REGIONAL PLANNING COMMISSIONERS OF ONTARIO

Reforming the Ontario Municipal Board:

Five Actions for Change

FINAL REPORT | August 31, 2016

PREFACE

In 2014, the Government of Ontario announced it would review the scope and effectiveness of the Ontario Municipal Board (OMB) and recommend possible reforms "that would improve the OMB's role within the broader land use planning system." The Regional Planning Commissioners of Ontario (RPCO) commend the Province on this initiative and have completed this report to support that review.

Every year across Ontario thousands of decisions are made on land use planning matters. Whether made by a municipal council, a Committee of Adjustment, the OMB, or an appeal court, these decisions can have profound impacts on community form and prosperity. Together, these decisions impact the province's economy, as planning approvals are often key determinants to investment decisions. In contentious and complex cases, the OMB often functions as the final decision-maker.

RPCO members plan for over 80% of Ontario's population in urban and rural, northern and southern locales. RPCO, representing both regional municipalities and single-tier municipalities, is well-positioned to take a leadership position in the initiative to reform the OMB as our members are involved to some degree in most of the decisions that lead to files coming before the Board.

RPCO was very intentional in choosing Joe Berridge as its Lead Researcher and Ian Lord as its Expert Solicitor for this project. Both Joe and Ian are highly regarded in their fields of expertise and their commitment to produce this comprehensive, creative, practical, and forward-thinking report was critical to achieving our goal. Our sincere thanks for their personal commitment and the work of their teams.

Over the course of this work, RPCO has also engaged Provincial staff, including the Ontario Municipal Board, who have all been very willing to assist with our work. We trust that our findings will provide both context and new directions for their consideration. Finally, our sincere thanks to all of our RPCO colleagues who have generously supported this initiative from the initial idea to this final report.

The report describes the OMB in the context of planning appeal bodies elsewhere in the world, the evolution of the OMB to its present form, the associated caseload, and insight into today's appeal process. It assesses the merits and demerits of the Board's current operations, drawing heavily from the collective experience of municipal planning staff. It concludes with thematic areas for reform and structured recommendations of the RPCO as developed and consolidated by the Lead Researcher, Joe Berridge, supported by his team of Emily Reisman and Inger Squires from Urban Strategies Inc. and Leah Birnbaum of Leah Birnbaum Consulting.

We look forward to hearing from all those reviewing this document and we maintain our commitment to working collaboratively with the Province toward implementing positive change in the near future. Together, we can improve the land use planning system in Ontario to better support our communities and our provincial economy.

Sincerely,

Ron Glenn, Chair
Regional Planning Commissioners of Ontario

Rob Horne, Past Chair
Regional Planning Commissioners of Ontario

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1 INTRODUCTION

The Regional Planning Commissioners of Ontario (RPCO) commissioned this report to provide input to the Provincially-mandated review of the Ontario Municipal Board (OMB) due to commence in 2016.

In developing this report, the research team undertook:

- A review of OMB-related literature;
- An analysis of the type, number, and geographic distribution of files in the OMB caseload based on Environment and Land Tribunals Ontario annual reports and the Expert Solicitor's review of some 420 recent decisions delivered from December 2015 to June 2016;
- An analysis of the land use appeal practices in other jurisdictions, based on existing jurisdictional scans;
- A review of earlier reforms to the OMB;
- Results of a questionnaire on experiences with the OMB which was distributed to RPCO members (Appendix C);
- Follow-up interviews with RPCO members; and
- Interviews with key people in planning, law, municipal and provincial policy, and the development industry.

The research has shown that the OMB is arguably the most powerful body of its kind in comparable jurisdictions. Users of the land use planning system on all sides have experienced considerable dissatisfaction with the current role and operation of the Board and have supported the need for reform.

The need for reform of the OMB does not, in our view, require its abolition. The presence of an efficient and accountable dispute resolution body, which is characteristic of most comparable jurisdictions, contributes to a well-functioning planning system and is an important check on any arbitrary or unreasonable imposition of administrative or political power.

Instead, solutions to the current dissatisfaction lie in filtering matters that appear before the OMB, sharpening its processes, strengthening its ability to resolve disputes, and resolving matters through alternative dispute resolution techniques wherever possible. Reform also requires that the Province and municipalities step up their professional planning function so that plans are up to date and in-force, leaving the OMB to focus on resolving substantive disputes and not on setting or broadly interpreting policy.

1.1 Purpose of the Report

The Ontario government has mandated that the Ministry of Municipal Affairs work to improve land use planning. Part of the Ministry's mandate is to lead a review of the scope and effectiveness of the OMB and to recommend possible reforms that would improve the OMB's role within the broader land use planning system.

The Ministry's Mandate Letter explicitly states that improvements to the land use planning system should have the effect of reducing appeals to the OMB. This indicates an acknowledgement of why changes are needed to the system at this time: to recognize that current operations of the Board are creating cost, uncertainty and unintended negative consequences to good planning and appropriate development; to acknowledge the increased planning maturity of municipalities; and to validate the extensive work that municipalities do in developing land use policy, leading public consultation, balancing constituents' desired directions, and adopting plans to implement provincial growth management directions.

The OMB is intended to provide a public forum for appeals and to resolve disputes in accordance with the principles of good planning. Public criticism of the Board's role in planning is, however, increasingly vocal. For municipalities, it is often seen as the place where policies designed to implement provincial policy or direct municipal initiatives get delayed, reduced, and rewritten. For the private sector, it increases uncertainty, cost, and risk but adds the prospect of additional rewards. For local communities, it can appear undemocratic and incomprehensible. Most participants interviewed for this research agreed on the characteristic negative attributes of current Board processes: risk, cost and delay, particularly for lengthy hearings. They also agreed that these attributes are playing an unwelcome role in influencing the way that all actors participate in the planning process and on its outcomes.

The purpose of this report is to explore what is and isn't working with the current land use appeal process and to make recommendations for standardizing the parts that work well and reforming the parts that do not. Because the OMB operates as part of the overall land use planning approval system, this report's recommendations look beyond the workings of the OMB itself and suggest ways to improve related functions of the land use planning system at the provincial and municipal levels. The overall vision of a reformed land use planning system is one where land use permissions are developed and implemented through a public process; where development conforms to broader provincial goals that are clearly expressed; and where legitimate disputes are resolved efficiently with the broad public interest being paramount in decisions.

This study focuses on the work of the OMB as it relates to land use planning matters governed by the *Planning Act* and concludes with recommendations for its reform. The activities of the OMB related to matters under other Acts such as the *Development Charges Act*, the *Ontario Heritage Act* and the *Aggregate Resources Act*, among others, are not directly included in the scope of this report.

1.2 The OMB within the planning system

The OMB has become more than an appeal body; it has become a fundamental part of Ontario's land use planning system. In a province that is increasingly providing overall planning policy direction and where municipal elected officials are supported by professionally sophisticated planning staff, the question of whether the OMB needs to or ought to be playing such a pivotal role should be thoroughly examined.

Ontario's land use planning approvals system begins with the Province setting broad policy for where and in what form development and other planning initiatives should occur. Then municipalities articulate that policy into the local context through municipal official plans and zoning by-laws. The OMB lies somewhere in the middle, providing decisions to resolve disputes between any combination of policy makers, landowners and community groups.

This report does not start from the position that the OMB should be abolished. Instead, implementing the proposed reforms will reduce its scope and focus its processes. In many ways, the land use planning system benefits from the existence of an appeal body. Planning is not an exact science; it is a complex and on-going social, environmental, and economic negotiation. Moreover, if municipalities fail to make the necessary decisions to implement provincial policy, or if they deny natural justice to property owners, community groups or individuals, some mechanism for redress and decision is required. Were the OMB not the venue for this, some other format would need to be found, with unknown consequences to the planning system.

