop later in November. A motion could be brought at the December 8 meeting. The deadline for comments to the Province is December 19th