



CITY OF HAMILTON
City Manager's Office
Legal Services
and
Planning and Economic Development Department
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	December 6, 2016
SUBJECT/REPORT NO:	Provincial Review of the Ontario Municipal Board – proposed submissions from the City of Hamilton (LS16027/PED16237)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Joanna Wice, ext. 4638 Joanne Hickey-Evans, ext. 1282
SUBMITTED BY:	Janice Atwood-Petkovski City Solicitor, City Manager's Office
SIGNATURE:	Jason Thorne General Manager Planning and Economic Development Department

RECOMMENDATION

- (a) That City Council adopt the submissions and recommendations, as provided in Appendix "A" to Report LS16027/PED16237, responding to the October 2016 "Review of the Ontario Municipal Board Public Consultation Document" issued by the Ministry of Municipal Affairs and the Ministry of the Attorney General.
- (b) That the City Clerk be directed to submit Report LS16027/PED16237 and minutes of the December 6, 2016 Planning Committee and the December 14, 2016 Council meeting to the Ministry of Municipal Affairs and the Ministry of the Attorney General by December 19, 2016 and request that this Report be considered the City of Hamilton's formal comments on the on the Ontario Municipal Board Review.

EXECUTIVE SUMMARY

In October 2016, the Province launched the review of Ontario Municipal Board with the issuance of the “Review of the Ontario Municipal Board – Public Consultation Document”. The review “focuses on the scope of land use planning matters that may come before the Board and the effectiveness of how the Board operates.” The purpose of this Report is to provide a proposed response to the Province for the OMB Review.

The consultation document contains five themes for the Review: 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. The public consultation document contains several questions for each theme, as well as a general question where other recommendations can be included. Appendix “A” to Report LS16027/PED16237 contains the proposed responses to the consultation document’s questions.

There are a number of proposed changes in the consultation document and in the proposed submissions that would give more emphasis on local decision making, improve public participation in the process, and make the appeal process more efficient. The greatest opportunities come from eliminating the “de novo” hearings (instead looking at whether Council’s decision was “reasonable”) and reforming the OMB’s practices and procedures, moving away from procedural orders and issues lists.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: The Province has directed the Ministries of Municipal Affairs and Attorney General to propose legislation as a result of this review in spring 2017. Any such proposal will be monitored and further reports may be brought for Planning Committee and Council’s consideration.

HISTORICAL BACKGROUND

1.0 Previous Comments on OMB Reform

One of the mandates of the Provincial government is to review the land use planning system across the Province. To improve its effectiveness, efficiency, transparency and allow for more meaningful public participation, OMB reform is a necessary and fundamental part of the review of the planning system.

The land use planning process has a considerable impact on the City. Each year, there are a significant number of planning applications made, as well as City-initiated amendments, that are potentially subject to OMB appeal. From 2011 up to the writing of this report, there have been 455 such appeals, broken down as follows:

- 222 – applicant appeals of Council decisions
- 24 – non-applicant appeals of Council decisions
- 12 – appeals for non-decision
- 186 – appeals of Committee of Adjustment decisions
- 11 – other types of appeals (i.e. parkland dedication appeals)

Because of the volume of appeals, any changes to the process or procedures of the OMB could have a significant impact on the management of those files.

Between October 2013 and January 2014, the Ministry of Municipal Affairs and Housing consulted with a number of stakeholders on changes to the land use planning system in Ontario. The City provided comments and recommendations on potential changes to the *Planning Act* and potential OMB reform on three occasions (PED14004, PED15093 and PED16152).

On December 15, 2016, the Province passed Bill 73 - Smart Growth for Communities. This Act included changes to the *Planning Act* that addressed a number of land use planning related matters (notice provisions, dispute resolution, reporting on cash-in-lieu of parkland and bonusing, non-decision appeals on OPAs, minor variance criteria, planning advisory committees, parkland dedication for one hectare per 500 units); many of the changes came into effect on July 1, 2016. However, the issues of OMB reform were not part of Bill 73.

2.0 Regional Planning Commissioners of Ontario (RPCO): Reforming the Ontario Municipal Board: Five Actions for Change

RPCO members who represent the various Regions and single tier municipalities prepared a Report that identified a series of administrative, procedural and legislative changes for the OMB.

This paper identified the major issues faced by municipalities including:

- Complex matters take too long to adjudicate;
- The costly process drives settlements;
- The lack of regard for municipal decisions;
- The failure to send applications back to Council when new information is presented at hearings or where applications are revised; and,
- The litigiousness of the process.

