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MUNICIPAL GOBBLEDEGOOK

Every year municipalities across Ontario send out thousands of notices to city residents. These notices are intended to inform citizens about decisions that are pending, meetings and hearings that have been scheduled, or by-laws that have been passed. These notices are sent because the matters they deal with may be important and of interest to the residents whose living or business environment may be affected.

Because these notices are the primary official vehicle to notify area residents of municipal action, many questions have been raised about them. Are they intelligible? Do the right people receive them? Do they contain enough information? Are citizens informed about all the matters that they should be informed about? and so on.

This COMMENT analyzes the intelligibility and adequacy of the information contained in two types of notices sent out -- as required by the provisions of the Planning Act[1] -- to residents of municipalities. These two are (1) notices dealing with zoning by-laws, and (2) notices dealing with minor variances.

ZONING BY-LAWS

NOTICE OF APPLICATION to the Ontario Municipal Board by the Corporation of the City of Toronto for approval of a by-law to regulate land use passed pursuant to Section 35 of The Planning Act, R.S.O. 1970, c.349.

TAKE NOTICE that the Council of the Corporation of the City of Toronto intends to apply to the Ontario Municipal Board pursuant to the provisions of Section 35 of

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1. It should be noted that while the Planning Act has general provisions for the holding of meetings and publishing of information by Planning Boards in order to encourage residents to cooperate and participate in the planning of their area, it has no specific provisions requiring municipalities to send written notices of official plans or amendments to residents. A case in point was a recent amendment to the City of Toronto Official Plan - Amendment No.5 - which dealt with the City's bonus policy. Notice of the hearing before the Ontario Municipal Board was published in the press but was not sent specifically to any residents. Similarly, there are no specific notice provisions for subdivisions. As a result, it is possible for the owner (or resident) of a property to be totally unaware of the fact that a major subdivision is to occur on property adjacent to his own.

The Planning Act for approval of its Restricted Area By-law No. 126-71 passed on the 13th day of May, 1971, the full text of which is furnished herewith. A note giving an explanation of the purpose and effect of the by-law stating the lands affected thereby is also furnished herewith.....

(From NOTICE OF APPLICATION to the Ontario Municipal Board)

EXPLANATORY NOTE

By-law No. 126-71 amends the City's Zoning By-law No. 20623 (1) by re-zoning as C.1 S L.1 Z.5 (commercial) certain lands fronting on the west side of St. Patrick Street, now zoned C.2 V.2 (light industrial) and certain lands fronting on the east side of McCaul Street, now zoned R.4 Z.4 (residential), between Dundas Street West and the extension easterly of Stephanie Street, and (2) so as to permit the erection of an apartment house on such lands (which lands are more particularly described in the By-law and are shown on the Plan attached hereto) having a total floor area of 838,000 square feet complying with the provisions of paragraphs (1) to (9) of Section 2 which relate to the following, namely:.....

(From the EXPLANATORY NOTE for By-law No.126-71 known as Grange Village)

All zoning by-laws must receive the approval of the Ontario Municipal Board. Under Section 35 of The Planning Act and according to the rules of procedure adopted by the Ontario Municipal Board, notice of the passing of a zoning (restricted area) by-law or amendment by Council, and notice of Council's application to the Ontario Municipal Board for approval of this by-law, must be sent to (among others) all owners of land within the area to which the by-law applies, and all owners of land within 400 feet of the area.[2] The Ontario Municipal Board (OMB) holds a public hearing prior to approving any zoning by-law in order to look into the merits of the by-law. But it may dispense with holding a hearing if there are no objections or if all the objections are deemed "insufficient" to require a public hearing. In general, then, if there is one or more reasonable objection to the by-law, an OMB hearing is held.

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[2] Questions can be raised about the practices of (1) sending notices after the by-law has been passed by the city council (rather than earlier in the approval procedure, before final city decisions have been made); (2) sending notices only to owners of property (rather than including tenants whose living environment may be radically changed - and who are forming a larger and larger proportion of city residents); and (3) sending notices only to owners of property within 400 feet of the area being rezoned (rather than to residents of a larger area, since the effect of high rise development, for example, is felt far beyond 400 feet). Recognizing these objections, the City of Toronto adopted a policy in October 1971 of sending notices of the application for a zoning change, to residents (owners and tenants) of property within 1,000 feet of the proposed zoning change. The Planning Act, however, does not require Toronto or any other Ontario municipality to do this.

