



Report to: Development Services Committee

Report Date: December 5, 2016

SUBJECT: Comments on The Province's 2016 Review of the Ontario
Municipal Board
FILES: PR 16 – 138801
PREPARED BY: Andrea Wilson-Peebles, Assistant City Solicitor
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REVIEWED BY: Biju Karumanchery, Director, Planning & Urban Design

RECOMMENDATION:

- 1) That the Staff report entitled "Comments on The Province's Review of the Ontario Municipal Board", dated December 5th, 2016, be received.
- 2) That Council endorse the Staff recommendations in this report and submit it to the Province as the City of Markham's comments on the Province's review of the Ontario Municipal Board ("OMB");
- 3) That Staff report back to Development Services Committee, on any changes made by the Province to the OMB and/or the planning appeal regime, to provide an overview of the changes and to outline potential operational impacts to the Legal Services and Planning and Urban Design Departments, including possible changes to work flow, processes, and resource allocation;
- 4) And that the Clerk be directed to forward a copy of this report to the Minister of Municipal Affairs, the Attorney General of Ontario, Markham Riding MPP's and the Region of York.
5. And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

The Province has released a document entitled "Review of the Ontario Municipal Board Public Consultation Document" (the "PCD"). This document provides background on the land use planning system in Ontario to assist stakeholders to make comments. According to the PCD, the Ontario Municipal Board ("OMB") is a public tribunal, to which appeals regarding land use decisions can be made. The OMB makes decisions based on applicable law and policies and the evidence presented at hearings. The OMB has the authority to overturn decisions made by local and regional municipal councils by substituting its own decision. The OMB will also make a decision on a land use application where the Council of the municipality has not done so.

The Provincial Government believes that there is a continuing role for the OMB in the land use planning system. However, to ensure its role is appropriate, open, and fair, the Province is exploring ways to change the OMB. Consequently, in June of 2016, the Province announced that it is reviewing the scope (what it deals with), and effectiveness (how it operates) of the OMB.

To inform its review, the Province has invited comments from individuals, organizations, and businesses about the OMB's role and responsibility within the provincial land use planning system. To guide the discussion, the Province released a public consultation document entitled "Review of the Ontario Municipal Board, Public Consultation Document, October 2016". The deadline for providing feedback on this paper is December 19, 2016. Additional information about the review is available on the Ministry of Municipal Affairs webpage (ontario.ca/ombreview).

The Province has organized the OMB review into five central themes, each with a series of discussion questions. These themes and the discussion questions are discussed in more detail later in this report.

The Five Themes are:

- 1) the OMB's jurisdiction and powers;
- 2) citizen participation and local perspective;
- 3) clear and predictable decision making;
- 4) modern procedures and faster decisions; and
- 5) alternative dispute resolutions and fewer hearings.

The Province's consultation document indicates that the Province wants Ontario to have an independent appeal tribunal that can efficiently resolve land use disputes, without relying on the court system.

In addition to the comments on the current proposal to refine the role and responsibility of the OMB, this report reiterates comments that the City provided to the Province on Bill 73. These include, among others, comments about limiting appeals to entire Official Plans and Zoning By-laws, the appropriateness of the ability to appeal a non-decision after 180 days, and expanding the power of local appeal bodies.

City Staff generally supports the Province making changes to refine the OMB's roles and responsibilities in the municipal planning process, and recommends that this report be forwarded to the appropriate Provincial Ministries for consideration.

PURPOSE:

This report identifies issues and comments on the Provincial review of the OMB and its role within the provincial land use planning system.

The report also recommends that, following the implementation of any reforms to the OMB, Staff update Development Services Committee about the changes, including potential operational impacts to the Legal Services and Planning and Urban Design Departments, including possible changes to work flow, processes and resource allocation.

BACKGROUND:

People do not always agree with the land use planning decisions of committees of adjustment and local municipal councils. The OMB is a public tribunal body which operates under the Ontario Municipal Board Act, as well as its own rules of practice and

procedure. The OMB reports administratively to the Ministry of the Attorney General. The Lieutenant Governor in Council appoints the members of the OMB. The members of the OMB have a wide range of professional backgrounds including planners, lawyers, engineers and other public and private sector fields. This tribunal is where appeals of land use decisions can be heard. The OMB makes decisions based on applicable law, provincial and municipal policies, and the evidence presented at hearings of appeals. Currently, the OMB has the authority to confirm, overturn or alter land use planning decisions made by municipalities. The OMB will also make a decision on land use applications where municipalities have not done so. According to the PCD, the OMB process is intended to be faster and less costly than appeals to the courts.

In the spring of 2016, a number of Ontario municipalities, including the City of Markham, requested that the Government of Ontario review the mandate and jurisdiction of the OMB. The City asked for the review to ensure the OMB is required to be respectful of municipal planning policies and local decision making, and that its decisions comply with Provincial Policies. Council also asked that the Provincial review include consideration of the amount of costs that may be awarded to ensure fairness for community participants in the appeal process. An extract from the March 1st, 2016 Council resolution, asking the Province to review the role of the OMB, is attached as Appendix 'A' to this report.

The PCD indicates that the government has heard a range of viewpoints regarding the role of the OMB in the land use planning system and processes. These views include:

- 1) citizens feel they do not have a meaningful voice in the process;
- 2) more weight should be given to municipal decisions;
- 3) OMB decisions are unpredictable;
- 4) hearings cost too much and take too long; and
- 5) there are too many hearings and more mediation should be pursued.

The provincial government believes that there is a continuing role for the OMB in the land use planning system, and are now exploring opportunities to make changes to the OMB's role. Consequently, the Province announced, in June of 2016, that they are reviewing the scope (what it deals with) and effectiveness (how it operates) of the OMB, to ultimately implement refinements to improve the role of the OMB, within the provincial land use planning system.

In October 2016, the Province invited comments from individuals, organizations and businesses to inform their review of the OMB's role within the provincial land use planning system. To support the review, the Province released a public consultation paper entitled, "Review of the Ontario Municipal Board, Public Consultation Document". This paper outlines the roles and responsibilities of the OMB and poses a number of questions about the OMB's role in the land use planning system. The Province has set a deadline of December 19, 2016 for providing feedback. Additional information about the review is available on the Ministry of Municipal Affairs webpage (ontario.ca/ombreview).

