ONTARIO MUNICIPAL BOARD REFORM:

Maturing Roles
Discussion Paper

JUNE 2016

Contents

Introduction

In her 2014 mandate letters to each Cabinet member, Premier Wynne wrote to the Minister of Municipal Affairs and Housing and the Attorney General directing them to review the scope and effectiveness of the Ontario Municipal Board ("OMB") and recommend reforms to improve Ontario's land use planning system. In March 2016, Minister McMeekin (Minister of Municipal Affairs and Housing) signaled that the review would begin in spring 2016.

The Association of Municipalities of Ontario ("AMO") welcomes this upcoming review. Municipalities across Ontario have passed resolutions calling for substantial reform of the OMB. Ontario's land use planning system has evolved dramatically over the past thirty years, and municipalities have matured substantially to keep pace with the regulatory regime. However, the OMB retains significant power to overturn the decisions of elected officials. Now is the opportunity to transform the OMB to align its role and its powers with the capacity and maturity that Ontario's municipalities have developed.

This paper serves as a discussion paper and provides brief history of the OMB, a brief description of its present-day form, a decision review of 195 OMB appeals between 2013-2015, and a jurisdictional scan of land use appellate bodies in Oregon, England and Wales, and New Zealand. The paper then provides some recommendations informed by the decision review, the jurisdictional scan, and municipal resolutions received by AMO to improve and reform the OMB.

History of the OMB

The OMB was established in 1896, largely holding financial and administrative oversight of municipalities, and then expanded to oversee the growing municipal railway systems shortly thereafter. The Board as we know it today, providing oversight through quasi-judicial and administrative roles focusing specifically on municipalities, was configured in 1932. In 1971 the Royal Commission on Civil Rights reviewed the role of the OMB. The report raised a concern that there was no master list of duties or authorities vested in the OMB and that the responsibilities of the Board were diffused across thirty pieces of legislation. The Commission concluded that the powers were excessive and without safeguards, and this resulted in significant changes.

Further refinements of the OMB to the scope of responsibility and execution of duties have continued over the past three decades. Under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, the OMB was designated as part of a cluster known as Environment and Land Tribunals Ontario ("ELTO") which includes the Assessment Review Board, the Board of Negotiation under the *Expropriations Act*, the Conservation Review Board and the Environmental Review Tribunal.

Maturing Municipalities

Concurrent with the evolution of the OMB have been changes on the land use planning front. In the 1970s many municipalities were undertaking their first official plans, most did not have their own planning employees, and the province had just stepped into the practice of provincial land use planning with the introduction of the Niagara Escarpment Plan (1973).

Significant changes to the land use planning regime took place in 1983 when a revised *Planning Act* put greater emphasis on public participation and notification processes. Since then, the province has deepened its role in land use planning with the introduction of further legislation and provincial plans[1].

As time went on, municipal capacity for land use planning increased and calls for OMB reform heightened. The 2006 *Planning Act* amendments included a more mature amendment application process called a "complete application", ensuring that the municipality would hear all the information pertaining to an application. This was a companion to direction that when hearing planning appeals the Board must have regard for municipal council decisions and that hearings were not to hear new evidence. Most recently in 2015, the *Smart Growth for Our Communities Act* (Bill 73) put new limits on what could be appealed. The Bill restricts appeals on official plan amendments which implement provincial plans (such as Drinking Water Source Protection Plans) and allows for a two-year pause in appealing amendments to official plans and other planning documents after comprehensive updates take place.

Today's OMB

The OMB hears appeals on a number of planning-related matters such as minor variances, consents to sever, official plans, and zoning by-laws, as well as ward boundary disputes and development charges. This paper will be limited to consideration of land use planning matters. Most disputes are brought to the OMB by filing an appeal application. Depending on the type of dispute, there are different processes and timelines for filing an appeal. The OMB reviews the appeal and decides, with input from the parties, the best path to resolution: mediation, pre-hearing, or hearing. Appeals may involve more than one of these options.

The OMB uses the pre-hearing process to manage complex or multi-party appeals of related municipal land use approvals (i.e. appeals to a new Official Plan). Through the pre-hearing process Board members can identify and prioritize issues, refine and scope broad appeals, provide detailed procedural instructions, and provide ongoing direction on any procedural disputes. Thus hearings for complex cases can be refined, focused and made more efficient to resolve with specific issues. Mediation through the OMB is often encouraged, though ongoing discussions between appellants and municipalities may result in settlements being reached outside of the OMB.

Once the hearing is complete, the Board member will deliver the decision. The OMB aims to issue written decisions within 60 days of the last hearing. Once an appeal has been made to the OMB, the OMB takes the place of the approval authority (i.e. municipal council) and can make any decision that the approval authority could have made.

[1] For example, the Provincial Policy Statement (1996), Oak Ridges Moraine Conservation Plan (2001), Greenbelt Plan (2005), Growth Plan for the Greater Golden Horseshoe (2006), Growth Plan for Northern Ontario (2011), and the Clean Water Act (2006).

Presently, the OMB is comprised of 32 members, including the Executive Chair of ELTO. The Chair of the OMB will assign a Board member to each meeting of the parties (whether pre-hearing, mediation, hearing, etc.). Throughout the case, Board members will make determinations if they are to remain responsible for ongoing aspects of the case as they order decisions on motions and specific appeals. Board members are typically lawyers, planners, surveyors, engineers or other land use planning-related professionals[2].

Recent Changes to the OMB

Recent changes to the OMB have occurred in 2006 and 2015. This section briefly overviews the outcomes of these changes.

2006: *Planning and Conservation Land Statute Law Amendment Act* (Bill 51)

- Introduced that the OMB shall have regard to the decision of a municipal council or approval authority on a matter.
- Provides that information and material not provided to the municipality should not be admitted into evidence at the hearing of an appeal unless the OMB believes it was not "reasonably possible" to provide it at the time. The OMB must determine if the decision should be sent back to the municipal decision maker to allow it an opportunity to reconsider its decision.
- Introduced the concept of a "complete application" which means that time periods for municipalities to make a decision do not begin until the applicant has submitted all of the required information (rather than the time period beginning when the applicant submitted minimal information). This prevented applicants from appealing before a council could make a decision based on a reasonable amount of evidence.
- Permitted municipalities to create "local appeal bodies" to hear planning appeals on minor variance and severance matters, except where those decisions were made in conjunction with other planning applications.
- Restricted rights of appeal for persons who did not participate in public consultation processes from appealing, from being added as a party unless the OMB determines there are reasonable grounds to do so.
- Eliminated rights to appeal official plan amendments and zoning by-law amendments that would alter settlement area, re-designated employment lands, and second unit policies.