Notices of zoning by-laws (such as those excerpted above) are probably the most important notices which the Planning Act requires municipalities to send to its residents. After all, a zoning change may lead to a radical change in the character of a neighbourhood. It may, for example, allow commercial uses in a formerly exclusively residential area; or it may allow high density development in a previously low-density area.

Presumably these notices are sent out to inform property owners in the vicinity about the pending change, to give them the opportunity to evaluate the change and, if they wish, to object to it. The notices must, according to the rules of procedure of the OMB, state "in clear and concise terms the purpose and effect of the by-law".

Despite this clear instruction, the excerpts from zoning by-law notices included at the beginning of this section and in the Appendix do provoke serious doubts about how much information is in fact conveyed to the recipient. The notices seem more likely to mystify than inform. There are two basic reasons for this problem: (1) the presentation of the information; and (2) the adequacy of the information contained.

Presentation of the Information

In general, the recipient of a zoning by-law notice receives a form NOTICE OF APPLICATION to the OMB for by-law approval, a copy of the by-law passed by the council of the municipality, and an EXPLANATORY NOTE. In many cases, these documents are nearly incomprehensible, even to the intelligent, well-educated layman.[3]

Probably the first document the recipient reads - or tries to read - is the NOTICE OF APPLICATION.... This notice refers to other acts and by-laws not described in the Notice - such as Section 35 of The Planning Act, R.S.O. 1970, c.349 and Restricted Area By-Law No.126-71 (How many people know what a "restricted area by-law" is?) It is so full of "herewiths", "pursuant tos" and "said by-laws" that the message it is designed to convey becomes submerged in the legal phraseology. In fact,this phraseology obscures the importance of the recipient's decision to object, support, or remain uninvolved -- and it also obscures the procedure by which he can become involved if he wishes. Since the decision of any single person to object to the by-law can lead to the holding of an OMB hearing, (and possibly to the OMB's refusing to approve the by-law), a more direct statement of who receives the notices, why they receive them, and under what circumstances hearings are held, might help to emphasize the importance of each person's decision. In its present form the notice is likely to provoke the frustrated reader to lodge his objections only with his own wastepaper basket. The procedure for becoming involved would be clearer if the second and third paragraphs of the notice were parallel in construction and if each gave the same information (only changing "to object" in paragraph 2 to "to support" in paragraph 3). For example (using the same basic phraseology and punctuation) these paragraphs would read:

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[3]. See Appendix for full texts of a NOTICE OF APPLICATION and an EXPLANATORY NOTE.

> Any person wishing to object to (to support) the application for approval of the by-law may within fourteen (14) days after the date of this notice send by registered mail or deliver to the Clerk of the City of Toronto notice of his objection to (support of) the said by-law together with a statement of the grounds of such objection (no statement of the grounds of support is necessary) together with a request for notice of any hearing that may be held giving also the name and address to which such notice should be given.

The inclusion in paragraph 2 (directions to objectors) of the request for a notice of an OMB hearing and of the address to which this should be sent appears to be important, since paragraph 4 indicates that hearing notices will be sent only to those "who have filed an objection or notice of support and who have left with or delivered to the Clerk undersigned, the address to which notice of hearing is to be sent."(Bureau underlinings added). If the objectors, in fact, do not have to leave their address in order to receive a notice of hearing, then the sentence in paragraph #4 should be changed to read: "Notice of any hearing that may be held will be given only to persons who have filed an objection or to persons who have filed a notice of support and have left or delivered to the Clerk undersigned, the address to which notice of hearing is to be sent."

After ploughing through the NOTICE OF APPLICATION, the reader probably looks at a copy of the By-law (if it is included). Since the By-law is, of necessity, framed in legal language, the reader probably turns quickly to the EXPLANATORY NOTE for help in understanding what the By-law means. Help is not always forthcoming. Unfortunately, the EXPLANATORY NOTE can be as confusing as the By-law and sometimes only serves to increase, rather than diminish the confusion.

