



COUNTY OF WELLINGTON

COMMITTEE REPORT

To: Chair and Members of the Planning Committee
From: Mark Paoli, Manager of Policy Planning
Date: November 10, 2016
Subject: **ONTARIO MUNICIPAL BOARD REVIEW - COMMENTS ON PROPOSED CHANGES**

1.0 Background:

The province started a review of the Ontario Municipal Board in June. The first phase of the review was based on a discussion paper that was released for comment.

A new phase of the review is underway as the province has released a Public Consultation Document that sets out proposed changes. According to the consultation document, "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; and
- There are too many hearings; more mediation should be used."

The province is seeking input on a number of proposed changes and the deadline for comments is December 19th, 2016. The proposed County input is attached in a manner that responds directly to the proposals put forward.

2.0 Comments:

Overall Comment

The County of Wellington's response is based on the following:

1. There is a need for a tribunal like the Ontario Municipal Board to deal with land use disputes.
2. The Ontario Municipal Board should assume that the decisions made by municipalities are correct and should only be authorized to overturn or modify these decisions if there is clear and compelling evidence that the decision is wrong.
3. The current Ontario Municipal Board process is too legalistic, time consuming and expensive and needs to be made simpler and more understandable.

| THEME | CHANGES BEING CONSIDERED | COMMENT(S) |
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| Jurisdiction and Powers | <p>1. Protect public interests for the future</p> <p>a. 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.</p> <p>b. 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.</p> <p>c. When the Minister of Municipal Affairs puts zoning provisions in place through a Ministers Zoning Order to protect public interests, the Minister (not the OMB) would have the authority to make final decisions on any requests to amend that zoning.</p> | <p>County needs to retain right to appeal Modifications to Council's decision.</p> <p>Support, if municipal right of appeal is retained.</p> |
| | <p>2. Bring transit to more people</p> <p>a. 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.</p> | <p>Not a major issue for the County.</p> |

| THEME | CHANGES BEING CONSIDERED | COMMENT(S) |
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| Jurisdiction and Powers (continued) | <p>3. Give communities a stronger voice</p> <ul style="list-style-type: none"> a. 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. b. No appeal of a municipal interim control by-law. This would give municipalities the time to do comprehensive studies that are required to appropriately plan for a neighbourhood, particularly where neighbourhoods are experiencing rapid change or are in transition. c. 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. d. Further clarify that the OMB's authority is limited to dealing with matters that are part of a 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. e. 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. | <p>Not a major issue for the County.</p> <p>Support.</p> <p>Support.</p> <p>Support. Also, OMB needs a way to screen appeals that are clearly frivolous, before they get to Prehearing or Hearing.</p> <p>Support as this also provides an additional opportunity for local public engagement.</p> |
| | <p>4. "De novo" hearings</p> <ul style="list-style-type: none"> a. Requiring the OMB to review municipal /approval authority decisions on a standard of reasonableness. That means that the OMB hearings would examine whether the original decision was within the range of defensible outcomes within the authority of the municipality/ approval authority. If the decision is found to have been made within the range of outcomes, the OMB would not be able to overturn it. b. 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. | <p>Strong support</p> <p>Strong support</p> |
| | <p>5. Transition and use of new planning rules</p> <ul style="list-style-type: none"> a. Land use decisions must reflect provincial policies in place when the decision is made, not when the application is made. | <p>Do not support</p> |

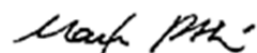
| THEME | CHANGES BEING CONSIDERED | COMMENT(S) |
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| Citizen Participation and Local Perspective | 1. The government is considering expanding the Citizen Liaison Office (CLO). Currently, the CLO has one employee dedicated to responding to requests for information for all Environment and Land Tribunals Ontario (ELTO) 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 the ELTO. A reconfigured CLO might include in-house planning experts and lawyers who would be available to the public (subject to eligibility criteria). | Not an issue for the County. |
| | 2. Exploring funding tools to help citizens retain their own planning experts and/or lawyers. | Should not include municipal funding. |
| Clear and Predictable Decision-Making | 1. 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. | Directed at the wrong end of the problem. Focus should be on reducing number of appeals. |
| | 2. The government is considering whether to reintroduce multi-member panels with panel members representing a broad range of skill and backgrounds to ensure clear and predictable decision-making at the OMB. Specifically, the government is considering: a. Having multi-member panels only conduct complex hearing; b. Having multi-member panels conduct all hearings | Support. Do not support. |
| Modern Procedures and Faster Decisions | 1. The government wants to see less formal and less adversarial culture at the OMB hearings and is considering changes to: a. Allow the OMB to adopt less complex and more accessible tribunal procedures b. Allow active adjudication | Strong support. Effect is unclear. |
| | 2. The government is also considering other ways to modernize procedures and promote faster decisions. Options include: a. Setting appropriate timelines for decisions b. Increasing flexibility for how evidence can be heard c. Conducting more hearings in writing in appropriate cases d. Establishing clearer rules for issues lists to ensure that hearings are focused and conducted in the most cost effective and efficient way possible e. Introducing maximum days allowed for hearings | Support. Support. Effect is unclear. Support. Support if fair to all parties. |

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| Alternative Dispute Resolution and Fewer Hearings | 1. 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, government is exploring: | Concerned that this will lengthen the process. |
| | a. More actively promoting mediation; | Support. |
| | b. Requiring all appeals to be considered by a mediator before scheduling a hearing; | Support if can be done locally and provides for local public engagement in the process. |
| | c. 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; | |
| | d. 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; | Support |
| | e. Creating timelines and targets for scheduling cases, including mediation. | Support |
| Other County Input: <ol style="list-style-type: none"> There is a need for a tribunal like the Ontario Municipal Board to deal with land use disputes. The Ontario Municipal Board should assume that the decisions made by municipalities are correct and should only be authorized to overturn or modify these decisions if there is clear and compelling evidence that the decision is wrong. The current Ontario Municipal Board process is too legalistic, time consuming and expensive and needs to be made simpler and more understandable. | | |

Recommendation:

That the report "Ontario Municipal Board Review - Comments on Proposed Changes" be forwarded to the Minister of Municipal Affairs, and circulated to local municipalities.

Respectfully submitted,



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