

Report to the Ministry of Municipal Affairs, Recommended Changes
To Section 217 of the Municipal Act (Business Improvent Areas-BIAs)

RECOMMENDED CHANGES TO BIA LEGISLATION
(Municipal Act, Section 217)

Report Submitted on behalf

of



THE FREEDOM PARTY OF ONTARIO

February 1987

FREEDOM PARTY OF ONTARIO, Action Director-Marc Emery

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1. NOTIFICATION BY MUNICIPALITIES OF PASSAGE OF BIA BY-LAW

The letter that municipalities send out to affected businesses indicating that a BIA has been proposed CURRENTLY is very unclear and extremely difficult to understand. Two samples are enclosed from municipalities of East York and North York (see Appendices 'A' and 'B').

The NOTICE OF INTENTION should be CLEAR, CONCISE AND SPECIFY the permanence of a BIA, the approximate taxes to be paid to the BIA and the objectives or function of the BIA. Also needed is a CLEAR EXPLANATION of the procedure to be followed if the reader disagrees with the formation of the BIA and a statement of the time limits involved in petitioning.

The NOTICE OF INTENTION should be sent by REGISTERED MAIL by the municipalities. Currently, the municipality has no proof that all businesses affected have received the NOTICE OF INTENTION, and there is a body of evidence to indicate that many businesses have never received such notice. Registration would also highlight the importance of the letter to the business and insure it will be read.

2. PETITIONING TO PROMOTE THE FORMATION OF A BIA

Under the present legislation, the onus falls exclusively on the opponents of the BIA concept to document their OPPOSITION.

Since the intention of the legislation is to establish a merchants' association, DOCUMENTED PROOF of majority SUPPORT in the form of a petition should be required by BIA organizers. This petition should be scrutinized by the City Clerk before being forwarded to the municipal council for first reading of the BIA by-law. In this way, the onus falls on PROMOTERS to earn the support of potential BIA members.

The current legislation requires that opponents of the BIA formation gather 34% of all businesses (in number and assessment) within 60 days of the notice of intent being mailed from the City Clerk's Office. Since the mails can take 5 to 7 days, even within cities, it is unfair to include this time in the petitioning process. REGISTRATION OF NOTICES should help eliminate problems in this area.

Realistically, the size of a proposed BIA can have a profound effect on the time required to produce such a petition.

In the proposed Yonge-Eglinton BIA, 1600 businesses are affected. If the City Of Toronto passes BIA legislation, 550 businesses must sign a petition within 55 days. Since it would take one person virtually 30 days, at 8 hours a day, to gather these signatures (and what businessperson can afford this?), this is completely unrealistic. Over 50% of the businesses affected in this particular area have their head offices elsewhere and petition requests would have to be redirected to other locations, where explanations of the petitions purpose would have to be repeated, etc.

One subject not to be forgotten is the COST of all this activity. Costs would include lawyers fees for advice about petition wording, petition printing, explanations must be written and printed, long distance phone bills to absentee owners, postage, and most of all the time lost from normal business operations. The time lost includes contacting and waiting for lists of businesses from the City Clerk, waiting for printing, visiting businesses as many times as necessary to contact the owner, extra delays involved in contacting head offices and/or absentee owners and the inevitable dealing with bureaucracy. All this is presently done to prevent someone, who has never demonstrated any support, from taking your hard earned money.

What we recommend is a MINIMUM 60 DAY PERIOD to petition against BIA formation in areas of less than 300 businesses, 90 days in areas with 300 to 750 businesses, and 120 days in areas with more than 750 businesses.

The current practice of taking all non-replies as being in favour must be abolished. This is unacceptable in our election laws and in any legitimate democratic organization.

3. ASSESSMENT OF NON-RETAIL BUSINESSES

The act stipulates that promotion of the 'area' as a retail shopping area is key to the intent of the by-law, yet administrative offices, doctors, chartered accountants, factories, banks, and other non-retail businesses are usually assessed at the same rate as retail outlets even though their benefit is clearly less.