The EXPLANATORY NOTES are often confusing for the same basic reasons as the NOTICES OF APPLICATION. First, the EXPLANATORY NOTE frequently refers to information contained only in other by-laws -- particularly the Zoning By-law (Toronto's By-law No. 20623). In the excerpt above from the EXPLANATORY NOTE for By-law No. 126-71 (known as Grange Village, at McCaul and St. Patrick), the zoning C.1 S L.1 Z.5, C.2 V.2 and R.4 Z.4 are really not adequately described. For example, although #6 (in the body of that NOTE) states that under the new by-law zoning the total floor space of the dwelling units in the building is restricted to 681,000 square feet (or 4.04 times the area of the site) and the last sentence of the NOTE states that the total permissible floor area of the building is 863,000 square feet (or 5.12 times the area of the site), the NOTE does not state what the permissible density for the site is under the present zoning. So the person reading the notice has no basis of comparison and therefore no way of knowing the extent of the proposed change. Furthermore, although part of the building is to be used as commercial space, no indication is given of the type of commercial uses permitted or expected to be included in the development. This information is also of great interest to residents and businessmen in the area.

Second, technical language that is not adequately defined is also frequently used. For example, "maximum density", "gross floor area", "light industrial", "landscaped open space", "conveyance", "alienation" are all terms that may have "special meanings" and are not immediately understood by the general public. "Landscaped open space", for example, is not always outside areas with grass and trees, as the layman might reasonably expect. Sometimes it includes gyms and squash courts. Furthermore, the definitions in the By-law itself are not complete (since they in turn refer to other definitions in other by-laws). And definitions are confused even further by the fact that they force the reader to refer back and forth between different sections of the By-law. The EXPLANATORY NOTE should gather together all the information necessary to give a clear and sufficiently complete definition of the terms.

Third, the complex sentence structures and long sentences with many qualifying phrases are often difficult to unravel. The excerpt at the beginning of this section is a good example, and other examples abound.

Fourth, the data is sometimes given in such a way that the reader cannot easily relate one piece of information to another. For example, the EXPLANATORY NOTE (in the Appendix) for By-law 239-71 states that 70% of the site of the northerly development must be landscaped open space; but that up to 25,000 square feet of this landscaped open space may be covered or on roofs. In order to determine what % of the landscaped open space may be covered or on roofs, we need to know the size of the site. Since the size of the site is not given in either the EXPLANATORY NOTE or the accompanying By-law, there is no easy way to tell how many square feet are included in the 70% of the site to be landscaped open space, or what % of the landscaped open space may be covered or on roofs.[4] In short, the 25,000 square feet cannot be readily related to the 70%.

All these problems of presentation are, of course, magnified for the reader who speaks or reads very little English. There are no requirements for sending out notices in languages other than English.

Adequacy of the Information Contained

Assuming that the receiver of the notice has managed to fight his way through the cover NOTICE OF APPLICATION, the By-law, and the EXPLANATORY NOTE, does he then have all the information he needs in order to make a decision about whether or not he supports the by-law? Unfortunately, the answer often is no. In some cases, key pieces of information are lacking. In the excerpts included in this report -- and a number of others -- such basic things as the size of the site, the number of buildings, the height of the buildings, the proposed number of suites, the proposed use of the commercial space and the amount and basis for bonus density (if any) are lacking.

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[4]. The approximate size of this northerly site can be determined by performing the fairly difficult calculation of multiplying the 2.4 density by the 740,061 square feet gross floor area. Sometimes, as shown in the next section, not even this indirect method can be used to determine the size of the site and to relate bits of information to one another.