The overall strategy in this report is therefore to suggest modifications to the existing structure of the OMB to resolve particularly complex and difficult disputes while reshaping and reducing its extent of influence. The OMB constitutes an important avenue for the pursuit of 'good planning' in matters of property and planning interest. This role cannot and should not be eliminated; neither should it be the sole forum for decision making.

The threat that without an OMB local councils may become too beholden to constituents who don't want to see any change in their communities is not an empty one. In San Francisco, for example, due in part to vocal neighbourhood and environmental groups opposing new development, and in part because no OMB-like structure exists to challenge these decisions, that city is struggling to meet a surge in housing demand.

The OMB acts as a balancing force against hyper-local issues having undue influence over municipal-wide matters. Several interview respondents told us that the OMB is useful for tempering the pressures that councils face, particularly in smaller municipalities. As one municipal planner reported, "the shadow of the Board can be very useful thing to have."

1.3 Previous attempts at OMB reforms

The OMB dates back to 1906 as the Ontario Railway and Municipal Board, which supervised municipal funds and the provision of rail transport between and within municipalities. The Board was renamed the Ontario Municipal Board in 1932. Most of the powers that the OMB was given at that time still stand today and many new powers have been given through legislative changes.

As an independent quasi-judicial tribunal the Board's main function is to hear appeals and applications, and to resolve disputes on a variety of contentious municipal matters. When a matter is appealed to the OMB, the Board takes the place of the approval authority and can make any decision that the approval authority could have made. This broad authority given to unelected officials has led to criticism, controversy, and persistent calls for the OMB to be reformed or abolished.

In the past 20 years there have been several attempts at reforming the planning system in Ontario, with some specifically focused on the role of the OMB. Many of these attempts at reform have been implemented while others have been either too controversial, too costly or were thought to endanger elements of natural justice.

The most significant reforms to the OMB to date include the following policy directives:

- permitting the Board to refer matters back to Council;
- requiring that complete applications be submitted before the municipal review period begins;
- requiring that the OMB "have regard to" decisions made by municipal councils; and
- restricting third-party appeals to those who participated in the initial decision-making process.

The recently proclaimed Bill 73, *Smart Growth for Our Communities Act, 2015*, introduced further reforms in the *Planning Act* restricting the right of appeal of entire official plans and certain parts of an official plan, as well as other matters, that will alter the current planning approval process. See **Appendix B** for a list of OMB reforms that have been implemented and those that have been proposed but not (or not yet) implemented.

1.4 Land use appeals in other jurisdictions

For this report, the research team undertook a review of appeal practices in other jurisdictions, based largely on a review of several existing jurisdictional scans, in particular:

- Moore, Aaron A., Planning Politics in Toronto: The Ontario Municipal Board and Urban Development. University of Toronto Press. 2013.
- Taylor, Zachary, Assistant Professor, Department of Political Science, Western University. Correspondence based on unpublished research, 2016.
- David Redmond and Associates. Overview of Municipal Appeal Mechanisms By Province. Prepared for the Canadian Home Builders' Association. October 2003.

While none of these reviews are entirely comprehensive, they do provide a good understanding of the way other jurisdictions handle land-use and planning dispute resolution and offer a comparison of the relative scope of appeal, access, powers, procedures and other key characteristics of the Board's operation.

From this review it is clear that Ontario is not unique in having an appeal body for local administrative decisions. Other Canadian provinces, the UK, Ireland, Australia and New Zealand all have some kind of land use appeal body. What is unique to Ontario, however, is the range of municipal decisions that are subject to appeal, the broad rights of appeal, and the power of the OMB to create new policy.

The following section compares the OMB to other appeal bodies across Canada and provides an overview of the land-use appeal system in the UK.

▶ COMPARING THE OMB TO OTHER APPEAL BODIES ACROSS CANADA

Every other jurisdiction in Canada has a body (or bodies) to hear appeals of some local land use planning decisions. It is useful to compare the varied approaches of appeal bodies across the country because of our shared traditions of parliamentary government, legal system, local government organization, and planning regulation. British Columbia, Alberta, Saskatchewan, Manitoba, and Newfoundland all have local or regional appeal boards. In these cases, local boards are typically appointed by municipal councils and regional boards are appointed by the province governments. Quebec, Ontario and the other Atlantic provinces have single appeal bodies that cover their full territory.

Scope of appeals

While all jurisdictions allow appeals for some types of local planning decisions, in most places the scope of appeal is limited so as not to undermine local democratic accountability. Manitoba, for example, completed public consultations for reform of the *Planning Act* in which "most participants agreed that the council should be the final decision-making authority on matters of local interest (Manitoba Intergovernmental Affairs, 2003 page 6)."

All provincial appeal bodies hear appeals by citizens whose development applications have been rejected by local authorities. However, not all types of decisions are appealable to provincial appeal boards. In Nova Scotia, minor variances are appealable to city council, not to the Nova Scotia Utility and Review Board. In Winnipeg, variance and subdivision appeals are heard by a committee of council. In British Columbia, refusals of development proposals are appealable to regional Boards of Variance on grounds that the provisions of the by-law impose "undue hardship." For these appeals, the Board may order a variance to or exemption from the by-law.

Outside of Ontario, no other jurisdiction in Canada permits the direct appeal of official plans or comprehensive by-laws that apply across a local government's territory. Distinct from the ability to appeal a site-specific decision, in Ontario the direct appeal of general policies prior to implementation is a unique challenge to the policy-making power of democratically elected councils.

Third party appeals

In most Canadian provinces participation in appeals by third parties who can demonstrate an interest or injury is permitted. The appeal body usually has discretion over whether the test of sufficient interest or injury has been met – typically referred to as a "leave test." In Nova Scotia, third-party appeals can only be made by those who believe that the decision will adversely affect the value or reasonable enjoyment of their property. In Saskatchewan, any affected person may appeal on grounds of error of process. In Ontario, third-party appeals are generally permitted if the third party participated or provided comments to the local authority prior to the decision.

Interpretation of policy documents

One area where the OMB exercises far greater jurisdiction than its counterparts in other provinces is in the interpretation of local and provincial planning policy. The OMB frequently rules on whether applications and plans are "good planning" and has the authority to rewrite any municipal policies.

Other provinces are much more restrictive. In Newfoundland, the appeal board is not permitted to make a decision that is contrary to the intent of the *Planning Act*, regulations, and municipal plan, but may confirm, reverse, or vary the original decision. British Columbia, and Saskatchewan prohibit the appeal board from making a decision that does not comply with official plans or provincial policies. The role of the appeal body is to ensure that planning applications conform to established policy. This is a much stronger direction than Ontario's "have regard to" standard; elsewhere 'good planning' is deemed to be described by the in-force policy documents. Nova Scotia denies leave to appeal if the decision of council reasonably carries out the intent of the municipal planning strategy or the decision is consistent with the by-law in question. The appeal body is required to uphold the council's decision if it is based on a reasonable interpretation of the intent of municipal planning strategy.

Appeals based on timely decisions

Most jurisdictions, with the exception of Ontario, New Brunswick and Saskatchewan, do not provide for appeals on the basis of untimely decision-making by local authorities (i.e. the failure of a municipal council or approval authority to make a decision within a prescribed time frame).

De Novo limitations

Ontario is the only jurisdiction in Canada that has the ability to hear appeals *de novo* – as though it had not already been considered and either approved or denied by a municipal council (although, as noted in Section 2.2, the OMB rarely makes use of truly *de novo* hearings). In Prince Edward Island, appeals are decided strictly on the basis of the evidence presented in the original process. In Saskatchewan, new evidence can be introduced with leave from the Municipal Board, which is limited to reviewing the record for error. In Newfoundland, the appeal board is not permitted to make a decision that is contrary to the intent of the *Planning Act*, regulations, and municipal plan, but may confirm, reverse, or vary the original decision.