We are familiar with one example in Forest, Ontario where a 'feed & grain' is included in the Forest BIA, while all dues collected are used to promote the area as a retail shopping area. This is an example of the gross exploitation of a non-retail business who pays the equivalent of TEN retailers. In London, Ontario, the head office of London Life (Insurance) paid \$25,000 to the BIA in 1986 alone, the equivalent of 75 retail businesses in the 1,000+ membership of London's Downtown BIA. Bell Canada's administrative head office finds itself in a similar circumstance. To refer to the example above, this implies that London Life receives 75 times the benefit than that of the average retail business. In fact the single small business derives more "benefit", since most money is spent on retail promotion.

The provisions for exemptions, maximum or minimum taxes are of little use under the current legislation, since all non-retail businesses within a designated BIA are invariably forced to pay the levy despite their appeals to the OMB.

SECTION 217 SHOULD ONLY APPLY TO THOSE BUSINESSES WITH A RETAIL VENDORS PERMIT. This will make petitioning easier for everyone involved. Since BIAs are usually called MERCHANTS' Associations in general conversation, legislation should reflect that reality.

4. BOARD OF MANAGEMENT

Under the current legislation Boards of Management are appointed by municipal councils, elected boards are not required.

We RECOMMEND that Boards of Management be ELECTED ANNUALLY by merchants in the association, with ballots mailed to them (perhaps with their BIA tax bill) by the City Clerk's Office.

When elected Boards have been permitted, election procedures have been inconsistent, sloppy and in some cases (see clipping in Appendix 'C'), even fraudulent. Many merchants remain unaware of any B.O.M. election, since municipal council's merely request the incumbent Board to place one small ad in the daily papers announcing nominations and balloting. This is sadly inadequate. Any businessman who happens to miss that small ad is completely disenfranchised.

The allotment of "ballots" has been extremely dubious. To refer to the Downtown London BIA once again, London Life paid \$25,000 to the BIA in 1986 yet received only one vote for elections to the Board of Management. Yet a parking company, with 11 locations, paying \$5,000 in total BIA taxes receives 11 votes. It is common for businesses to receive multiple numbers of ballots based on very subjective criteria.

Under current legislation, which leaves selection in the hands of municipal councils, BIA "members" who are fundamentally opposed to the BIA concept are rarely appointed. Also, municipal councils are under no obligation to appoint the elected individuals. This effectively removes any type of check or balance that could prevent BIA overspending or other abuses. Often these abuses are "legally" acceptable to the BIA Board and City Council but may be of significant dismay to many BIA "members".

5. BUDGETS

ANNUAL MEETINGS SHOULD BE REQUIRED, and A DOCUMENTED MAJORITY OF MEMBERS SHOULD APPROVE PROPOSED BUDGETS for the following year.

If a majority of members vote against a proposed budget, then the Board of Management must come back with another budget and another vote.

This safeguard, combined with the existence of an elected board, would prevent many problems and make BIAs fully accountable to their members.

6. SUNSET LEGISLATION

SUNSET LEGISLATION SHOULD BE PASSED requiring a vote by BIA members every 5 years to determine if a BIA mandate should be renewed. Under existing legislation, BIAs exist in perpetuity.

Limits, such as sunset legislation, would also prevent grandious schemes which would indebt present and future members far beyond their means.

Legislation to allow the petitioning of businesses for the purpose of abolishing an existing BIA should be enacted. City Councils should be legally bound to honour such petitions after scrutiny by the City Clerk's Office.

7. SUMMARY

In short, BIAs must, at the very least, become accountable, democratic organizations, assuming that the choice to voluntarily associate will continue to be denied. A demonstration of majority support for the formation and operation of a BIA will make their presence in Ontario communities at least tolerable, though certainly not just or desirable.

The above changes would induce proponents of the BIA concept to objectively prove its value to merchants. If they demonstrate such value, they will receive value in return (support) and the most important step towards abolishing Section 217 of the Municipal Act will have been taken without conflict and without government coercion.

FREEDOM PARTY believes that the PURPOSE OF GOVERNMENT is to PROTECT our freedom of choice, NOT to restrict it.