The site seems to be carefully described in legal terms; but one of the key elements --its size -- is either not given or very difficult to calculate. The recipient of the notice, therefore, doesn't know the magnitude of the proposed change.[5]

In the EXPLANATORY NOTES (and By-laws) for a number of high rise developments in the City of Toronto -- including the ones contained in this report -- the term "apartment house" is used in a way that would mislead most laymen. For example, the Grange Village By-law 126-71 quoted at the beginning of this section refers to permission to erect "an apartment house". The normal reader would assume that one building was to be built. In fact, according to planning and other reports based on the developer's application for a zoning change (documents not sent to notice recipients), there will be not one apartment house, but three high rise buildings and a shopping mall. The Quebec-Gothic By-law 239-71 and EXPLANATORY NOTE (in the Appendix) refers to "the erection of two apartment houses". Again, the lay reader would assume that this meant two buildings. In fact, according to planning and other reports based on the developer's application for a zoning change, there will be not two apartment houses, but four apartment towers and some 28 townhouses.

To people in the neighbourhood the height of a building -- particularly of a high rise -- is probably its most salient feature. And yet, in many cases, the height of a building cannot be determined from the EXPLANATORY NOTE or By-law. The EXPLANATORY NOTE and By-law 126-71 for Grange Village says that the apartment house may have 838,000 square feet (or 863,000 square feet or 5.12 times the area of the site when mechanical areas are included). But most people have no idea how tall the resulting building is likely to be. The EXPLANATORY NOTE and By-law 239-71 for the Quebec-Gothic development is slightly better, since height limitations of 250', 300' and 338' are given. But even here most people would have trouble translating that into readily understandable terms, such as number of stories. After all, most apartment dwellers say "I live on the 20th floor.", not "at the 300th foot."

One final type of information that seems to be frequently omitted is reference to and description of a "bonus system". Several developments in Toronto have been awarded additional density (i.e., additional floor space), on the basis of a bonus system which grants increased density for such things as the large size of the site, the amount of landscaped open space, "good planning", and so forth. Neither of the EXPLANATORY NOTES included in this report even refer to the existence of a bonus system, let alone explain how much of the density (or total floor area of the apartment houses) is derived from this bonus system. Again, this type of information should be conveyed to everyone receiving the notice about the By-law.

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[5] Two cases where it is impossible to determine the size of the site from the information provided in the By-law and EXPLANATORY NOTE are:
(1) City of Toronto By-law No.184-69 (to permit an apartment house at Duplex and Roselawn), which gives a building density (exclusive of the top floor) of 2.325 times the size of the site; but does not give a gross floor area in square feet; and
(2) City of Toronto By-law No.282-71 (to permit the extension of the Art Gallery of Ontario) which gives a gross floor area of the building (226,000 square feet); but does not give a density.

The additional information about proposed developments referred to above is generally available from reports prepared by various officials, but often it is not included in the notices sent to residents. Surely it is not an impossible task to state in clear and concise terms the purpose and effect of the by-law in question.

MINOR VARIANCES

The Committee of Adjustment is empowered by Section 42 of the Planning Act to authorize "minor variances" to restricted area (zoning) by-laws. The Committee is required by the Planning Act and by the rules of procedure set by the Minister of Municipal Affairs (effective February 1, 1972) "to give written notice of the time and place of the hearing of each application, together with a brief explanation of the nature of the application", to, among others, "all assessed owners of land lying within 200 feet of any land or building that is the subject of the application."[6] A minor variance is a change that does not, in the opinion of the Committee, change the general intent and purpose of the by-law and of the official plan (if there is one).

Minor variance notices, as is evident from the example in the Appendix, suffer from many of the same ills as zoning notices: excessive legal terminology and phraseology; references to acts and by-laws not adequately described; and provision of inadequate information. In some cases these notices are even more cryptic than zoning by-law notices, because they do not contain a map or "explanatory note". Although minor variances are supposed to be minor changes, they may nevertheless be of interest to those in the immediate vicinity. And this, of course, is the reason the notices are sent out.