2015: *Smart Growth for Our Communities Act* (Bill 73)

- Applies the requirement of having regard to the decision of a municipal council to appeals based on non-decision.
- Also requires the OMB to have regard to any information and material that municipal council received in relation to the application or the matter, including written and oral submissions from the public.
- Restricted rights of appeal of entire official plans. Appeals are now limited to parts of the plan.

[2] See Appendix A for a brief review of current members' qualifications.

- Restricted rights of appeal that enact provincial policies such as the Lake Simcoe watershed, the Greenbelt or the Growth Plan.
- Where appeals suggest that a decision of council is inconsistent with or fails to conform with provincial or upper tier policy, the notice of appeal must explain how the decision is inconsistent with or fails to confirm.
- Empowers municipalities to use alternative dispute resolution to resolve an appeal and provides an additional 60 days for dispute resolution.
- Limits rights of appeal of non-decisions for persons or public bodies to twenty days after being given notice of the appeal.

Decision Review: 2013-2015

To identify trends in OMB decisions, 195 planning-related appeals across 78 cases were reviewed and analyzed. The appeal decisions were issued between 2013 and 2015 and were regarding decisions in 57 different municipalities. The decision review provides some broad themes that can inform recommendations for changes to the OMB.

Overview of Reviewed Appeals

The charts below show the number of appeals by type of planning issue included in this decision review compared to the number of appeals received by OMB during a similar time period. In this analysis, the categories "official plan/amendment" and "zoning by-law/amendment" include municipality-initiated amendments (including proposed official plans, secondary plans and comprehensive zoning by-laws) as well as applicant-initiated amendments (such as site-specific official plan amendments and zoning by-law amendments).

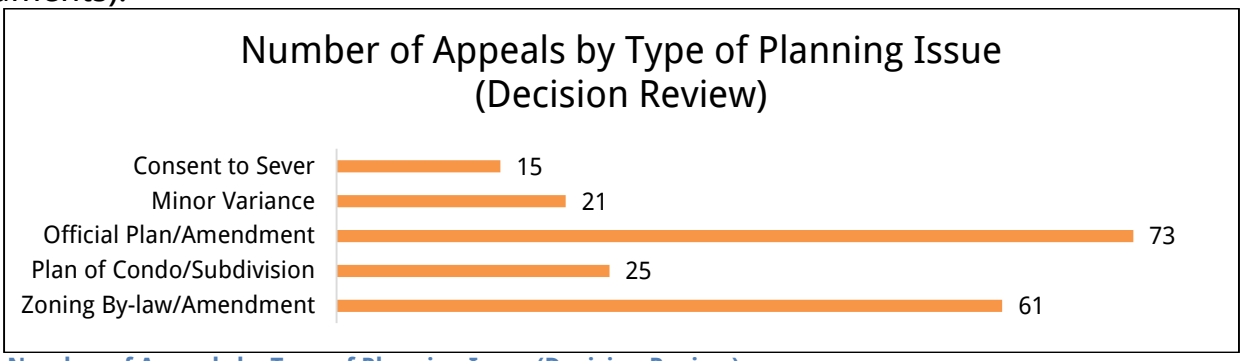


Figure 1: Number of Appeals by Type of Planning Issue (Decision Review)

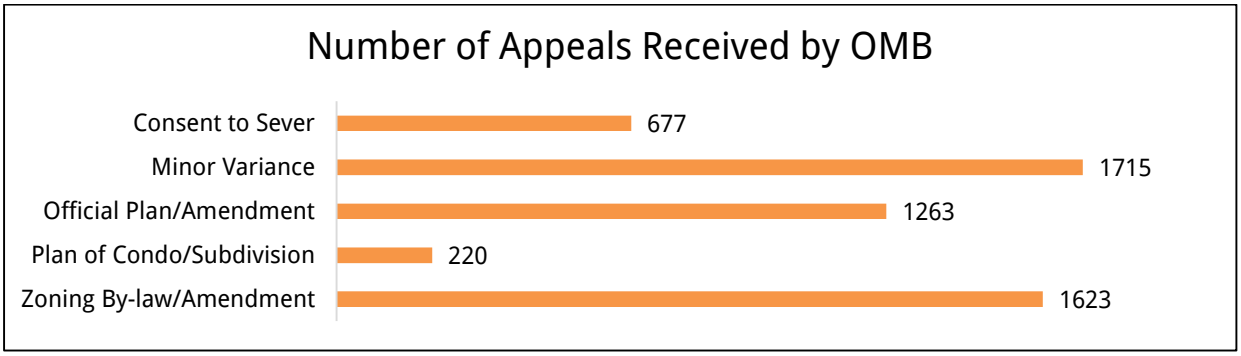


Figure 2: Number of Appeals Received by OMB

Note: See Appendix B for a full description of the data and sampling methodology. The basis of this decision review is OMB decisions during the time period 2013-2015 while the annual report shows appeals received by the OMB during the fiscal years 2012-13, 2013-14, and 2014-15. These figures also include appeals regarding the City of Toronto which were not included in the decision review. See Appendix C for further analysis based on OMB Annual Reports.

The appeals in this decision review have been made by a variety of appellants. The table below shows the number of appeals reviewed by appellant type. The majority of the appeals reviewed in this analysis are launched by applicants.

Applicant	81
Landowner	66
Municipality	1
Province	1
Third Party	44
Upper Tier	2

Figure 3: Number of Appeals by Appellant

Note: Applicants are appellants who are property owners who have filed planning applications for permission to modify or develop the built form on their land, including individuals and corporations. Landowners are appellants who were identified to own land subject to land use planning instruments such as proposed official plans, secondary plans, or comprehensive zoning by-laws. Third parties are appellants who are not the applicant and appeal the decision of a municipal body (e.g. neighbours or ratepayers' associations).