To frame their review of the OMB, the Province established four (4) guiding principles.

- 1) protect long-term public interests;
- 2) maintain or enhance access to dispute resolution;
- 3) provide transparency in hearing processes and decision-making; and
- 4) minimize impacts on the court system.

The Province is exploring whether the OMB's role could be improved by:

- 1) enabling more meaningful, affordable resident participation;
- 2) giving more weight to local and provincial decisions;
- 3) bringing fewer municipal and provincial decisions to the OMB, by promoting alternative ways of settling disputes; and
- 4) supporting clearer, more predictable decision making.

DISCUSSION:

The Province's review of the OMB is organized into five themes.

- 1) the OMB's jurisdiction and powers;
- 2) citizen participation and local perspective;
- 3) clear and predictable decision making;
- 4) modern procedures and faster decisions; and
- 5) alternative dispute resolutions and fewer hearings.

The discussion below provides an overview of the changes that the Province is proposing, and Staff's responses to questions posed by the Province which are applicable to a municipality.

Theme 1: The OMB's jurisdiction and powers

The Province has heard that the scope of issues dealt with by the OMB is too broad, meaning too many matters are appealed to the OMB, which is time consuming and costly. They have also heard that the OMB deals with too many local matters without giving enough weight or consideration to the decisions made by municipal councils. It has also been suggested that "de novo" hearings (hearings that start anew, with evidence being provided that may not have been before Council when making its decision) should be eliminated, as they do not respect the decisions of municipal councils, and they duplicate the decision making process of municipal councils.

The Province has 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.

Protecting Public Interests

According to the PCD, the Province is considering limiting appeals on land use decisions related to broader public interest, such as protecting drinking water and directing development away from flood-prone areas, so that:

- a) parts of official plans would not be subject to appeal, perhaps relating to matters such as the preservation of farmland and what the PCD refers to as the orderly development of safe and healthy communities;
- b) new official plans or proposed official plan amendments that are required to implement Provincial Plans, would not be subject to appeal;
- c) only the Minister would have the authority to make a final decision on requests to amend Minister's Zoning Orders.

Discussion Question

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

City response

The City generally supports changes to the OMB that will limit appeals on those matters of broad public interest, and looks to the Province to provide clarity on which matters won't be subject to appeal. Further, when a Municipal Official Plan is appealed or when an application to amend a Municipal Official Plan is refused by Council, the Province or, the upper tier Municipality should execute a screening process, having regard for the public interest, to determine whether a potential appeal is valid. Including a screening mechanism to determine whether a matter is appealable, will provide greater certainty to municipalities and residents regarding the long term policy direction of their communities.

With regard to limiting appeals on the basis of public interest, a more precise response can be provided when the Province has indicated more clearly which parts of municipal Official Plans would or would not be subject to appeal (e.g. source water protection, special policy areas, forecasts/intensification targets/minimum densities, employment lands protection ...)

Bringing Public Transit to More People

According to the PCD, the Province is considering restricting appeals of municipal official plans, amendments to municipal official plans, and zoning by-laws for development that supports provincially funded transit infrastructure such as subways and bus stations to help ensure that there are sufficient densities to support provincial 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?

City response

The City generally supports restricting appeals of official plans and zoning by-laws for development within transit corridors that is in compliance with the height and density ranges established in local and regional official plans.

However, where a private development proposal would significantly exceed the height or density provisions of the applicable Official Plan(s), it is reasonable to expect that the current municipal review and approval processes and OMB appeal procedures would continue to apply. It is not clear how the Province intends to restrict appeals (e.g. is the Province intending to eliminate the right to appeal or to scope the extent of the appeal?). It would be preferable if municipalities were given the authority to determine appropriate restrictions on appeals of development that supports public transit. These would be implemented through Official Plan policies.

The Province should also consider eliminating appeals where the City has denied a zoning by-law and/or official plan amendment applications to reduce density in a transit corridor.

Give Communities a Stronger Voice

The Provincial government is exploring changes to the land use planning and appeal system so that more decisions are made locally. These include:

- a) no appeal to a municipality's refusal to amend a new secondary plan for two years, to recognize the community effort and involvement in developing these plans.
- b) no appeal of interim control by-laws, to give municipalities time to do comprehensive studies to appropriately plan neighborhoods, particularly those experiencing rapid change or those that 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, architectural control, landscaping, access or lighting;
- d) further clarify that the OMB's authority is limited to dealing with matters that are part of Council's decision, meaning the board is only able to deal with the same parts of the Official Plan as those dealt with by Council.
- e) require the OMB to send significant new information that arises at a hearing back to Council for re-evaluation to ensure that the OMB has the benefit of Council's perspective.

Discussion Question

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

City response

The City generally supports refinements to the OMB, such as those outlined above, that will provide communities with a stronger voice in the land use planning process.

Appeals to a municipality's refusal to amend a new secondary plan should not be allowed, in order to be consistent with the provisions of Bill 73 as it applies to appeals to whole Official Plans and Comprehensive Zoning By-laws.

The City agrees with the proposal to eliminate appeals of interim control by-laws. In the event that the Province wishes to provide an appeal mechanism, the only basis to object to these by-laws should be that the requirements of the Planning Act were not met.

The City supports the option of directing site plan appeals to a local appeal body. The City of Toronto provides an example of how this body might work. In Toronto, the local appeal body is made up of locally appointed members making decisions about local planning matters affecting Toronto neighbourhoods. The Chair and members are selected by an impartial citizen-member nominating panel, which makes its recommendations for appointments to City Council.

It is recommended that the parties to such appeals would continue to be limited to the City and the proponent and not open to appeal by the public.

In addition, it is recommended that parties could only be permitted to argue, on appeal, the same sections of the Official Plan that formed the basis of Council's decision.

The City strongly agrees that significant new information that arises for the first time at a Board hearing should be sent back to Council for re-evaluation to ensure that the OMB has the benefit of Council's perspective.

NOTE: This recommendation applies only if de novo hearings regarding municipal decisions are not eliminated. If de novo hearings are eliminated, new information would not be permitted at the OMB.