Section 217 of the Municipal Act exists to restrict the freedom of choice of businesspeople in Ontario, NOT to protect that freedom.

Changes MUST be made.



APPENDIX A

THE CORPORATION OF THE BOROUGH OF NORTH YORK

NOTICE

NOTICE OF INTENTION OF THE COUNCIL OF THE
BOROUGH OF NORTH YORK TO PASS A BY-LAW
DESIGNATING AN IMPROVEMENT AREA PURSUANT TO
SECTION 361 OF THE MUNICIPAL ACT REVISED
STATUTE OF ONTARIO 1970 CHAPTER 284 (Our File 173)

TAKE NOTICE that the Council of the Corporation of the
Borough of North York intends to pass a by-law designating an
area as an Improvement Area in the Borough of North York to
consist of the area defined and described in the proposed by-law.

AND FURTHER TAKE NOTICE that the proposed by-law
would designate the area described in Schedule A attached hereto
and illustrated by the accompanying maps attached hereto as
Maps 1, 2, 3 and 4 as an improvement area and establish a Board
of Management, to which will be entrusted the improvement,
beautification and maintenance of municipally owned land,
buildings and structures in the improvement area beyond such
improvement, beautification and maintenance as is provided
at the expense of the Municipality at large and the promotion of
the area as a business or shopping area and further will govern
the procedure for the operation of the Board of Management.

The proposed by-law would require the Council in each
year to levy a special charge upon persons in the area assessed
for business assessment sufficient to provide a sum equal to
one sum of money provided for the purposes of the Board of
Management which shall be borne and paid by such persons in the
proportion that the assessed value of the real property that is
used as the basis for computing the business assessment of each
of such persons bears to the assessed value of all the real
properties in the area used as the basis for computing business
assessment.

Unless a petition objecting to the passing of the proposed
by-law signed by at least one-third of the persons entitled to
Notice representing at least one-third of the assessed value of
the lands in the area that is used as the basis for computing
business assessment, is received by the Clerk of the Borough of
North York within two months following the date of this Notice,
the Council may pass the by-law.

The proposed by-law designating the represented area
does not come into force without the approval of the Ontario
Municipal Board and as a condition of giving its approval, the
said Board may by its order, impose such restrictions, limitations
and conditions with respect to such matter as may appear necessary
or expedient.

DATED AT THE BOROUGH OF NORTH YORK, 5100 YONGE
STREET, WILLOWDALE, ONTARIO ON THE 17th DAY
OF JULY, 1978.

E. Roberts
E. Roberts, Clerk



Clerk's Department
550 Mortimer Avenue
Toronto, Ontario, Canada M4J 2H2
Telephone (416) 461-9451

Wm. Alexander, Jr., A.M.C.T., C.M.C., C.M.O., P.M.M.
Member of the Academy - I.I.M.C.
Borough Clerk

Reply to the
attention of

John E. Craig, A.M.C.T., C.M.C.
Deputy Borough Clerk

NOTICE RE PROPOSED BUSINESS IMPROVEMENT AREA

O'CONNOR DRIVE

NOTICE is hereby given pursuant to the provisions of Section 217 of the Municipal Act (a copy of which is attached) that the Council of The Corporation of the Borough of East York proposes to pass a by-law, designating the lands shown on the attached map as an Improvement Area.

NOTICE is also hereby given that, unless a petition objecting to such designation is received by the Borough Clerk within the two months following the mailing of this notice, then Borough Council may pass a by-law designating the Improvement Area. Such petition must be signed by at least one-third of the persons occupying or using land for the purpose of, or in connection with, any business and representing at least one-third of the assessed value of the lands in the area used as the basis for computing business assessment. The last day for receiving such petition is July 21, 1986.

NOTICE is also hereby given that, unless a petition objecting to such designation is received by the Borough Clerk within thirty days following the mailing of this notice, the by-law will come into force without the approval of the Municipal Board. Such petition must be signed by one or more persons entitled to notice. The last day for receiving such objection is June 23, 1986.