The appeals are launched for the primary reason that the appellant has an objection to a municipal council decision. Another significant portion of the appeals were launched due to non-decision of a council, which means that the legislated time period for a municipality to make a decision ran out before a decision was made.

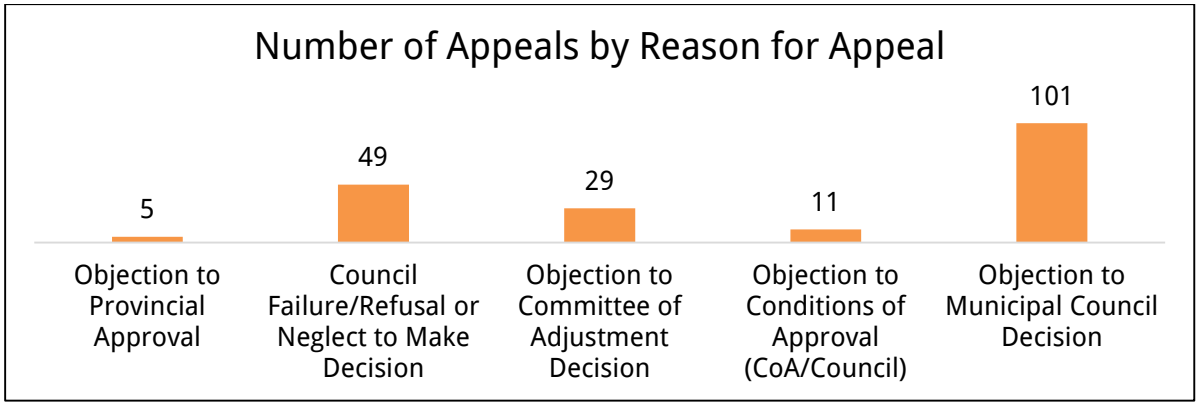


Figure 4: Number of Appeals by Reason for Appeal

Outcomes of Appeals

Outcomes have been classified into four broad categories: 1) the appeal can be allowed in whole or in part, which means the municipal decision is overturned or modified; 2) the appeal can be dismissed or deemed invalid, which means the municipal decision is upheld; 3) the appeal can be settled, which means that the parties negotiated an agreement to their mutual satisfaction; and 4) the appeal can be withdrawn, which means the appellant decides not to pursue the appeal and the OMB no longer has jurisdiction to make a decision. The chart below shows that the majority of appeals in this decision review were settled.

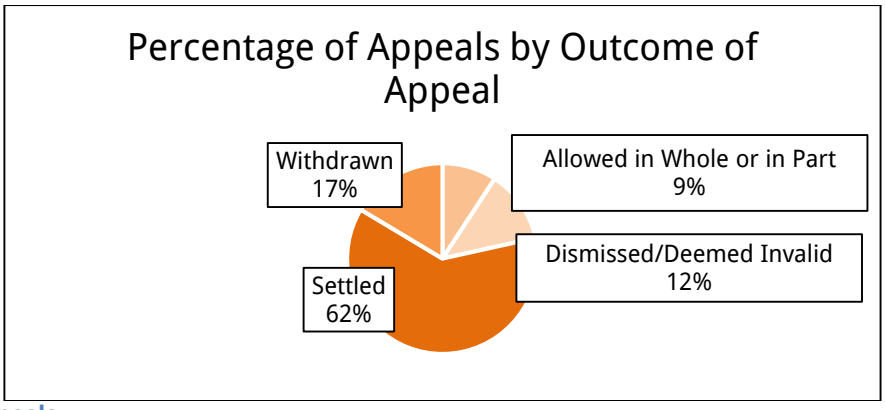


Figure 5: Outcome of Appeals

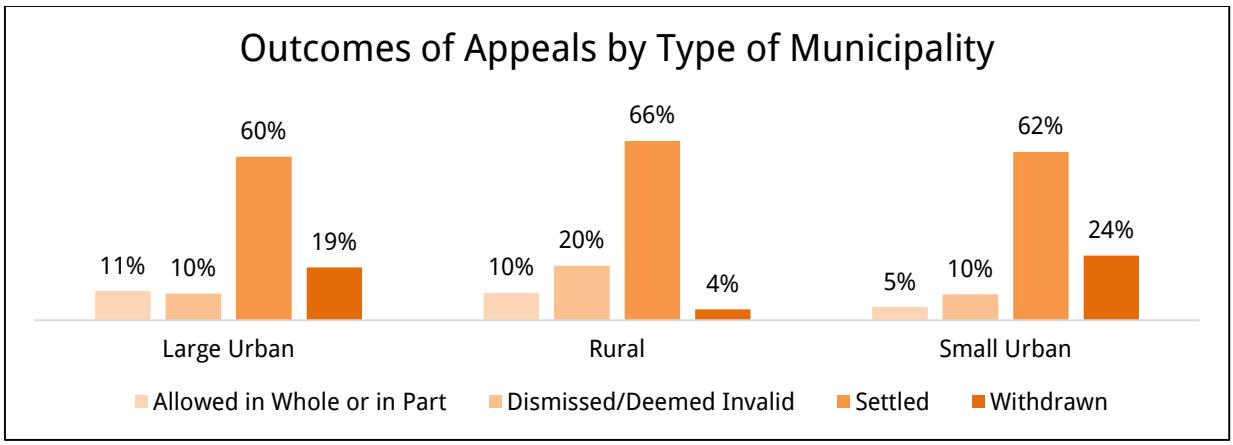


Figure 6: Outcomes of Appeals by Type of Municipality

As the chart below demonstrates, settling is the most prominent outcome for all types of appeals. However, there is a difference in the distribution of outcomes for certain planning issues.