Several solutions to improve the efficiency and effectiveness of the OMB were identified. Proposed legislative, administrative and procedural changes include:

- Ensure appeals include sufficient planning grounds and allow for dismissing appeals;
- Restrict appeals to Official Plan Amendments in defined circumstances;
- Improve procedures at OMB (i.e. increased planning staff to review files, improved Board member training and compensation);
- Improve mediation and dispute resolution processes;
- Increase Provincial staff involvement to resolve questions about provincial plan conformity; and,
- Require municipalities to update Zoning By-laws to implement Official Plans.

3.0 Provincial Review of OMB

In October 2016, the Province launched the review of Ontario Municipal Board. More specifically, the review “focuses on the scope of land use planning matters that may come before the Board and the effectiveness of how the Board operates.”

The Province has prepared a public consultation document which poses a series of questions based on the following five themes:

- The OMB jurisdictions and Powers;
- Citizen participation and local perspective;
- Clear and predictable decision making;
- Modern procedures and faster decisions; and,
- Alternative dispute resolutions and fewer hearings.

Comments on the Consultation Paper are due on December 19, 2016.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

Development Industry Liaison group

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Over the past several years, the Province has invested considerable resources on updating the land use planning system, including updating various Provincial Plans, Policy Statement, and introducing new legislation. Bill 73, now *Smart Growth for*

Communities Act, 2015, focussed on changes to the Planning Act which were aimed at improving the land use planning system. At every opportunity during Provincial consultation processes, the City has provided additional comments on the need to reform the OMB. The OMB is a critical component in the effectiveness and efficiency of the planning system in Ontario.

As noted in the background section, the Province is undertaking a review of the OMB and posed a series of questions based on certain themes. The proposed submissions to the Province are contained in Appendix "A", which includes a summary of the questions, the context and recommendations.

There are number of process/procedure improvements the OMB can undertake that do not require legislative changes, but can be made by changes to the Board's Rules of Practice and Procedure. Other changes would require legislative changes or increases to funding to the OMB. Overall, these changes will reduce costs, shorten the time of hearings, increase the transparency in the process, and make the process more accessible to the public (particularly those not represented by counsel).

The highlights of the proposed submissions to the Province contained in Appendix "A" are set out below:

- Emphasize local decision-making:
 - Eliminate hearings "de novo" (Board hearings made as if Council had not made a decision), instead requiring the OMB to review the decision of Council on a standard of "reasonableness". This would force applicants to put their best proposal forward to Council, rather than the OMB, and ensure that the public's input is meaningful when given throughout the City's engagement processes.
- Appeals:
 - Increase vetting by OMB to pre-screen applications and dismiss deficient, frivolous or vexatious appeals, or appeals outside OMB jurisdiction; (per previous Council recommendation).
 - Restrict appeals of provincially-approved OPs and OPAs (per previous Council request) as well as appeals of zoning and OPAs that support transit; also restrict appeals of interim control by-laws.
- Hearings:
 - The OMB should only hear the same version of the application that was before Council, revisions should be referred back to Council for consideration.
 - Reduce the time between the appeal of a planning decision and the hearing, streamlining the OMB's procedures.

- Reduce the number of pre-hearings, if any.
- Eliminate procedural orders and issues lists to streamline the procedures.
- Require the exchange of all evidence prior to hearings for all matters to transparency and reduce 'trial by ambush'.
- Consider hearing two/three short hearings, such as pre-hearings, settlements or motions, on the same day.
- Conduct more hearings in writing (such as motions for party/participant status, expert qualifications, uncontested settlements, etc.).
- Decisions:
 - Should be available more quickly on the OMB website, and include all attachments.
 - Should contain subheadings for ease of understanding.
 - Ensure that all exhibits that are part of the order are added as attachments to the decisions for the purpose of understanding the changes made at the OMB.
 - Reinstate the use of decision numbering for all OMB decisions.
- OMB Panel Members/Makeup
 - Increase the use of multi-member panels, especially for complex cases.
 - When sitting in a panel, members should be from different disciplines (e.g. lawyer/planner panel).
- Mediation
 - Increase the number and availability of mediators to decrease the time it takes to get to a scheduled mediation; and,
 - Reduce amount of materials required to be filed in advance of mediation.
- Other Matters
 - Introduce a process such as early neutral evaluation, similar to pre-trials used in court systems, which would allow the Board to more actively vet the appeals, understand the nature of those appeals, provide information to the parties on the jurisdiction or powers of the OMB (particularly for those who are unrepresented or under represented), and provide preliminary views on the substance of the matter with the intent to narrow the appeals, or encourage mediation or settlement.

ALTERNATIVES FOR CONSIDERATION

Council could choose not to provide submissions for the OMB Review. If Council were to choose this alternative, the City will have declined to participate in the Province's review process and would not have had the opportunity to provide input on any proposed change.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth *Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.*

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” Proposed submissions to the Ministry of Municipal Affairs in response to the “Review of the Ontario Municipal Board Public Consultation Document”