The proposed by-law designating the area as an Improvement Area, a plan showing the lands to be affected, and a list of the persons occupying or using land for the purpose of, or in connection with, any business in the area, shown in the last revised Assessment Roll of the municipality as being assessed for business within the meaning of the Assessment Act, may be seen in my office in the East York Municipal Offices, 550 Mortimer Avenue, Toronto.

WM. ALEXANDER, JR.
Borough Clerk

Dated this 21st day of May, 1986.

London & Western Ontario

SECTION	Deaths	C11
C	Classified ads	C11-19
	Horoscope	C16
	Comics	C19
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Election invalid, downtown board to vote again

Another election for the London Downtown Improvement Area board of management will be held today or Friday because votes cast Tuesday night were "very clearly wrong," board vice-chairman John Nash said Wednesday.

The voting was invalid because Cambridge Developments of Toronto cast 12 extra votes to which it was not entitled, Nash said. Cambridge cast 28 votes, including the 12 on properties it owns downtown, instead of on the business assessment for each property.

The developer has acquired the block bounded by Talbot, Dundas, Ridout and King streets for redevelopment, which is scheduled to get under way within the next two years.

After Tuesday night's election, some members complained of "il-

legal and sloppy voting procedures." While the procedure followed was legal, the votes cast were invalid because of the extra Cambridge ones, Nash said.

The 11 Citipark votes were legitimate, but three of these were on parking lots owned by Cambridge, he said. Three of the Citipark votes were also included in Cambridge's 28 votes.

Nash said confusion arose over the fact that only members with a business assessment on their property, not just a property tax, are eligible to vote.

Members who voted this week will be asked to cast new ballots. Nash said they can go to the Downtown Improvement Area office at 294 Dundas St., Suite 109, or a ballot box, accompanied by a scrutineer, may be taken to members for their votes.

Proxy voting is not allowed under the present bylaw. And block voting is "not adequately covered in the bylaw," said John Inch, general manager of the Downtown Improvement Area.

Under the bylaw, "the voting procedures are not very clear," Nash said, emphasizing that he will make certain these are amended before a general membership meeting early next year.

Fanny Goose said she is appealing the voting because it was "very sloppy and not constitutional." She said people were allowed to wander in and out throughout the evening to vote, with no check being made to determine who was actually entitled to vote.

"We don't have to have an election," Inch said. "We could have nominated 11 members and appointed a board."

Goose said "I'm not against the people who were voted in, but just the way the vote was handled. I don't care that I was not elected."

In addition to Nash, others elected to the board of management were: Howie Atkinson, Don Brady, Susan Campbell, Bob Dykeman, Ken Law, Clare McKenney, Brian Mortimer, Bob Neilly, Craig Scott and Norm Young.

Jeff Pease, also nominated for the board, said "personally, I don't think it's fair." He wasn't elected but he said he had no strong feeling that there was "a miscarriage of justice." Asked whether he planned to appeal the vote outcome, Pease said "I'd rather not comment."

Nick Lang, a retiring board member whose son Jeff also failed to win a seat, said they were looking into a possible appeal. Nick Lang said in most democratic elections, nomina-

tions are allowed up to the time of voting. But nominations from the floor are no longer permitted under the improvement area's amended constitution.

"We needed a new full slate of officers," Nick Lang said. "We need a change. We have a real problem on our hands."

Lang said only \$10,500 was authorized for the balloon fiesta in August. But the amount actually spent on the event rose to about \$57,000, members were told.

Nash said he and other board members were "chagrined" because revenue expected from the balloon fiesta fell short by \$27,000. The event was "unsuccessful financially" and too big to handle for an organization such as the Downtown Improvement Area, Nash said.

"A corporate sponsor is needed," he said. "It can't be done without one. It's not the job of a BIA (business improvement area) to run a cash-flow project."

The improvement area administration put forward an estimated 1986 budget of \$365,500, an increase of 15 per cent over this year's budget. While members generally did not object to the proposed budget increase, some were concerned about allocation amounts, including \$150,000 for promotion — up from \$98,000 this year.

Some said the beautification budget should be higher than the \$98,500 forecast for next year — up from \$72,200 this year. The budget must be approved by city council before being presented to the improvement area's general membership early next year.

Albion