



Greenspace Alliance of Canada's Capital

Alliance pour les espaces verts dans la capitale du Canada

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24 February 2011

Mr. Jeffrey Dea
Ministry of the Environment
EAAB Project Coordination Section
2 St. Clair Avenue West, Floor 12A
Toronto ON M4V 1L5

By email: EAABGen@ontario.ca

Re: **EBR Registry Number 011-1391**
Proposed Amendments to the Municipal Engineers Association's
Municipal Class Environmental Assessment

Dear Mr. Dea,

Friends of the Greenspace Alliance (FGA - Greenspace Alliance of Canada's Capital), offers the following comments on the proposed amendments regarding section A.2.9 (INTEGRATION WITH THE PLANNING ACT) of the MEA's Municipal Class Environmental Assessment.

Our comments are in light of FGA's recent litigation experience which involved just that provision. That experience unequivocally shows that both the current provision and the proposed amendments are inadequate and misleading.

The City of Ottawa issued a *Notice of Completion* of Class EA Schedule B and C infrastructure projects, which led to an Official Plan Amendment (OPA 77) that FGA then appealed to the Ontario Municipal Board. The *Notice* read in part:

“Since the City is following an integrated planning and environmental assessment process, there is no opportunity for a Part II Order under the *Environmental Assessment Act*. However, any person or public body with objections to any of the projects identified in the Plans and/or to the OPA may file an appeal to the Ontario Municipal Board.”

[newspaper advertisements]

The OMB, in considering FGA's appeal, begged to differ that its jurisdiction had expanded to cover Part II Order appeals under the EAA:

2.

“It is noteworthy that the only instrument before the Board is OPA 77. The Class EA process does not require our benediction... The authority upon which the Board is empowered to act stems from the *Planning Act*. The Board does not have the jurisdiction or the incidental powers pursuant to the *Environmental Assessment Act* to effect changes to the EA process. ... There is no question that the by-product of the approval of OPA 77 translates to a pre-approval of the Master Plan and the projects of the Class EA. However, the Board cannot change such a by-product unless it has the legal tool to do so.”
(PL090678, 17 June 2010, p. 8)

FGA sought Leave to Appeal the OMB decision to Divisional Court. In his Endorsement, RSJ Hackland concurred:

“I would not see [the City of Ottawa having allegedly misled FGA about its appeal route for the environmental issues of concern to them] as a basis for expanding the OMB’s jurisdiction to reject an Official Plan Amendment. I see no error of law on the OMB’s ruling ... in light of an analysis of the applicable legislation...
(*The Friends of the Greenspace Alliance v. Ottawa (City)*, 2011 ONSC 477, 21 January 2011, par. 7)

It is clear, therefore, that under current legislation appeal rights from Class Environmental Assessments under the *EAA* are not expunged when the Integration Provision is used. Neither the current nor the proposed wording of section A.2.9 make this clear – on the contrary, they create the impression that an appeal to the OMB is the only available avenue. Clearly, that is what the City of Ottawa also thought to be the case. Specifically, where the proposed text says:

“Planning Act decision(s) may be appealed to the Ontario Municipal Board (OMB). The OMB is the administrative body to which appeals of the land use planning decision, including the supporting infrastructure can be made.”
(Last para. of s. A.2.9.1, PDF page 4),

no advice is given regarding appeal rights under the *EAA*. Under the heading “*Ontario Municipal Board (OMB)*” the proposed document even states explicitly:

“Class EA matters involved in an integrated approach are appealed to the OMB.”
(PDF page 10)

Clearly, this is wrong in law. A case could be made for amending the law (giving the OMB jurisdiction over EA appeals, or directing appellants to the Environmental Review Tribunal, for example) but as the law stands there continue to be appeal rights from a Class EA under the *EAA* and the MEA Manual should say so.

3.

We note that under “*Content of Notice of Public Meeting*” the proposed text states as a requirement:

“In the case of Notices of Completion for both Schedule B and C projects:

...

- ii) advice for the public's right with regard to the provisions to request an order, with date by which the request must be received by the Minister and the address of the Minister.”

(PDF page 9)

While there is no explicit reference to Part II Order requests under the *EAA*, this is presumably what “request an order” refers to. This therefore flatly contradicts the text on pages 4 and 10. Unfortunately for FGA, the City of Ottawa chose to follow the main thrust of the MEA Manual, not what it says on page 9.

We would appreciate being informed of the outcome of this consultation and any amendments to the MEA Manual that are eventually approved.

All sources quoted are in the public domain, so we dispense with sending you attachments.

Thank you for the opportunity to comment.

On behalf of FGA,

Erwin Dreessen
Ottawa, Ontario