

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: NOVEMBER 28, 2016

FROM: Legal and Planning Services Departments

DATE: November 9, 2016

SUBJECT: Ontario Municipal Board Review

LOCATION: Town Wide

WARD: Town wide

Page 1

RECOMMENDATION:

1. That Town Council endorse the report from the Legal and Planning Services departments, dated November 9, 2016, regarding the Ontario Municipal Board Review; and
2. That the Town Clerk forward a copy of the report to the Ministry of Municipal Affairs, the Ministry of the Attorney General, Halton's MPPs, Halton Region, the City of Burlington, the Town of Halton Hills and the Town of Milton for their information.

KEY FACTS:

The following are key points for consideration with respect to this report:

- The Province sees a continuing need for the Ontario Municipal Board (OMB) in Ontario's land use planning system, but is engaging in public consultation to review its scope and effectiveness.
- The Province has identified five key themes to the OMB Review:
 - (1) OMB's jurisdiction and powers
 - (2) Citizen participation and local perspective
 - (3) Clear and predictable decision-making
 - (4) Modern procedures and faster decisions
 - (5) Alternative dispute resolution and fewer hearings.
- Town staff support many of the Province's proposed changes, but view two as fundamental to any improvement in the OMB appeal system: (1) Changing the OMB's standard of review of municipal planning decisions, and (2) Scoping appeals and limiting what can be appealed to the OMB.

From: Legal and Planning Services Departments
Date: November 9, 2016
Subject: Ontario Municipal Board Review

- The deadline for providing feedback is December 19, 2016.

BACKGROUND:

The Province has made it clear that it sees a continuing need for the OMB in Ontario's land use planning system and feels that it is important that Ontario continues to have an independent appeal tribunal that can resolve some land use disputes. However, the Province is exploring changes to the OMB's role within Ontario's land use planning system to review its scope and effectiveness.

On October 6, 2016 the Government of Ontario released, "Review of the Ontario Municipal Board: Public Consultation Document" setting out the five key themes that will guide its review of the OMB. Submissions are due by December 19, 2016.

In addition to the Public Consultation Document, the Province is holding a series of public meetings across the Province. A meeting at Oakville Town Hall was held on November 3, 2016, which was well attended by members of the public, several Members of Council as well as Town staff. Consistent comments were voiced at the meeting regarding changes to the scope and review of Council planning decisions. Ministry staff indicated that they anticipate reporting back with recommendations for proposed legislative amendments this winter.

Planning and Legal staff provided detailed comments on the "Halton Area Planning Directors' Submission", which was endorsed by Regional Council on November 9, 2016 and attached as Appendix A.

The purpose of this report is to provide an overview of the Province's Consultation Document and provide comments on the specific questions raised for consideration as set in Appendix B, many of which were already provided as part of the Halton Region submission.

COMMENT/OPTIONS:

The Province has identified five key themes to the OMB Review in the Public Consultation Document and sets out possible changes being considered to improve the OMB's role within the system.

Theme 1: OMB's jurisdiction and powers

The Public Consultation Document suggests that the Province will be considering additional measures to further limit the OMB's jurisdiction and powers. Changes under consideration would give more weight to local and provincial decisions, and bring fewer decisions before the OMB, by moving away from "de novo" hearings (where matters are considered by the OMB as though no previous municipal council decision had been made) and giving more weight to municipal and provincial decisions. The Province has identified options may include:

- Requiring the OMB to review municipal/approval authority decisions on a standard of “reasonableness”, eg: whether the original decision was within a range of defensible outcomes within the authority of the municipality/approval authority;
- Raising the “threshold test” that must be met before the OMB can overturn such decisions, eg: only if that decision does not follow local or provincial policies.

Change the Standard of Review

A change to the standard of review of municipal planning decisions is fundamental for any improvement in the OMB’s role in the land use system. Such a change would better reflect and validate the extensive work that municipalities do in developing land use policy, while balancing the need for a review process to ensure the principles of natural justice to property owners. The requirement for the OMB to “have regard” to Council’s decision has not been effective. As such, requiring the OMB to review municipal decisions on a standard of reasonableness, or establishing a threshold test (decision does not follow local or provincial policy) would be an essential change for any improvement in the OMB’s dispute resolution process.

Limit the Scope of Appeals

The Province has already limited the scope of appeals that the OMB may consider through changes to the *Planning Act* under Bill 73. For example, Bill 73 now eliminates the right of appeal of the entire new plan. However, further amendments are still required to effectively scope matters that are far too broad without legitimate planning justification. Appeals of official plan policies or zoning by-law regulations as they apply to the entirety of a municipality should not be permitted. This change would retain the right to appeal policies or zoning regulations as they apply to particular lands without compromising the implementation elsewhere within a municipality.

