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Hon Yasir Naqvi & Hon Bill Mauro,

Re: Ontario Municipal Board Review – EBR 012-7196

Introduction

The provincial government is undertaking a review of the scope and effectiveness of the Ontario Municipal Board (the "OMB"), which serves a critical function to resolve disputes that cannot be managed locally. The provincial consultation document recognizes that over the next 25-years, Ontario is expected to grow by an additional 4 million people and that as we continue to plan and build for the future that there will be disputes about how land is planned. OHBA notes that since 2003, this review marks the fourth time the province has proposed substantive amendments to the scope, powers and function of the OMB (Bill 26 – *Strong Communities Act*, Bill 51 – *Planning Conservation Land Statute Law Amendment Act,* and Bill 73 - The *Smart Growth for Our Communities Act*, 2016). OHBA acknowledges that the government has received extensive feedback regarding the OMB from a diversity of stakeholders and the government's objective from this review is to resolved more planning matters locally.

OHBA has consistently stated that municipal zoning must be modernized to be in conformity with provincial plans, which would allow the planning process to be more effective, predictable and result in fewer OMB appeals. Notwithstanding the recent - and significant changes brought forward in Bill 73, OHBA notes that it will be difficult for the province, municipalities and stakeholders to evaluate the effects of the legislative and regulatory changes in relation to the OMB and the intended consequences of this review. OHBA does however, have a number of recommendations that we believe would enhance local decision-making, improve citizen access to the Board, enhance the use of mediation and improve the efficiency and effectiveness of the Board.

OHBA Support for the OMB

OHBA supports the essential role of the OMB as an impartial, evidence-based, administrative tribunal that is responsible for handling appeals of land use planning disputes. In this administrative authority, the OMB serves to ensure that provincial land use policies and objectives are achieved, and that municipalities employ consistency in the application and implementation of the *Planning Act*, the *Development Charges Act*, the *Provincial Policy Statement* and other related land use legislation (i.e. provincial plans).

It is important to note that the decisions made by the OMB are based on planning evidence, provided by expert witnesses under oath, ensuring that long-term public policy objectives, rather than short-term local political intentions, are upheld. Without an independent tribunal that specializes in administrative and planning law, land use related disputes could end up in the court system. The courts are not a good alternative for reasons well known to the government and stakeholders.

Key OHBA Recommendations

1. ***A blanket prohibition against appeals of provincial decisions to approve OPs or OPAs is not appropriate from OHBA's perspective. Rather, a targeted approach may be preferable against appeals of provincial decisions on OP/ OPAs to implement provincial plans. OHBA recommends that should this approach be adopted, it should be limited to very explicit matters.***
2. ***OHBA is supportive of limiting third party appeals against infill/intensification project(s) within 500m of a high order transit station that has received an approval for either a Zoning or OP amendment from a municipal council.***
3. ***OHBA strongly supports maintaining existing appeal rights for Secondary Plans under the Planning Act.***
4. ***OHBA is opposed to the blanket prohibition of appeals of ICBLs.***
5. ***Prior to extending any additional responsibilities or powers to LABs, the province should wait until there is substantial operational experience and jurisprudence.***
6. ***OHBA opposes limiting the OMB's authority to dealing with only those parts of an OP that were dealt with by Council.***
7. ***OHBA opposes the proposal to require the OMB to send significant new material back to the municipal council for re-evaluation.***
8. ***OHBA recommends that natural justice be adequately safeguarded by the continued ability to have a full "De Novo" hearing before the OMB because there are practical problems with applying a "reasonableness" standard to municipal/approval authority decisions.***