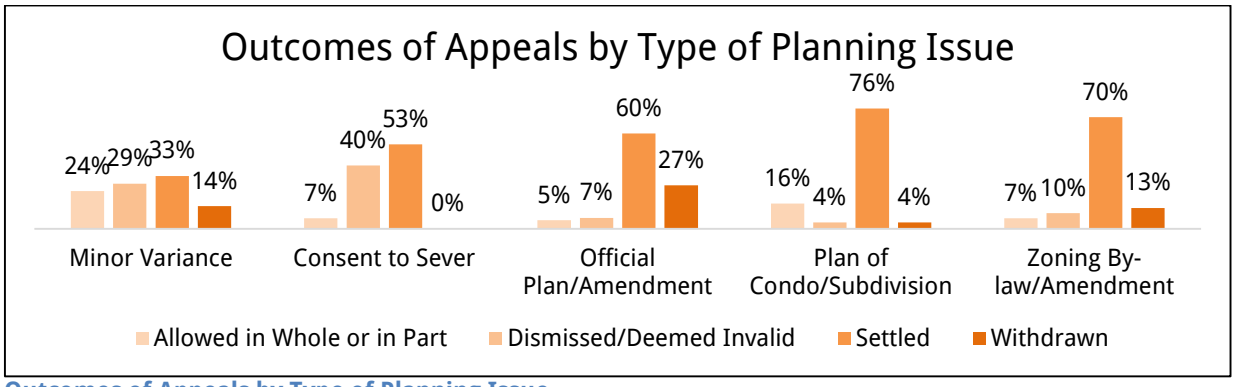


Figure 7: Outcomes of Appeals by Type of Planning Issue

Note: This chart shows the outcomes of appeals as a percentage of all appeals of that type (i.e. 70% of zoning by-law amendment appeals are settled).

Minor variance and consent to sever appeals have lower rates of settling and higher rates of appeals being dismissed or deemed invalid. Conversely, zoning by-law amendments, official plan amendments and plans of condominium/subdivision have very high rates of settling. Minor variance appeals are allowed at the highest rate among all types of planning issues.

The chart below shows that the trend of settling appeals continues across all types of appellants. In this sample, applicants are settling far more often than third parties, landowners and government appellants. Third parties and landowners were less likely to have their appeals allowed and were more likely to have their appeals dismissed, deemed invalid, or withdrawn than other appellants.

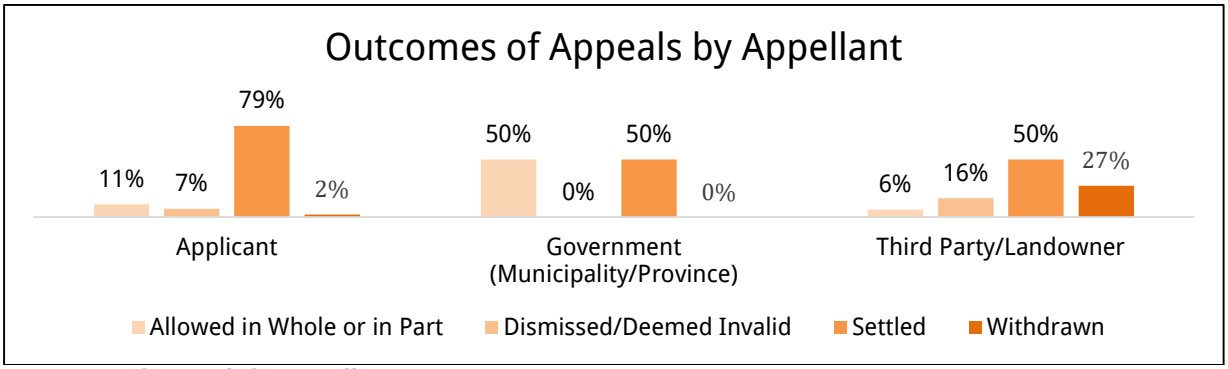


Figure 8: Outcomes of Appeals by Appellant

Summary of Key Findings

1. *The majority of OMB appeals in this decision review were launched due to an objection with a municipal decision. A significant portion are also due to "council failure, refusal or neglect to make a decision."* Many municipal councils feel that especially contentious planning decisions will be appealed regardless of how much time and effort they put forth into their consideration. This may explain the high rate of appeals based on "failure, refusal or neglect to make a decision" within the appropriate timeframe.

2. *The vast majority of OMB appeals in this decision review were settled*. It is possible that the high rates of settlement are a result of pressure on all parties to settle due to the high costs and extended lengths of hearings. Settlements give all parties more predictability than through the OMB hearing process. The high rate of settlement may also be connected to the previous finding that a significant portion of appeals are launched due to a council's failure to make a decision within the prescribed timeframe (88% of appeals based on "failure, refusal or neglect to make a decision" are settled). If municipalities are being found to make good planning decisions, this suggests that the OMB is providing an unnecessary stamp of approval and an additional administrative burden to the agency and municipalities.

3. *Minor variance appeals and consent to sever appeals, planning permissions typically decided by Committees of Adjustment (or equivalents), have differential appeal outcomes from other planning issues.* Minor variances and consents to sever have lower rates of settling and higher rates of dismissal than other planning issues, but

minor variances also have a higher rate of being allowed. Minor variances and consents to sever are typically addressed by municipal Committees of Adjustment or their counterparts. In many cases, decisions made by Committees of Adjustment are not seen by municipal councils prior to the filing of an appeal. Municipalities may be able to play a role is reducing the number of unnecessary appeals heard by the OMB.

4. *Third parties and landowners are more likely to have their appeals dismissed or deemed invalid*. It is not clear why this trend occurs, but it may suggest a lack of understanding to navigate the OMB and successfully appeal or it may suggest that appeals brought forward by third parties and landowners tend to not to have appropriate grounds for appeal. If third party and landowner appeals are not succeeding at reasonably similar rates as others, some procedural intervention may be necessary.

Other Jurisdictions

Much criticism has been directed towards the OMB, due to its uniqueness as an all-encompassing adjudicative body. Though other provinces in Canada have appellate bodies that address similar issues, none are as all-encompassing as the OMB. This section briefly reviews examples of land use appellate bodies in jurisdictions around the world.