Panel composition

In some places, including Ontario, the Board's impartiality is secured by requiring no specific expertise of members hearing particular cases. The facts of the case are to speak for themselves. (The OMB is empowered to independently call in experts to clarify technical issues, but we are unaware of its having done so). In other jurisdictions, however, it is deemed important to have members with directly relevant experience hear particular cases. In this model, multi-member panels are usually required to include at least one lawyer or judge to ensure legal correctness. The Manitoba Municipal Board has two full-time and 30-40 part-time members drawn from all regions of the province and relevant professions. Appeals are heard by three-member panels — one full-time member and two part-time members. At the OMB, hearings are typically conducted by one member although larger panels are sometimes assigned to more complex cases and new members are sometimes paired with more experienced members.

▶ LAND-USE APPEALS IN THE UK

The planning approval process in the United Kingdom and the Ontario approval process, though rooted in the same common law jurisdiction, are very different. The following is a brief overview of the UK land-use appeal process.

Planning approvals process

In England and Wales Local Plans are the main planning documents used to govern development. Following background work and consultation, the Local Plan is submitted to the Planning Inspectorate for approval accompanied by a summary of the consultation. The Inspectorate examines the document to ensure the proposed Local Plan meets all legal requirements and is 'sound'. The Planning Inspectorate will consider objections to policies or site proposals during this period if they pertain to material considerations (i.e. issues of good planning and the public interest). The Inspectorate can suggest amendments and modifications to Council but cannot impose a plan on a Council who are the ultimate approval authority. However, the Inspectorate can recommend changes that will affect the policies of the plan if the Local Planning Authority (LPA) has requested it do so. If the Inspectorate deems the plan unsound, it will recommend that the plan not be adopted. In these circumstances the LPA will be required to withdraw it.

Public consultation

When a planning application is submitted, local planning authorities typically have eight weeks to issue a decision. Comments from the public must be submitted in writing to be formally included in the process. Decisions are either made by a Planning Committee comprising elected officials, where members of the public can register to speak, or are delegated to staff.

The right of appeal

The British planning does not bestow the right of appeal to third parties. Third parties may only make appeals on points of law in a Judicial Review to the High Court, challenging the local authority on whether it has followed correct procedure or given consideration to all matters required by law. Third parties may also file complaints with the Local Government Ombudsman over issues of fairness or procedural correctness; however the Ombudsman cannot overturn a planning decision.

The appeals process

An appeal can be triggered if an LPA refuses to grant permission for a development, imposes conditions on an approval, or fails to address an application within a given time frame. Once a decision has been made by the LPA, only the applicant has the right to appeal to the Planning Inspectorate. Appeals are made to the Secretary of State through the Planning Inspectorate. During an appeal, the Inspectorate considers all material planning considerations submitted by the appellant, the LPA, and anyone else who made representations on the original application.

Format of appeal submissions

Planning appeals are submitted though written representations, usually in the form of a statement of case. Parties may comment on each other's written statements. Most types of appeal are addressed either through a Hearing or a Local Inquiry. Hearings involve the submission of written evidence, followed by a round-table discussion led by the Inspectorate. Third parties are able to attend and participate in the discussion. Hearings typically take one day and include a site visit.

The OMB by comparison

Compared with other Canadian jurisdictions and the UK, Ontario allows appeals of the broadest range of municipal decisions. Ontario's rights to appeal are also very broad; whereby any third party who participated in the initial consultation process before Council can appeal a matter to the OMB. The powers of the OMB itself are also more extensive than other appeal bodies. The OMB is able to make decisions on planning rather than on procedural grounds and can modify planning instruments.

1.5 Statistical analysis on OMB files

The following is an analysis of the type, number, and geographic distribution of files in the OMB caseload based on Environment and Land Tribunals Ontario annual reports and the Expert Solicitor's review of some 420 recent decisions delivered from December 2015 to June 2016.

Regional Distribution

The regional distribution of files coming to the OMB has remained fairly steady over time. Reporting on statistics is not consistent but the general pattern is that the GTA accounts for about half of all files (Toronto 25-30%; York 10%; Halton, Peel, and Durham less than 6% each). Ottawa generates about 6% of the OMB's work per year and the rest of the files originate from around the province with no one municipality accounting for more than 5% of the total.

Types of Appeals

The data shows that the number of annual appeals that the OMB receives is fairly constant with an average of 1,830 appeals received each year over the past decade (Figure 1). Of these appeals, nearly half (46%) consist of minor variance and consent appeals.

Hearing Events

Over the past decade the OMB has presided over an average of 1465 hearing events per year (data from 2003-2014). Hearing events include pre-hearing conferences, settlement hearings as well as full hearings of any length. They are different than hearing days. Most hearing events (86%) take one day or less. These short hearing events comprise about half of the OMB's overall workload taking up 54% of hearing days (data from 2012-2014).

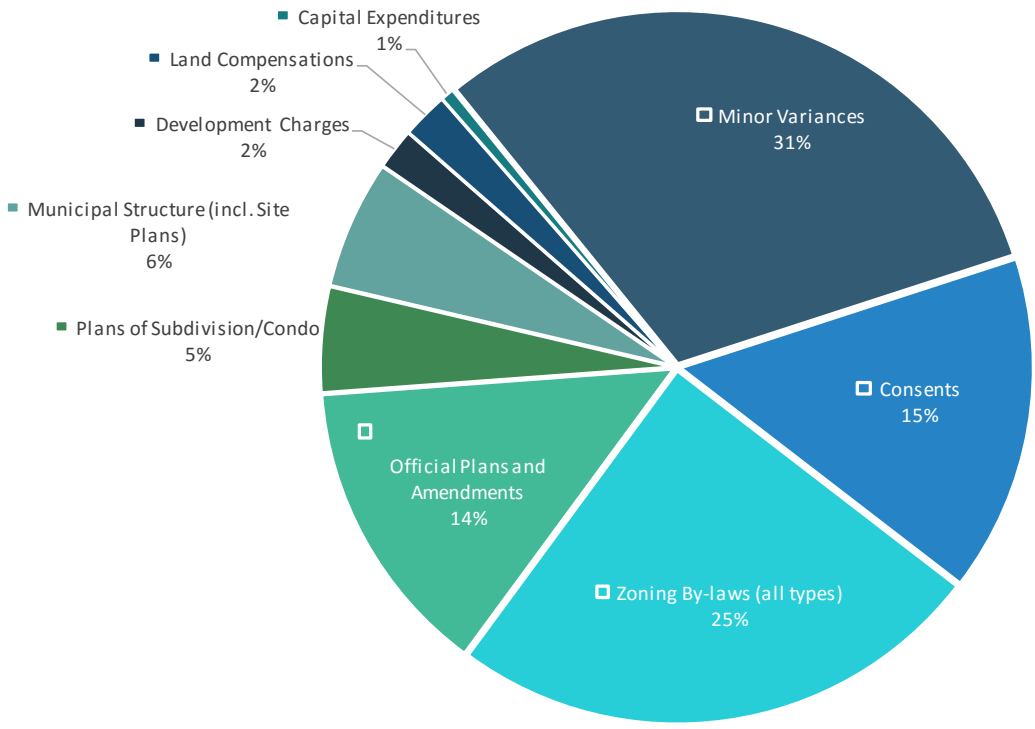

Figure 1: Types of Appeals to the OMB: Averages from 2003-2014.

Hearing Days

The data show that only 6% of hearing days in 2012/13 and 12% of hearing days in 2013/14 took more than twenty days, averaging 9% over 2 years (Figure 2). Files that have taken more than 20 hearing days include Halton's Regional Official Plan Amendment 39 which has been under appeal since 2012 and the Region of Waterloo's Official Plan which spent over four years at the OMB. Appeals related to Toronto's Central Waterfront Secondary Plan were first heard in 2005 and related hearings continue to this day. While the percentage of files that warrant this type of long hearing is small, this report's research points to these long hearing events as a major source of dissatisfaction with the OMB.