9. ***OHBA has consistently supported that decisions on site-specific applications should be based on the planning legislation and policies applicable at the time a complete application was submitted.***
10. ***The province must adequately fund an enhanced CLO to serve the public better. OHBA supports the CLO providing procedural assistance and general information regarding the Planning Act and other legislation the Board decides on to the public.***
11. ***OHBA supports increasing the number of OMB adjudicators, increasing remuneration to attract higher quality candidates, and placing a greater emphasis on training to ensure that they possess the necessary skills to carry out their function in an effective and efficient manner.***
12. ***OHBA suggests that a multi-member panel may be appropriate for long, complex hearings.***
13. ***OHBA suggests that improvements are needed to provide a more accessible and transparent reporting system to enhance the public's understanding of the Board's activity and operations via annual public reporting to the Environment and Land Tribunals of Ontario.***
14. ***OHBA suggests general timelines be established for providing decisions.***
15. ***OHBA supports efforts to increase and enhance mediation services, but recognizes that the OMB needs to be given adequate resources to do so.***
16. ***OHBA recommends an enhanced Board structure featuring a separate roster of Board members for adjudication and for mediation.***
17. ***OHBA recommends that the province make mediation (of some form) mandatory before the hearing on the merits.***

THEME 1. OMB'S JURISDICTION AND POWERS

Q1. What is your perspective on the changes being considered to limit appeals on matters of public interest?

- OHBA is concerned by the proposal to limit the right to appeal Provincial decisions to approve OPs ("OP") or OP Amendments ("OPA's") that are intended to implement provincial plans. Municipalities often address a wide range of matters in new OPs or OPA's that result from a municipal comprehensive review and/or OP review under section 26 of the *Planning Act*. Some matters directly address the policies of provincial plans and others do not. In addition, there is not simply one way to implement Provincial Plans and the consultation document acknowledges that there can be legitimate disputes, which could include the best way in which to implement such policies.

- OHBA member's experience is that in approving an OP or OPA in this context, the Province's revisions largely focus on ensuring that the policies under consideration conform to provincial plans and consider certain

matters of provincial interest. However, the Province does not have a detailed knowledge of local planning issues and context, and may not be involved in the process leading to the adoption of the OP or OPA in question. A blanket prohibition against appeals of provincial decisions to approve OPs or OPAs is not appropriate from OHBA's perspective. There are legitimate land use planning issues that arise in the context of new OPs or OPAs that are intended to implement provincial plans that would not factor into the Province's decision.

- OHBA is concerned the Province is considering specifying that parts of its decisions on OPs or OPAs that are not subject to appeal. This targeted approach may be preferable to a blanket prohibition against appeals of provincial decisions on OPs or OPAs intending to implement provincial plans, however this power (if adopted) should be limited to very explicit matters. To this end, OHBA requests clarification about the proposal to allow the province to specify which parts of its decisions on OPs would not be subject to appeal. Would it be the intention that province would wait until issuing a decision to identify non-appealable portions – if so, this seems contrary to the stated objective of being committed to an "inclusive and transparent land use planning system".

- If the Province decides to prohibit or limit rights of appeal of its decisions on OPs or OPAs, the Province must ensure that it provides an opportunity for the public and agencies to express their concerns with the OP instruments in question and fully consider those concerns before making a decision. In addition, we note that questions of consistency with the PPS and conformity with provincial plans are questions of law. Accordingly, if the Province assigns itself the role of final decision-maker in respect of these questions, the ability for judicial review must be preserved.

Q2. What is your perspective on the changes being considered to restrict appeals of development that supports the use of transit?

- The Province should carefully consider whether it seeks to restrict appeals of municipal OPs and zonings by-laws for development that supports provincially funded transit infrastructure or conform to a proposed Transportation Planning Policy Statement (TPPS) under Section 31.1 of the *Metrolinx Act*. If that is the desired policy objective, a precise definition for what is 'transit-supportive' is required as the proposal is unclear what is specifically meant by "development that supports the use of transit".

- OHBA is unclear if this appeal restriction would only apply to municipality-initiated OPAs and ZBAs or if the proposal would extend to limiting appeals against privately initiated applications to amend zoning by-laws and/or amend an OP for projects, which are supportive of transit or conform to a proposed TPPS. The

proposal is also unclear with respect to the appropriate density and/or distance from transit that the appeal restrictions would be applicable and who makes this determination.

- OHBA would be supportive of limiting third party appeals against an infill/intensification project within 500m of a higher order transit station that has received an approval for either a Zoning or OP amendment from a municipal council. This would provide more certainty in the land use planning process and support provincial objective for transit-oriented development.

Q3. What is your perspective on the changes being considered to give communities a stronger voice?

