



MANITOBA ECO-NETWORK

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November 10, 2021

Honourable Derek Johnson
Minister of Municipal Relations
Government of Manitoba
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Community Planning Branch, Winnipeg
provincialplanning@gov.mb.ca

Dear Minister Johnson,

Re: MbEN Comments – Municipal Board Planning Appeals Consultation

The Manitoba Eco-Network (MbEN) appreciates this opportunity to comment on Manitoba Municipal Relations' plans for modernizing the planning and permitting process in Manitoba. The comments and recommendations contained in this document have been developed in response to the *Modernizing the Appeals Process Discussion Paper* published on EngageMB as part of the Municipal Board Planning Appeals consultation. Since 1988, MbEN has promoted positive environmental action by supporting people and groups in our community. MbEN's programming focuses on policy advocacy, engagement in consultation processes and developing capacity building tools that benefit the environmental non-profit sector and our member groups.

The Discussion Paper's focus on gathering input about "efficiency" and "timely results" also needs to support meaningful public participation, an important element of any appeals process that may result in significant environmental degradation. Administrative and judicial processes that support meaningful public participation are an important part of environmental governance and help ensure access to environmental justice in the decision-making process. Therefore, it is important that the appeals processes the Municipal Board has oversight of, with the potential to approve development projects that will significantly impact the environment and the lives of the communities living and working near such developments, be designed to ensure affected community members and public interest organizations can meaningfully participate.

Despite the suggestion that the changes enacted through [*The Planning Amendment and City of Winnipeg Charter Amendment Act*](#) will improve public participation, it still remains largely unclear what the public's role in the new Municipal Board appeal processes will be. The discussion paper mentions public involvement, however, there is a lack of detailed information about which planning appeal processes the public may engage in. Clarity on this issue is important since the "level of public interest and participation varies depending on the subject

matter before the Board” (p. 6) and there are certain appeal processes from which the public is excluded or lack standing to initiate a Municipal Board appeal themselves, such as the appeal process for aggregate extraction and large scale livestock operations. Community members who have participated in recent Municipal Board proceedings, including the Lilyfield Quarry hearing in 2020, have voiced concerns with the new appeal process and expressed dismay at the lack of available plain language information about the process. It is important that the role of the public is clearly identified and explained, and mechanisms for meaningful public participation are not ignored or added to the pile of “red tape” that recent government consultations have been so focused on discarding.

Including Diverse Perspectives:

To ensure a diverse range of perspectives are captured during Manitoba Municipal Relations’ consultation process, it is important to include a broader range of stakeholders than the usual focus on industry and government participants. There is a need to directly seek input from community groups, environmental non-governmental organizations and members of the public who can provide feedback on public experiences with Municipal Board processes and recommend changes to support meaningful public participation.

The *de novo* standard of review utilized by the Municipal Board will also require more diversity in terms of Board membership to ensure the government appointed decision-makers with the power to override the decisions of municipal elected officials are capable of considering more than just an industry/government economic perspective. There are many ways to ensure diversity such as legislative mechanisms or policies requiring gender parity, inclusion of individuals who represent an Indigenous perspective, and environmental expertise. It is also important that Municipal Board decision-making processes include specific consideration of the environment, such as a project’s potential impact on the environment. This can be accomplished by requiring certain factors, laws, and policies be considered by decision-makers through legislative requirements and Municipal Board policies and rules. For example, the City of Winnipeg’s Board of Revision and Appeal Committee consider the City’s *Climate Action Plan* when making a decision.

The recommendations of the Manitoba Law Reform Commission in [Report 121: Improving Administrative Justice in Manitoba](#) (2009) should be considered and reflected in the changes to Municipal Board practices, make-up and procedures. Recommendations include openness and transparency, merit based criteria, minimizing partisan influence and accountability mechanisms. Best practice recommendations from other jurisdictions, like Ontario, and from international guidance documents that focus on improving environmental governance processes, should also be considered. For example, the UNEP [Guide for Environmental Courts and Tribunals](#) is designed to provide an overview for policy makers, decision makers and other leaders who are interested in improving adjudication of environmental disputes. There are many best practices in Chapter 4 aimed at improving environmental justice that could be incorporated into new Municipal Board planning appeals processes.

Meaningful Public Participation:

There is also a need to consider the elements of meaningful participation and incorporate them into Municipal Board processes. As discussed by the Manitoba Law Reform Commission in [Report 130: Manitoba's Environmental Assessment and Licensing Regime Under The Environment Act](#) (2015), there are many diverse and important benefits enjoyed when meaningful public participation is adequately incorporated into any regulatory proceeding (p. 48). MbEN suggests the MLRC's discussion of meaningful public participation and associated recommendations be considered during the review of the Municipal Board's appeal processes. This includes mechanisms such as early notification, electronic access to plain language information, a designated contact person to assist the public with navigating administrative procedures, more detailed guidance documents, and publicly available reasons for decisions and Board Orders on an online platform (for example, see the Manitoba Public Utilities Board and Clean Environment Commission websites). Administrative tribunal decisions have also been made available through public databases like CanLII (<https://www.canlii.org/>).

MbEN appreciates your consideration of our comments about the modernization of the planning and permitting process in Manitoba and welcomes future opportunities to engage with Manitoba Municipal Relations to ensure the development of effective and inclusive decision-making processes in Manitoba.

Sincerely,

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