The minor variance in the notice in the Appendix -- referring to the Homewood-Carlton development in Toronto -- is an interesting example. Since it is also one variance which perhaps might not have been considered "minor" by some residents, it provides us with an example of why it is important to give people clear, concise and adequate information. In this case, the applicant had failed to provide the amount of "landscaped open space" required by the zoning by-law which had originally given permission for the erection of a commercial-residential development (By-law No. 146-70). He was asking for permission to be allowed to make up the difference by placing the landscaped open space "on the main roof of the apartment building". Neither the notice of the application nor any of the documents in the file (mentioned by the Notice) in the offices of the Committee of Adjustment gave a vital piece of information -- i.e., the height of the building (which, according to planning reports, was to be 24 stories). Surely the height of the building is a relevant consideration when a decision is to be made by a receiver of the notice about the location of landscaped open space on the main roof of the building.

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[6] Questions can be raised about whether or not tenants (as well as property owners) should receive notices, and whether or not the geographic area of 200 feet is adequate.

Another interesting piece of information -- which becomes clear only when one examines the site-plan on file at the Committee of Adjustment and data contained in the planning report on the development (not on file at the Committee of Adjustment offices) -- is that a very large part of the "landscaped open space" is already above ground level, on a 2 storey podium and canopy roof. Originally only 10.5% (7,220 square feet) of the site was to be landscaped open space at grade. The minor variance would mean that this 10.5% would be reduced even further (by about 4,900 square feet) -- to about 3.3%. Again, this information could significantly influence the decision by the recipient to object, support, or remain uninvolved in the application for a minor variance.

This discussion of notices required by the Planning Act has shown the ways in which many notices, rather than clearly informing people of decisions that are pending, may only confuse and perhaps frustrate or even antagonize them. It is too easy to view the notices as mere legal formalities. But they are much more. These notices not only convey specific information to particular individuals, but also are an important mechanism through which citizen participation may be encouraged and informed or discouraged and possibly nipped in the bud. The increasing emphasis on public participation in planning brings home the need to closely review both the form and content of public notices.

APPENDIX
(1)

NOTICE OF APPLICATION to the Ontario Municipal Board by The Corporation of the City of Toronto for approval of a by-law to regulate land use passed pursuant to Section 35 of The Planning Act, R.S.O. 1970, c. 349.

Para. #1* TAKE NOTICE that the Council of The Corporation of the City of Toronto intends to apply to The Ontario Municipal Board pursuant to the provisions of Section 35 of The Planning Act for approval of its Restricted Area By-law No. 239-71 passed on the 29th day of September, 1971, the full text of which is furnished herewith. A note giving an explanation of the purpose and effect of the by-law stating the lands affected thereby is also furnished herewith.

#2 ANY PERSON INTERESTED MAY, within fourteen (14) days after the date of this notice, send by registered mail or deliver to the Clerk of the City of Toronto notice of his objection to approval of the said by-law together with a statement of the grounds of such objection.

#3 ANY PERSON wishing to support the application for approval of the by-law may within fourteen (14) days after the date of this notice send by registered mail or deliver to the Clerk of the City of Toronto notice of his support of approval of the said by-law together with a request for notice of any hearing that may be held giving also the name and address to which such notice should be given.

#4 THE ONTARIO MUNICIPAL BOARD may approve of the said by-law but before doing so it may appoint a time and place when any objection to the by-law will be considered. Notice of any hearing that may be held will be given only to persons who have filed an objection or notice of support and who have left with or delivered to the Clerk undersigned, the address to which notice of hearing is to be sent.

THE LAST DATE FOR FILING OBJECTIONS will be November 19, 1971.

DATED at the City of Toronto this 5th day of November, 1971.

G. T. BATCHELOR
City Clerk,
City Hall,
Toronto 100, Ontario

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* Paragraphs numbered by Bureau.

APPENDIX
(2)

EXPLANATORY NOTE

By-law No. 239-71 amends the City's Zoning By-law so as to permit the erection of two apartment houses located on the lands shown on Plans 1 and 2, respectively, attached to the By-law. The restrictions applicable to the two apartment houses are set out in Sections 1 and 2 of the By-law, Section 1 dealing with the northerly building and Section 2 with the southerly building.