“De novo” Hearings

The PCD identifies that de novo means ‘starting from the beginning’, which is how the OMB deals with appeals to municipal land use decisions. Since 2007, the OMB has been required to have regard for municipal council decisions and any other supporting information which lead to the decision. Eliminating “de novo” hearings would mean that the OMB would focus on reasonableness of the actual municipal decision under appeal, instead of imposing an alternative decision based on different facts, supporting materials, expert witnesses and evidence. The decision by Council or the Committee of Adjustment would then be central to the appeal. According to the PCD, this could be achieved by:

- a) the OMB ensuring that a decision has been made within a range of defensible outcomes that are within the authority of Council or the Committee of Adjustment. If the decision is found to have been made within that range of outcomes, the OMB would not be able to overturn the decision.
- b) only authorizing the OMB to overturn a local decision if the decision does not comply with municipal or provincial policies. (e.g. an Official Plan that does not meet Growth Plan targets or policies.)

Discussion Questions

Q 4. What is your view on whether the OMB should continue to conduct de novo hearings?

City response

City Staff are of the opinion that elimination of de novo hearings has the potential to significantly improve the land use planning system in that it would strengthen local decision-making, focus the OMB's role on adjudicating only those matters and materials that were considered by Council, reduce hearing times improve public participation and speed up decision making.

De novo hearings permit applicants to: submit different development plans to the Board than those reviewed by Council; submit new evidence to the Board based on revised proposals or the testimony of additional expert witnesses; or submit new evidence based on an unrevised development plan. Applicants are often able to do this without public consultation or without the prior consideration by municipal Staff or Council.

- Q 5.** If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?

City response

The OMB should function as a true appeal body, and should be limited to reviewing the evidence that was before Council. The OMB should only have the authority to overturn decisions that are unreasonable or non-compliant with provincial or municipal policy based on the same proposal and supporting information that Council had before it. Because the OMB would be limited to considering the development proposal and supporting evidence that was before Council, this would encourage applicants to put their best case forward at the municipal level, and discourage applicants from bringing forward a less desirable alternative to the Board that may have previously been discouraged during the local municipal review. This may have implications for the appeal periods identified below. Applicants should be prevented from appealing before their application has been fully reviewed by municipal Staff, and public input sought.

In the case of an appeal for failure to make decision within the timelines set out in the Planning Act (30 days for site plans, 120 days for zoning by-law amendments and 180 days for official plan amendments), a hearing de novo may be required. However, it is still recommended that in such cases, applicants be prohibited from submitting to the Board new evidence that was not before the municipality before the appeal was filed. One narrow exception to prohibition on new evidence should be recognized. It is unrealistic to expect that residents would expend the resources to contribute expert evidence to Council prior to a decision being made. Therefore, residents groups who file third party appeals or are added to proceedings as parties should be permitted to submit new evidence in the form of testimony and reports from their own experts.

Transition and Use of New Planning Rules

Should planning decisions be made on the most up-to-date planning documents or should planning decisions be based on the planning documents that were in place when the application 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 Province is seeking input on whether to expand this to require all decisions to be based not only on provincial legislation and planning documents but also municipal planning documents in effect at the time of the decision.

Discussion Question

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?

City response

The City generally supports basing decisions on policies in place at the time of the decision. However, for reasons of fairness and certainty, there should be a mechanism in place that would allow a proposal to proceed, at the discretion of Council, if the policy has been developed since the application was submitted. This could be similar to, for example, the Planning Act provisions that allows Council to determine whether further notice is required where a change is made to a proposed by-law after the holding of a public meeting.

In Staff's view, it would be appropriate for municipalities and the OMB to apply the policies that were approved at the time of the decision. Currently, adopted plans which are not in force at the time of application are to be considered, but this is not done consistently by all Board members. New rules should provide that:

- 1) the Board's decisions must comply with municipal and provincial policies which are in force at the time of decision;
 - 2) that the Board must have regard to policies which are adopted but not yet in force; and,
 - 3) that their decisions should explain how the adopted, but not in force, policies were taken into account.
- What is your perspective on having updated provincial planning rules apply at the time of decisions for applications before 2007?

City response

City Staff generally supports having the planning rules apply to all applications, even those applications submitted before 2007.

Staff also recommend that the Province establish, or enable municipalities to impose, expiry dates for applications that have not been significantly advanced by the proponent.

Theme 2: Citizen Participation and Local Perspective

The Province has heard concerns from individuals about their ability to participate in OMB hearings. The cost to participate frequently discourages participation as it can be very expensive to retain subject matter experts. The OMB has also heard that it needs to be more accessible. For example, having a more user-friendly web site and adopting plain language might increase accessibility. The Province wants to ensure that individuals or groups without legal representation are able to stay involved in the planning process, including the appeal process.

Expanding the OMB's Citizen Liaison Office (CLO)

The government is considering hiring more Staff at the CLO to help the public understand what the OMB does and how to participate in the process. These Staff would include in-house planning experts and lawyers who, subject to eligibility criteria, would be available to the public. The government is also exploring funding tools to help citizens retain their own planning experts/lawyers.

Discussion Questions

Q 7. If you have had any experience with the Citizen Liaison Office, describe what it was like – did it meet your expectations?

City response

Not applicable.

Q 8. Was there information you needed, but were unable to get?

City response

Not applicable.

Q 9. Would the above changes support greater citizen participation at the OMB?

City response

The changes described above could support and encourage greater citizen participation. All efforts by the provincial government to assist the public with their understanding of the role of the OMB, and to assist the public by providing them with access to appropriate resources to present their case at the OMB, are encouraged. The OMB should refer the public to professional organizations, such as the Law Society of Upper Canada or the Ontario Professional Planners Institute where they can obtain lists of subject matter experts.

In addition to the above, the Board should invest in a truly interactive and user

friendly website. This improved website would contain not only general information for the public, but serve as an information portal for hearings. Affidavits, witness statements, exhibits, studies and reports, should all be posted on the site by the Board. This would allow interested parties and members of the public easier access to hearing-related information should they decide to participate in or attend a hearing.

- 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 process would help citizens to participate in mediations and hearings?

City response

The Province may want to consider providing these services at arm's length to the OMB, so the perception of conflict of interest is minimized. The OMB could also provide clearer information about the role of the OMB and how hearings are structured, the types of evidence to be submitted, how to prepare a case, etc. Expansion of the services provided by the Province may also provide more opportunities for individuals to give evidence at the OMB without being represented by lawyers

- Q 11.** Are there funding tools the Province could explore to enable citizens to retain their own planning experts and lawyers?

