



ONTARIO MUNICIPAL BOARD REFORM

AMO RECOMMENDATIONS

DECEMBER 8, 2016

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Introduction

For well over a year, the Association of Municipalities of Ontario (AMO), through the Planning Task Force and member engagement, has been refining the position on next steps to reform the Ontario Municipal Board (OMB). This paper outlines positions in keeping with the themes identified by the Province during their recent consultations. The OMB plays a noteworthy role in not only municipal planning decisions which change the face of our communities, but the resources required of municipal governments to participate at the board are significant.

Municipalities are diverse and a mature order of government. We have taken on a more rigorous role in land use planning over the years. Over the past few years there have been a number of adjustments to the powers of the OMB to better reflect the maturity of municipal governments in the planning realm. However, these existing authorities and powers of the OMB have not been fully implemented or used. Despite the changes putting greater emphasis on the council's decisions, the outcomes at the OMB remain almost the same. This review has to be more substantive with demonstrable outcomes. This requires a transformation of the OMB's roles and procedures.

To that end, we have outlined recommendations below for the five different provincial themes:

- The OMB's Jurisdiction and Powers
- Citizen Participation and Local Perspective
- Clear and Predictable Decision Making
- Modern Procedures and Faster Decisions
- Alternative Dispute Resolutions and Fewer Hearings

AMO recommends that the OMB also review these and consult back with AMO for more information. We hope these recommendations will lead to more efficient and improved municipal management and planning, and thriving municipal cities, towns and communities.

OMB'S Jurisdiction and Powers

AMO supports limiting the ability to appeal amendments of planning documents that implement provincial interests. Where a municipal government is making amendments in keeping with a provincial plan or interest, this compliance simply should not be subject to appeal.

Removing committee of adjustment appeals from the purview of the OMB is generally supported by AMO. But thought needs to be given regarding how this is accomplished. Despite the current *Planning Act* provisions allowing municipal governments to develop a "local appeals body", none have been created primarily due to financial barriers. Should the Province look to local appeal bodies to manage appeals of Committee of Adjustment decisions, it should provide appropriate funding.

Recent changes required applicants submit complete applications to municipal councils before local decisions are to be made. In theory no significant new information should come to the

OMB. However, this is not the case. While the current OMB rules provide that the Board can return the appeal to the municipality for review when new significant information arises, the Board does not use this power. The OMB must have regard to the information that was in front of the council when it made its decision and not allow new information to guide the hearing. AMO requests that the language in the rules must oblige the OMB to return appeals.

It is AMO's position that the OMB already has discretionary power to not hold "de novo" hearings, however this power is not used. AMO asks that the OMB be compelled to cease the practice of de novo hearings by removing the permissive language. Additionally, safeguards must be in place such that civil action cannot be the consequence of scoping the Board in this manner. This would be costly and time consuming.

Routine public reporting from the OMB would help the citizens and municipal governments better understand the OMB, what is appealable and the rationale for decisions and precedents.

Citizen Participation and Local Perspectives

AMO believes that there is always room to improve the experience of a citizen trying to navigate the OMB processes. AMO recommends a strong case management process that, as part of assessing the planning merits of the appeal, could work with citizens to explain the status of the file and what they can expect. For example, hearing preparation guides similar to those used for drainage hearings could be helpful. Funding mechanisms associated with the various boards that provide for interveners could be explored.

AMO recommends that Ontario adopt criteria or checklists which would help citizens understand what constitutes a viable appeal. Presently, the system unfairly expects a potential appellant to expend time and money only to find their appeal is not viable. Other jurisdictions have such lists, moving to an administrative process rather than a quasi-judicial process to advise a person that their appeal has no basis is a much more fair and transparent approach.

While the OMB is a quasi-judicial body and this framework is important given the impacts of its decisions, there nevertheless is an obligation for the processes of the Board and the interaction with the legislative provisions to be effectively monitored and reported publicly. Plain language explanations of both process and outcomes should be instituted.