Secondary Plans:

- OHBA respects the intent to provide community residents and landowners a period of certainty following the adoption of a Secondary Plan. However, OHBA strongly supports maintaining existing appeal rights for Secondary Plans under the *Planning Act*. Such measures are a fundamental principle of the land use planning system in the province and should not be limited.

Interim Control By-Laws (ICBLs):

- OHBA is opposed to the blanket prohibition of appeals of ICBLs. The stated rationale for the prohibition is to allow municipalities additional time to do comprehensive studies; however, that is precisely what the power to enact interim control by-laws is for. By contrast, the right of appeal is intended to act as a check against potential abuse of this extraordinary power. OHBA believes that the proposed prohibition on appeals of ICBLs makes this planning tool too susceptible to abuse.

Local Appeal Bodies:

- OHBA suggests that it is premature to consider expanding the role of LABs given that municipalities despite having the authority to do so since 2007 have established none. OHBA strongly believes that prior to extending any additional responsibilities or powers to LABs that the province defer this suggestion until there is operational experience and jurisprudence.

Matters that are part of council's decision:

- OHBA is concerned that limiting the OMB's authority to dealing with only those parts of an OP that were dealt with by Council may make the approval of an amendment less efficient, which is contrary to the consultation document's "theme number 4". It is also unclear what is intended beyond the limits on the Board's powers that already exist because of the introduction of subsection 17(50.1) under Bill 51.

Sending new information back to council for re-evaluation:

- OHBA is concerned with respect to the proposal to require the OMB to send significant new material back to the municipal council for re-evaluation. This proposal has the potential to delay the hearing process (particularly if no party – including the municipality – is requesting that this occur). This issue was already considered in Bill 51 prior to the 2007 amendments to the *Planning Act* and it was determined by the Provincial government that the most appropriate solution was to allow the OMB to determine by motion on a case-by-case basis whether to send significant new material back to a municipal council for reconsideration. OHBA notes that there have been very few instances in the last ten years where this type of motion has been considered, suggesting that the introduction of significant new material in the hearing process is not a problem that needs to be addressed through additional OMB reforms. A solution is better case management, pre-hearing filing and motions.

Q4. What is your view on whether the OMB should continue to conduct de novo hearings?

- OHBA supports the principal that natural justice be maintained in the Province of Ontario. The complete elimination of "de novo" hearings may prejudice natural justice being applied in matters before the OMB or other administrative tribunals. OHBA recognizes that the province is considering abolishing "de novo" hearings in an effort to put more weight and to grant more authority on local decisions. The implications of abolishing *de novo* hearings on certain matters should be carefully considered, as it could lead to appeals being filed as soon as the decision timelines have expired and would not incent cooperation, collaboration and arriving at settlements locally.

- OHBA supports the position of the Regional Planning Commissioners of Ontario (*Reforming the Ontario Municipal Board: Five Actions for Change Final Report August 31, 2016*) that: "…in procedure and practice, it does not actually conduct *de novo* hearings". In many ways, a hearing before the Board is no longer *"de novo",* as it must have regard to the decision of council, there are restrictions on new information, and the Board cannot make changes to sections that were not part of the council decision.

- OHBA notes that eliminating *"de novo"* hearings and granting greater authority to municipalities – will simply increase the burden on municipal councils, in terms of the imposition of natural justice, which is to ensure fair and adequate procedures. Common law imposes procedural requirements on the decision-maker, which do not necessarily need to be accounted for in Council's current decision-making authority. Ontario's *Planning Act*, Section 61 deems a council's actions in passing a by-law to be legislative, and also sets out a requirement to provide "a fair opportunity to make representation".

- OHBA notes that the courts have shown little interest in scrutinizing the actions of a council in this scenario, particularly as it relates to a demonstration of bad faith. This is neither surprising nor inappropriate since the Board has been held to remedy a defective procedural (or other) decision made at council. If such a remedy is no longer available, the courts will require municipal councils to provide comprehensive representation, in accordance with the rules of natural justice, which they are unlikely to be equipped to manage from a legal perspective.