Number of Hearings

From 2003 to 2014 an average of 2138 hearings were scheduled. Of these, an average of 1465 hearings were held (68%). Of these hearing events, an average of just 68 mediation events were held, representing a small portion (5%) of the OMB's overall work. However, it should be noted that these may involve greater time commitment and play a greater role in complex cases.

In summary, the OMB's Annual Reports and the close reading of hundreds of recent decisions tell us that much of the Board's hearing event work happens quickly and efficiently. These achievements are not in dispute. Given that more complex files face long delays, however, the question of why so much of the Board's time is devoted to minor variances and consents is raised. The initiation of local appeal bodies by at least one major municipality (Toronto) is in part a response to that question.

See Appendix D: Statistical Data for more details on the statistics presented above.

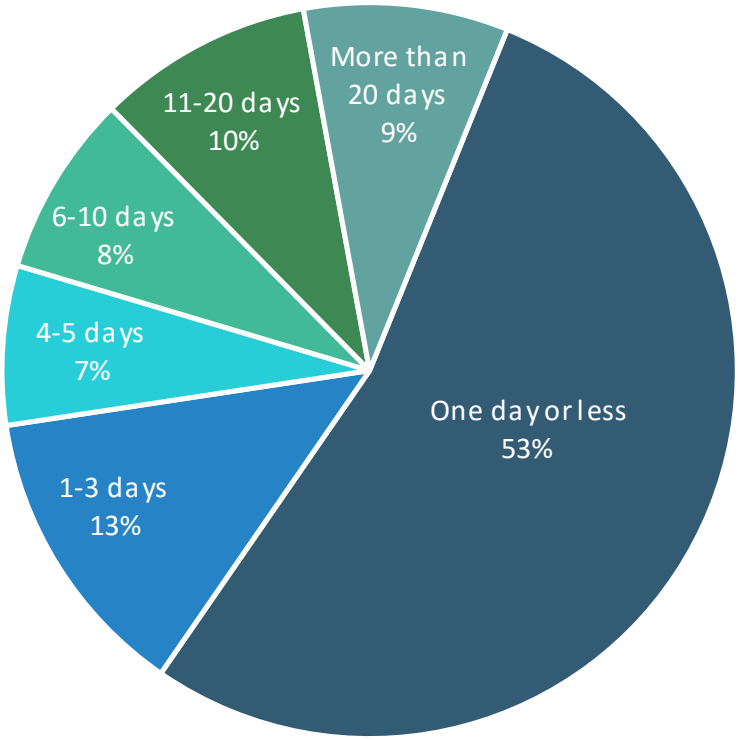

Figure 2: Duration of OMB Hearing Days: Averages from 2012/13 and 2013/14.

2 ISSUE IDENTIFICATION

The research team prepared and distributed questionnaires to RPCO members (Appendix C) and received responses from all of them. Follow-up interviews were held with RPCO members and their key staff. The research team also undertook interviews with key people in planning, law, municipal and provincial policy, and the development industry. It is evident from the questionnaire results and the interviews that many municipalities and regions are experiencing very similar issues with the performance of the OMB (in particular those in the Greater Golden Horseshoe (GGH)), while some others find that the OMB is working quite well. This research points to several issues of concern to those who frequently interact with the Board.

2.1 What is working well?

In their questionnaire responses and in subsequent interviews, respondents raised several good news stories – files that were handled well, and issues that were resolved efficiently to the satisfaction of all parties. The recommendations below will echo these good news stories by identifying and standardizing current non-legislated best practices in order to improve the whole system. In particular, respondents reported satisfaction with the OMB process in cases where:

- Appeals are resolved through mediation and hearings are avoided;
- Appeals are effectively scoped prior to the hearings and are grouped into topics to be heard at different points in the hearing;
- Board members hold all parties to the scoped issues list, achieving a quick resolution;
- Board members schedule a series of pre-hearing conferences and push all parties for results, continuing to schedule formal and informal meetings as talks progress rather than waiting for the hearing date to resolve issues;
- Appeals without merit are quickly dismissed; and
- Board members demonstrate good mediation skills and manage conflict effectively.

2.2 What needs improvement?

Many respondents reported concerns, however, where the presence and proceedings of the OMB needed improvement. Most of the concerns had to do with large, lengthy, and complex files coming before the OMB. While the Board generally resolves many small matters efficiently, the system appears ill-equipped to handle large-scale, multi-party appeals of entire plans, sections of plans or plan amendments, or very complex development applications that impact key official plan policies. On these files, the Board process is too slow, too litigious and too expensive. As a result, policy implementation is held back for too long, and private interests operate in uncertainty. Community members are intimidated by the Board's cost and complexity and, while they may participate in hearings, they often feel ignored.

Five inter-connected issues of concern arose:

1. Large, complex hearings take too long and tie up resources.
2. Resolving disputes at the OMB is expensive.
3. The OMB has insufficient regard for the decisions of municipal staff and Councils.
4. The process is too litigious.
5. The *de novo* hearing limitations

ISSUE 1:
Large, complex hearings take too long and tie up resources

Municipalities, particularly those in the GGH, can get stuck in a perpetual cycle of overlapping and inconsistent plan approvals. Interviewees report feeling gridlocked by having portions of their official plans and/or zoning by-laws stalled in appeals at the OMB – sometimes for years – while development applications continue to come in that are subject to the regular processing time requirements. Staff struggle to shape applications to be in line with stated municipal policy when much of that policy is not yet in force.

Issue 1A) Administrative delays at the OMB contribute to the time it takes to have complex issues resolved.

In the Environmental & Land Tribunals Ontario's (ELTO) most recent Annual Report that discusses the scheduling of hearing, (2012-2013), 83% of cases had a first hearing event within 180 days of filing of the last application that formed part of the case. Put the other way, 17% of cases languish at the Board with no pre-hearing conference, settlement meeting, mediation event or hearing scheduled for more than six months. In addition, large and complex cases can continue to draw appeals long after the file first arrives at the OMB. In those cases, even if the first hearing event is scheduled within a reasonable time from the receipt of the last appeal, the original appeal may have been in the Board's hands for months or even years. We also heard from respondents that complex files require several pre-hearing conferences before moving to the hearing stage and there can be long delays between these meetings.

The time between the end of hearings and the issuance of a decision by the OMB also contributes to delays. Although the OMB reports that in 2012-2013, 82% of decisions were issued within 60 days of the hearing, we heard from respondents that part of the delay associated with bringing appealed planning documents into force is waiting for decisions to be issued after hearings have ended. We also heard that decisions are issued quickly for site-specific development cases, including minor variances, while decisions related to the adoption and approval of municipal or regional policy documents are too often subject to long delays in policy implementation.

Issue 1B) The length of hearings themselves contributes to delay.

Interviewees report that hearings are taking longer than necessary because matters before the Board are not sufficiently scoped prior to the hearing. Issues lists prepared by parties are kept deliberately broad and the degree to which issues are scoped prior to hearings varies widely by Board member. The mechanism exists for scoping, by way of motion and decision, but it is complex, expensive and time consuming and, because it is a discretionary decision, it is unpredictable. A lack of scoping can result in repetitive witness testimonies that add to the length of hearings. One commissioner noted that, "In the 1980s a two-week hearing was considered huge. Now we see seven-week hearings." This problem is particularly prevalent in the municipalities subject to the implementation of provincial Growth Plan policies.

Delays in scheduling pre-hearing conferences, teleconferences and hearings can often be attributed to scheduling issues between the lawyers and consultant expert witnesses, and the OMB members' own schedule. Many respondents suggested that event dates should simply be set and all parties should be expected to find a way to make the dates work.

Furthermore, delays in scheduling long hearings and delays in issuing decisions can result in a perpetual cycle of appeals and conformity exercises as dispute resolution overlaps with the required review time periods. The policies are at a gridlock and municipalities struggle to implement both local and Provincial policy.