The Board should also remember that planning decisions that are appealed have been through a very public and participatory process prior to the Council decision. Should there be a situation where the OMB believes it needs to supersede municipal decisions, then it must ensure fair and equitable participation by local community members, and that decision-making processes include the public.

Clear and Predictable Decision Making

AMO strongly supports ensuring that OMB members bring the appropriate skills to their positions. The effectiveness of the OMB as an appeal agency for planning disputes is dependent on parties seeing hearing officers as being credible, reliable and independent. Therefore, the provincial government must ensure that the OMB appointment process is seen as consistent, transparent and relevant to all stakeholders. The Province should seriously consider developing a competency profile for the knowledge and skill set that a member hearing planning issues

should hold. It starts with provincial appointments. Most entities have competency profiles for board members, the Province should as well.

Board members tend to be lawyers. They bring that skill set. Many board members do not have land use planning experience. This reinforces the perception that the OMB is about “good lawyering rather than good planning”. Breaking this perception is important to the success of any changes.

In addition, the OMB should ensure that Board members have ongoing training on OMB subject areas, including legislative changes and ensure that staff performance measurement is taking place. Training should be an ongoing effort to ensure that Board members fully understand and can utilize their powers, such as not adding new parties to cases who have not participated in municipal consultation on a matter. If the breadth of issues in question at a hearing requires a return to a multi-member panel, then the OMB should do so in order to get the scope of knowledge and skill required to achieve a quality result.

Some argue that the practice of two-year appointments to the Board is too short. AMO recommends that the Province should lengthen appointments to staggered four year terms with possible renewals in keeping with the current limit. Evaluation of how the objectives of the legislation are being achieved should be built into a term renewal process and form part of ongoing performance metrics.

Modern Procedures and Faster Decisions

AMO agrees OMB hearings should be less formal and less adversarial. To achieve this, AMO believes that a robust pre-screening process for all appeals is needed. This process would screen for the merits of the appeal. In other words, the OMB could not proceed with a hearing or mediation if appeals have no land use planning merits or are frivolous and vexatious. Through the pre-screening process, appeals that have land use planning merits should be sent to mediation in appropriate circumstances.

Strengthening case manager role or asking Board members to also act as case managers should be explored. Case managers could educate participants on the OMB process and help to set expectations regarding the length of the process and possible costs for participation.

Alternative Dispute Resolution and Fewer Hearings

AMO agrees that alternative dispute resolution should be encouraged. A significant number of appeals are dismissed or deemed invalid, however, in many cases these were not deemed as such until after a pre-hearing or hearing. As noted above, when appeals are first received by the OMB, there should be a pre-screening process using clear criteria utilized by case managers. Appellants must be able to identify specific procedural or land use planning grounds for the appeal.

During this pre-screening process, criteria should be applied to identify the best process for a timely decision, including pre-hearing, mediation or move directly to hearing. Mediation should be sought often as the ideal dispute resolution process. Given the high number of cases that are settled, it is possible that parties involved in appeals have much in common and additional time

or support outside of formal OMB processes is often needed. A robust alternative dispute resolution process should be in place prior to an appeal becoming a case.

Summary

While these recommendations can improve the effectiveness and efficiency of the appeals process, similar reviews have taken place in the past with similar suggestions being endorsed. This review must address why the existing authorities and powers of the OMB have not been fully implemented and used. This review has to be more substantive with demonstrable outcomes.

Additionally, local planning documents must be respected as reflecting the embodiment of both provincial plans and local land use plans. The OMB is not in place to impose their own vision for municipal governments. The planning process must make space for local goals expressed in planning documents. Scoping the authority of the OMB so official plans or secondary plans are indeed considered 'official' needs to be firmly established.

Given the substantial amounts of time and money that are spent by all parties in appeals a move toward efficiency is vital. Administrative practices, transparency and accountability can be vastly improved.

Again, AMO appreciates the effort and thought that is going into this process. We look forward to working together to bring about meaningful changes. Stability in the land use planning environment is essential for local viability, economic growth and meeting social needs.