- OHBA believes that the requirement for a new hearing (de novo) before the Board has many benefits, including the correction of technical irregularities by a municipality. For example, where there has been improper notice, the courts have held that these technicalities are remedied by having a new hearing at the Board. The Board is not the same as an appellate court, as it has an overriding public policy mandate beyond the interests of any party to make decisions in the public interest. For example, even when the parties have a settlement, the Board requires evidence that the instrument is "good planning". It will not simply accept what the parties are in agreement, which differs from a settlement at court. OHBA strongly believes that this is a positive attribute of the Board that should not be interfered with by eliminating Hearings De Novo.

- OHBA is concerned that abolishing De Novo would not allow for impartial accountability and planning evidence to be heard in the decision making process. For example in June, Toronto City Council refused a zoning by-law amendment a block away from OHBA's office for 740 and 750 York Mills Road and 17 Farmstead Road in a 31-0 vote. This occurred despite the professional planning staff report "recommending approval of the application to amend the zoning by-law," and further noting, "the proposed development is appropriate as it provides for sensitive and compatible infill development." The elimination of hearings De Novo would not allow for a full hearing at the Board to weigh the planning evidence submitted with the complete application nor the advice of municipal professional planning staff, but rather the "reasonableness" of the political decision at council that ignored municipal professional planning staff recommendations. This example fits a pattern that Aaron Moore (Fellow of the Institute of Municipal Finance and Governance) reported on in his 2014 academic research book *Planning Politics in Toronto: The Ontario Municipal Board and Urban Development*: "councilors have been known to vote against a development that fits the City's Official Plan, but that local residents don't want just so they can get re-elected." OHBA is concerned the elimination of hearings De Novo will further politicize planning decisions.

- OHBA notes that if the OMB were to act as a true appellate body, there should be a hearing built into the planning approvals process at a municipal Council to properly evaluate and weigh evidence. Not only is there

no hearing at any municipal Council, there is often not even a decision to "have regard to". A proper planning hearing at Council is impractical for many reasons, and is a procedure that most if not all municipality's would not welcome if De Novo hearings are eliminated from the Board. The *Statutory Powers Procedures Act* (SPPA) would apply, as would other principles of procedural fairness and natural justice. For example, this would include the right to cross-examine, the need for written reasons for a council decision, etc. Therefore, OHBA strongly recommends that natural justice be adequately safeguarded by the continued ability to have a full De Novo hearing before the OMB.

Q5. If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?

- The adoption of either of the approaches listed below in the context of the provincial planning framework is problematic and will likely lead to poor planning decisions. As potential alternatives, the Province's consultation document suggests:

  (a) requiring the OMB to review municipal/approval authority decisions on a standard of reasonableness, and/or
  (b) limiting the OMB's jurisdiction to alter municipal/approval authority decisions only on the basis of non-conformity with existing provincial or municipal planning policy.

- There are practical problems with applying a "reasonableness" standard to municipal/approval authority decisions. Generally speaking, a "reasonable" decision is one that falls within a range of defensible outcomes, in light of the facts and law (or in this case, planning policy). Under this standard, municipal/approval authority decisions that do not fulfill the full promise of provincial policies could nevertheless be considered "reasonable", and thus upheld at the OMB. For example a high-rise proposal on a subway line based on the City of Toronto's OP could be considered "reasonable" at either 10 or 30 stories given how flexible local planning documents are that have no hard numbers to establish specific outcomes. This means that the OMB could disagree with a council decision, but still not overturn it as long as it fits a "reasonable" outcome.

- OHBA is concerned that there is no role for "good planning" in a "reasonableness" standard. Even if the OMB thinks there is a better outcome, or a different decision would better conform to Provincial Policy, it still could not interfere with the decision of council. OHBA believes that this is the fundamental problem and it appears that the Province did not give sufficient thought to the practical implications and unintended consequences of a "reasonableness" review in the land use-planning context – particularly when applied to areas affected by provincial plans. OHBA is concerned this will lead to "good enough planning" rather than "good planning."

- The Province has invested significant time, energy and resources into developing a planning framework that promotes its vision of building strong, sustainable communities through efficient development. In order to safeguard the Province's vision, and its investment in that vision, municipal/approval authority decisions must be consistent with provincial policy and conform to the provincial plans; *reasonable* consistency and *reasonable* conformity is not sufficient. OHBA is concerned with respect to how move away from de novo hearings and towards review of council decisions on "reasonableness" standard may affect ability to achieve aggressive targets in the new Growth Plan or provincial objectives in the PPS.