ISSUE 2:
Resolving disputes at the OMB is expensive

A growing concern with the OMB's current role in the planning process is that resolving disputes is very expensive. Several respondents report that costs are rising as cases before the OMB become more and more complex.

Issue 2A) The OMB consumes a lot of staff time and resources.

RPCO members report that preparing for and attending OMB hearings involves substantial direct costs for external consultants and lawyers and consumes considerable dedicated staff time. For all municipalities this diverts resources away from other planning matters but it is a particular issue in smaller municipalities where staff numbers are small. For most large RPCO municipalities, OMB hearings occasion direct annual costs of between $500,000 and $4 million on external consultants and lawyers. This is over and above the considerable cost of internal staff time and resources. Halton Region, as an example, has spent $3.5 million at the OMB over the past four years while the Region of Waterloo spent $1.7 million defending its regional official plan.

Full OMB hearings, attended by consultant expert witnesses, staff expert witnesses, consultant lawyers and staff lawyers, require significant amounts of time and money to prepare for and to attend. Full hearings are only one form of dispute resolution process that the OMB can employ and are arguably the least efficient and the least effective at resolving complex multi-party disputes in the name of good planning. Maximizing opportunities to resolve disputes without full hearings will serve to reduce direct and indirect costs for all parties.

Issue 2B) Cost concerns are driving decision-making.

RPCO members expressed an increasing concern that staff planners and Councils must sometimes make decisions geared toward avoiding OMB hearings because the municipality cannot afford to go to the Board. Making planning decisions contingently to avoid a costly dispute resolution process highlights the increasingly problematic position of the OMB within a planning system founded on the expression of 'good planning' practice.

ISSUE 3:

The OMB has insufficient regard for the decisions of municipal staff and Councils

An issue of major concern to respondents is that the procedures of the OMB and the outcomes of cases do not consistently have regard for the decisions of municipal councils.

Issue 3A) Regard for Council decisions is inconsistent.

Respondents to our questionnaire felt that when policies are developed at the municipal level with extensive professional staff input, public consultation, and debate at council, that they should not be dismantled on appeal. Indeed, to confirm the substance of these deliberative processes, Bill 51 introduced amendments to the *Planning Act* requiring that the OMB "shall have regard to" the decisions of municipal council in making its decisions.

The intention of introducing the "have regard to" language for municipal decisions was to address concerns that the Board was not adequately considering the information and materials presented to, and ultimately the decision of, a democratically elected council. However, in practice, this test, added under the area of the *Planning Act* that includes a long list of other matters to "have regard to", gives complete discretion to the Board member as to the weight any of these matters would have in their decision, respondents find that the OMB has in its practice taken varying and contradictory approaches to the application of this subsection of the *Planning Act*.

In some OMB cases, the Board has regard for municipal policies that are under appeal and are not in full force and effect because they speak to the municipality's intentions. In other hearings, however, these policies are disregarded because they are not yet in force. Many respondents also feel that municipally-initiated policy documents that are adopted and/or approved to implement provincial policy should not be subject to appeal.

RPCO members feel that the OMB should give considerable weight to those municipal decisions in determining any matters under appeal.

Issue 3B) The status of guidelines and other non-statutory documents is unclear.

The consideration given to planning instruments such as urban design guidelines and precinct plans (which are adopted by councils but do not carry weight under the *Planning Act*) and secondary plans (which do carry legislative weight but are widely variable in their level of detail) is inconsistent in OMB decisions. Guideline documents are increasingly being developed with a substantial amount of public consultation with the expectation that they will be upheld by Council, staff, applicants and the OMB. However, OMB members frequently disregard these documents in their decisions.

Additionally, respondents voiced their frustration that they are unable to implement community planning permit systems (formerly known as the development permit system[1]) because the initial policy framework is appealable.

Issue 3C) The OMB hears new evidence without remitting matters back to Council.

The procedures of the OMB can also undermine municipal decision-making processes in other ways. Respondents have found that Board members often allow appellants to make changes to their application or submit new information or new studies during the hearing process. This new information has not been previously reviewed by municipal staff nor made available to Council before it issued its decision. While the *Planning Act* contains provisions that allow the OMB member to remit matters back to Council, which would seem appropriate in many such circumstances, this power is rarely used. Respondents report that either motions to remit information back to Council are refused or the delays associated with initiating the motions act as a disincentive to put them forward. Respondents are concerned that the OMB is over-reaching in its scope when it issues decisions on these revised applications.

1. Per the *Smart Growth for Our Communities Act*, 2015 (Bill 73) the former Development Permit System is now referred to as the Community Planning Permit System in the *Planning Act*.

Issue 3D) The OMB over-reaches in its decisions.

RPCO members are also concerned that the OMB over-reaches in its decisions by setting policy rather than simply resolving disputes. For example, cumulative decisions to approve developments in areas of Toronto with high growth pressure undermine the municipal growth strategy and are creating a de facto official plan represented by the Board's collective decisions. In another municipality, an OMB decision to approve a development that was refused by Council also determined the Section 37 benefits, a process usually agreed upon through extensive negotiation between a developer, the community, and the municipality.

Several interviewees reported that Board members have treated the municipal planner as less qualified than outside consultant witnesses. This preference, if accurate, for outside expertise would be a concern as it would indicate a disregard for municipal professionalism. Respondents also noted that community groups are often not taken seriously at the Board unless they have the resources to bring in outside expert consultants to testify. Some noted that the participation of community groups is received as tokenistic – that the OMB provides a venue for groups to air their views while not weighing those views heavily in its decisions.

However, these concerns may not be borne out in actual examination of Board behaviour. Findings from Moore's research, albeit limited to Toronto cases only, suggest that the OMB most often 'sides' with the municipality in a substantial majority of cases where the Council adopted the planning staff recommendations.

Issue 3E) The OMB is inconsistent with its application of precedent.

Some RPCO members questioned whether the OMB should be bound by precedent in order to provide more consistency between decisions. This research considers that while the OMB should be consistent on procedural matters, decisions on land use and public policy matters should not be bound by precedent. In planning, each development application must be evaluated on its merits and within its site context. A decision related to a particular building or site should not bind future decisions, even where the context is similar. If OMB decisions were bound by precedent, the accumulation of OMB decisions would soon entirely supersede municipally-led comprehensive planning.

Consistency on procedural matters, however, should be improved. The OMB should treat issues such as the submission of new evidence, the appearance of new parties, the status of municipal guideline documents, and the requirement to send matters back to Council consistently. Standardizing direction on these issues into clear OMB procedures should improve predictability and consistency on those matters.

ISSUE 4:
The process is too litigious

The OMB, and therefore the whole planning process, has become too legalized and the proceedings too court-like. Respondents report that the court-like proceedings allow parties with significant resources to spend time on legal manoeuvring rather than on the issues in dispute, adding to overall costs for all parties.

Respondents are concerned that achieving positive outcomes at the Board has become a matter of 'good lawyering' rather than 'good planning'. A symptom of this issue is that staff planners who are tasked with evaluating the merits of planning applications are assessing applications with an eye to what will be defensible at the OMB if the municipal decision or non-decision is appealed. Planners tell us that they are strategizing for "the win" based on the OMB's record of decisions instead of evaluating the merits of an application based on its adherence to approved municipal plans, policies and guidelines.

Respondents expressed concerns that the OMB's court-like proceedings and the aggressive cross-examination of witnesses is not conducive to resolving disputes over land use and is out of step with broader cultural trends in management and dispute resolution. Further, at a time when the gender and ethno-cultural composition of the planning profession is enjoying new diversity, the reputation of the OMB as an unnecessarily combative arena could detract from the appeal of planning as a profession.

ISSUE 5:
The *de novo* hearing limitations

Many users and observers of the OMB have called for limits to the Board's use of *de novo* hearings. Some, including contributors to this research, have argued that the OMB should not hear matters *de novo* but should confine itself to finding whether municipal decisions are legally or procedurally flawed.