It remains a significant impediment in the land use planning system to continue to allow, in many cases, years of protracted litigation on municipal official plans, and then thereafter permit further lengthy hearings on a municipality’s denial of private amendments to recently approved official plan policies. This is particularly inefficient when applications are submitted as a “complete application” yet lack sufficient planning justification and/or technical studies. In order for the implementation of an official plan to operate with stability, any municipal refusal of a privately-initiated official plan amendment should not be appealed to the OMB.

Interim control by-laws should not be appealed to the OMB in order to provide a municipality sufficient time to study an area and make informed planning decisions rather than being compelled to process an application prematurely.

Theme 2: Citizen Participation and Local Perspective

Changes under consideration by the Province would allow for more meaningful, more accessible public participation, by:

- Increasing public education opportunities, such as a new, user-friendly website, to provide clearer information on OMB practices and procedures
- Expanding the OMB's Citizen Liaison Office to provide easier public access to information
- Provide access to view hearings or follow the proceedings on-line rather than through expansive transcripts.
- Reconfiguring the Citizen Liaison Office outside of the Environment and Land Tribunal Ontario with in-house planning experts and lawyers
- Exploring funding tools to help citizens retain their own planning experts or lawyers.

Theme 3: Clear and Predictable Decision-Making

Another issue that the Province intends to address is the consistency and predictability of OMB decisions. The potential solutions identified require significantly greater public funding and resources than that currently allocated to the land use planning system, including:

- Increasing the number of OMB adjudicators and expanding the training required for adjudicators; and
- Requiring multi-member panels to conduct complex hearings, or possibly all hearings.

The need for more OMB adjudicators has been consistently voiced by the municipal law bar. Increased compensation for highly qualified adjudicators is also required to attract planning consultants, senior municipal planners and respected legal counsel to serve as future members of the OMB. However, the backlog of existing files before the OMB must first be cleared.

Theme 4: Modern Procedures and Faster Decisions

The Province has identified that it intends to shift the focus from adversarial OMB hearings towards adjudication that will be less complex, more accessible to the public and may result in faster decision-making. The Province has identified the following potential measures:

- Promoting “active adjudication” to encourage adjudicators to scope issues, question witnesses and in cases address inequalities between parties;

- Allowing hearings (and not just motions) to be conducted in writing; and
- Setting clear rules for both the hearing process and the decision-making itself (e.g. limiting the maximum days for hearing, setting clear rules for issues lists and time limits for when decisions must be issued).

The OMB must be provided with procedural tools to achieve timely results. As set out in Appendix B, there are some basic best practices that could be implemented to improve the appeal system, such as:

- Empower municipalities to reject appeals received from people who did not make submissions prior to the council decision without being required to forward it to the OMB
- Establish a docket for multiple matters (eg: pre-hearings, settlements, etc) to be heard on the same day similar to how courts are scheduled
- Similar to court scheduling, event dates should simply be set based on the OMB's schedule and all parties should be expected to attend, subject to sufficient time to seek instructions from the client.

Theme 5: Alternative Dispute Resolution and Fewer Hearings

Finally, the Province intends on avoiding a formal appeal process where possible. Bill 73 already permits municipalities to initiate a mediation process for certain appeals in advance of forwarding the record to the OMB. However, the Province will be considering the following changes:

- Requiring mandatory mediation prior to scheduling a hearing;
- Allowing government mediators to be available at all times during an application process (e.g. even before an application arrives at municipal council); and
- Setting timelines and targets for case management including mediation.

The promotion of mediation and alternative dispute resolution must not undermine (or replace) the OMB's ability to adjudicate effectively and arrive at timely decisions. However, mediation can be useful in not only resolving disputes, but identifying those matters with insufficient planning grounds that should be withdrawn, or scoping the issues.

CONSIDERATIONS:

(A) PUBLIC

The Province's OMB Review is intended to address more meaningful public participation in the appeal process as well as consistency and predictability of OMB decisions.

(B) FINANCIAL

None

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Planning Services and Legal staff will continue to monitor the Province's OMB Review and will apprise Council of any changes resulting from this.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be the most livable town in Canada

(E) COMMUNITY SUSTAINABILITY

The OMB Review impacts the Town's sustainability objectives of the Livable Oakville Plan.

APPENDICES:

Appendix A – Halton Area Planning Directors' Submission

Appendix B – Consultation Document Questions & Proposed Responses

Prepared and Recommended by:
N. Chandra
Assistant Town Solicitor

Prepared and Recommended by:
D. Childs
Manager of Policy Planning

Submitted by:
D. Carr
Town Solicitor

Submitted by:
M. Simeoni
Director of Planning Services