

REVIEW OF THE ONTARIO MUNICIPAL BOARD

PUBLIC CONSULTATION DOCUMENT

October 2016

Ontario.ca/OMBReview

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MINISTERS' MESSAGE

A MESSAGE FROM MINISTER MAURO AND ATTORNEY GENERAL NAQVI

We believe that Ontarians deserve well-planned sustainable, vibrant communities. That's why our government has been reviewing its land use plans and the province's land use planning system — to ensure that the system is evolving to best meet the needs of Ontarians. The Ontario Municipal Board (OMB), which hears appeals on planning decisions, plays a significant role in the planning process and is also being reviewed.

Over the next 25 years, we expect Ontario will have an additional 4 million people. As we continue to plan and build for the future, there will naturally be disagreements about how we develop. When those disputes cannot be managed locally, the Ontario Municipal Board (OMB) often has the role of resolving them.

This OMB Review focuses on the scope of land use planning matters that may come before the Board and the effectiveness of how the board operates. This review is open to everyone — we want to know what you think are the types of issues that should be brought to the Board and the process through which issues are contested.

To help focus the discussion, we have set out in this document a number of ideas about the types of changes that could be made including:

- allowing for more meaningful and less costly resident participation
- giving more weight to local decisions and allowing alternative ways to settle disputes
- bringing fewer municipal and provincial decisions to the OMB
- supporting clearer and more predictable decision-making



Hon. Bill Mauro
Minister of
Municipal Affairs



Hon. Yasir Naqvi
Attorney General of
Ontario

The changes we are considering are based on what the province has heard during previous, extensive public and stakeholder consultations, and from public and stakeholder feedback received since we launched the OMB Review in June of this year.

We hope this review sparks a productive discussion on how different views about land use can be resolved fairly at less cost and in an accessible manner.

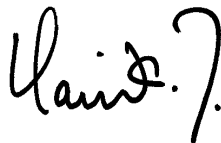
We invite you to review the changes we are considering and provide us with your feedback, either in writing or in person at town halls planned throughout the province. See page 34 for the different ways you can participate.

Thank you for considering this important matter. We hope you will take the time to share your opinions and insights with us.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Mauro'.

Hon. Bill Mauro
Minister of Municipal Affairs

A handwritten signature in black ink, appearing to read 'Y. Naqvi'.

Hon. Yasir Naqvi
Attorney General of Ontario

OMB REVIEW

INTRODUCTION

Strong communities are at the heart of a strong Ontario. From bustling urban centres to suburban neighbourhoods to smaller rural and northern towns, our communities are where we live, work and play.

Yet healthy, sustainable, liveable and safe communities that promote a high quality of life do not just happen. They must be well thought out and carefully developed. How do we attract investment and create jobs? Where should industry be located? Where should roads and transit be built? How do we protect our forests and farmlands, our green space, our ecologically sensitive lands and waters, the air we breathe, our cultural heritage? How can we best address the challenge of climate change?

Land use planning is vital to the growth and development of all Ontario communities. But it's not always a smooth or easy process. People don't always agree on how their communities should develop or change. They don't always agree with the planning decisions made by their local councils. That's where the Ontario Municipal Board (OMB) comes in.

The OMB is an independent, public body where people can appeal or defend land use decisions that affect their properties and communities. The Ontario government sees a continuing need for the OMB in Ontario's land use planning system. That is why we are exploring changes to make sure that the Board's role is appropriate, open and fair. We want to ensure that it is a place where people can go, and be heard.

Through the OMB Review, the government will consider the OMB's scope (what it deals with) and effectiveness (how it operates) to determine improvements with respect to how the Board works within Ontario's broader land use planning system.

This document is designed to support the review. It provides context and direction. It gives background on Ontario's land use planning system and on the OMB. It sets out possible changes to improve the OMB's role within the system as organized under five key themes and raises questions for consideration. A glossary of relevant terms is also included at the end.

Focus

Ontario is committed to an inclusive and transparent land use planning system. Since 2004, the province has made improvements that:

- set out clearer rules for land use planning
- strengthen policy directions that outline the provincial interest in land use planning
- give municipalities a stronger voice and more independence in local land use decisions
- provide residents more opportunities for involvement and a greater say in land use decisions in their communities

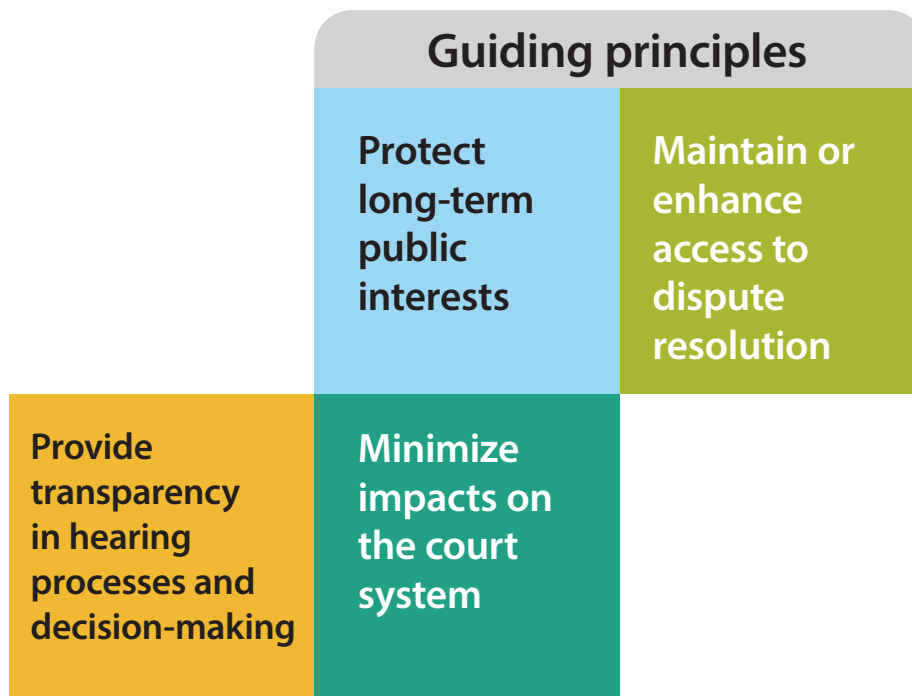
These changes have also affected the OMB. Through this review, the government is seeking to build on past improvements to ensure the Board can contribute within the system to its best effect. We are exploring whether the OMB's role within the land use planning system could be improved by:

- enabling more meaningful, affordable citizen participation
- giving more weight to local and provincial decisions
- supporting clearer, more predictable decision-making
- promoting alternative ways of settling disputes

Principles

It is important that Ontario continue to have an independent appeal tribunal that can resolve some land use disputes — not having an OMB would result in more appeals to the courts. Tribunals can support an efficient process, they are designed to be faster and less costly than the courts, and their members are subject matter experts.