Oregon Land Use Board of Appeals

The Oregon Land Use Board of Appeals ("LUBA") was established as the only forum to hear and rule on appeals of land use decisions made by local governments and special districts. LUBA can only review final decisions by a local government that concern the adoption, amendment or application of the statewide planning goals; a comprehensive plan or a land use regulation (e.g. zoning); a land use decision that will have a significant impact on present or future land uses in the area (e.g. the construction of a major street through a quiet residential area); and certain types of decisions concerning sites within urban growth boundaries (e.g. urban subdivision, urban site plans).

A LUBA appeal challenges the legal sufficiency of the local government's decision based on the evidence that was before the local government. A LUBA appeal is not an opportunity to present new evidence. LUBA cannot overturn a decision simply because the Board members disagree with the decision or think it is unwise. The legislature has listed specific reasons for overturning an appealed decision:

- The local officials failed to follow the correct procedures in making the decision and the procedural error deprived the Petitioner of a substantial right;
- The decision violates a constitutional guarantee, a state law (e.g. statute, statewide planning goal) or local law (e.g. comprehensive plan policy or zoning ordinance);
- The decision is not supported by substantial evidence.

Other points of comparison include:

- Board members are attorneys who are experts in land use planning law and are appointed by the Governor.
- There is no informal participation by interested citizens or groups.

- LUBA decisions may be appealed to the Oregon Court of Appeals within 21 days after the final decision is issued.

England and Wales Planning Inspectorate

In England and Wales, planning appeals are received and decided by the Planning Inspectorate (an agency sponsored by the Ministerial Department for Communities and Local Government). A property owner needs planning permission to build something new or change the use of the building. A property owner can appeal a decision of a local planning authority regarding a planning permission if they disagree with the decision or if a decision is not made within the appropriate timeframe. Applicants can also appeal against any conditions that have been imposed on a planning permission.

There are three types of appeal procedures: written submissions, hearing, and inquiry. A hearing is a roundtable discussion between the applicant and the local planning authority, though the Inspector (the equivalent of an OMB member) may exercise discretion to include other parties. An inquiry is a formal, public process that allows for the investigation into and testing of evidence. When submitting an appeal, the property owner can indicate which procedure they believe to be the most appropriate, though the final procedure will be determined by the Inspector. After determining the procedure, reviewing the materials submitted, and conducting the hearing or inquiry, the Inspector will make a decision to issue planning permission or not.

Other points of comparison include:

- There are no fees for appealing.
- Depending on the type of appeal, the appellant can receive a decision within 10-27 weeks.
- Decisions may be challenged in court if it is believed that the Inspector made a legal error.
- Only the planning applicant may appeal the procedure (there are no third party rights of appeal).
- The Planning Inspectorate also deals with national infrastructure planning applications and examinations of local plans.

Environment Court of New Zealand

The Environment Court of New Zealand was developed under New Zealand's main environmental protection legislation. This legislation ensures activities such as building houses, clearing bush, and moving earth does not harm people, communities, or the environment. The Environment Court allows individuals who object to decisions about the environment (including planning decisions) to appeal. The court is made up of Environment Judges and Environment Commissioners and an Environment Court hearing usually consists of at least one Environment Judge and one or more Environment Commissioners.

The Environment Court can hear planning-related appeals such as: resource consents (permissions to conduct activities outside of official plans such as land use changes or subdivisions), proposed district and regional plans, proposed regional policy statements,

and heritage orders. Among other powers, the Environment Court has the power to: direct councils to make changes to their policy statements or plans; direct councils to review resource consents that have been granted; and confirm, amend or cancel decisions on applications for resource consents and designations. Local governments may also apply to the Environment Court for a declaration if there are different views on plan rules and how those should be interpreted.

The Environment Court has procedures similar to OMB pre-hearings and hearings. Mediation is strongly encouraged and will not prejudice the outcome of a hearing if the case proceeds to a hearing.

Other points of comparison include:

- Applicants must submit their appeal within 5-30 working days of the decision depending on the issue.
- When the court hears an appeal it must have regard to the council's decision (or the other decision-making authority), but the Court is not bound by it.
- Applicants should allow at least six months for an appeal to be heard and decided.

Recommendations

Principles

AMO believes that two core principles should guide the OMB review.

1. Municipalities are a mature form of government and are in a position to take on a more rigorous role in land use planning. This requires a significant transformation of the OMB's roles and procedures.

2. Planning in Ontario has been and should continue to be a public, democratic process. Any adjudicative process that can supersede municipal decisions must ensure fair and equitable participation by local community members, and must meaningfully employ processes and decision-making methods that include the public.

With these principles in mind, it is important to emphasize that there is a role for an adjudicative body to ensure that property rights are upheld, proper process is followed, and to advise municipalities to navigate conflicting planning policies and legislation.

Restricting the Scope of the OMB

1. Remove appeals of Committee of Adjustment (or equivalent) decisions from the jurisdiction of the OMB.

Planning matters dealt with by Committees of Adjustment (or equivalents) have much higher rates of appeals being dismissed and deemed invalid, though many of these applications are never considered by Councils before proceeding with appeals. Minor variances and consents also form a significant amount of appeals received by the OMB. The Province should remove these planning issues from the purview of the OMB and develop processes that allow municipal councils to review Committee of Adjustment decisions prior

to any appellate body process. Municipal councils should also be empowered to create local appeals bodies for matters heard by Committees of Adjustment and their counterparts. A regulation under the *Planning Act* allows municipalities to develop a local appeals body, yet none have been created primarily citing financial barriers. The Province should support the establishment of these local appeals bodies through enabling funding.

2. Appeals of planning documents that have been approved by a second approval authority should not be allowed.

When there is a second approval (i.e. upper tier or province) for a planning document, the approval authority should be held accountable through public process for their decisions. In current circumstances, single- and lower-tier municipalities are responsible for defending plans at the OMB that have been approved by another authority such as an upper-tier municipality or the province. Ultimately, these second approvals ensure that planning documents conform with provincial interests. Appeals of planning documents that have been given second approval should not be allowed. This would require second approval authorities to make sound policy decisions rather than use the OMB as a dispute resolution process.