City response

Prior to any funding being provided to private individuals, groups or corporations, the appeal should be reviewed and certified to ensure that the appeal has merit and is not frivolous, as recommended for all appeals under Question 1. Only if the appeal has merit should funding be considered. Where developers appeal a decision of council, a predetermined amount of money to fund public participation in the process should be considered to assist the opposition. However, if a member of the public files a third party appeal, then they should fund their appeal themselves.

- 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?

City response

It's not clear if the CLO in-house planning experts and lawyers would represent the public at hearings or simply help educate and provide information to the public.

As stated above, all appeals should be reviewed and certified to ensure that the appeal has merit and is not frivolous, including those where funding is being sought.

The City also sees merit in requiring members of the public participating at an OMB hearing to cover a portion of their own costs as a disincentive to frivolous appeals. Staff also note that the March 1, 2016 Markham Council resolution states that "...the

Provincial review include consideration of the amount of costs that may be awarded to ensure fairness for community participants in the appeal process...”.

Theme 3: Clear and Predictable Decision Making

The government has heard the OMB members need to be well qualified individuals who have the appropriate background and training to do the job. They need to be able to provide a clearer rationale and use more plain language in their decisions. To accomplish this, the Province is considering:

Increasing the number of adjudicators and their training

The government is considering increasing the number of board members and ensuring that they have the necessary skills. Additional training could include how to deal with parties that have no legal representation.

Multi-member panels

The government is considering having multi-member panels conduct complex hearings or having multi-member panels conduct all hearings.

- Q 13.** Qualifications for adjudicators are identified in the job description posted on the OMB website (Ontario.ca/cxjf). What additional qualifications and experiences are important for an OMB member?

City response

The qualification of OMB members varies widely. Decisions vary in terms of quality of writing and substantive content. Further, there is a lack of consistency with respect to quality of analysis and outcomes on similar matters. In order to address these concerns, the Province should consider requiring the Board to be bound by precedent in their decision making. All Board members should have experience working within the Ontario land use planning system. Board member remuneration may need to be increased to attract more qualified and experienced adjudicators to these positions. Additionally, there is a lack of Board members skilled in alternative dispute resolution processes, so more such members should be appointed or trained. Currently, the Board's case management practices are lacking. Members should be trained to implement a rigorous process of dismissing frivolous appeals and scoping issues, prior to scheduling hearing events.

More thought should be given to which members are assigned to which appeals, to ensure the expertise of the members is leveraged.

- Q 14.** Do you believe that multi-member panels would increase consistency of decision-making? What should be the make-up of these panels?

City response

Multi-member panels will likely improve the quality of decisions. This would be the case particularly if they are used for more complicated appeals about issues that involve a number of competing multi-disciplinary issues and

qualifications of the Board members reflect the issues being adjudicated. The OMB should consider the subject matter of appeals when assigning Board members and ensure that the panel has the necessary expertise to appropriately adjudicate the matter.

Q 15. Are there any types of cases that would not need a multi-member panel?

City response

Multi-member panels are generally supported, but may not be required for Committee of Adjustment Minor Variance and Consent applications (if such appeals continue to be decided by the OMB). Settlement hearings may also not require a multi-member panel. Other applications that may also not require a multi-member panel include site plan applications and site-specific official plan and zoning by-law amendments. This type of panel would be appropriate for official plan appeals that affect multiple properties or an entire municipality.

Q 16. How can OMB decisions be made easier to understand and be better relayed to the public?

City response

All Board members should have demonstrated professional experience in municipal land use matters and be trained to clearly explain their reasoning in their decisions, and these decisions should be written in plain language and follow a standard format. Decisions should also be reviewed thoroughly to ensure that explanations are written in as non-technical way as possible. This would assist with issuance of decisions in a more timely matter, and with ensuring the decisions are well-understood by all parties.

Theme 4: Modern Procedures and Faster Decisions

The government has heard that the rules of practice and procedure, which set out how the OMB deals with appeals, need to be updated and the procedures streamlined to make the system more accessible, and to promote timely decisions. To achieve this, the Province would like to reduce the complexity of the process and to modernize procedures and promote faster decisions. The OMB has publicly posted business plans with timelines for scheduling hearings and issuing decisions as follows:

Chart 1 - OMB Timeline Targets

		Target
Hearings scheduled	Minor variance	Within 120 days of receipt of the complete appeals package
	Other application types	Within 180 days of receipt of the complete appeals package
Decision issued	All application types	Within 60 days of the end of the hearing

Reducing process complexity

The government is considering allowing the OMB to adopt less complex and more accessible procedures by allowing Board members to play a more active role in the

hearing, by for example, explaining rules and procedures, scoping issues and evidence, and questioning witnesses.

Modernizing procedures and promoting faster decisions

The government is considering a number of options, including:

- 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 issue lists to ensure that hearings are focused and conducted in the most cost-effective way possible; and
- e) introducing maximum days allowed for hearings.

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?

City Response

There is a concern that the proposed deadlines for setting hearing dates will direct the process towards hearings, and will unfairly prejudice municipalities. Municipal Staff typically report to Council for instructions on most appeals, and in many cases, discussions with appellants/applicants occur to determine if an appeal can be resolved or at least scoped. This opportunity for settlement negotiations, involving Council instructions may be lost or constrained if municipalities were required to prepare for a hearing so quickly. The ability to have scoping or settlement discussions promotes efficient use of Board resources by ensuring that contested hearings are shorter and more focused, or in many cases, avoided altogether.

Q 18. Would the above measures help to modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?

City response

Simplifying tribunal procedures and facilitating active mediation could mean less reliance on lawyers and more discussion by subject matter experts. As a result, hearings may be less litigious and more likely to result in consensus and better planning for communities. In addition, prior to a hearing, opportunities for experts to agree on facts that would also help to scope a hearing and may result in shorter hearings.

The Province should permit municipal clerks to determine whether appeals are valid on their face (ie: based on appeal periods, making of submissions during the public process, etc...). The Board itself should conduct initial reviews to determine if there are any substantive planning grounds sufficient for an appeal. This would eliminate the need for preliminary motions brought by the parties on appeals with no merit, and eliminate the expenditure of significant

municipal resources on preparation of appeal packages for appeals that are not valid. The preparation of explicit appeal letters that substantively scope the matters under appeal would also enhance the efficiency of initial reviews.