The following set of guiding principles help frame the OMB Review:



Themes

Recent government initiatives on related issues, such as the Long-Term Affordable Housing Strategy Update, the Coordinated Provincial Plan Review, and the Land Use Planning and Appeal System Review, as well as a specific invitation for public input on the OMB, have helped to inform the priorities for discussion in this review. The OMB Review has been organized according to the following five themes:

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

Opportunities to Participate

We encourage you to participate in this review. Your thoughts and opinions regarding the potential changes are important.

Details on how to submit written comments are outlined on page 34. Other opportunities to participate can be found through the Environmental Bill of Rights Registry and at town hall meetings to be held across the province. Please visit the Ministry of Municipal Affairs webpage at [Ontario.ca/OMBReview](https://ontario.ca/OMBReview) for the most up-to-date information.

BACKGROUND

ONTARIO'S LAND USE PLANNING SYSTEM

Each Ontario community is unique. Whether urban, rural or northern, each has its own distinct geographic, social and economic circumstances and each must plan with these in mind.

Land use planning helps communities effectively manage their land and resources. It helps them decide where and how to grow; where to build homes and factories, parks and schools, roads and sewers and other essential infrastructure; and, protects the natural environment such as water resources and forests. It sets goals for future development and determines how to best reach these goals.

The province also has a strong interest in land use planning. Development in all communities needs to occur in a way that is good for Ontario and its future. Ontario's provincial land use planning system is set out in the Planning Act.

The Planning Act defines the province's approach to planning, the roles of key participants, and the requirements for creating land use documents such as official plans and zoning by-laws. It also provides a process for resolving land use disputes through appeals to the Ontario Municipal Board (OMB).

The Provincial Policy Statement (PPS) ([Ontario.ca/PPS](https://www.ontario.ca/PPS)) is created under the Planning Act. The PPS sets out the province's land use policies on a wide range of matters that include: economic development, transportation, housing, parklands/trails, energy conservation, air quality, climate change, natural heritage, natural hazards, cultural heritage, agriculture, mineral aggregates (i.e., sand, gravel and stone) and water resources. It aims to achieve a balanced approach to economic growth, environmental protection and social well-being.

Provincial plans build on the direction provided by the PPS. They focus on specific geographic areas and emphasize matters like managing growth, environmental conservation, and economic issues within these areas. Examples include the Growth Plan for the Greater Golden Horseshoe ([Ontario.ca/cxii](https://www.ontario.ca/cxii)), the Growth Plan for Northern Ontario ([Ontario.ca/cxij](https://www.ontario.ca/cxij)), the Greenbelt Plan ([Ontario.ca/greenbelt](https://www.ontario.ca/greenbelt)), the Oak Ridges Moraine Conservation Plan ([Ontario.ca/iv61](https://www.ontario.ca/iv61)), and the Niagara Escarpment Plan (escarpment.org/landplanning/plan/index.php).

The Planning Act requires that all planning decisions implement provincial policies.

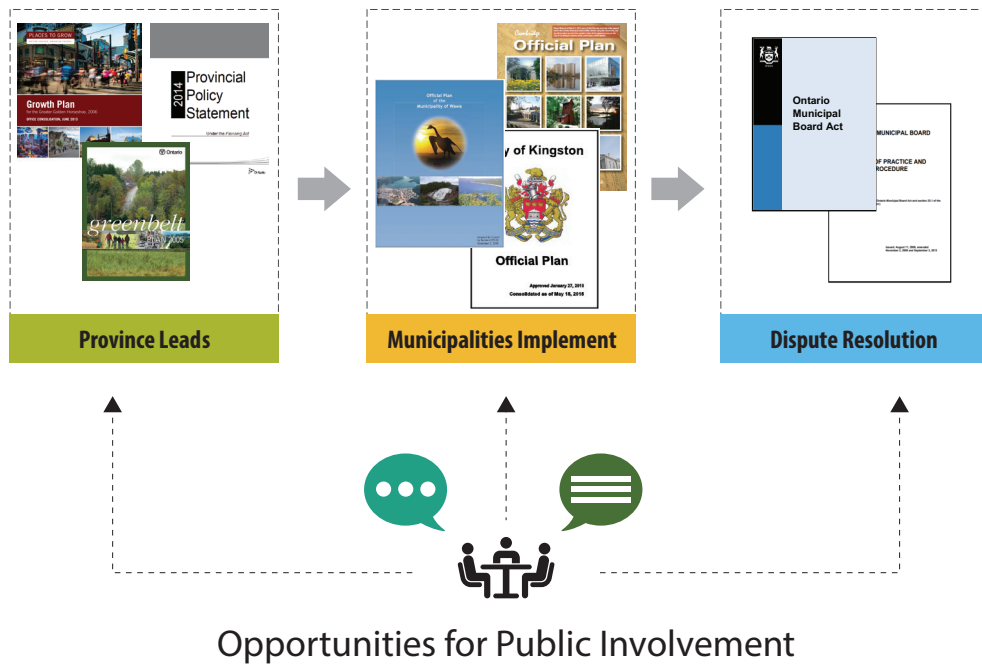
Each municipality develops its own official plan that sets out its own goals and rules, and governs how it grows and develops. These plans are approved by either an upper-tier municipality or the province. Official plans are implemented locally through tools like zoning by-laws, site plans, subdivision plans, and community planning permit systems.

Land Use Planning System in Ontario



Public participation is a cornerstone of Ontario's land use planning system. It ensures that Ontarians can help shape the future of their communities. People can attend public meetings or review and comment on planning matters that may affect them. They can challenge most planning decisions by appealing them to the OMB. Public input is encouraged on matters that range from approving development proposals to developing new planning documents that change existing policies.

Inevitably, people have different ideas about what land use planning and development should accomplish, and disputes between competing interests can and do occur. Ontario's planning system is designed to allow for differing viewpoints to be heard and for issues to be resolved fairly.



THE ONTARIO MUNICIPAL BOARD

The OMB is an independent tribunal (a court-like body) that makes decisions at arm's length from government, and hears matters under a large number of public statutes (laws). The OMB is granted its powers under these statutes as well as by the Ontario Municipal Board Act, and reports administratively through Environment and Land Tribunals Ontario (ELTO) to the Ministry of the Attorney General.