This research revealed that, while the OMB may conduct hearings *de novo* because it is an administrative tribunal and not a judicial court, in procedure and practice, it does not actually conduct full *de novo* hearings.

The OMB's Rules of Practice and Procedure allow for early dismissal, for mediation, for pre-hearing conferences, and the *Planning Act* requires Board members to 'have regard to' the municipal decision and any information and materials that they received in relation to the matter – each of these procedures effectively restricts the Board's ability to truly hear matters *de novo*. Given that the primary concerns with the OMB are that it is too slow, too expensive and too litigious, this research has determined that reconstructing the OMB as a body that does not hear matters *de novo* will not, in itself, alleviate these concerns because true *de novo* hearings are rare.

Rather, this research has determined that the Province can use legislation to limit appeal matters and both the Province and the Board can impose directions for changes to the OMB's Rules of Practice Procedure so as to effectively limit the scope of hearings. See Section 3.5.

3 REFORM OF THE OMB

Recommendations

The recommendations for reform are structured around five actions. Each action is designed to focus and improve the operations of the OMB and the overall planning context within which it operates so that the OMB can more effectively and efficiently resolve the land use disputes that will still arise.

The overall goal of these directions is to think big and to press for bold, substantive change to a system that is now too slow, inefficient, expensive and uncertain of outcome. As discussed above, the OMB is a necessary institution; some form of secondary determination of land-use planning matters exists in most liberal democracies. The OMB is, however, the most extensive in its powers and operation of any such jurisdiction surveyed. The collective intent of the reforms outlined below is to retain the OMB to focus on the cases that truly require dispute resolution; to assist the work of the OMB towards its prime directive of 'good planning'; and to reduce the role that formal hearings play in the dispute resolution process so that the whole appeal process can run more efficiently.

The recommendations for reform follow the issues raised by the RPCO members, issues identified in the background research phase reviewing the well-travelled grounds of previous attempts at OMB reform, and input received during other stakeholder interviews.

This array of directions for reform does not form a fully integrated package. If some overall directions are implemented, they may cancel the need for other specific recommendations. Further, some recommendations may be more relevant to areas of the province that are experiencing strong growth pressures.

The recommendations, grouped under the five proposed actions, are:

1. **FILTER:**
   Filter certain matters from appeal so that only issues of legitimate planning substance (that do not interfere with the implementation of provincial policy) appear before the OMB.

2. **SHARPEN:**
   Sharpen the practices and procedures of the OMB so that files move through the system more efficiently.

3. **STRENGTHEN:**
   Strengthen the professional capability of the OMB to undertake its post-reform role.

4. **RESOLVE:**
   Rigorously scope matters under appeal and resolve more disputes through mediation and alternative dispute resolution (ADR) methods prior to or in place of formal OMB hearings.

5. **STEP UP:**
   In order for these proposed reforms to the OMB to be most effective, both the Province and municipalities need to step up their performance in the overall planning system.

Following each recommendation for reform, this Report highlights whether the effect of each recommendation will require one or more of the following changes:

1. **Legislative** (i.e. changes to the *Planning Act and/or Statutory Powers Procedure Act);*
2. **Procedural** (i.e. changes to the Ontario Municipal Board 's Rules of Practice and Procedure and/or the *Ontario Municipal Board Act)*; and/or
3. **Administrative** (i.e. administrative changes for municipalities, regions, Province and/or the OMB).

3.1 FILTER

Municipalities typically undertake extensive public consultation and analysis to arrive at decisions. Decisions arrived at by democratically elected representatives should not be easily overturned. Further, some comprehensive planning decisions, when approved by any upper-tier municipality and/or the Province, should be protected from appeal so that Ontario's municipalities can operate with current, in-force planning policies in place.

This direction for reform proposes to filter the types of planning appeals that appear before the Board so that more matters are either removed from appeal or resolved in the municipal arena. Only matters of legitimate planning substance, provided they do not interfere with the implementation of provincial policy direction, should appear before the OMB.

To filter matters before a formal hearing at the OMB, the following actions are proposed:

A) Implement Bill 73 (*Smart Growth for Our Communities Act*) and Bill 204 (*Promoting Affordable Housing Act*) through the appropriate regulation.

The Province has introduced or enacted two pieces of legislation that, when fully implemented, will limit appeals of certain matters. Many of the recommendations in this report build upon these pieces of legislation and require that they be fully implemented.

In the case of Council adopting a "new official plan", Bill 73 now eliminates the right of appeal of the entire new plan and does not allow appeals of certain parts of an official plan,. It also includes a two-year "time-out" period prohibiting applications to amend new official plans, new comprehensive zoning by-laws and minor variances of site-specific zoning by-laws. This is a welcome change which may provide some stability to new plans. However, as municipalities rarely adopt entire new official plans or comprehensive zoning by-laws, its impact may be limited.

In May 2016 the Province introduced Bill 204, the *Promoting Affordable Housing Act*, 2016 which enables municipalities to adopt inclusionary zoning policies to require that developers provide affordable housing in new developments. Bill 204, as proposed, does not allow for appeals to the OMB for decisions, by-laws or conditions related to inclusionary zoning policies, except by the Minister.

The ability to adopt inclusionary zoning policies without the threat of appeal and the protection of new official plans from some appeals is a step in the right direction. On their own, however, these pieces of legislation do not go far enough to resolve the back-log in the approval of plans. Municipal official plans will still be held up, possibly for years, while the OMB resolves dozens and sometimes hundreds of appeals of sections of plans. Therefore, a more comprehensive restriction on appeals of municipal policies is warranted, as proposed in the following recommendation.

B) FILTER: Remove the right to appeal all municipally-initiated official plans or official plan amendments in defined circumstances.

The *Planning Act* has been amended in the past to remove the right to appeal certain municipal policies including implementing by-laws that allow second units, settlement area boundary changes, and the removal of lands from an area of employment. The *Planning Act* should be further amended to make all municipally-initiated comprehensive and area-wide official plans and official plan amendments exempt from appeal. Land owners and community interest groups would no longer be able to appeal policies as they apply to the full geographical area of the municipality or, in the case of secondary or precinct plan, to a substantial part (to be defined) of that municipality. People would, however, retain the right to appeal policies as they apply to particular lands without compromising the implementation and application of the overall policy.

The Province would retain its right of appeal to ensure that municipal policies are in keeping with provincial policy. In addition, municipalities would retain their right of appeal to provide a check on the provincial power to alter municipal policy.

This reform is necessary to create an environment where municipalities can operate with official plan policies that are up-to-date and in force. These foundation policy documents must be in place and must not be held up in totality by the resolution of site-specific appeals.

The intention of this recommendation is to limit appeals of entire official plan policies while allowing appeals of how those policies impact development rights on particular pieces of land. Those disputes would still proceed through a reformed OMB process but the overall official plan policies would be in force for the remainder of the municipality or defined planning area (once adopted by the municipality and approved by the Region or the Province).

For example, municipal official plan policies with respect to aggregates would not be subject to appeal. However, a person could appeal the application of the aggregates policies to a particular property and have that dispute resolved through OMB processes. Further, a municipal land use map, contained in an official plan, would not be subject to appeal while people could appeal a particular property's inclusion or exclusion from a particular designation.

As now, private official plan amendment applications could still be submitted (subject to the time-out periods under Bill 73). However, in order for the implementation of the official plan to operate with stability, any municipal refusal of a privately-initiated official plan amendment could not be appealed.

Effect of recommendation: Legislative.

C) FILTER: Reduce the role of the OMB in dealing with appeals of minor variances and consents.

The OMB is currently able to process appeals to minor variance and consent decisions relatively efficiently. Hearings are generally scheduled within a reasonable amount of time, hearings are short, and decisions are issued quickly. In 2013-14, 25% of files at the OMB were minor variances and 10% were consents.