Q 19. What type of cases/situations would be most appropriate to a written hearing?

City response

Appeals to Committee of Adjustment decisions on Minor Variance and consent applications and minor Zoning By-law amendment applications may be suitable for written hearings. They may also be appropriate where there are a single or a few clear-cut issues. This is particularly true in cases when the decision of the approval authority is consistent and aligns with the recommendations of the subject matter experts employed by the municipality to make recommendations.

The City recommends the Province consider adopting a process similar to certain court levels where parties are required to abide by strict time limits to make their argument based on pre-filed materials. This would promote efficient use of the Board's time and resources.

Theme 5: Alternative Dispute Resolution and Fewer Hearings

The government has heard that there is considerable interest in pursuing alternative ways to work out mutually acceptable solutions to land use planning issues without a formal appeal process. The Province is considering the following:

More actively promote mediation

According to the PCD, requiring all appeals be considered by a mediator before a hearing is scheduled, and by having mediators available at all times during an application process, including before an application arrives at municipal council for a decision.

Strengthen case management at the OMB

To scope issues in dispute and identify areas that can be resolved at pre-hearings.

Creating timelines and targets

To create timelines and targets for scheduling hearing, including mediation.

Discussion Questions

Q 20. Why do you think that OMB cases don't settle at mediation?

City response

Mediation works if the parties involved are willing to compromise and want to reach a solution. It is very difficult to mediate in cases where the positions are polarized, where the parties are not on an equal footing financially and where parties are entrenched in their positions ("winner take all").

Q 21. What types of cases/situations have greater chance of settling at mediation?

City response

Mediation is typically most beneficial to parties who have something to gain from compromise, e.g. saving the cost of a full hearing or if the goals of each party can at least be partially achieved. Elimination of de novo hearings would assist as well, because applicants would not be permitted to submit different proposals or technical information to Council and the Board than what was presented to Council. The current system favours the well funded parties to the detriment of those that are not.

There is a need to have decision makers at the mediation that have the expertise and authority to negotiate on behalf of each party involved in the mediation.

- Q 22.** Should mediation be required, even if it has the potential to lengthen the process?

City response

If the parties involved aren't willing to negotiate and potentially compromise, then mandatory mediation won't be successful.

- 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?

City response

See Q. 18.

General Discussion 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?

City response

The City of Markham also provided a number of comments related to OMB reform when we commented on proposals for Bill 73 in January 2014. The comments not addressed by Bill 73 are as follows:

a) Appropriateness of ability to appeal a non-decision after 180 days

The 180-day decision period is unrealistic, due to the complexity of Official Plan and Zoning By-law amendment applications, especially in rapid growth areas such as the GTA. Some developers are using the 180-day timeframe to unrealistically expedite their applications by the threat of moving jurisdiction to the OMB. The time limit for an appeal of a non-decision should be extended to one year. This would allow time for a robust community consultation, without the threat of a quick OMB appeal to sway decision makers. Bill 73 did not change the ability of an applicant

to appeal after 180 days.

b) Expansion of the powers of local appeal bodies

The powers of local appeal bodies should be expanded to allow adjudication of site plan approvals and minor zoning amendments. The option to implement a local appeal body should continue to be at the discretion of Council.

In addition to the comments noted earlier in relation to Bill 73, Committee of Adjustment appeals may also be more appropriately dealt with outside of the OMB. These matters tend to be site specific and extremely local. Another avenue to adjudicate disputes over these matters should be considered.

Finally, Staff are of the view that requiring appellants to seek leave to appeal an application to the OMB would permit the OMB to effectively reduce or eliminate frivolous appeals, and to assist residents' groups to articulate valid land use planning objectives when launching appeals. Such a process could be carried out in writing, and would save time and resources for all parties.

Conclusions

Staff of the Legal Services Department and the Development Service Commission are generally supportive of and encouraged by the OMB reforms being considered by the Province. Staff are particularly encouraged by the focus on limiting appeals on matters of public interest and moving away from 'de novo' hearings.

These comments and recommendations should be forwarded to the appropriate Provincial Ministries for consideration.

Staff will report back to Development Services Committee, on any changes made by the Province to the OMB and/or the planning appeal regime, to provide an overview of the changes and to outline potential operational impacts to the Legal Services and Planning and Urban Design Departments, including possible changes to work flow, processes, and resource allocation.

FINANCIAL CONSIDERATIONS:

Not applicable.

HUMAN RESOURCES CONSIDERATIONS:

Not applicable.

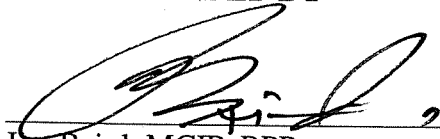
ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable.

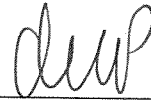
BUSINESS UNITS CONSULTED AND AFFECTED:

The business units primarily affected by these changes are the Planning and Urban Design Department and the Legal Services Department.

RECOMMENDED BY



Jim Baird, MCIP, RPP
Commissioner of Development Services



for Catherine Conrad
City Solicitor

ATTACHMENTS

Appendix A - Extract of the Council Motion asking the Province to review the role of the OMB

Appendix B – OMB Themes/Questions and City Responses

File path: Amanda\File 16 13880\Documen\Recommendation Report



RESOLUTION OF COUNCIL MEETING DATED MARCH 1, 2016

MOTIONS

- (1) REQUEST THE GOVERNMENT OF ONTARIO
TO LIMIT THE JURISDICTION OF THE
ONTARIO MUNICIPAL BOARD (13.2 & 10.0)

Moved by Councillor Karen Rea

Seconded by Councillor Valerie Burke

- 1) That the City of Markham request that the Province of Ontario undertake a public review of the mandate and jurisdiction of the Ontario Municipal Board to ensure that the OMB is respectful of municipal planning policies and local decision making and complies with Provincial Policy; and,
- 2) That the Provincial review include consideration of the amount of costs that may be awarded to ensure fairness for community participants in the appeal process; and,
- 3) That a copy of this Motion be sent to the Honourable Kathleen Wynne, Premier of Ontario; the Honourable Ted McMeekin, Minister of Municipal Affairs and Housing; the Honourable Patrick Brown, Leader of the Progressive Conservative Party; the Honourable Andrea Horwath, Leader of the New Democratic Party; and all MPPs in the Province of Ontario; and further,
- 4) That a copy of this Motion be sent to the Association of Municipalities of Ontario (AMO); Federation of Canadian Municipalities (FCM); York Region Council and all Ontario municipalities for their consideration.