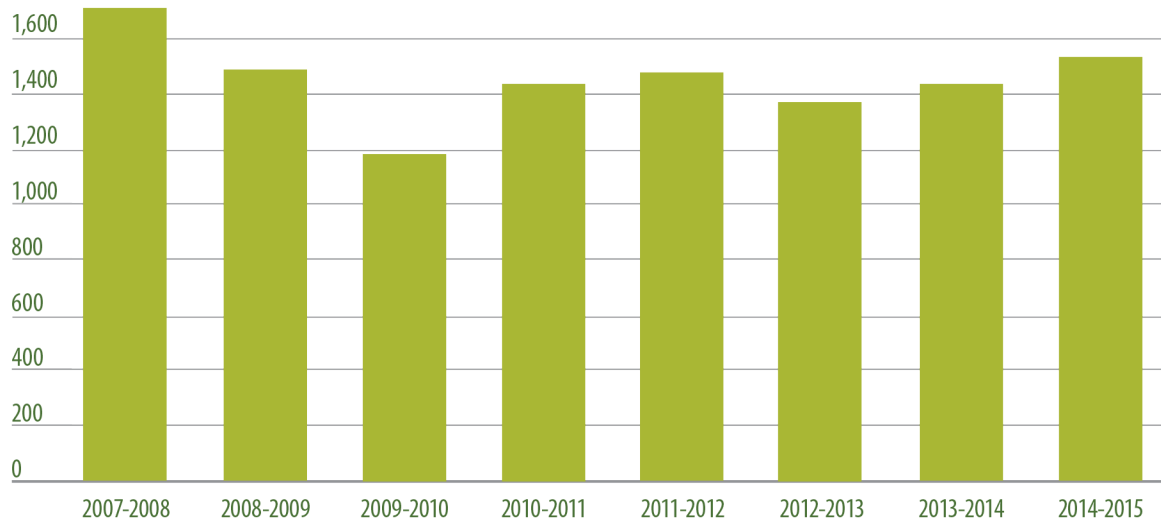
While the OMB has diverse powers and responsibilities, its primary function is that of an appeal body on land use planning issues, and most matters before the Board are appeals under the Planning Act. The Board also deals with non-planning matters including expropriation, development charges, and ward boundaries.

The chart on the next page shows the number of files received by the OMB between 2007-08 and 2014-15 that relate to land use planning issues (files might include more than one appeal)¹.

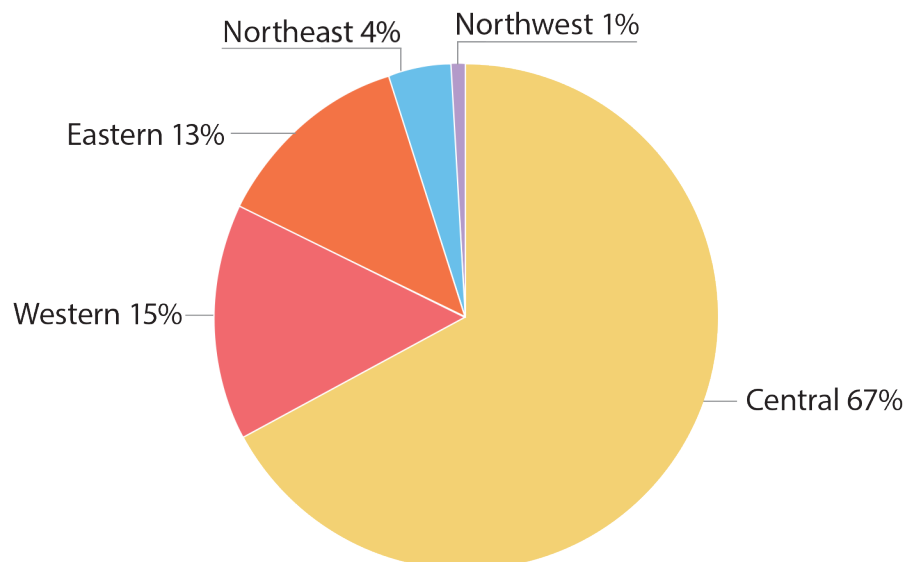
In 2014-2015, the OMB received 1,535 files from across the province related to the Planning Act. The following illustration shows their geographic origin. Most (67 per cent) were from Central Ontario, including 39 per cent from Toronto.

¹ Planning Act files include: minor variances, consents, zoning by-laws and zoning refusal or inaction, official plans/ amendments, plans of subdivision/condominium, and site plans.

Planning Act - Files Received by the OMB²



Files Received by the OMB by Geography (2014-2015)³



² Data source: ELTO Annual Reports.

³ Data source: ELTO 2014-2015 Annual Report.

ROLE OF THE OMB

Why does Ontario need an OMB? People don't always agree on how their communities should grow. Land use disputes occur on issues as varied as where industrial development should be located, the height of a building, what type of community services should be provided and more.

When people can't resolve their differences on community planning matters or disagree with a planning decision made by their municipal council, the OMB provides an independent forum to settle disputes.

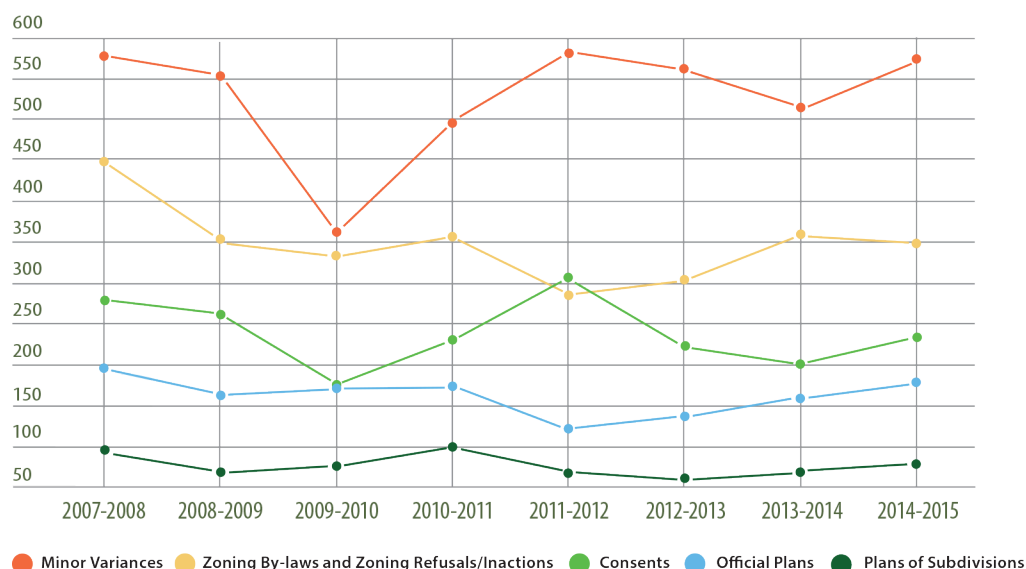
Ontario's land use planning system allows for changes to most land use planning documents, including official plans and zoning by-laws, and allows most land use planning applications and decisions to be appealed. The OMB conducts public hearings in all these areas.

