



## PLANNING AND BUILDING SERVICES

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### REPORT - INFORMATION REPORT # 2016-44

TO: Mayor and Members of Council  
SLT/OLT

SUBJECT: Ontario Municipal Board Review  
NP-16-44

ORIGIN: Planning and Building Services

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**In accordance with the Procedure By-law, any Member of Council may request through the Clerk's office that this Information Report be placed on an upcoming Committee of the Whole agenda for discussion.**

#### **PURPOSE OF THIS REPORT**


The purpose of this Report is to provide information to Council regarding the Ontario Municipal Board (OMB) review that is currently being undertaken by the Province as well as provide a summary of the recommendations being proposed by the Regional Planning Commissioners of Ontario (RPCO).

#### **BACKGROUND**

In June 2015, the Province's Attorney General announced that a review of the OMB would be undertaken. The review came largely in response to the input received during extensive public and stakeholder consultations on the Smart Growth of Our Communities Act (Bill 73), the update to the Long-term Affordable Housing Strategy and the Coordinated Land Use Planning Review, in which many suggestions were made regarding potential improvements to the OMB.

In October 2016, the Province released a Public Consultation Document that outlines the scope of the review. This paper set the scope of the review, setting out to address many of the OMB-related comments received through the Coordinated Land Use Planning Review and Bill 73 consultations.

Also in October 2016, a series of Town Hall Meetings were released by the Province as part of the public consultation process, designed to provide the opportunity for the public to learn about the OMB's current role, provide perspectives, and review and comment on changes that the government is considering. One of these meetings was held in Newmarket during the evening of October 18, which was well attended by the public, staff and various Members of Council.



The deadline for providing feedback to the Province is December 19, 2016.

## **COMMENTS**

### **OMB Overview and Statistics**

The OMB is an independent appeal tribunal which hears appeals on planning decisions. In 2014-2015, the OMB received 1,535 files from across the Province related to the Planning Act. The majority (approximately 37%) of these files are for minor variance applications, followed by zoning by-law amendment applications (approximately 23%), and consent applications (approximately 16%). Applications for Official Plan Amendments and Plans of Subdivision complete the remaining 24% of applications dealt with by the OMB.

Most OMB hearings (53%), last one day or less. 13% of hearings require 1-3 days. 7% of hearings require 4-5 days. However, 27% of all hearings require between 6 and 20+ days.

### **OMB Compared to Other Jurisdictions**

Having an appeal body for planning matters is not unique to Ontario. All Canadian provinces, except Newfoundland and British Columbia, have provincial boards that hear appeals of land use decisions made (or not made) by municipal councils, local or regional planning authorities, committees or boards. Newfoundland has regional appeal boards. Appeal boards in British Columbia are locally established.

However, what is unique to the OMB are the relatively extensive powers afforded to the OMB by the Province. By comparison to other jurisdictions, the OMB hears the broadest scope of issues. That's because in Ontario, more land use matters are subject to appeal, from minor variance applications to major planning issues such as expansion of urban settlements.

Another area where the OMB exercises greater jurisdiction than its counterparts in other provinces is in the interpretation of local and provincial planning policy. The OMB frequently rules on whether applications and plans are "good planning" and has the authority to rewrite municipal policies.

Finally, unique to the Ontario context, the OMB has the authority to overturn decisions made by municipal council or to make a decision when council has not done so. In most jurisdictions the scope of appeal is limited so as not to undermine local democratic accountability.

### **OMB Review Initiated by the Province**

The Province recognizes that an opportunity exists to modify the OMB to increase its efficiency, bring it more in-line with appeal bodies in other jurisdictions in terms of its powers, and address other issues including citizen participation and modernizing its procedures.

To date, largely through the Coordinated Land Use Planning Review and Bill 73 consultations, the Province has heard a range of viewpoints regarding the OMB, its role in Ontario's land use planning system, and its processes. These views include:

- citizens feel they don't have a meaningful voice in the process
- more weight should be given to municipal decisions
- OMB decisions are unpredictable
- hearings cost too much and take too long
- there are too many hearings; more mediation should be used

In response, the Province has identified the following five themes that are to be examined as part of the review and is considering changes to address each:

- the OMB's jurisdiction and powers
- citizen participation and local perspective
- clear and predictable decision-making
- modern procedures and faster decisions
- alternative dispute resolution and fewer hearings

#### **Regional Planning Commissioners of Ontario (RPCO) Report**

The Province has received submissions from numerous individuals, groups, and organizations. Among these submissions is the "Reforming the Ontario Municipal Board: Five Actions for Change" Report, prepared by the Regional Planning Commissioners of Ontario (RPCO). This Report is available in full upon request, or through the RPCO's website:

[http://www.rpco.ca/files/RPCO\\_OMB\\_REFORM\\_Final\\_Report\\_2016\\_09\\_1.pdf](http://www.rpco.ca/files/RPCO_OMB_REFORM_Final_Report_2016_09_1.pdf)

This RPCO Report contains many valuable recommendations that the Province should consider. Of note, it identifies that the OMB has uniquely extensive powers when compared to other jurisdictions, and states that although this may have been beneficial when the OMB was first established, it is no longer needed in the modern context where most municipalities exhibit increased planning maturity and elected officials are supported by professionally sophisticated planning staff. The conclusion being that municipalities are more capable than ever before, and therefore able to assume additional appeal responsibilities.