Carried by recorded votes

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberley Kitteringham', with a long horizontal stroke extending to the right.

Kimberley Kitteringham
City Clerk

APPENDIX 'B'
OMB THEMES/QUESTIONS & CITY RESPONSES

<p><u>Theme 1: The OMB’s jurisdiction and powers</u></p>	<p>Protecting Public Interests</p> <p>Discussion Question</p> <p>Q 1. What is your perspective on the changes being considered to limit appeals on matters of public interest?</p>	<p>City response</p> <p>The City generally supports changes to the OMB that will limit appeals on those matters of broad public interest, and looks to the Province to provide clarity on which matters won’t be subject to appeal. Further, when a Municipal Official Plan is appealed or when an application to amend a Municipal Official Plan is refused by Council, the Province or, the upper tier Municipality should execute a screening process, having regard for the public interest, to determine whether a potential appeal is valid. Including a screening mechanism to determine whether a matter is appealable, will provide greater certainty to municipalities and residents regarding the long term policy direction of their communities.</p> <p>With regard to limiting appeals on the basis of public interest, a more precise response can be provided when the Province has indicated more clearly which parts of municipal Official Plans would or would not be subject to appeal (e.g. source water protection, special policy areas, forecasts/intensification targets/minimum densities, employment lands protection ...)</p>
	<p>Bringing Public Transit to More People</p> <p>Discussion Question</p> <p>Q 2. What is your perspective on the changes being considered to restrict appeals of development that supports the use of transit?</p>	<p>City response</p> <p>The City generally supports restricting appeals of official plans and zoning by-laws for development within transit corridors that is in compliance with the height and density ranges established in local and regional official plans. However, where a private development proposal would significantly exceed the height or density provisions of the applicable Official Plan(s), it is reasonable to expect that the current municipal review and approval processes and OMB appeal procedures would continue to apply. It is not clear how the Province intends to restrict appeals (e.g. is the Province intending to eliminate the right to appeal or to scope the extent of the appeal?). It would be preferable if municipalities were given the authority to determine appropriate restrictions on appeals of development that supports public transit. These would be implemented through Official Plan policies.</p> <p>The Province should also consider eliminating appeals where the City has denied a zoning by-law and/or official plan amendment applications to reduce density in a transit corridor.</p>

APPENDIX 'B' OMB THEMES/QUESTIONS & CITY RESPONSES

<p>Give Communities a Stronger Voice</p> <p>Discussion Question</p> <p>Q 3. What is your perspective on the changes being considered to give communities a stronger voice?</p>	<p>City response</p> <p>The City generally supports refinements to the OMB, such as those outlined above, that will provide communities with a stronger voice in the land use planning process.</p> <p>Appeals to a municipality's refusal to amend a new secondary plan should not be allowed, in order to be consistent with the provisions of Bill 73 as it applies to appeals to whole Official Plans and Comprehensive Zoning By-laws.</p> <p>The City agrees with the proposal to eliminate appeals of interim control by-laws. In the event that the Province wishes to provide an appeal mechanism, the only basis to object to these by-laws should be that the requirements of the Planning Act were not met.</p> <p>The City supports the option of directing site plan appeals to a local appeal body. The City of Toronto provides an example of how this body might work. In Toronto, the local appeal body is made up of locally appointed members making decisions about local planning matters affecting Toronto neighbourhoods. The Chair and members are selected by an impartial citizen-member nominating panel, which makes its recommendations for appointments to City Council.</p> <p>It is recommended that the parties to such appeals would continue to be limited to the City and the proponent and not open to appeal by the public.</p> <p>In addition, it is recommended that parties could only be permitted to argue, on appeal, the same sections of the Official Plan that formed the basis of Council's decision.</p> <p>The City strongly agrees that significant new information that arises for the first time at a Board hearing should be sent back to Council for re-evaluation to ensure that the OMB has the benefit of Council's perspective.</p> <p><i>NOTE: This recommendation applies only if de novo hearings regarding municipal decisions are not eliminated. If de novo hearings are eliminated, new information would not be permitted at the OMB.</i></p>
<p>"De novo" Hearings</p> <p>Discussion Question</p> <p>Q 4. What is your view on whether the OMB should continue to conduct de novo hearings?</p>	<p>City response</p> <p>City Staff are of the opinion that elimination of de novo hearings has the potential to significantly improve the land use planning system in that it would strengthen local decision-making, focus the OMB's role on adjudicating only those matters and materials that were considered by Council, reduce hearing times improve public participation and speed up decision making.</p>

APPENDIX 'B' OMB THEMES/QUESTIONS & CITY RESPONSES

	<p>De novo hearings permit applicants to: submit different development plans to the Board than those reviewed by Council; submit new evidence to the Board based on revised proposals or the testimony of additional expert witnesses; or submit new evidence based on an unrevised development plan. Applicants are often able to do this without public consultation or without the prior consideration by municipal Staff or Council.</p>
<p>Q 5. If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?</p>	<p>City response</p> <p>The OMB should function as a true appeal body, and should be limited to reviewing the evidence that was before Council. The OMB should only have the authority to overturn decisions that are unreasonable or non-compliant with provincial or municipal policy based on the same proposal and supporting information that Council had before it. Because the OMB would be limited to considering the development proposal and supporting evidence that was before Council, this would encourage applicants to put their best case forward at the municipal level, and discourage applicants from bringing forward a less desirable alternative to the Board that may have previously been discouraged during the local municipal review. This may have implications for the appeal periods identified below. Applicants should be prevented from appealing before their application has been fully reviewed by municipal Staff, and public input sought.</p> <p>In the case of an appeal for failure to make decision within the timelines set out in the Planning Act (30 days for site plans, 120 days for zoning by-law amendments and 180 days for official plan amendments), a hearing de novo may be required. However, it is still recommended that in such cases, applicants be prohibited from submitting to the Board new evidence that was not before the municipality before the appeal was filed. One narrow exception to prohibition on new evidence should be recognized. It is unrealistic to expect that residents would expend the resources to contribute expert evidence to Council prior to a decision being made. Therefore, residents groups who file third party appeals or are added to proceedings as parties should be permitted to submit new evidence in the form of testimony and reports from their own experts.</p>