Q6. From your perspective, should the government be looking at changes related to transition and the use of new planning rules? If so:

A) What is your perspective on basing planning decisions on municipal policies in place at the time the decision is made?

B) What is your perspective on having updated provincial planning rules apply at the time of decision for applications before 2007?

- OHBA has consistently supported that decisions on site-specific applications should be based on the planning legislation and policies applicable at the time a complete application was submitted.

- Regarding the proposal for making pre-2007 planning matters subject to provincial plans in effect on the date of decision, OHBA notes that there are likely a small number of pre-2007 planning matters still outstanding. However, should the Province wish to change the transition rules, it may be appropriate to consider a "sunset clause" whereby the new rules would only take effect after some reasonable period to allow applicants the opportunity to move those applications forward prior to the sunset date

- Although the Province has recently required planning decisions to be based on provincial policy in effect at the time of the decision, expanding those transition rules to municipal planning policies could have far greater implications, given the pace at which municipal planning policies change. Furthermore, OHBA is concerned municipal OP policies could be changed late in the process simply in an attempt to delay and/or frustrate a contentious planning application.

- The province must carefully consider the appropriate balance between "Clergy principle" rights and the need for the most-up-to-date planning document to apply to a particular development application. The balance could be struck by providing a window from the date of complete application when no new OP policy would apply.

THEME 2. CITIZEN PARTICIPATION AND LOCAL PERSPECTIVE

Broadly speaking, greater public education regarding the planning process and provincial planning policy should be undertaken at the provincial and local level. Meaningful and respectful consultation, where public participants had better understand the process and scope of what is on the table for discussion, will lead to better planning outcomes (and likely fewer appeals to the OMB). Furthermore, municipalities must educate and engage residents by informing the public of how their communities will evolve.

The province and municipalities do a disservice to the integrity of the planning process when they fail to educate and inform the public as to the reasons why their community is evolving. Without an active public education program regarding planning policy and the changing nature of communities the current adversarial environment will continue to undermine the goals of provincially led planning objectives

Q7. If you have had experience with the Citizen Liaison Office, describe what it was like — did it meet your expectations?

- The CLO is vastly under resourced and significantly underfunded. The province must adequately fund an enhanced CLO serve the public and to provide the public an understanding of the role and function of the Board as well as assistance for those involved in the OMB process.

Q8. Was there information you needed, but were unable to get?

- OHBA recommends an improved database of OMB decisions on an enhanced user-friendly website, which would enable the public easier access to decisions.

- OHBA supports making information about the OMB more readily available and providing easier public access for those wishing to participate in the process.

Q9. Would the above changes support greater citizen participation at the OMB?

- OHBA recommends greater resources for the CLO, which could include in-house legal and planning practitioners to provide general information to the public regarding the various provincial and municipal planning policies referred to in the *Planning Act* and other related legislation. This would support greater citizen awareness, engagement of the land use planning process.

Q10. Given that it would be inappropriate for the OMB to provide legal advice to any party or participant, what type of information about the OMB's processes would help citizens to participate in mediations and hearings?

- OHBA supports the CLO providing procedural assistance and general information regarding planning policies to the public.

- The CLO could produce information bulletins and/or guidance manuals to ensure citizen participants are prepared with supporting documentation and information that is useful to the hearing process, understand how mediation and hearings work, and the difference between being a party and a participant at the OMB.

Q11. Are there funding tools the province could explore to enable citizens to retain their own planning experts and lawyers?

- OHBA notes that citizens who appeal to the OMB are often unfamiliar with the process and what is required of them as either a participant or a party. However, funding tools from the province need to be carefully considered as funding could result in funding directed at applicants for the purpose of hiring professional planners and lawyers to merely frustrate or delay the approvals process.

Q12. What kind of financial or other eligibility criteria need to be considered when increasing access to subject matter experts like planners and lawyers?

- The province must strike a balance that enhances the role of the CLO with greater public access to planning and legal resources without encouraging frivolous appeals where appellants can prolong the planning process.