Changing OMB Processes

3. The OMB should develop a robust pre-screening process to identify appeals without merit.

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. When appeals are first received by the OMB, there should be a pre-screening process using clear criteria utilized by case managers[3], the OMB should aim to prevent invalid appeals and appeals dismissed with no land use planning grounds (including frivolous and vexatious appeals) from moving to the pre-hearing or hearing stages. Significant weight should be applied to the description of the basis of the appeal. Appeals must be able to identify specific procedural or land use planning grounds for the appeal.

4. The pre-screening process should also be used to triage appeals for appropriate and timely decisions.

During this pre-screening process, criteria should be applied to identify the best process for timely decision, including pre-hearing, mediation, or directly to hearing. As often as possible, mediation should be sought 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 often need additional time or support outside of formal OMB processes to identify common ground.

5. Develop stricter limitations on attempts to introduce new materials to the application during pre-hearing and hearing proceedings.

Recent changes to the OMB have required applicants to submit complete applications to municipal councils before decisions are required and that the OMB must have regard to the

[3] See Appendix D for suggested criteria.

information in front of the council when it made its decision. However, during the pre-hearing and hearing processes, new evidence may be introduced by any party as a means to interpret the information presented within the complete application. OMB Board members have a responsibility to ensure that new material is not introduced. When new material is introduced and could have an impact on the decision, the OMB Board member has the authority to send the application back to the municipal council for re-evaluation. To encourage full disclosure of information in the complete application, further limitations should be developed to restrict the introduction of new materials through pre-hearing and hearing procedures.

6. Schedule hearings around qualified OMB Board member availability and make appellants and participants responsible for ensuring their counsel is available.

The scheduling of hearings seems to revolve around legal counsel availability leading to lengthy waiting periods for hearings. The imperative should be to schedule proceedings with Board members that have appropriate experience with the planning matters within the case. Participants should then ensure their counsel is available when the Board schedules their hearings.

7. Introduce case managers to the OMB to support participants during the appeal process.

The introduction of case managers to the OMB or for 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.

Board Member Roles and Qualifications

8. Ensure that OMB Board members have appropriate qualifications, training, and performance management.

Board members tend to be lawyers, but many do not have planning experience. This reinforces the perception that the OMB is about "good lawyering rather than good planning." The OMB should at least ensure Board members have ongoing training on OMB subject areas and ensure staff performance management is taking place. Part of this staff performance management piece should be an ongoing effort to ensure that Board members are fully utilizing their powers, such as not allowing new parties to cases who have not participated in municipal consultation.

9. Extend the length of appointments for OMB Board members.

The current practice of two-year appointments is inappropriate and serve as a deterrent for qualified individuals to take on and remain in the role. Further, short appointments prevent Board members from building experience over time and utilizing it in future proceedings. The province should lengthen the appointment times to four year cycles.

Information Sources

Environment and Land Tribunals Ontario (2015). *2014-2015 Annual Report*. http://elto.gov.on.ca/wp-content/uploads/2016/03/2014-2015-ELTO-Annual-Report_Tabled.pdf

New Zealand Ministry of Justice (n.d.). *Environment Court of New Zealand*. http://www.justice.govt.nz/courts/environment-court

The Planning Inspectorate (2016). *Procedural Guide: Planning Appeals – England.* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509809/Procedural_Guide_Planning_appeals_v7_23_03_16_MASTER.pdf

State of Oregon (n.d.). *Land Use Board of Appeals*. http://www.oregon.gov/LUBA/pages/index.aspx

Table of Figures

APPENDIX A: Board Member Qualifications

Jan de P. Seaborn (Toronto)
- Worked as a lawyer in the regulatory, planning and environmental department of a Toronto law firm.

James R. McKenzie (Thornhill)
- Professional mediator and registered professional planner.

Jyoti V. Zuidema (Brantford)
- Practiced law in the public and private sector and represented municipal and provincial governments in the area of municipal and development law.

Karlene Hussey (Stratford)
- Worked as a lawyer in civil litigation, wills, estates and trusts.

Susan de Avellar Schiller (Oakville)
- Professional mediator and registered professional planner.

Steven Stefanko (London)
- Former private practice lawyer.

Reid Rossi (Toronto)
- Former Executive Director of Canadian Housing & Renewal Association and was a Member of the Immigration and Refugee Board in Toronto.

Justin Duncan (Toronto)
- Former Crown Attorney and staff lawyer at Ecojustice Canada.

Sarah Jacobs (Windsor)
- Practiced municipal and land use planning law in private and public sectors.

Karen Kraft Sloan (Shanty Bay)
- Former Parliamentary Secretary to the federal Minister of the Environment and diplomat.

Marcia Valiante (Toronto)
- Current law professor and formerly practiced environmental, administrative and planning law.

Jason Chee-Hing (Richmond Hill)
- Professional experience in fields of urban and regional planning, housing and public administration.

Colin Hefferon (Toronto)
- Experience in land use planning and real estate development in public and private sectors.

Marc Denhez (Ottawa)
- Lawyer, mediator and author of books on planning-related issues, including environment and heritage.

Sylvia Sutherland (Peterborough)
- Former Mayor of Peterborough.

Richard G. M. Makuch (Orleans)
- Deputy Commissioner in the Office of the Commissioner of Review Tribunals and former Vice-Chair of the Agricultural and Rural Affairs Tribunal.

Christopher L. Conti (Oshawa)
- Worked as a planner with Central Lake Ontario Conservation Authority and the Ministry of Natural Resources.

Mary-Anne Sills (Belleville)
- Former municipal Councillor and Mayor of the City of Belleville.

Maureen Carter-Whitney (Toronto)
- Legal analyst for Environmental Commissioner of Ontario and course instructor in environmental law at Ryerson University.

Blair S. Taylor (Oakville)
- Practiced municipal and development law in public and private sectors.

David Lanthier (Cochrane)
- Private practice lawyer and municipal solicitor with several northern and central Ontario municipalities.

Helen Jackson (Toronto)
- Senior hydrogeologist.

Joseph E. Sniezek (Sault Ste. Marie)
- Professional planner and former President of OPPI.

Laurie Bruce (Toronto)
- Professional planner, environmental planning consultant, and trained mediator.

