



Ontario
Home Builders'
Association

20 Upjohn Rd., Suite 101 (416) 443-1545
North York, Ontario Toll Free 1-800-387-0109
M3B 2V9 Fax: (416) 443-9982
www.ohba.ca info@ohba.ca

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Honourable Yasir Naqvi
Attorney General
McMurtry-Scott Bldg 11th Flr, 720 Bay St,
Toronto, ON M7A 2S9

Honourable Bill Mauro
Minister of Municipal Affairs
777 Bay Street, 17th Floor
Toronto, ON M5G 2E5

Hon Yasir Naqvi & Hon Bill Mauro,

Re: Ontario Municipal Board Review

The provincial government has commenced a review of the scope and effectiveness of the Ontario Municipal Board (OMB), an important part of the province's land use planning system. OHBA recognizes that over the past couple of years the government has received extensive feedback on the OMB from a wide variety of stakeholders. This was evident during consultations on the *Smart Growth for Our Communities Act* (Bill 73), the update to the Long-term Affordable Housing Strategy and the Co-ordinated Land Use Planning Review. OHBA is aware that this review of the OMB comes only months after a number of significant changes to the land use planning and appeals system have taken effect through the *Smart Growth for Our Communities Act*. As such, it will be difficult for the province, municipalities and stakeholders to properly evaluate the resulting effects of these legislative and regulatory changes in relation to the OMB.

OHBA Support for the OMB

OHBA strongly 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.

It is important to note that the decisions made by the OMB are based on planning evidence, provided by expert witnesses under oath, which ensures that long-term public policy objectives, rather than short-term local political calculations, are upheld. Without an independent tribunal that specializes in planning law, such as the OMB, it would be more difficult to achieve Provincial policy goals. Without an administrative body for third party review, land use related disputes could end up in the court system. We believe that the court system would not have the same level of planning expertise, which could lead to inconsistent and unpredictable results that are not in the best interest of the public, while increasing the costs of public participation. Furthermore, the existence of an informed tribunal to adjudicate planning appeals has a positive role in focusing the work of professional public sector practitioners to work within the planning regime with integrity.

Contrary to Popular Belief

Contrary to the perception that the OMB most often sides with developers, independent research by Aaron A. Moore (Institute on Municipal Finance and Governance, Munk School of Global Affairs, Cities Centre, University of Toronto) found that the OMB bias most often favours the expert testimony of municipal planners, as they are considered to have greater autonomy than their private-sector counterparts.

“While the OMB does decide on occasion in favour of developers despite city planner’s objections, the city fares much better when opposing development city planners reject. In addition, the city fares horribly when city planners support a development it [city council] opposes,” (Planning and Politics in Toronto, Aaron A. Moore).

Furthermore, many OMB decisions approving development proposals result from appeals for the failure of a municipality to make a decision within statutory timelines. Such decisions are often based on supportive evidence from municipal planners and do not reflect a “development bias”, but instead the OMB’s essential role is in ensuring a fair, efficient and timely approval process. OHBA notes that in its role as a third party appeals body, the OMB is also an important tool that can be activated by municipalities, NGOs, ratepayer groups and the provincial government (e.g. the recent Metrolinx appeal of a City of Toronto rezoning that would conflict with the province’s signature \$10 billion Regional Express Rail project).

In the Interest of the Public Good

The board 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. 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.

OHBA acknowledges that there is always room for improvement in the role, operation and function of the OMB. In order to achieve other desired policy objectives arising from some of the questions posed by the government, we are of the opinion that certain 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.

Themes of the Provincial Review

• Jurisdiction and powers:

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. These recent changes have occurred through Bill 73 and include, but are not limited to:

- When municipalities prepare new Official Plans, the plans can no longer be appealed in their entirety;
- Once a new Official Plan or Comprehensive Zoning By-Law update is in place, they would not be subject to any new appeals of private applications for two years unless the municipality allows the applications to be made;
- A greater focus on alternative dispute resolution to reduce the number of OMB hearings.

OHBA recognizes that the province would like to see more planning decisions and disputes resolved at the local level and we have consistently stated that municipal zoning must be modernized to be in conformity with provincial policy. This would allow the planning process to be significantly more efficient, predictable and result in fewer OMB appeals. The province should take a more proactive role to ensure municipal zoning is updated and brought into conformity with the PPS and Provincial Plans.