THEME 3. CLEAR AND PREDICTABLE DECISION-MAKING

Q13. Qualifications for adjudicators are identified in the job description posted on the OMB website. What additional qualifications and experiences are important for an OMB member?

- OHBA supports increasing the number of OMB adjudicators, the remuneration to attract higher quality candidates, and placing a greater emphasis on training to ensure that they possess the necessary skills to carry out their function in an effective and efficient manner.

- It is important for more OMB members to have experience in ADR (or to have a separate roster of OMB adjudicators and OMB mediators), as the use of Board-assisted mediation should increase as a result of this consultation on the scope and effectiveness of the OMB.

Q14. Do you believe that multi-member panels would increase consistency of decision-making? What should be the make-up of these panels?

- OHBA recognizes that larger, more complex hearings could benefit from multi-member panels that bring a range or expertise and experience to the table.

- OHBA is however concerned that the Board as currently structured is under-resourced. Multi-member panels should only be considered for larger, more complex hearings and only after the Board is appropriately resourced.

Q15. Are there any types of cases that would not need a multi-member panel?

- Most pre-hearing conferences, consent hearings, site plan appeals, minor variances and other scoped matters likely do not require a multi-member panel.

Q16. How can OMB decisions be made easier to understand and be better relayed to the public?

- OHBA suggests that improvements are needed to provide a more accessible and transparent reporting system to enhance the public's understanding of the Board's activity and operations.

- Annual public reporting to the Environment and Land Tribunals of Ontario should occur and include the types of appeals, the geography of appeals, performance targets for issuing timely decisions, and the decision history of the Board, including hearings concluded via a settlement. The annual report should feature a variety of metrics that provide a much better overview of all aspects of Board activities. This would provide more information to the general public, providing a greater understanding of the role and operations of the Board,

and enhance the transparency of the Board, especially as it pertains to how many major development decisions are made by the Board.

- OHBA also recommends that OMB decisions be written in clearly worded language. Furthermore, decisions should also be based on a set of general templates for consistency.

THEME 4. MODERN PROCEDURES AND FASTER DECISIONS

Q17. Are the timelines in the chart above appropriate, given the nature of appeals to the OMB? What would be appropriate timelines?

- OHBA suggests that efficiencies could be made to the hearing process to reduce the timelines. However efficiencies should not rush or compromise the quality of decisions.

- OHBA suggests that it would be helpful if general timelines were established for providing decisions or an update on the status of decisions if decisions are not issued within the expected timeframe.

- OMB adjudicators must have the necessary resources and time to write decisions and OHBA hopes that by increasing the number of adjudicators and Board resources, timelines will improve substantially.

Q18. Would the above measures help to modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?

- The suggestion of establishing clear rules for issues lists to ensure that hearings are focused and conducted in a cost-effective and efficient manner is worthy of further consideration, and may require OMB adjudicators to gain more rigorous training in conducting hearings and/or to adopt a more active role in the prehearing process to ensure that the issues in dispute for a hearing are more clearly defined.

- OHBA has concerns with the proposed introduction of setting a maximum number of days allowed for hearings. Although OHBA supports efforts to make the hearing process more streamlined and as efficient as is reasonably possible, setting an arbitrary limit on the number of hearing days risks the OMB not having full information to assist it in making decisions and may ultimately limit the public's involvement in the process.

- OHBA notes that lengthy, multi-week OMB hearings are the exception, and are reflective of the significance of land-use proposal or the policy under examination. Therefore the need for clearer rules for pre-hearings and

issues lists would be warranted. They tend to be a reflection of the importance of the decisions being made and the level of interest such matters generate, further supporting the necessary role of the OMB.

Q19. What types of cases/situations

- Evidence in contested matters should be through oral testimony to ensure that the evidence can be properly tested and where the OMB adjudicator can ask questions of the witnesses.

THEME 5. ALTERNATIVE DISPUTE RESOLUTION AND FEWER HEARINGS

In OHBA's 2014 submission to the Land Use Planning and Appeals System consultation, OHBA suggested that the current appeal process, which many believe to be too adversarial should be rethought so that the OMB focuses on a more collaborative and informative environment for all parties. The focus should be directed towards dispute resolution. OHBA supports the use of mediation as a means to balance the interests of all parties.