APPENDIX 'B' OMB THEMES/QUESTIONS & CITY RESPONSES

<p>Transition and Use of New Planning Rules</p> <p>Discussion Questions</p> <p>Q 6. From your perspective, should the government be looking at changes related to transition and the use of new planning rules? If so:</p> <ul style="list-style-type: none"> • 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 decisions for applications before 2007? 	<p>City response</p> <p>The City generally supports basing decisions on policies in place at the time of the decision. However, for reasons of fairness and certainty, there should be a mechanism in place that would allow a proposal to proceed, at the discretion of Council, if the policy has been developed since the application was submitted. This could be similar to, for example, the Planning Act provisions that allows Council to determine whether further notice is required where a change is made to a proposed by-law after the holding of a public meeting.</p> <p>In Staff's view, it would be appropriate for municipalities and the OMB to apply the policies that were approved at the time of the decision. Currently, adopted plans which are not in force at the time of application are to be considered, but this is not done consistently by all Board members. New rules should provide that:</p> <p>the Board's decisions must comply with municipal and provincial policies which are in force at the time of decision;</p> <p>that the Board must have regard to policies which are adopted but not yet in force; and,</p> <p>that their decisions should explain how the adopted, but not in force, policies were taken into account.</p> <p>City response</p> <p>City Staff generally supports having the planning rules apply to all applications, even those applications submitted before 2007.</p> <p>Staff also recommend that the Province establish, or enable municipalities to impose, expiry dates for applications that have not been significantly advanced by the proponent.</p>
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APPENDIX 'B'

OMB THEMES/QUESTIONS & CITY RESPONSES

<u>Theme 2: Citizen Participation and Local Perspective</u>	
<p>Expanding the OMB's Citizen Liaison Office (CLO)</p>	<p>City response Not applicable.</p>
<p>Discussion Questions</p> <p>Q 7. If you have had any experience with the Citizen Liaison Office, describe what it was like – did it meet your expectations?</p>	
<p>Q 8. Was there information you needed, but were unable to get?</p>	<p>City response Not applicable.</p>
<p>Q 9. Would the above changes support greater citizen participation at the OMB?</p>	<p>City response The changes described above could support and encourage greater citizen participation. All efforts by the provincial government to assist the public with their understanding of the role of the OMB, and to assist the public by providing them with access to appropriate resources to present their case at the OMB, are encouraged. The OMB should refer the public to professional organizations, such as the Law Society of Upper Canada or the Ontario Professional Planners Institute where they can obtain lists of subject matter experts.</p> <p>In addition to the above, the Board should invest in a truly interactive and user friendly website. This improved website would contain not only general information for the public, but serve as an information portal for hearings. Affidavits, witness statements, exhibits, studies and reports, should all be posted on the site by the Board. This would allow interested parties and members of the public easier access to hearing-related information should they decide to participate in or attend a hearing.</p>
<p>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 process would help citizens to participate in mediations and hearings?</p>	<p>City response The Province may want to consider providing these services at arm's length to the OMB, so the perception of conflict of interest is minimized. The OMB could also provide clearer information about the role of the OMB and how hearings are structured, the types of evidence to be submitted, how to prepare a case, etc. Expansion of the services provided by the Province may also provide more opportunities for individuals to give evidence at the OMB without being represented by lawyers.</p>

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OMB THEMES/QUESTIONS & CITY RESPONSES

<p>Q 11. Are there funding tools the Province could explore to enable citizens to retain their own planning experts and lawyers?</p>	<p>City response Prior to any funding being provided to private individuals, groups or corporations, the appeal should be reviewed and certified to ensure that the appeal has merit and is not frivolous, as recommended for all appeals under Question 1. Only if the appeal has merit should funding be considered. Where developers appeal a decision of council, a predetermined amount of money to fund public participation in the process should be considered to assist the opposition. However, if a member of the public files a third party appeal, then they should fund their appeal themselves.</p>
<p>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?</p>	<p>City response It's not clear if the CLO in-house planning experts and lawyers would represent the public at hearings or simply help educate and provide information to the public. As stated above, all appeals should be reviewed and certified to ensure that the appeal has merit and is not frivolous, including those where funding is being sought. The City also sees merit in requiring members of the public participating at an OMB hearing to cover a portion of their own costs as a disincentive to frivolous appeals. Staff also note that the March 1, 2016 Markham Council resolution states that "...the Provincial review include consideration of the amount of costs that may be awarded to ensure fairness for community participants in the appeal process..."</p>

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<u>Theme 3: Clear and Predictable Decision Making</u>	
<p>Increasing the number of adjudicators and their training and Multi-member panels</p> <p>Q 13. Qualifications for adjudicators are identified in the job description posted on the OMB website (Ontario.ca/cxf). What additional qualifications and experiences are important for an OMB member?</p>	<p>City response</p> <p>The qualification of OMB members varies widely. Decisions vary in terms of quality of writing and substantive content. Further, there is a lack of consistency with respect to quality of analysis and outcomes on similar matters. In order to address these concerns, the Province should consider requiring the Board to be bound by precedent in their decision making. All Board members should have experience working within the Ontario land use planning system. Board member remuneration may need to be increased to attract more qualified and experienced adjudicators to these positions. Additionally, there is a lack of Board members skilled in alternative dispute resolution processes, so more such members should be appointed or trained. Currently, the Board's case management practices are lacking. Members should be trained to implement a rigorous process of dismissing frivolous appeals and scoping issues, prior to scheduling hearing events.</p> <p>More thought should be given to which members are assigned to which appeals, to ensure the expertise of the members is leveraged.</p>
<p>Q 14. Do you believe that multi-member panels would increase consistency of decision-making? What should be the make-up of these panels?</p>	<p>City response</p> <p>Multi-member panels will likely improve the quality of decisions. This would be the case particularly if they are used for more complicated appeals about issues that involve a number of competing multi-disciplinary issues and qualifications of the Board members reflect the issues being adjudicated. The OMB should consider the subject matter of appeals when assigning Board members and ensure that the panel has the necessary expertise to appropriately adjudicate the matter.</p>
<p>Q 15. Are there any types of cases that would not need a multi-member panel?</p>	<p>City response</p> <p>Multi-member panels are generally supported, but may not be required for Committee of Adjustment Minor Variance and Consent applications (if such appeals continue to be decided by the OMB). Settlement hearings may also not require a multi-member panel. Other applications that may also not require a multi-member panel include site plan applications and site-specific official plan and zoning by-law amendments. This type of panel would be appropriate for official plan appeals that affect multiple properties or an entire municipality.</p>
<p>Q 16. How can OMB decisions be made easier to understand and be better relayed to the public?</p>	<p>City response</p> <p>All Board members should have demonstrated professional experience in municipal land use matters and be trained to clearly explain their reasoning in their decisions, and these decisions should be written in plain language and follow a standard format. Decisions</p>