The chart below shows the number of files received by the OMB between 2007-08 and 2014-15, defined by planning application type. The majority of files relate to minor variances.

Origins of the OMB

The Ontario Municipal Board is one of the province's longest-standing adjudicative tribunals. In 1906, it assumed its initial responsibilities, including those previously carried out by the Office of the Provincial Municipal Auditor. Originally named the Ontario Railway and Municipal Board, it was created to oversee municipalities' accounts and to supervise the rapidly growing rail transportation system between and within municipalities. It was renamed the Ontario Municipal Board in 1932. Its mandate and responsibilities have continued to evolve.

Planning Act Files Received by the OMB by Application Type⁴



⁴ Data Source: ELTO Annual Reports.

The OMB makes independent decisions with reasoning based on applicable law and policies and the evidence presented. Currently, it has the authority to overturn decisions made by municipal council or to make a decision when council has not done so.

OMB decisions also uphold provincial interests such as preservation of farmland, protection for aggregate (i.e., sand, gravel and stone) and natural resources (e.g., water and wetland), conservation of cultural heritage resources, protection of infrastructure and transportation corridors, and public health and safety.

OMB HEARINGS

The OMB holds hearings all across Ontario, usually in the municipality where the land that is the subject of an appeal is located.

These hearings are less formal than court proceedings and can be held in various formats:

- oral (in-person) hearings are most common
- electronic hearings can be held through a teleconference or videoconference call, providing a timely and more cost-efficient alternative
- written hearings, occurring through written submissions, are rare (except for motions) but can be used for matters that rely on documentary evidence

The length of a hearing can range from a few hours to several weeks or even months.

Complex hearings can involve a number of issues, multiple parties, numerous lawyers, witnesses (including subject matter experts), local residents and other concerned citizens.

Authority of the OMB

When reviewing matters, the OMB generally has the same authority and can make any decision that the original decision-making body (e.g., a municipal council or the Minister of Municipal Affairs) can make.

Different types of disputes have different processes and timelines for filing an appeal. The OMB reviews each case and decides, with input from the parties, whether to direct the case to mediation, hold a pre-hearing conference or schedule a hearing. Currently, most appeals proceed directly to a hearing. Hearings are open to the public but in order to take part, a person must be named by the OMB as either a party or a participant.

COMPARING THE OMB TO OTHER LAND USE APPEAL BOARDS

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

The key challenge in comparing these systems to Ontario's is that each provincial planning system is different, and each province takes a different approach to appeals based upon what was decided, who made the decision, and how the decision was made.

No other provincial board has as extensive a jurisdiction over planning-related matters as the OMB. That's because, in Ontario, more land use matters are subject to appeal — from minor variance applications to major planning issues such as expansion of urban settlements.

Land use systems in many US jurisdictions also differ from the Ontario model. In many states, land use decisions are local decisions and any appeal must occur through the courts. While state-wide appeal bodies are not common, Oregon and Washington are examples of states that have established state-wide land use appeal tribunals.

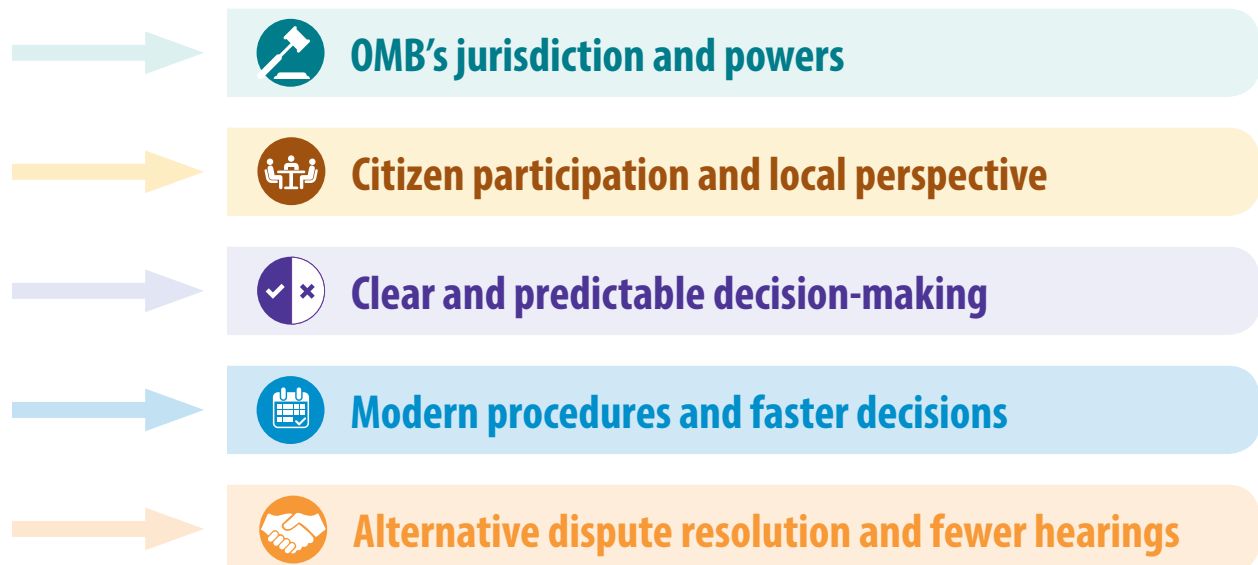
STRUCTURE OF REVIEW

The government has heard a range of viewpoints regarding the Ontario Municipal Board (OMB), its role in Ontario's land use planning system, and its processes. These views include:

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

These comments and others provide direction for this review, which will consider ways to improve the OMB's scope and effectiveness in the system.

The following section groups ideas into five key themes:



Each theme is divided into four subsections: what we've heard, what we've done, changes we're considering, and discussion questions.

KEY THEMES



THEME 1. OMB'S JURISDICTION AND POWERS

What we've heard

A common concern, heard over many years, is that the scope of issues dealt with by the Ontario Municipal Board (OMB) is too broad. Because of this, it is argued, too many matters are appealed to the OMB, which is time consuming and costly for all involved.

To address this, some municipalities and stakeholders have called for the OMB's jurisdiction and power to be limited to matters of provincial interest. Others have asked for more limits on appeals, for example, prohibiting appeals where the province has approved an official plan amendment, or where municipalities are implementing provincial policy in local planning documents.

We've heard concerns that the OMB deals with too many local matters and does not give enough weight or consideration to decisions made by municipal councils. The point is often made that municipalities are in a better position than the OMB to make decisions on local planning matters because they have a better understanding of the local context.

We've also heard, from both municipalities and community groups, that the OMB should change the way it holds hearings, including eliminating de novo (starting anew) hearings. Comments regarding de novo hearings include: they do not respect the decisions of municipal councils, they duplicate the municipal decision-making process, and the case presented before the OMB often bears little resemblance to the matter dealt with by municipal council.