Q20. Why do you think more OMB cases do not settle at mediation?

- Board-assisted mediation is increasingly becoming an important tool in resolving, or scoping, issues. OHBA supports efforts to increase and enhance mediation services, but recognizes that the OMB needs to be given adequate resources to do so.

Q 21. What types of cases/situations have a greater chance of settling at mediation?

- Mediation is generally only effective if there is the alternative of a hearing before the OMB that will produce clear and predictable decisions.

- It may be appropriate for mediation assessment to be routine for certain types of appeals – particularly more complex matters.

- OHBA recommends an enhanced Board structure featuring a separate roster of Board members for adjudication and for mediation. Both "adjudicators" and "mediators" must have the same powers and ability to conduct hearings and issue decisions.

Q 22. Should mediation be required, even if it has the potential to lengthen the process?

- In OHBA's 2014 submission to the Land Use Planning and Appeals System consultation, OHBA expressed its support for the concept of mediation as an alternative to dispute resolution and furthermore suggested implementing a pre-hearing requirement of mandatory mediation for applications (suggestion of hearings in excess of one or two weeks) to provide a forum of principled dispute resolution and aid in the facilitation of

decision making at a pre-hearing level, thereby reducing the number of full hearings or the scope of hearings before the Board. At a minimum, some files would benefit from mandatory, but confidential pre-mediation assessment.

- This process would not pre-empt the scheduling of a hearing date, as both would be scheduled concurrently; however, having mandatory mediation assessment for all applications prior to a full hearing may alleviate the large volume of cases going to a full hearing.

- OHBA recommends that the province make mediation (of some form) mandatory before the hearing on the merits. The Province's suggestion of making government mediators available for this purpose is novel and well intentioned only if they are well versed in the *Planning Act (and other legislation, provincial* plans, policies and regulations *commonly addressed before the Board)*.

Q 23. What role should OMB staff play in mediation, pre-screening

- OHBA supports early case management by the OMB which would include pre-screening applications to identify planning merits and ensure early dismissal of cases that are without merit, scoping cases by identifying areas of agreement, opportunities for mediation and the areas/issues of dispute.

GENERAL QUESTION

Q24. Do you have other comments or points you want to make about the scope and effectiveness of the OMB with regards to its role in land use planning?

- OHBA is very concerned by the backlog of files awaiting resolution and the length of time it takes to schedule a hearing.

- OHBA notes that through recent amendments to the *Planning Act*, that a number of significant changes have been made to the jurisdiction and powers of the OMB and that there has not been a meaningful period of time to adequately evaluate the effects of these changes.

- OHBA is supportive of improving accessibility through the greater use of technology, such as video conferencing, electronic filing and other information technology to reduce costs, reduce delays and improve access to the OMB.

CONCLUSION

The OMB provides considerable value to the public good because decisions made by the OMB are an important counterbalance to the local political pressures of municipal councils. In other words, the local interest is not always the public interest. The OMB provides a forum where the principles of fairness, quality, consistency, and transparency are fundamental, and the provision of administrative justice is the first and last order of business. Before making significant changes, the Province should recall that the OMB is designed to ensure the appropriate implementation of provincial policy and those decisions should ultimately be based on evidence and "good planning" rather than short-term political sentiments. OHBA notes that service to the broader public interest in achieving good planning is sometimes unpopular among certain individuals or groups. This is why the OMB is so critical in the planning process.

OHBA acknowledges that there is always room for improvement in the role, operation and function of the OMB. OHBA supports a number of enhancements to improve the efficiency and operations of the Board, but is very concerned by proposals to reduce the scope of the Board's powers and moving away from De Novo hearings. In order to achieve other desired policy objectives arising from some of the questions posed by the government, we are of the opinion that our recommendations for reforms to the Board's operating structure and procedural policies will assist to improve and make the land use planning system more efficient and predictable. Furthermore it is critical that the province appropriately resource both the OMB and the CLO. OHBA appreciates the opportunity for consultation and looks forward to continued dialogue with the government to improve Ontario's land use planning and appeals system.