In order for the OMB to address the backlog and delay associated with its more complex files, these minor cases may be better dealt with elsewhere - as they are in most other jurisdictions.

Having appeals heard through a Local Appeal Body (LAB) rather than at the OMB is already an option. Municipalities should be further encouraged to set up LABs as only one (Toronto) has done so since the enabling legislation was passed in 2006. The Province should examine why LABs are not being implemented in more jurisdictions and encourage their more widespread use.

If costs are a deterrent, the Province should consider amending the *Planning Act* to allow two or more municipalities, regions, or counties, to form LABs together and share costs.

To implement this recommendation, the Province will have to provide sufficient resources to municipalities to set up local appeal bodies – perhaps diverted from the relief of the Board having to deal with these matters. In addition, municipalities must follow through on the powers given to them through Bill 73 to establish criteria for what constitutes a minor variance. This will mitigate the risk that applications will proceed through one or more minor variance or consent applications when they should be determined through applications to amend the zoning bylaw or through plans of subdivision.

In municipalities where LABs are not set up, appeals of minor variances and consents will continue to be heard at the OMB. These appeals should proceed through a triage system with more rigorous procedural timeline standards to separate such hearings from the Board's more complex files, providing an "OMB-lite process" for any appeals. Such a process, without the formality, delay and expense of a full OMB hearing process and one in which the role of mediation is central, would be analogous to the operations of a Small Claims Court.

Effect of recommendation: Legislative, Procedural, and Administrative.

D) FILTER: Empower municipalities to reject appeals where oral or written submissions were not made.

The *Planning Act* grants the right of appeal to "a person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council." (24(1)). Despite this, municipalities sometimes receive appeals from people who did not make submissions prior to the council decision. In these cases, municipalities should be empowered to reject the appeal without being required to forward it to the OMB with a recommendation for dismissal.

Effect of recommendation: Procedural and Administrative.

3.2 SHARPEN

Many of the frustrations with the OMB stem from its lengthy and cumbersome processes and the court-room nature of hearings.

The following actions are proposed to sharpen the procedures of the OMB so that files move through the system more efficiently:

A) SHARPEN: Dismiss appeals that lack sufficient land use planning grounds.

The OMB currently has the power to dismiss appeals without a hearing, on its own initiative or on the motion of any party, if it is of the opinion that "the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the plan or part of the plan that is the subject of the appeal could be approved or refused by the Board" (*Planning Act* subsection 17(45)(a)(i)). This power, replicated in other subsections of the *Planning Act*, is rarely, if ever, used on a Board initiative.

The OMB should use this power more frequently, provided its determinations are properly grounded and made public, within a framework that could meet any challenge for judicial review. The proper exercise of such power could require that the Board be supported by professional planning staff (see below in 'Strengthen') so that files can be appropriately screened for planning merits in advance for consideration by the OMB panel and recommended for dismissal if they are found to lack apparent land use planning grounds.

Effect of recommendation: **Procedural.**

B) SHARPEN: Increase the standards for submitting an OMB appeal.

To ensure that the OMB is tasked with resolving only those disputes with valid land use planning grounds for appeal, and to effectively scope the matters under dispute, the standard for submitting an appeal to the OMB should be raised. Appellants should be required to:

- Provide in their appeal a rationale that addresses and defines the good planning elements upon which the appeal is founded. This rationale would be a critical document in the Mandatory Review and Mediation Process suggested in 'Resolve' below;
- Identify the specific changes being requested and provide, where appropriate, alternative policy wording or mapping; and
- Pay an appeal fee that is scaled to better reflect the importance of the outcome of the appeal on the public interest.

Bill 73 introduced a requirement for "enhanced reasons" as part of an appeal letter. As an example, appellants will need to explain why the decision of council is inconsistent or fails to conform with provincial or upper-tier policies. As with many of the other provisions of Bill 73, this is a crucial first step toward ensuring that the OMB is tasked only with matters requiring legitimate planning dispute resolution.

Effect of recommendation: Legislative and Procedural.

C) SHARPEN: Institute procedural controls designed to improve the scheduling of hearing events.

One of the major issues identified in this research – and one that informed many of these recommendations – is the delay associated with scheduling events at the OMB. The following actions are proposed to reduce delays in scheduling:

- Provide two Board members for any hearing scheduled for ten or more days. If necessary, Board members would operate as a team with only one member sitting at a time, allowing one to cover the days that the other is not available so hearing dates are less impacted by individual members' schedules.
- Expand the use of technologies such as electronic filing, video-conferencing, and other information management strategies to overcome scheduling and travel obstacles.
- Exert greater authority in scheduling pre-hearing conferences, meetings, and hearings based on the Board's availability as opposed to scheduling to accommodate all parties. In other areas of the judicial system, court dates are set and parties must appear and the judge does not consult on schedule.

Effect of recommendation: Procedural and Administrative.

D) SHARPEN: Institute procedural controls designed to improve the range and efficiency of dispute resolution processes.

The length of hearings themselves also contributes to long delays in having disputes resolved. The following actions are proposed to help the process run more quickly:

- Move files through a Mandatory Review and Mediation Process (described below in 'Resolve') to reduce the number of issues in dispute and to focus the scope of any resulting hearing.
- Phase hearings so that if one decision may make subsequent hearings unnecessary, that matter is decided first. For example, if a refusal of an official plan re-designation would remove the need to explore associated zoning or subdivision appeals, the Board should first decide on the official plan matter alone.
- Set page limits for submitted documents.
- Require site visits by Board members before hearings begin. This will ensure that the Board members are familiar with the local context and will remove the need for detailed testimony on the site context.
- Develop protocols for written rather than in-person hearings.
- Institute metrics for issuing timely decisions and require Board members to report on those metrics in annual reports to ELTO and in annual performance reviews.

Effect of recommendation: Procedural and Administrative.

E) SHARPEN: Institute procedural controls designed to make the process less litigious.

In order for dispute resolution process to resolve land use planning issues using a consensual and more inclusive environment, the following recommendations address expediency and focus:

- Limit examination-in-chief to filed affidavit evidence, with page number limits.
- Limit cross-examination to issues relevant to the witness, as listed on the affidavit.

This recommendation aims to standardize higher levels of hearing room decorum. The Board member does and will continue to have considerable control over decorum during hearings. An atmosphere of respectful problem-solving should accompany the land use dispute resolution process. Board member guidance and actions, together with the recommendations here, can help a polite and productive atmosphere prevail.

Effect of recommendation: Procedural.

F) SHARPEN: Institute rules of practice and procedure regarding the treatment of new evidence brought to the Board.

The OMB's Rules of Practice and Procedure should be revised to describe how the Board Members should treat new information and material submitted at an OMB hearing that was not provided to council. While Bill 51 revised the *Planning Act* to include new provisions to restrict new evidence before the Board, the Board's own Rules of Practice and Procedure have not adequately changed to describe under what circumstances this information and materials should be sent back to council for them to reconsider their decision.

Updated procedures must also address the timelines that should be followed by council when they are reviewing and making decisions on the new evidence brought forward from the Board.

Effect of recommendation: Procedural.

3.3 STRENGTHEN

The professional capacity of the OMB needs to be strengthened to carry out its role more effectively.

A) STRENGTHEN: Ensure that the OMB's budget is adequate to support and augment enhanced planning staff review of files.

Several of the recommendations proposed in this report require that the OMB has the professional planning staff capacity to review files, support the dispute resolution processes, and pro-actively bring parties together to move disputes through the system. These actions collectively suggest the need for the Board's staff to move beyond basic case management to providing Board members with evaluations of the merits and scope of cases. This administrative review can be of material assistance both for the enhanced scoping and alternative dispute resolution processes being recommended in 'Resolve' and the 'Filtering' processes recommended above.