However, we've also heard that the OMB is needed to provide decisions based on planning evidence when a municipal council makes a decision based on local concerns that may not reflect the broader public interest. We have also heard that the OMB is needed when municipalities are not able to make decisions, to ensure there is a fair, efficient and timely approval process. Other points include that without the OMB, appeals could end up in the court system, leading to even greater costs for public participation.

What we've done

Since 2004, the government has made a series of land use planning reforms that have also affected the OMB.

Changes include limiting the number of matters that can be appealed to the OMB, giving municipalities a stronger voice and more independence in local land use decisions, and giving residents more say in land use decisions in their communities. These changes have occurred as a result of the Strong Communities (Planning Amendment) Act, 2004, the Planning and Conservation Land Statute Law Amendment Act, 2006, and, most recently, the Smart Growth for Our Communities Act, 2015.

The following chart sets out the parts of the Planning Act the government has changed to support stronger recognition of municipal and provincial decisions and policies. It also lists matters that cannot be appealed to the OMB.

Planning Act provisions that affect decisions made by the OMB	Matters that cannot be appealed to the OMB
<ul style="list-style-type: none"> • Decisions “shall be consistent with” the Provincial Policy Statement • Decisions are to be based on provincial policies in effect on date of decision • Requirement for OMB to “have regard to” municipal decisions and information that was before council • The OMB can only deal with matters that were part of council’s decision • New significant information can be sent back to council for reconsideration • Power to dismiss an appeal if application is substantially different from that which was before council • Expanded authority to dismiss an appeal without a hearing 	<ul style="list-style-type: none"> • Refusals and non-decisions on applications for urban boundary expansions and, if appropriate policies are in place, employment land conversions • Policies authorizing residential second units (e.g., basement apartments, accessory units) • Entire official plan • Official plans/amendments that implement certain matters with previous provincial approval (e.g., approved source water protection boundaries, Growth Plan for the Greater Golden Horseshoe employment and population projections, Greenbelt Plan boundaries) • Appeals of lower-tier official plan/amendments, if upper-tier determines it does not conform with the upper-tier official plan

Since 2007, municipalities have had the option of establishing a local appeal body to deal with appeals of minor variances and consents. In places where such a body is established, the OMB will continue to hear appeals for other matters, such as official plans, zoning, subdivision plans, and community planning permits. To date, no Ontario municipality has set up a local appeal body, although the City of Toronto has the process underway.

Changes we're considering

Strong communities need to be able to conduct comprehensive, strategic land use planning, make land use and development decisions in a timely manner, and ensure that citizens are able to be involved from an early stage. In this regard, the government is considering amendments to the Planning Act to enhance Ontario's land use planning and appeal system in the following areas:

1. Protect public interests for the future

Land use planning aims to protect the broader public interests of the community. For example, the system aims to provide clean and safe drinking water and direct development away from flood-prone areas or unstable slopes. The government is considering limiting appeals on provincial land use planning decisions so that:

- the province could specify which parts of its decisions on official plans would not be subject to appeal. This would assist in matters like the preservation of farmland, and the orderly development of safe and healthy communities
- the province's decisions on new official plans or proposed official plan amendments, where municipalities are required to implement Provincial Plans, would be final and not subject to appeal
- when the Minister of Municipal Affairs puts zoning provisions in place through a Minister's Zoning Order to protect public interests, the Minister (and not the OMB) would have the authority to make the final decision on any requests to amend that zoning

Appeal Rights

The Planning Act provides appeal rights to the OMB for most planning matters. Appeal rights are restricted for certain land use matters to protect provincial land use issues, and to support community decision-making in areas like permitting second units in homes.

Discussion Question

- Q 1. What is your perspective on the changes being considered to limit appeals on matters of public interest?**

2. Bring transit to more people

Modern transit systems attract new investment and jobs, connect people to home and work, fight traffic congestion, air pollution and climate change, and help to strengthen communities and the province. That's why Ontario is investing \$31.5 billion in transit, transportation and other priority infrastructure projects over the next 10 years.

The government is considering restricting appeals of municipal official plans, amendments to these plans, and zoning by-laws, for development that supports provincially funded transit infrastructure such as subways and bus stations. This would help ensure that there are sufficient densities to support transit investments.

Discussion Question

Q 2. What is your perspective on the changes being considered to restrict appeals of development that supports the use of transit?

3. Give communities a stronger voice

The land use planning process provides communities with an important opportunity to shape their future. The provincial government is exploring whether to make the following changes to the land use planning and appeal system so that more land use decisions can be made locally:

- no appeal of a municipality's refusal to amend a new secondary plan for two years. This recognizes the extensive work and involvement of a community in developing a plan, and would provide certainty and stability for neighbourhoods
- no appeal of a municipal interim control by-law. This would give municipalities the time to do the comprehensive studies that are required to appropriately plan for a neighbourhood, particularly where neighbourhoods are experiencing rapid change or are in transition
- expand the authority of local appeal bodies to include appeals related to site plans. This would allow them to hear disputes on individual properties relating to, for example, landscaping, driveways or lighting
- further clarify that the OMB's authority is limited to dealing with matters that are part of the municipal council's decision, meaning the Board is only able to deal with the same parts of an official plan as those dealt with by council
- require the OMB to send significant new information that arises in a hearing back to the municipal council for re-evaluation of the original decision. This would ensure the OMB has the benefit of council's perspective on all significant information

Discussion Question

- Q 3. What is your perspective on the changes being considered to give communities a stronger voice?**

4. “De novo” hearings

The government is looking for input on a possible change that would give more weight to municipal and provincial decisions by moving the OMB away from de novo hearings.

The term “de novo” has been used to describe how the OMB deals with appeals of municipal land use planning decisions, by considering the same issue that was before the municipality as though no previous decision had been made.

Since 2007, the OMB has been required to “have regard” to the earlier municipal or approval authority decision that is being appealed. However, some stakeholders have suggested this does not go far enough. They recommend a shift away from de novo hearings altogether.

If this were to occur, it would mean the OMB would focus on the validity of the decision under appeal instead of seeking the “best” decision. The decision of the approval authority (i.e., municipality or the province) would be central to the appeal in a way that it currently is not. This might be achieved in a number of ways, including:

- requiring the OMB to review municipal/approval authority decisions on a standard of reasonableness. That means OMB hearings would examine whether the original decision was within a range of defensible outcomes within the authority of the municipality/approval authority. If the decision is found to have been made within that range of outcomes, the OMB would not be able to overturn it
- authorizing the OMB to overturn a decision made by a municipality/approval authority only if that decision does not follow local or provincial policies. This would mean that the Board would have to be convinced that the planning decision under appeal is contrary to local or provincial policies. Examples might include approvals of proposals for development in a flood-prone area or a provincially significant wetland, or an official plan that does not meet the Growth Plan for the Greater Golden Horseshoe intensification targets

Discussion Questions

- Q 4. What is your view on whether the OMB should continue to conduct de novo hearings?**
- Q 5. If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?**

5. Transition and use of new planning rules

The government is committed to giving municipalities a stronger voice in local planning issues, and has made several changes in this regard to date that have affected land use planning rules. This inevitably brings up questions about when new rules should apply and how to transition to them.

