

Canadian Environmental Law Association

Ontario Municipal Board

May 17, 2000

Presentation by

Theresa McClenaghan, Counsel,
CELA

About CELA

- 30 years old this year; founded in 1970
- Is incorporated federally as a not for profit organization
- Is an Ontario Legal Aid specialty clinic; specializing in environmental law
- Mandate is province wide for client representation
- Law reform mandate includes provincial, federal and international levels

CELA's ROLE

- Full Client representation
- Summary advice and brief legal assistance
- Law Reform advocacy
- Consultations with governments
- Networking with other NGO's
- Public Legal Education
- Community organizing and outreach
- Briefs and Submissions
- Environmental Legal writing and editing

OUR RESOURCES

- Volunteer Board of Directors, including lawyers and community representatives
- 4 staff lawyers, 2 researchers, 1 librarian, 1 articling student, 1 part time communications director, 2 administrative staff
- International program - one part time lawyer and one staff researcher

More Resources

- Resource Library for the Environment and the Law - open to the public,
www.environmental.ca catalogue soon on line
- Other volunteers
- Intervenor Newsletter, Quarterly
- Memberships in CELA
- Web Site: www.web.net/cela; soon to be www.cela.ca

CELA Application Process

- Client representation requests come in to CELA
- They are taken to a committee of our Board of Directors
- They are considered in light of case selection criteria
- Financial eligibility; disadvantaged communities
- Environmental law precedent
- Important environmental issue
- Lawyers' resources
- Private bar not available

Substantive Issues

- Developers' time appeals
- One Window Planning
- Resource constraints of parties
- Provincial Policy Statement
- Other legislative amendments favouring development (Development charges; LTT rebates etc.)

90 Day Appeals

- Section 22(7)(c) appeals - 90 days from application for official plan amendments
- Section 34(11) appeals - 90 days from application for zoning by-law amendment
- No longer referral by Minister
- OMB must hear
- Public process may be circumvented
- Local requirements may be by-passed

“One Window”

- Provincial review and comment much more rare
- Local council and citizens lack benefit of provincial staff review
- Not necessarily access to or knowledge of provincial level comment
- Some occasions where provincial staff subpoenaed
- MMAH staff resources strained
- Specialized expertise may be lost if issue not flagged for specialist review

Resource Constraints

- Clients we represent usually lack resources; yet we need them to pay for experts
- Need an expansive base of expertise to bring everyone to the same starting place for ecosystem / natural heritage protective planning decisions
- Small and medium size municipalities also have strained finances for long hearings
- Provincial staff downsized

Provincial Policy Statement

- Concern that long hearings are structured in same order as PPS
- Early decisions about housing and infrastructure might constrain natural heritage and water protection decisions in the hearing
- However, the PPS does not give expressed priority to development aspects over natural heritage

Other legislative Amendments

- Development Charges Act amendments
- Land Transfer Tax rebates introduced in 1996 for new homes only
- Decreased funding of public transit
- These and many other changes are recipe for urban sprawl, in our opinion
- Very wasteful use of land and high impact on ecosystem, agricultural and water protection values

Ideas

- Use of interim order powers
- Support local requirements and decision making
- Use annual reports to highlight concerns if possible
- Caution with costs awards; use practice guidelines to reassure participants

Board's Powers

- Section 17(45), Board's power to dismiss all or part of an appeal without a hearing on its own motion or motion of any party
- Reasons include that applicant did not make submission to public meeting without reasonable explanation
- (e) appellant has not responded to a request by the OMB for further information within the time requested by the Board

Board's Powers Continued

- S. 17(45) is expressed to prevail over Statutory Powers Procedure Act
- Also powers after hearing, of course, to approve, refuse, modify section 17(50)
- Reasons could include that applicant disregarded local process in all but form or that local requirements were not met
- Similarly s. 34(25)(a.1) and (d) among other powers, for zoning amendment applications

Support local requirements and decision making

- Through above powers of the Board
- Closely scrutinize applications as to whether local process had a fair opportunity
- Expiry of 90 days should not be presumed bad faith by municipality; elected representatives and staff should be presumed to be acting in good faith

Provincial Responsibilities

- Many of the current issues are due to current version of Planning Act and other legislative amendments
- Many tools are available to Minister of Municipal Affairs and Housing

More Provincial Tools

- Minister has tools that local municipalities do not have -- e.g. section 23(1) to amend an official plan where a matter of provincial interest as set out in a section 3 policy statement is or is likely to be affected
- Use annual reports to highlight concerns if possible

Costs

- Caution with costs awards
- Could use practice guidelines to reassure participants
- Very important to encourage citizen and local group participation
- Often very knowledgeable about local conditions
- Important for acceptance of process and outcome to encourage participation

Thank You...

- Thanks for having us to discuss these issues; I hope these comments are useful and constructive.
- Canadian Environmental Law Association