



HEALTHY COMMUNITIES • SUSTAINABLE COMMUNITIES

December 19, 2016

Mr. Ken Petersen  
Manager  
Ministry of Municipal Affairs  
Local Government and Planning Policy Division  
Provincial Planning Policy Branch  
777 Bay Street, Floor 13  
Toronto ON M5G 2E5

**Re: Review of the Ontario Municipal Board – Public Consultation Document**

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Dear Mr. Petersen:

The Ontario Professional Planners Institute (OPPI) appreciates the opportunity to comment on the *Review of the Ontario Municipal Board (OMB) – Public Consultation Document*. As a key stakeholder in Ontario's planning system, we are pleased to provide our input.

OPPI is the recognized voice of the Province's planning profession. Our almost 4,500 members work in government, private practice, universities, and non-profit agencies in the fields of urban and rural development, urban design, environmental planning, transportation, health, social services, heritage conservation, housing, and economic development. Our Members meet strict practice requirements and are accountable to OPPI and the public to practice ethically and to abide by a Professional Code of Practice. Only Full Members are authorized by the Ontario Professional Planners Institute Act, 1994, to use the title "Registered Professional Planner" (or "RPP").  
[www.ontarioplanners.ca](http://www.ontarioplanners.ca)

Our comments below follow the key themes outlined in the consultation document.

**Jurisdiction and Powers**

The OMB plays an important role in Ontario's land use planning system and improvements are welcome regarding its involvement in the planning process. As an important decision-making body, care must be taken by the government to ensure that the OMB remains equipped to make decisions in the public interest and acts as a neutral third party.

The planning process is complex resulting from numerous levels of regulation and policy, a balancing of local and provincial interests, and numerous stakeholders with divergent, often competing, views. The OMB provides a check and balance by ensuring participants that an independent review by a neutral third party is available, should it be necessary.

The *Planning Act* requires the OMB and approval authorities to have regard to municipal decisions. While we heard a range of opinions from our membership on the need for de novo hearings, in balance, it is believed that this is an appropriate level of review that does not bind the OMB but includes the municipal decision as part of its considerations. Municipal decision-makers, such as elected officials, have multiple interests that may or may not be consistent with a particular policy in a given file. It is appropriate for the OMB to assess these decisions on appeal against the relevant regulations and policies, particularly with regards to provincial policy.

Regarding changes being considered to limit appeals on matters of public interest, these are already broadly defined by the *Planning Act*. It would be difficult to decide which of these interests are important enough/more important than others to be specifically selected to limit appeals.

Transit should not be considered in isolation of other key planning issues. In addition, much of transit in dense urban areas is already at capacity and proximity to transit does not guarantee adequate access or take into consideration broader mobility issues such as active transportation.

Limiting appeals on secondary plans for two years has merit.

Limiting appeals with interim control by-laws also has merit but care must be taken so that it is not abused.

Provided that local appeal bodies can be created that are independent, minor variances can most likely be effectively adjudicated by a local appeal body.

The OMB already has at its discretion the power to refer new information back to Council. This acts as a discouragement to bringing additional information to an OMB hearing and circumventing municipal councils. Requiring all new information to be sent back to Council in all cases could introduce further delays in the system and be problematic for all parties.

### **Citizen Participation and Local Perspective**

OPPI's member are committed to protecting and furthering the public interest. In keeping with this, there is widespread support for meaningful citizen participation.

Currently, there is only one Community Liaison Officer for the Board. Very few OPPI members were even aware that this position existed. If this role is to be meaningful, additional resources need to be directed both to resourcing this function and raising its profile.

The OMB must continue to make efforts to ensure fair hearings are held, particularly when a party is not represented by legal counsel. These efforts include explanatory literature available to participants but most importantly the manner in which a hearing is conducted. Parties must not only receive a fair hearing but also must believe that they received a fair hearing. This approach takes extra effort on the part of the hearing officer, particularly for unrepresented parties, to explain proceedings, exercise patience, know when to intervene, and to pace the hearing appropriately for the circumstances.