There are two points of view:

1. All planning decisions should be made on the most up-to-date planning documents.
2. Fairness requires that planning decisions be based on the planning documents that were in place when the process was started.

Since 2007, the Planning Act has required that, going forward, land use decisions must reflect provincial policies in place when the decision is made, not when the application is made.

The government is now seeking input on possible changes that would expand on the 2007 changes by requiring that all planning decisions, not just those after 2007, be based on provincial legislation and planning documents and municipal planning documents in effect at the time of the decision.

Discussion Questions

- Q 6. From your perspective, should the government be looking at changes related to transition and the use of new planning rules? If so:**
- **what is your perspective on basing planning decisions on municipal policies in place at the time the decision is made?**
 - **what is your perspective on having updated provincial planning rules apply at the time of decision for applications before 2007?**



THEME 2. CITIZEN PARTICIPATION AND LOCAL PERSPECTIVE

What we've heard

Ontarians have strong opinions regarding land use planning, the appeal process, and the ability for the average citizen to be able to participate in a meaningful way. People want a say in how their communities grow, and they want to be sure the local perspective is well represented, and well respected when decisions are made.

Individuals have raised various concerns about their ability to participate in OMB hearings. Cost is an issue: the cost to participate in a hearing is high, which can discourage participation. Fairness can also be a factor: a person or community group may not have the same access to subject matter experts that is available to municipalities and developers. People have also said that OMB procedures generally need to be more citizen-friendly.

Other points raised include a perceived lack of information about how a layperson can take part in an appeal and what to expect at a hearing. We've received suggestions on ways to make the OMB more accessible, including a more user-friendly website, adopting plain language, and creating easy-to-understand educational videos. We've also heard that decisions should be posted online in a way that is easy to find, and use.

What we've done

It's important to the government that people are comfortable dealing with the OMB. We want the process, including the experience of participating in a hearing, to be welcoming and not overwhelming nor intimidating.

In 2006, Ontario established the Citizen Liaison Office (CLO) at the OMB (Ontario.ca/cxil) to help the public understand what the OMB does and how to participate in the process. The CLO is available to answer questions on how to launch an appeal, the process involved, the citizen's role, what happens at a hearing, and how a decision is made and issued. The CLO is also available, on request, to answer questions from ratepayer associations at community meetings, municipal meetings and at other functions.

The Citizen Liaison Office receives about 2,500 calls a year and 780 written inquiries. Over six months in 2016, it received nine requests to attend community meetings.

Last year, in response to citizen feedback, the government passed the Protection of Public Participation Act, 2015. This legislation is designed to ensure people can speak out on matters of public interest without fear of retribution. It encourages citizen participation on issues, including planning-related issues, some of which can be contentious. It also allows for faster and less expensive procedures at boards and tribunals by requiring that parties make written submissions about legal costs.

The Smart Growth for Our Communities Act, 2015, gave Ontarians a greater and more meaningful say in the planning process by:

- requiring that municipalities better involve residents in the planning process for new developments and policies
- including citizen representatives on municipal planning advisory committees so council can benefit from their views
- enhancing the Community Planning Permit System to help plan for and better address local needs as raised by municipalities and the public

Changes we're considering

The government wants to ensure that individuals and parties without legal representation are able to get and stay involved in local land use planning, including appeals. To support this, the government is considering increasing public education opportunities to provide clear information on OMB practices and procedures, including creating a new user-friendly website.

The government is also exploring and is seeking input on whether the following proposals will encourage citizen participation and improve the OMB experience to ensure the local perspective is heard:

- the government is considering expanding the CLO. Currently, the CLO has one employee dedicated to responding to requests for information for all Environment and Land Tribunals Ontario tribunals, including the OMB. The government is considering either, hiring more staff to provide easier public access to information or reconfiguring the CLO, including moving it outside of ELTO. A reconfigured CLO might include in-house planning experts and lawyers who would be available to the public (subject to eligibility criteria)
- explore funding tools to help citizens retain their own planning experts and/or lawyers

Discussion Questions

- Q 7. If you have had experience with the Citizen Liaison Office, describe what it was like — did it meet your expectations?**
- Q 8. Was there information you needed, but were unable to get?**
- Q 9. Would the above changes support greater citizen participation at the OMB?**
- Q 10. 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?**
- Q 11. Are there funding tools the province could explore to enable citizens to retain their own planning experts and lawyers?**
- Q 12. What kind of financial or other eligibility criteria need to be considered when increasing access to subject matter experts like planners and lawyers?**



THEME 3. CLEAR AND PREDICTABLE DECISION-MAKING

What we've heard

Good decisions are important. Making good decisions requires both good decision-makers and clear and predictable decision-making processes. Feedback in this area focuses on OMB members as adjudicators, and the ability of members to effectively carry out their role.

Comments received to date include the need for OMB members to be well qualified, possess specific skills and accreditation, and receive appropriate training to do their job well. Other suggestions include the need for clearer rationale, more plain language in decisions, and for complex hearings to be heard by multi-member panels.

Ontario Municipal Board Members

As of September 1, 2016, the OMB consists of:

- thirteen full-time members
- six full-time Vice Chairs
- one full-time Associate Chair
- four part-time members

Members of the OMB are generally appointed mid-to-late career and bring a wealth of professional knowledge and experience from their previous occupations. Lawyers with backgrounds in environmental, municipal and planning law make up about half of the Board. Other appointees include planners, former elected officials, and people with adjudication and mediation experience.

What we've done

Ontario's Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 sets out the requirements for appointments to adjudicative tribunals in Ontario, including the OMB. The Act requires that people appointed to tribunals go through a competitive, merit-based recruitment process. Candidates are assessed using criteria that include experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal.

OMB member positions are advertised, and job descriptions are posted year-round on the ELTO website (Ontario.ca/cxjf). Candidates are rigorously interviewed by the Executive Chair of ELTO who makes recommendations for appointments and reappointments to the Attorney General. All new appointments are subject to review by the Standing Committee on Government Agencies, an all-party committee of the Ontario Legislature.

When appointed, new members are sent, if needed, on a one-day course provided by the Society of Ontario Adjudicators and Regulators (SOAR) on decision-writing. As well, ELTO sends new members to a five-day course called "The Certificate in Adjudication for Administrative

Agencies, Boards and Tribunals” provided by SOAR and Osgoode Professional Development of Osgoode Hall Law School, which provides a grounding in the administrative justice system and decision-writing. They are given extensive training materials and resources to develop and enhance their subject area expertise, and also take professional development courses.