The total floor areas of the buildings are equivalent in both cases to 2.4 times the area of the lots. Each building has three above-grade portions, as shown on Plans 1 and 2, the "A" and "B" portions of the northerly building are limited to a height not exceeding 250 feet. The "C" portion of the northerly building is required to contain at least 18 "town-house" units. Landscaping in the case of both buildings is required to the extent of at least 70 per cent. of the area of the lot. In the case of the northerly building sports areas, as specified in paragraph (3) of Section 1, and landscaped roof areas below the elevation of 25 feet and not exceeding 25,000 square feet in area may be included in calculating landscaping.

The siting of the portions of the southerly building is as shown on Plan 2. The "A" and "B" portions are limited in height to 338 and 300 feet, respectively, and the "C" portion is required to contain at least 10 "town-house" units.

The "A" and "B" portions of both buildings are required to contain in each of the first 5 storeys not less than two three-bedroom units.

Vehicular access is to be confined to the portions of the boundaries of the lots marked by a heavy line on the Plans.

No sports or recreational facility within the northerly building may be located west of a line 260 feet west of the west limit of Quebec Avenue, or north of a line drawn at right angles to the west limit of Quebec Avenue from a point 910 feet north of the north limit of Bloor Street West.

The existing zoning on the lands covered by the By-law is R.2 Z.2 . This zoning permits apartment houses, but restricts the total floor area to .6 times the area of the lot.

This explanatory note is an attempt to summarize the effect of By-law No. 239-71, and has been prepared in order to comply with the Revised Rules of Procedure of the Ontario Municipal Board. For accurate reference please examine the By-law itself.

APPENDIX
(3)

CITY OF TORONTO

COMMITTEE OF ADJUSTMENT

Members:
His Honour Judge W.M.Martin,Chairman Geo.A.Lister Earle C.Morgan,F.R.A.I.C
Paul McLaughlin

Charles E. Taylor
Secretary-Treasurer
City Hall
Toronto 100, Ontario
Telephone: 367-7565

IN THE MATTER OF Section 42 of The Planning Act and The City of Toronto Zoning By-laws No. 18642 and 20623, as amended,

- and -

IN THE MATTER OF an apartment house project located on the north side of Carlton Street, west of Homewood Avenue, such premises are located partially in an area zoned R.4.Z.5. with the balance of the premises located in an area zoned C.1S.L.1.Z.5. by City of Toronto Zoning By-laws No. 18642 and 20623, as amended; By-law No. 146-70 being a By-law to amend Zoning By-law No. 20623 in respect to the said apartment house project requires landscaped open space to be provided and maintained at the ratio of 78% of the area of the lands upon which the said project is located, such area being a total of 54,398 square feet,

- and -

IN THE MATTER OF an application by Car-Allan Investments Limited and Davhil Investments Limited, through their solicitors, Messrs. Thomson, Rogers for permission in conjunction with an apartment house development to be constructed on the north side of Carlton Street, west of Homewood Avenue, to provide landscaped open space of 49,544 square feet, on the strict understanding an additional area of 4,900 square feet of landscaped open space will be provided on the main roof of the apartment building in accordance with plans on file in the office of the Committee of Adjustment.

--- NOTICE OF APPOINTMENT FOR HEARING ---

The Committee of Adjustment has appointed Tuesday, the 8th day of February, A.D. 1972, at the hour of eight o'clock in the evening (local time), in Committee Room No.4, 2nd Floor, City Hall, Toronto, for the hearing of all parties having an interest in this matter.

As the Assessment Roll indicates you to be an owner of property in the immediate vicinity, the Committee of Adjustment has instructed that you receive a copy of this notice and if you desire, you may attend this meeting or file your views in writing with the Secretary-Treasurer.

DATED at The City of Toronto this 28th day of January, A.D. 1972.

(signed)
Assistant to the Secretary-Treasurer.

SHOULD A COPY OF THE COMMITTEE OF ADJUSTMENT'S DECISION BE REQUIRED BY YOU, THE REQUEST FOR THE DECISION MUST BE MADE IN WRITING AND ADDRESSED TO THE SECRETARY-TREASURER, COMMITTEE OF ADJUSTMENT, CITY HALL, TORONTO, PRIOR TO OR AT THE HEARING AS SET FORTH ABOVE.