Access for citizens could be greatly increased with improvements to the Board's website. While progress have been made over time, the website is still cumbersome and it is difficult for the public to access information and to navigate its contents. The website needs to be overhauled and made more accessible. The addition of short educational videos to explain various aspect of the OMB would be helpful.

The suggestion on page 22 to have in-house lawyers and planners giving legal and planning advice to appellants is fraught with complications and should not be pursued. It would be beneficial though for the public to have more information about the role and responsibilities of the OMB, citizen's rights, and what to expect at a hearing or in mediation through the staff and the website.

Additional resources to support citizen participation through intervenor funding are worth exploring so that there are fewer unrepresented parties and there is increased access for citizens to retain Registered Professional Planners (RPPs) and/or lawyers. Clear criteria to ensure that funding is allocated only after standing is granted and financial need is determined. It would be worth examining the provisions in place for environmental tribunals.

### **Clear and Predictable Decision Making**

A standardized decision format may assist in the public's understanding of the content and process leading to a decision. There are several common elements to decisions, and consideration could be given to setting out the order of these items, while leaving room to include the unique circumstances in each case.

Further plain language in written decisions with a plain language summaries would also be useful for the public to have a better understanding of decisions as it can be difficult for lay people to understand the jargon.

More than one Board member may be appropriate for complex cases, particularly where various areas of expertise and experience would be an asset. This is also useful for training new Board members. Most hearings, however, can be conducted by one Board member.

There needs to be enough Board members who are supported by adequate training that equips them to manage complex cases. The Board needs to have full complement of members who are competent and have experience. The current number of Board members continues to be an issue.

Given the nature of the hearings and the increasing complexity of appeals, qualifications for adjudicators should also include knowledge and experience with land use and planning matters. This should be specifically noted in the job description.

### **Procedures and Decisions**

It is important that decisions are issued in a timely fashion. Timelines outlined in the consultation document are reasonable but are dependent on an adequate number of Board members and support staff. Given the increasing complexity of appeals and applications, it isn't surprising that decisions on cases can sometimes exceed the timelines.

One of the purposes of the Board is to allow a process of order to ensure a fair hearing of all relevant comments and opinions. A certain formality of hearings is necessary. The Board ensures that one voice is heard at a time, that voice is cross-examined to test how robust the argument is, and that each voice is heard in turn.

The challenge with expert evidence is how to limit it to that necessary to make the point, and not unduly add to the length of the hearing. Guidelines for the giving of expert evidence could include main areas to cover, an order to oral evidence, and what is required in writing in advance of hearing and shared with other parties.

While the OMB is less formal than the courts and less costly, care must be taken to ensure that the process remains accessible to the public.

### **Alternative Dispute Resolution**

The Board utilizes Alternative Dispute Resolution (ADR) when agreed upon by the parties to arrive at a suitable solution for all. Mediation, in particular, has increasingly been used with positive results. Mediation, for it to be meaningful and to work, should be voluntary. Even in cases where mediation does not fully work, the discussions that take place in mediation are very useful in helping to scope issues and finding common ground for a hearing.

The role of a mediator is quite different from that of an adjudicator as are the skills needed to conduct a hearing as opposed to holding a mediation session. Additional training for Board members in the area of ADR and mediation would be beneficial for all parties. Consideration should be given to the idea of having OMB members who specialize or are exclusively focused on mediation cases.

Case workers perform an important administrative function and not an adjudicative one. Staff are administrators and do not make judgments as to the merits of an appeal or decisions on narrowing or expanding issues. The proposed changes would require a substantial upgrade of qualifications and experience for case workers and would diminish the adjudicative role of the OMB. Decisions are better left to the Board members where decisions can be made in an open forum that is accessible to all parties.

Thank you again for the opportunity to comment. We look forward to the release of the consultation document. Please feel free to contact me at 416-668-8469 or by email at [l.ryan@ontarioplanners.ca](mailto:l.ryan@ontarioplanners.ca)

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Ryan', followed by a horizontal line.

Loretta Ryan, RPP  
Director, Public Affairs  
Ontario Professional Planners Institute