OMB hearings are generally conducted by one member. The member will hear the case and write a decision. While the Ontario Municipal Board Act allows for panels of more than one, the use of multi-member panels at the OMB became less common in the 1990’s due to cost. Once a decision is drafted, it is reviewed by senior board members for clarity of reasoning and expression. Throughout the process, the OMB’s legal staff is available to provide assistance.

Changes we’re considering

The government is considering increasing the number of OMB adjudicators and ensuring they possess the necessary skills. Further training could be increased — including on decision writing, active adjudication, and dealing with parties that have no legal representation.

Multi-member Panels

The government is also considering whether to reintroduce multi-member panels with panel members representing a broad range of skills and backgrounds to ensure clear and predictable decision-making at the OMB. Specifically, the government is considering:

- having multi-member panels only conduct complex hearings
- having multi-member panels conduct **all** hearings

Discussion Questions

- Q 13. Qualifications for adjudicators are identified in the job description posted on the OMB website ([Ontario.ca/cxjf](https://ontario.ca/cxjf)). What additional qualifications and experiences are important for an OMB member?**
- Q 14. Do you believe that multi-member panels would increase consistency of decision-making? What should be the make-up of these panels?**
- Q 15. Are there any types of cases that would not need a multi-member panel?**
- Q 16. How can OMB decisions be made easier to understand and be better relayed to the public?**



THEME 4. MODERN PROCEDURES AND FASTER DECISIONS

What we've heard

The OMB has rules of practice and procedure that set out how it deals with land use planning appeals. Increasingly, we're hearing that these rules need to be updated and the procedures streamlined to make the system more accessible, and to promote timely decisions.

Comments include the need for faster screening and scheduling of appeals, and more flexibility in how evidence can be presented. People feel the hearing process is too long.

Concerns also include the process: it is not simple, predictable or transparent. There is a view that hearings are too adversarial and too court-like. Most people support a less formal process.

What we've done

The OMB has publicly posted business plans (Ontario.ca/cxit) with timelines for scheduling hearings and issuing decisions. In recent years, targets have increasingly not been met. ELTO attributes this to limited adjudicator resources combined with an increase in the number of complex and lengthy hearings.

Performance Results	2013-2014 Achieved (Target)	2014-2015 Achieved (Target)	2015-2016 Achieved (Target)
OMB decisions issued within 60 days of the end of a hearing	86% (85%)	84% (85%)	80% (85%)
OMB minor variance cases (stand-alone) scheduled for a first hearing within 120 days of the receipt of a complete appeals package	71% (85%)	51% (85%)	67% (85%)
Other OMB cases scheduled for a first hearing within 180 days of the receipt of a complete appeals package	80% (85%)	75% (85%)	84% (85%)

In 2008, the OMB updated its rules of practice and procedures to require mediation assessment. This allowed the Board, upon receiving an application, to review the information and decide if mediation was the best way to deal with a matter, potentially avoiding or shortening a hearing. The OMB also began to allow video conferencing.

Changes we're considering

The government wants to see a less formal and less adversarial culture at OMB hearings and is considering changes to:

- allow the OMB to adopt less complex and more accessible tribunal procedures
- allow active adjudication

The government is also considering other ways to modernize procedures and promote faster decisions. Options include:

- setting appropriate timelines for decisions
- increasing flexibility for how evidence can be heard
- conducting more hearings in writing in appropriate cases
- establishing clear rules for issues lists to ensure that hearings are focused and conducted in the most cost-effective and efficient way possible
- introducing maximum days allowed for hearings

Active Adjudication

Lets adjudicators play a more active role in hearings, for example, explain rules and procedures, scope issues and evidence, and question witnesses.

Issues List

An issues list details specific questions related to the concerns raised by parties to the appeal.

Discussion questions

- Q 17. Are the timelines in the chart above appropriate, given the nature of appeals to the OMB? What would be appropriate timelines?**
- Q 18. Would the above measures help to modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?**
- Q 19. What types of cases/situations would be most appropriate to a written hearing?**



THEME 5. ALTERNATIVE DISPUTE RESOLUTION AND FEWER HEARINGS

What we've heard

Most people would choose to avoid a formal appeal process, whenever possible. There is considerable interest in pursuing alternative ways to work out mutually acceptable solutions to land use planning issues.

Comments heard in this regard suggest that mediation, particularly, should be promoted. We've heard suggestions that more OMB members should be able to mediate appeals and more staff should be hired to facilitate mediation processes. It has also been suggested that mediation should be required to level the playing field for all involved.

Mediation at other Ontario Tribunals

Human Rights Tribunal of Ontario: Parties are asked on the application or response form if they are willing to try mediation. If both sides agree, an HRTO mediator will be assigned and will meet with both parties to discuss the situation and ideal resolutions.

Landlord and Tenant Board: On the day of a hearing, if the parties are willing to mediate, a dispute resolution officer will work with them to find a resolution. The hearing will only take place if mediation does not resolve all issues in dispute.

What we've done

The Smart Growth for Our Communities Act, 2015, makes it easier to resolve disputes locally. For example, municipalities are given time to engage in alternative dispute resolution (ADR) before an appeal is forwarded to the Board. If ADR is initiated, a 60-day "time-out" applies, allowing a pause in the process to work out disputes and potentially avoid a hearing.

When a dispute does go to the OMB, it is reviewed to determine if it should be streamed into mediation, pre-hearing or a full hearing. Most appeals proceed directly to a full hearing.

The OMB's existing mediation program offers a flexible approach that reflects the parties' interests and the evidence relevant to each case. Mediation can occur on a range of planning matters, including controversial site-specific land use disputes and complex official plan matters. Currently, a roster of trained OMB members work as mediators.

A pre-hearing is a preliminary meeting that occurs between an OMB member and the parties and participants. These are set for matters that are expected

to take five days or more. Pre-hearings can help make hearings more efficient by: identifying issues, parties and participants, organizing complicated hearings, determining what documents should be exchanged, and determining procedures before and during the hearing. They help to clarify issues, focus the hearing and ultimately save time.

In 2015-16, the OMB successfully resolved 49 cases through mediation.

During a hearing, OMB members may consult with a duty vice chair, the planner who prepared the case for adjudication, and the two lead case coordinators as they seek to resolve the issues.