APPENDIX 'B'

OMB THEMES/QUESTIONS & CITY RESPONSES

	should also be reviewed thoroughly to ensure that explanations are written in as non-technical way as possible. This would assist with issuance of decisions in a more timely matter, and with ensuring the decisions are well-understood by all parties.
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Theme 4: Modern Procedures and Faster Decisions	
Reducing process complexity Modernizing procedures and promoting faster decisions 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?	City Response There is a concern that the proposed deadlines for setting hearing dates will direct the process towards hearings, and will unfairly prejudice municipalities. Municipal Staff typically report to Council for instructions on most appeals, and in many cases, discussions with appellants/applicants occur to determine if an appeal can be resolved or at least scoped. This opportunity for settlement negotiations, involving Council instructions may be lost or constrained if municipalities were required to prepare for a hearing so quickly. The ability to have scoping or settlement discussions promotes efficient use of Board resources by ensuring that contested hearings are shorter and more focused, or in many cases, avoided altogether.
Q 18. Would the above measures help to modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?	City response Simplifying tribunal procedures and facilitating active mediation could mean less reliance on lawyers and more discussion by subject matter experts. As a result, hearings may be less litigious and more likely to result in consensus and better planning for communities. In addition, prior to a hearing, opportunities for experts to agree on facts that would also help to scope a hearing and may result in shorter hearings. The Province should permit municipal clerks to determine whether appeals are valid on their face (ie: based on appeal periods, making of submissions during the public process, etc...). The Board itself should conduct initial reviews to determine if there are any substantive planning grounds sufficient for an appeal. This would eliminate the need for preliminary motions brought by the parties on appeals with no merit, and eliminate the expenditure of significant municipal resources on preparation of appeal packages for appeals that are not valid. The preparation of explicit appeal letters that substantively scope the matters under appeal would also enhance the efficiency of initial reviews.
Q 19. What type of cases/situations would be most appropriate to a written hearing?	City response Appeals to Committee of Adjustment decisions on Minor Variance and consent applications and minor Zoning By-law amendment applications may be suitable for written hearings. They may also be appropriate where there are a single or a few clear-cut

APPENDIX 'B' OMB THEMES/QUESTIONS & CITY RESPONSES

	<p>issues. This is particularly true in cases when the decision of the approval authority is consistent and aligns with the recommendations of the subject matter experts employed by the municipality to make recommendations.</p> <p>The City recommends the Province consider adopting a process similar to certain court levels where parties are required to abide by strict time limits to make their argument based on pre-filed materials. This would promote efficient use of the Board's time and resources.</p>
<p>Theme 5: Alternative Dispute Resolution and Fewer Hearings</p> <p>More actively promote mediation, strengthening case management at the OMB and creating timelines and targets</p> <p>Discussion Questions</p> <p>Q 20. Why do you think that OMB cases don't settle at mediation?</p> <p>Q 21. What types of cases/situations have greater chance of settling at mediation?</p>	<p>City response</p> <p>Mediation works if the parties involved are willing to compromise and want to reach a solution. It is very difficult to mediate in cases where the positions are polarized, where the parties are not on an equal footing financially and where parties are entrenched in their positions ("winner take all").</p> <p>City response</p> <p>Mediation is typically most beneficial to parties who have something to gain from compromise, e.g. saving the cost of a full hearing or if the goals of each party can at least be partially achieved. Elimination of de novo hearings would assist as well, because applicants would not be permitted to submit different proposals or technical information to Council and the Board than what was presented to Council. The current system favours the well funded parties to the detriment of those that are not.</p> <p>There is a need to have decision makers at the mediation that have the expertise and authority to negotiate on behalf of each party involved in the mediation.</p> <p>City response</p> <p>If the parties involved aren't willing to negotiate and potentially compromise, then mandatory mediation won't be successful.</p> <p>City response</p> <p>See Q. 18.</p>
<p>Q 22. Should mediation be required, even if it has the potential to lengthen the process?</p>	
<p>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?</p>	

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OMB THEMES/QUESTIONS & CITY RESPONSES

General Discussion Question	
<p>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?</p>	<p>City response The City of Markham also provided a number of comments related to OMB reform when we commented on proposals for Bill 73 in January 2014. The comments not addressed by Bill 73 are as follows:</p> <p>a) Appropriateness of ability to appeal a non-decision after 180 days The 180-day decision period is unrealistic, due to the complexity of Official Plan and Zoning By-law amendment applications, especially in rapid growth areas such as the GTA. Some developers are using the 180-day timeframe to unrealistically expedite their applications by the threat of moving jurisdiction to the OMB. The time limit for an appeal of a non-decision should be extended to one year. This would allow time for a robust community consultation, without the threat of a quick OMB appeal to sway decision makers. Bill 73 did not change the ability of an applicant to appeal after 180 days.</p> <p>b) Expansion of the powers of local appeal bodies The powers of local appeal bodies should be expanded to allow adjudication of site plan approvals and minor zoning amendments. The option to implement a local appeal body should continue to be at the discretion of Council.</p> <p>In addition to the comments noted earlier in relation to Bill 73, Committee of Adjustment appeals may also be more appropriately dealt with outside of the OMB. These matters tend to be site specific and extremely local. Another avenue to adjudicate disputes over these matters should be considered.</p> <p>Finally, Staff are of the view that requiring appellants to seek leave to appeal an application to the OMB would permit the OMB to effectively reduce or eliminate frivolous appeals, and to assist residents' groups to articulate valid land use planning objectives when launching appeals. Such a process could be carried out in writing, and would save time and resources for all parties.</p>