More specifically, the RPCO Report identified five inter-connected issues of concern: (i) large, complex hearings take too long and tie up resources; (ii) resolving disputes at the OMB is expensive; (iii) the OMB has insufficient regard for the decisions of municipal staff and Councils; (iv) the process is too litigious; and (v) *de novo* hearings (i.e. the OMB's ability to hear appeals anew; with limited regard to municipal decisions and related information).

Some of the more significant recommendations that the RPCA Report makes in order to address these issues of concern are:

1. Extend the appeal limitations set out in Bill 73 so that all municipally-initiated comprehensive and area-wide official plans and official plan amendments be exempt from appeal.
2. Remove minor variance and consent appeals from the OMB. Further promote the establishment of Local Appeal Bodies (LABs) where these appeals can be dealt with at the local municipal level. (Note: LABs are currently permitted however only one exists in the Province, in the City of Toronto.)
3. For municipalities where LABs are not established, minor variance and consent appeals should proceed through an “OMB-lite process” without the formality, delay and expense of full hearings.
4. Empower municipalities to reject an appeal where oral or written submissions were not previously made.
5. More frequently use the existing right that the OMB has regarding the dismissal of appeals that lack sufficient land use planning grounds.
6. Increase the standards for submitting an appeal, including the requirement of planning rationale, the identification of specific changes being requested, and a potential appeal fee increase.
7. Provide two Board Members for any hearing scheduled for 10 days or more, allowing one to cover for the other as needed.
8. Expand the use of technologies such as electronic filing, video-conferencing, etc.
9. Create a Mandatory Review and Mediation (MRMP) process to reduce the number of issues in dispute. All appeals (not only those requesting mediation) would be subject to the MRMP and be triaged to the most effective route to resolution, recommending either: (i) dismissal; (ii) a more aggressive Alternative Dispute Resolution (ADR) process than what currently exists; or (iii) proceed to a scoped hearing.
10. Phase hearings logically in instances where the decision of one matter may negate the need for latter hearings.
11. Set page limits for submitted documents.
12. Require site visits by Board Members, in order to remove the need for detailed testimony on site context.
13. Limit examination-in-chief to filed affidavit evidence, with page number limits.
14. Limit cross-examination to issues relevant to the witness, as listed on the affidavit.
15. Evolve the OMB’s staff responsibility from basic case management to providing Board Members with evaluations of the merits and scope of cases.
16. Provide more competitive compensation for Board Members, on par with senior civil servant salaries in order to attract more qualified, senior professional planners.
17. Establish qualification standards for Board Members.
18. Adjust Board Member appointment terms from the two, three and five year protocol that currently exists to a six year staggered term with one right to renewal.
19. Offer Board Members and staff continuing education opportunities, training in dispute resolution and exposure to best practices in other jurisdictions.
20. Require regular performance reviews for Board Members.
21. Dedicate adequate resources to relieve the backlog of files awaiting resolution.



22. The Province should provide binding interpretations of “shall have regard to” relative to having regard to decisions of Council.
23. The Ministry of Municipal Affairs must clearly and quickly issue conformity and approval statements for municipal Official Plans and Official Plan Amendments.
24. The Province should issue letters of clarification or provide appropriate staff to provide evidence on provincial policy at issue.
25. Regarding built form as a new matter of provincial interest, the Province should offer clear direction on how the OMB ought to consider municipal guidelines that shape built form / treat municipal design guidelines consistently.
26. Municipal planning staff should provide clear, direct professional opinions throughout the process so that applications that do not conform with policy are not encouraged to proceed.
27. Municipalities should make every effort to bring zoning by-laws in line with official plan policy to allow more development as of right, thereby limiting appeals to the OMB.
28. Municipalities should implement zoning that truly reflects the heights and densities that are desired in high-growth areas.
29. The initial implementation of Community Planning Permits Systems be removed from appeals, so that municipalities can rely on them to guide development, particularly in areas of rapid change.

### **COMMUNITY CONSULTATION**

As part of the public consultation process for the OMB Review, the Province has organized numerous Town Hall Meeting throughout the Province between October 18 and November 24, 2016. One of these meetings was held in Newmarket during the evening of October 18, which was well attended.

In addition, the Province has set up a website for the OMB Review, providing in-depth project information and the consultation paper for public review and comment: <http://www.mah.gov.on.ca/Page14965.aspx>.

### **HUMAN RESOURCE CONSIDERATIONS**

There are no human resource considerations resulting from this Report.

### **BUDGET IMPACT**

There are no budget impacts resulting from this Report.

### **BUSINESS PLAN AND STRATEGIC PLAN LINKAGES**

*Well-respected:*

- Being an influential contributor to regional and provincial affairs.

**CONTACT**

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