Changes we're considering

The government wants to encourage more land use disputes to be resolved using alternative dispute resolution, which would not only help make the OMB experience a more comfortable one for many people, but also lead to fewer and/or possibly shorter OMB hearings. To achieve this, the government is exploring:

- more actively promoting mediation
- requiring all appeals to be considered by a mediator before scheduling a hearing
- allowing government mediators to be available at all times during an application process, including before an application arrives at municipal council, to help reduce the number of appeals that go to the OMB
- strengthening the case management at the OMB to better stream, scope issues in dispute, and identify areas that can be resolved at pre-hearing and to further support OMB members during hearings
- creating timelines and targets for scheduling cases, including mediation

Discussion Questions

- Q 20. Why do you think more OMB cases don't settle at mediation?**
- Q 21. What types of cases/situations have a greater chance of settling at mediation?**
- Q 22. Should mediation be required, even if it has the potential to lengthen the process?**
- Q 23. What role should OMB staff play in mediation, pre-screening applications and in not scheduling cases that are out of the OMB's scope?**

General Question

Q 24. 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?

GLOSSARY

Active Adjudication: an approach to hearings in which adjudicators play a more active role to simplify and expedite the hearing process, and in some case to address inequalities between parties.

Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009: legislation that sets out the requirement for appointments to adjudicative tribunals in Ontario, including the OMB. Also allows the government to place tribunals together in clusters (see Environment and Land Tribunals Ontario (ELTO)).

Adjudicator: a member of the Board who manages the hearing process, makes rulings, applies the relevant law and policies and makes a decision to settle the dispute.

Appellant: a person or corporation that makes an appeal to the Board.

Citizen Liaison Office: an office located in ELTO to help the public understand the OMB's policies and practices and to participate effectively in the OMB process.

Committee of Adjustment: a committee of adjustment established under section 44 of the Planning Act. Its main responsibilities are the authorization of minor variances to the zoning by-law and, and in some cases, the approval of applications for consent.

Community Planning Permit System: a planning tool that combines zoning, site plan and minor variance processes into one application and approval process.

Consent: approval under the Planning Act which authorizes, among other things, the division of a piece of land into two or more lots.

De Novo: a hearing where the matter is considered anew, as if no previous decision had been made.

Employment Land Conversion: a conversion of lands in employment areas to non-employment uses, for example industrial to residential.

Environment and Land Tribunals Ontario (ELTO): a cluster of tribunals created under the authority of the Adjudicative Tribunals Accountability, Governance, and Appointments Act, 2009. Consists of the Ontario Municipal Board, the Assessment Review Board, the Environmental Review Tribunal, the Conservation Review Board and the Board of Negotiation.

Interim Control By-law: a temporary freeze on some land uses while the municipality is studying or reviewing its policies.

Issues List: a list of issues in dispute that is required by the OMB, and established by the parties, to ensure the hearing is focused on relevant issues and on matters of importance to

the parties. Issues are presented by the parties [to the Board] based on their importance. They are then written-up in the form of an “issues list” which is included as part of the Procedural Order for the proceeding.

Local Appeal Body: a municipal appeal body that can be established to deal with consent and/or minor variance appeals.

Lower-tier Municipality: the lower level of government in a two-tier municipal structure. Generally, a local municipality that forms part of a region or county.

Minister’s Zoning Order: a tool under the Planning Act through which the Minister of Municipal Affairs can zone any property in the province.

Minor Variance: a small change from a zoning by-law.

Motion: when a party asks the Board to do something before or during a hearing.

Official Plan: a document that provides the policies governing land use, and the development and redevelopment of land in a community. It must include matters such as goals, objectives and policies to manage and direct physical change.

Participant: a person or incorporated organization that participates by making a statement to the OMB on some or all of the issues at a hearing. Participants are not required to have made submissions to municipal council when the application was before council, before becoming involved in an OMB matter. They may be questioned by the OMB and other parties. Participants generally do not question witnesses and cannot ask for costs, adjournments or request a review of the decision.

Party: a person or incorporated organization that has been named a party by the OMB. In most cases, a person seeking party status must have participated when the matter was being dealt with at the municipal level. A party:

- is expected to fully participate in appeal procedures and exchange documents for a hearing
- may request Board-assisted mediation, present evidence, question witnesses, and make submissions to the OMB
- may request and may be subjected to costs
- can request adjournments or a review of the decision issued following a hearing

Planning Advisory Committee: an advisory committee in the planning process which provides non-binding advice to municipal council on planning matters.

Provincial Plans: documents outlining the province’s land use planning policies that address issues facing specific geographic areas in Ontario.

Provincial Policy Statement: a document outlining the province's policies on land use planning.

Second Units: also known as accessory or basement apartments, secondary suites and in-law flats — are self-contained residential units with kitchen and bathroom facilities within dwellings or within structures accessory to dwellings (such as above laneway garages).

Secondary Plan: a land use plan for a particular area of a municipality, prepared as an amendment to an official plan. Typically, a secondary plan will provide more detailed policies for the area it covers (e.g., public spaces, parks, urban design, heritage, scale and placement of buildings).

Site Plan: a planning tool that can regulate certain external building, site and boulevard design matters (character, scale, appearance, sustainable streetscape design).

Subdivision: the division of a lot or parcel of land into multiple lots or blocks which can be sold separately.

Transition Provisions: in some instances where new land use planning changes are enacted, transition provisions are included to grandfather planning applications that were initiated or started before enactment, where a final decision has not been made.

Upper-tier Municipality: the higher level of government in a two-tier municipal structure. Generally a county or a regional municipality.

Urban Boundary Expansion: an expansion of the boundary of built-up areas and lands designated for urban uses where development is concentrated.

Witness: An individual who provides evidence at a hearing and may get cross-examined.

Zoning (Zoning by-law): a document regulating land uses including where buildings and other structures can be located, the lot sizes and dimensions, parking requirements, building heights and setbacks from the street.

HOW TO PARTICIPATE

Your opinion is important. Please submit written comments by:



Filling out our **online web form** at: **Ontario.ca/cxje**



E-mailing us at: **OMBReview@ontario.ca**

Writing us at:



Ontario Municipal Board Review

Ministry of Municipal Affairs
Provincial Planning Policy Branch
777 Bay Street, 13th Floor
Toronto, ON M5G 2E5

Responding to the **Environmental Bill of Rights (EBR) Registry** posting by searching the registry number 012-7196 on the following website:



Ontario.ca/EBR

Additionally, we invite you to participate at town hall meetings being held across the province. Please visit the **Ministry of Municipal Affairs webpage** (**Ontario.ca/OMBReview**) for the most up-to-date consultation schedule and details.

If you have any questions on how to participate in this review, please call



1-855-776-8011 or



Email at: **OMBReview@ontario.ca**

Please note:

All comments and submissions received will become part of the public record and could be released.

Any personal information collected is under the authority of the Ministry of Municipal Affairs and Housing Act for the purpose of obtaining input on the Ontario Municipal Board Review. If you have questions about the collection, use, and disclosure of this information, please contact:



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