Richard Coleman Jones (Midhurst)
- Former Director of Planning and Development for City of Barrie and private planning consultant.

Anne Milchberg (Toronto)
- Registered architect and professional planner.

Hugh Wilkins (Toronto)
- Lawyer who has specialized in administrative, environmental and international law and policy.

Heather Gibbs (Mississauga)
- Lawyer, adjudicator and mediator; formerly a member of Child and Family Services Review Board and Immigration and Refugee Board of Canada.

Robert Wright (Toronto)
- Former commercial lawyer and environmental litigator with the Sierra Legal Defence Fund.

Bruce Krushelnicki (St. Catharines)
- Former Director of Planning and Building for the City of Burlington and Associate Professor of Urban and Environmental Studies at Brock University.

Jerry Demarco (Toronto)
- Former lawyer and professional planner.

Shing Kan Wilson Lee (Toronto)
- Former assistant regional solicitor with the Regional Municipality of Peel and Regional Municipality of Sudbury.

APPENDIX B: Decision Review Methodology

This analysis searched for decisions posted on the OMB e-Decisions website by combining the search terms of a year (2013, 2014, 2015) with each type of planning issue (consent, minor variance, plan of subdivision, official plan amendment, zoning by-law amendment). The first five cases that matched the search terms were selected, though in some cases less than five were selected if the search results did not provide five matching cases. Within each case, all identifiable appeals were included in the data collection (thus, there are more appeals than cases). Each separate appeal was coded on the following variables and the value for each variable recorded for analysis.

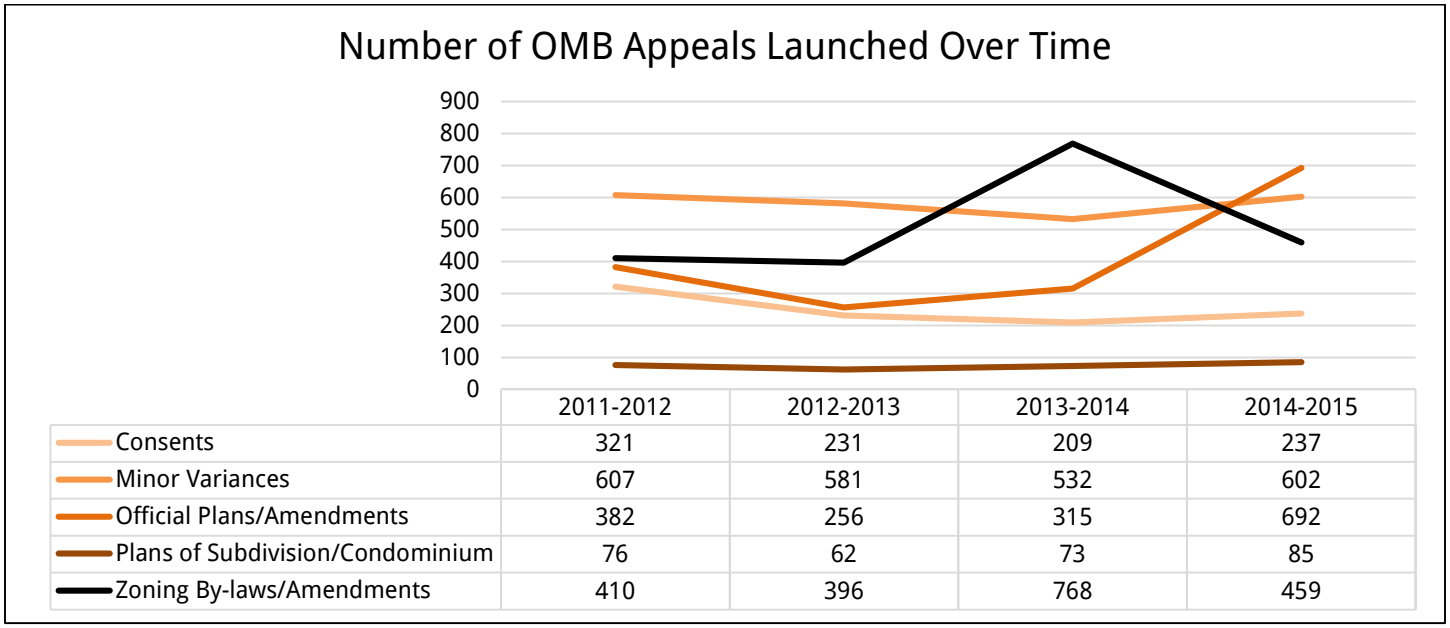
Variable	Possible Values
Type of planning issue	- consent to sever - minor variance - official plan (including official plan amendments) - plan of condominium/subdivision - zoning by-law (including zoning by-law amendments)
Who initiated official plan amendment or zoning by-law amendment	- applicant - municipality
Nature of the appeal	- objection to conditions of approval - objection to approval - objection to refusal - failure to make a decision - refusal or neglect to make a decision (OMB often distinguishes this from “failure to make a decision”)
Who made decision/failed to make decision	- Committee of Adjustment (or counterpart) - council - province - upper tier
Type of municipality	- large urban - rural - small urban
Appellant	- applicant - municipality - province - third party

	- upper tier (county/regional municipality)
Outcome	- allowed - allowed in part - dismissed - invalid - settled - withdrawn

Explanation of outcome	- appellant ceased communication - appellant does not have standing - beyond statutory appeal deadline - council supported applicant revisions - endorsed settlement - good planning (applicant) - good planning (municipality) - good planning (municipality with consideration to appellant) - good planning (province) - modified settlement - municipality repealed official plan amendment - no evidence to support appeal - no land use planning grounds for appeal - settled outside of OMB - unavailable witnesses/board did not grant adjournment
Did the Board member mention having 'regard for Council decision'	- no - yes