OHBA could support greater filtering of appeals, however applicants should still retain the right of appeal for Committee of Adjustment matters (in the absence of a Local Appeal Body). The Board could then focus more of its

resources on larger issues. OHBA notes that up to 45% of appeals on an annual basis are minor variances. Once up and running, the Toronto Local Appeals Board should reduce the OMB case-load. However, OHBA remains cautious with respect to additional Local Appeal Bodies in smaller jurisdictions until we have experience with the operation of the Toronto Local Appeals Body. Furthermore, at this time, OHBA does not support expanding the scope of powers to Local Appeal Bodies until there is operational experience with Local Appeals Bodies established by Ontario municipalities.

- **Meaningful citizen participation and local perspective:**

Broadly speaking, greater public education regarding the planning process, as well as provincial planning policies should be undertaken at the provincial and local level. Meaningful and respectful consultation, where public participants 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 regarding the planning rationale supporting OP's and zoning by-law reviews, and support those final OP and zoning decisions by informing the public of how their communities will evolve. No resident should be surprised by new developments in their neighbourhoods.

The province and municipalities do a disservice to the integrity of the public 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. Specific to the OMB, OHBA supports an enhanced role of the citizen liaison office to provide education and assistance for those involved in the OMB process for the first time.

OHBA also supports having planners work as case management workers to pre-screen appeal applications. A mandatory review through a case management worker would assist to quickly determine if there are appropriate grounds to proceed with mediation, hearing or dismissal. Furthermore, as part of any mediation process, the board should have the authority to assign recognized ratepayer associations/groups with a resource with planning experience and perhaps more preferably a Registered Professional Planner with mediation training and certification. This would encourage greater public participation as groups would have equitable access to trained professionals whose role and purpose is to resolve conflict. Such resources should be funded by the Board.

Lastly, OHBA has consistently supported a transparent practice of having public comments detailed and addressed during the review of a planning application. This should be established as a municipal best practice and a best practice that could be included in written OMB decisions.

OHBA also suggests an improved database of OMB decisions to enable the public easier access to decisions.

- **Clear/predictable decision making:**

OHBA supports clear and predictable decision making. This could be supported by improved and ongoing adjudicator education and training and standardized decision formats. Furthermore, enhancing the qualifications required and the remuneration of board members would attract high quality candidates and should result in better, clearer and more consistent decision making.

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. Reporting should be annually and include the types of appeals, the geography of appeals, and the decision history of the board. 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.

- **Hearing procedures and practices:**

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 confrontational should be rethought so that the OMB focuses on a more collaborative and informative environment for all parties, with a focus on "dispute resolution", proceeding to hearings - only in those cases where such alternative resolution cannot be reached.

OHBA would also support the increased use of dismissals and the awarding of costs to appellants that waste the board's time. To improve the efficient use of time and resources, OHBA would support limiting the number of pages of an affidavit.

- **Alternative dispute resolution:**

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. There would be no inherent risks to participants; there would be no requirement to settle, and, parties would still have the right to proceed to a full hearing.

At the time, we suggested implementing a pre-hearing requirement of mandatory mediation for applications (suggestion of hearings in excess of one or two weeks) in order 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. Furthermore, the length of hearings before the Board would be reduced as many issues would be raised could be resolved in the mediation session thereby reducing costs and time for all parties involved.

OHBA notes that this would require the Board to hire and train more experienced mediators. However, we strongly believe that it would provide relief to the case-loads of many board members and create efficiencies with the board's scheduling calendar.

- **Timely processes and decision making:**

OHBA greatly supports strengthening the boards resources by hiring more board members and improving remuneration to attract high quality candidates. This would reduce the backlog of cases that are causing significant and costly delays to the planning process while ensuring the fair and timely release of decisions. OHBA also believes that enhancing the qualifications for board members and continuing education should improve the quality and consistency of decisions.

Greater resources also means setting the board up for future success and accessibility. This could be achieved by the greater use of technology, such as video conferencing, to reduce costs and improve access to the OMB.

Finally, the OMB should amend its rules to require all parties, including municipalities, to have clear issues identified at the first pre-hearing to enable effective case management and scheduling.

Thank you for the opportunity to submit this preliminary set of comments. OHBA looks forward to the upcoming consultation and ability to working with both the Ministry of the Attorney General and the Ministry of Municipal Affairs through the OMB review process.

Sincerely,


Joe Vaccaro
CEO

Ontario Home Builders' Association