

# Undemocratic OMB needs to be reined in

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Toronto's elected council and its expert planning staff have – once again – been overruled by the unaccountable, unfair and undemocratic Ontario Municipal Board.

Following a familiar pattern, the provincial agency went against the city and rewarded developers last week, by allowing three high-rise residential complexes to go ahead on Queen Street West.

The decision, made over the objections of residents, defenders of the arts and design district, city planners and Toronto politicians, underlines the need for dramatic change to this agency and its current mandate as approved by the province.

Ontario Municipal Affairs Minister John Gerretsen tabled a series of limited OMB reforms in the Legislature a year ago.

But these, at best, amounted to tinkering with a system that clearly needed massive redesign and restructuring.

The Queen Street West decision was made under the old OMB rules, but there is no indication the outcome would have been any different with Gerretsen's minor reforms.

At issue is the construction of condominium towers to south and east of Queen and Dufferin Sts. This zone, known as the Queen West Triangle, is a distinctive but underutilized area featuring art galleries, studios, storefronts, Victorian buildings and old industrial space.

Virtually everyone agrees it is ripe for growth. The city, guided by its in-house planners, opted for a strong focus on protecting the "creative industries," especially arts and design, with a modest proposal that included some residential development, mainly in low-rise buildings.

Developers sought – and won – much more. The way is now clear for a 19-storey condominium, an 18-storey tower, and a series of smaller high-rises totalling 1,500 units, housing about 2,000 residents.





When this agency was created in 1897, its job was to supervise municipalities' finances. The OMB's mission gradually evolved and it is now an appeal panel on planning and development issues, with the power to overrule the decisions of elected municipal councils.

The board currently has 27 members, all appointed by the province. Members can be of diverse backgrounds and include lawyers, former elected officials, engineers, public administrators and others. Generally, one or two members hear any given case, depending on the matter's complexity. They are assisted by a staff of 53, including planning experts and other specialists.

In recent years, more and more municipalities have become frustrated by the OMB, which has evolved to the point where it often acts as a second planning board, with the powers to overrule decisions made by local planning boards.

Such a role may have been needed in 1897, but it is reasonable to ask if this role is still needed 110 years later.

For example, despite being Canada's sixth largest government and despite new powers and autonomy granted to the city by Queen's Park, the OMB can still thwart Toronto's planning officials

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and elected council. That doesn't make sense.

Toronto's chief planner, Ted Tyndorf, has said the city is studying the possibility of using its new powers to get out from under the OMB's sway and set up its own land-use appeal board. This approach should be encouraged. Other Canadian provinces run appeal systems for land-use decisions, but no jurisdiction has a panel with the sweeping powers of the OMB.

Toronto is large enough to support its own quasi-judicial tribunal. And the city certainly has enough land-use changes and controversial developments to keep such a panel busy.

In structuring the proposed agency, care would have to be taken to ensure fairness to all, including developers and individual property-holders.

However it would be reasonable to expect that the city's democratically elected council and its professional urban planners would be less likely to be overruled.

Giving more weight to city council decisions serves both democracy and fairness. If the public strenuously objects to a development allowed by politicians, it can elect someone else. But there is no way to vote the OMB out of office.

The system, as it stands, is manifestly unfair. Even in a city as big as Toronto, it pits a handful of civil service planners against a host of lawyers, analysts and planning consultants hired by developers.

A tempting and strong argument can be made to abolish the OMB outright.

But smaller jurisdictions, lacking money and without the development pressure that Toronto and other major cities face, would still need some appeal system in case local planners and politicians seriously overstepped their bounds.

That's why the OMB should be left in place for these areas, however it should be transformed into a true review panel, not the alternate planning system that it has become today.

The agency's mandate should be constrained so a municipality's decisions are deemed final unless they involve a clear case of error or impropriety.

That was the key recommendation in a 2003 report from a special task force on OMB reform set up by municipalities across Greater Toronto.

And it is worth heeding now.

Land-use decisions made by municipalities should not be subject to easy reversal by an unaccountable body just because it favours an 18-storey building over an eight-storey building or prefers one style of architecture over another.

Clearly, the time has come for sweeping change to the OMB.

The alternative is an endless repetition of the OMB's wrong Queen West decision, extended to different places across the province, but almost always with the same unhappy results.