APPENDIX C: OMB Annual Report Analysis

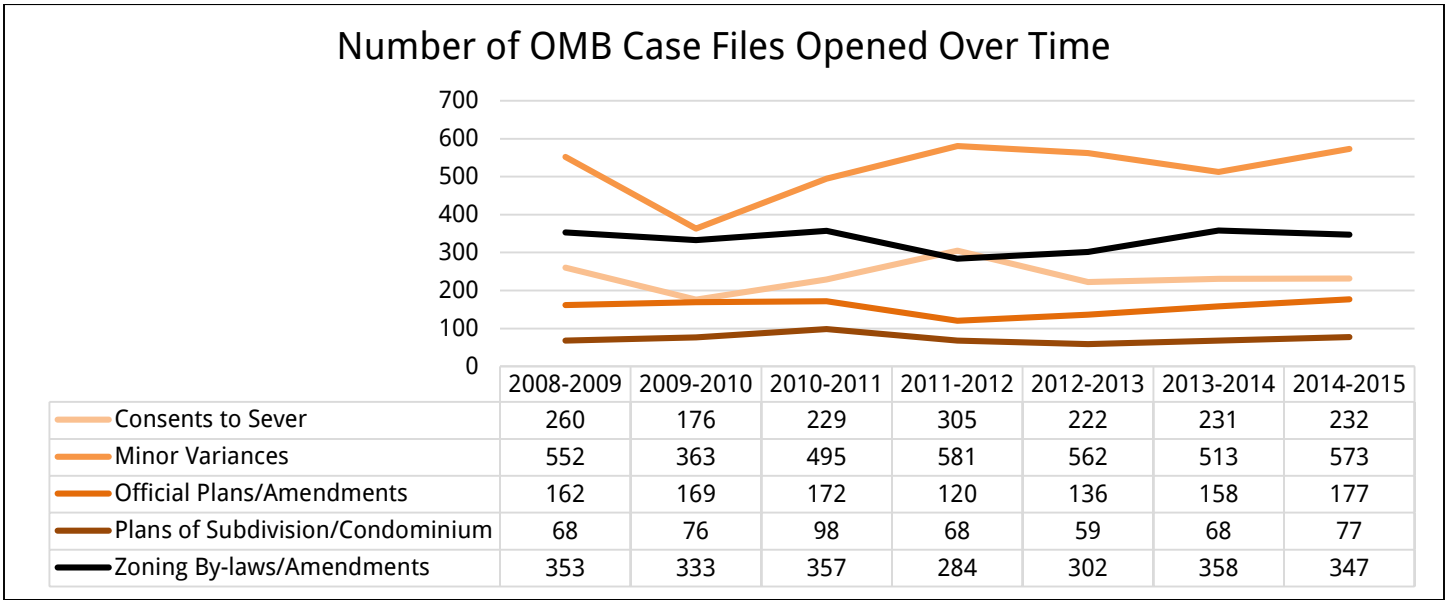
Figure C1 shows the number of OMB appeals that have been launched over time. The data from OMB annual reports shows a number of trends. The number of zoning by-law amendment appeals peaked in 2013-2014. Official plan amendment appeals grew significantly over the time period. Minor variance appeals continue to form a substantial number of the appeals received by the OMB.



	2011-2012	2012-2013	2013-2014	2014-2015
Consents	321	231	209	237
Minor Variances	607	581	532	602
Official Plans/Amendments	382	256	315	692
Plans of Subdivision/Condominium	76	62	73	85
Zoning By-laws/Amendments	410	396	768	459

Figure C1: Number of OMB Appeals Launched Over Time

Figure C2 shows the number of OMB case files opened over time. Again, cases may and generally do contain multiple appeals, as appellants must file an appeal for each planning approval required (i.e. an application to develop a property may require an official plan amendment, a zoning by-law amendment, and a plan of subdivision). In general, the number of cases has not changed significantly over time. Though not shown on this graph, cases regarding the City of Toronto accounted for 25% of those opening in 2010-2011, 30% in 2011-2012, 32% in 2012-2013, and 39% in 2014-2015 (data for 2013-2014 is unavailable).



	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Consents to Sever	260	176	229	305	222	231	232
Minor Variances	552	363	495	581	562	513	573
Official Plans/Amendments	162	169	172	120	136	158	177
Plans of Subdivision/Condominium	68	76	98	68	59	68	77
Zoning By-laws/Amendments	353	333	357	284	302	358	347

Figure C2: Number of OMB Case Files Opened Over Time

APPENDIX D: Frivolous and Vexatious

"Frivolous" and "vexatious" generally mean different things, however both are typically grouped together as they relate to the same basic concept of a complaint or claim not being brought in good faith. A frivolous claim or complaint is one that is about a matter so trivial or meritless that pursuing the complaint would result in disproportionate time and costs. A vexatious claim or complaint is one that is specifically being pursued to harass, annoy or cause financial cost to the recipient.

While all parties understand the need to provide a means for review of decisions or materials made through government or public processes, bad faith appeals or requests can strain the capacity of the public sector to provide services. This includes the OMB as an agency and municipal governments who must respond to such appeals. Various jurisdictions have been tackling this issue, some of which are highlighted below.

Criteria to Pre-screen Frivolous and Vexatious Actions

Often the first line of inquiry of various Ontario boards looking at appeals or complaints pertains to the grounds for the appeal or complaint. However, there are other indicators which ought to be assessed concurrently. As part of the pre-screening appeal boards and complain review bodies should ascertain:

- Process and Good Faith of the Body Making the Decision:
    - Did the correct person or body undertake the assessment or decision? Do they have the proper authority?
    - Did the process follow regulation and/or policy?
    - Did the required parties participate in this assessment/decision?
    - Could an accurate assessment or fair decision be made; based on policy/regulations, complete facts/application?
- Conduct Indicating Motives of the Appellant or Complainant

- Did the complainant provide full and complete information during the process?
- Is the complainant working within standard procedures? Are they prepared to accept facts?
- What has the nature of the contact with municipal staff/council members been in terms of frequency, reasonableness, and tone?
- Are additional or subsidiary issues raised whilst the primary concern is being addressed?
- Has the appellant denied previous statements, secretly recorded or demonstrated bad faith?
- Is this issue also being addressed through other avenues such as the MPP, Ombudsman, courts? Are they using multiple routes?
- Is the issue that of process or unwillingness to accept the outcome?
- Has this individual or group made multiple complaints?