While Board members would retain all decision-making powers with respect to dismissing, scoping, and issuing decisions on matters before them, professional planning staff – experienced Registered Professional Planners – would support Board members by reviewing written submissions and providing publically accessible advice to Board members.

Effect of recommendation: Administrative.

B) STRENGTHEN: Provide better compensation for Board members.

The current remuneration offered to Board members does not reflect the impact that Board decisions have on the planning system in the Province. To properly perform their function, Board members should be compensated and have terms of employment more on a par with senior civil servant salaries. Better compensation may serve to attract, for example, senior professional planners who are currently underrepresented at the Board. It may also generate interest in candidates – such as senior planners nearing retirement – with experience and expertise in mediating land use planning disputes.

Effect of recommendation: Administrative.

C) STRENGTHEN: As appropriate, insulate Board decisions from administrative or judicial review.

Because several of our recommendations aim to speed up the dispute resolution process and limit the length of hearings, implementing them may raise the concern of a judicial review challenge to the decisions of individual Board members. Board decisions should be insulated from judicial reviews by having the OMB's Rules of Practice and Procedure updated to reflect recommendations such as the dismissal or scoping of appeals, limiting of the length of written submissions, and limiting evidence in chief and cross-examination. Such appropriate procedural regulation should provide adequate protection from judicial review challenge.

Effect of recommendation: Procedural.

D) STRENGTHEN: Enhance the standards for Board member appointment.

The research revealed that Board members have varying levels of expertise and experience in land use planning, and while some are proficient in mediation, others are not. The Province should set up qualification standards for Board members and prioritize experience and expertise in land use planning and mediation as key skills that Board members must hold. Furthermore, the appointment terms should be adjusted from the two, three, and five-year protocol currently in place to a six-year staggered term with one right to renewal (subject to satisfactory performance reviews described below).

Effect of recommendation: Procedural and Administrative.

E) STRENGTHEN: Institute Board member training and performance review practices.

In order to maintain the highest professional standards, OMB members and staff should be offered on-going continuing education opportunities, training in dispute resolution, and exposure to best practices in other jurisdictions on issues that frequently come before the Board. Regular performance reviews should be required, the results of which would be tied to re-appointment criteria.

Specific training should be offered on issues such as granting party status and admitting new evidence where more procedural consistency between Board members is required.

Effect of recommendation: Procedural.

F) STRENGTHEN: Relieve the backlog of files awaiting resolution.

All of the recommendations in this report are designed to help the system run more efficiently but the current backlog of files before the OMB must first be cleared before the impact of any new reforms can be assessed. The OMB (and by extension, the Province) must dedicate resources to resolve outstanding appeals – those that have been in the OMB system for more than two years – without further delay. This may require that additional Board members and mediators be assigned to these files and that case managers push to have pre-hearing conferences and hearing events scheduled.

Effect of recommendation: Administrative.

3.4 RESOLVE

Many of the recommendations in this report aim to limit the number of files that reach the OMB. For those appeals that do reach the Board, implementing the following recommendations will allow disputes to be thoroughly scoped before they can proceed to a hearing so that hearings can run more efficiently.

Bill 73 amended the *Planning Act* to implement an extension to the time before a matter under appeal is forwarded to the OMB. This lays the foundation for mediation or other alternative dispute resolution (ADR) prior to (or, if successful, instead of) an OMB hearing. The following two recommendations call for a file to proceed through a Board-sponsored planning-based scoping process and for every opportunity for resolving disputes through ADR methods to be explored before parties appear in a formal hearing.

While Bill 73 allows municipalities to structure a dispute resolution process to occur after Council makes a decision but prior to any appeal being forwarded to the Board, this report recommends a slightly different approach to achieve a similar outcome of alternative resolutions to full, formal OMB hearings.

A "Mandatory Review and Mediation Process" is proposed that would take place under the auspice of the Board. Under this process the Board would be able to use its extensive powers to appropriately manage the appeal, to encourage expeditious dispute resolution, and to make timely decisions.

A) RESOLVE: Require that appeals proceed through a Mandatory Review and Mediation Process.

The Mandatory Review and Mediation Process (MRMP) described below represents a formalization and expansion of current best practices in two important regards.

First, all appeals, not only those where parties request mediation, would be subjected to MRMP. Second, a substantive 'review' of the appeal matter would be undertaken. That 'review' would formalize two steps now frequently used in the Board's mediation processes - a substantive early evaluation of the planning issues raised by the appeal; and a recommendation as to the route and scope of the appeal following the MRMP process. It would effectively act as a 'triage' for appeals, directing the Board on the most effective route to resolution. The MMRP would be applied as follows:

Upon receiving an appeal, the OMB would assign the file to a neutral mediator. The mediator may be a Board member (although not the member who would preside over any resulting hearing) or may be drawn from a roster of qualified planning professionals or others with training in dispute resolution.

The mediator would be responsible for moving the file through the MRMP process within a compressed time frame (75 days is suggested) to ensure that

the process is efficient, effective and succinct. The mediator would review the material submitted as part of the appeal. At a subsequent meeting(s), the mediator would hear a summary of each party's case, and guide the discussion to identify areas of agreement, opportunities for mediation, and identify specific issues in dispute.

The MRMP process would conclude with a mediator's report, submitted to the Board member chairing the matter, assessing the case and, for each appeal, providing a non-binding evaluation of the merits of the case and a recommendations related to one of the following three options:

1. **Dismissal:** The appeal is recommended for early dismissal if it is found to have insufficient planning grounds or if the appeal is withdrawn during the MRMP process.

2. **Alternative Dispute Resolution:** The appeal is recommended for mediation or settlement discussions if the parties involved are moving toward resolution during the MRMP window. The MRMP mediator may be invited to continue and mediate or another mediator may be selected with the parties' consent.

3. **Proceed to scoped hearing:** The appeal is recommended to proceed to a hearing that is scoped to the issues identified through the MRMP review. The option for written and/or video conferencing rather than in-person hearings should be available.

The recommendations in the mediator's report, while non-binding, would be presented to the Board member to review and would shape the extent of issues that the Board member would consider at the hearing. Most importantly, the MRMP process would represent a winnowing of issues and of parties, which could lead to the earlier withdrawal of appeals and the tight scoping of any resultant hearing. To be clear, the mediator's report would not include any confidential information that may prejudice the hearing process.

The MRMP process suggested above will need to be extensively 'road tested' to optimize its efficacy. A three-year trial process is suggested to see what processes and procedures work best to achieve the result of efficient and appropriate dispute resolution.

This recommendation will require that the Board be more interventionist in its approach to dispute resolution and that it exercise sufficient managerial agility to provide the appropriate mediation and support services within the tight timelines now set out in the *Planning Act*.

Furthermore, the research team acknowledges that many details of this proposed MRMP process remain to be worked out. In particular, its relation to the timelines set out for dispute resolution prior to the appeal being forwarded to the OMB set out in Bill 73 must be evaluated. For example, the point at which people may appear to seek party status may take place at the initial meeting with the mediator or may take place on the first day of any resulting hearing, as it does now. There is also a legitimate question as to whether this process would be absolutely mandatory or whether any exceptions would be contemplated.

The clear goal however, is to create a rigorous process whereby files that arrive at the OMB are evaluated for their planning merits and are scoped so that only those issues under dispute proceed to a hearing.

Effect of recommendation: Legislative, Procedural, and Administrative.

B) RESOLVE: Explore every avenue for dispute resolution prior to hearings.

As described in the MRMP process above, certain files would be recommended to proceed with further ADR including mediation and settlement discussions. The information contained in the mediator's report will not include any confidential information that may prejudice the appellant's case before the Board. These files, with the consent of the parties, would proceed to Board-sponsored mediation or private settlement discussions. These ADR processes would proceed with more aggressive objectives, deliverables and timelines.

Both the MRMP and any subsequent ADR processes must be subject to timelines that minimize delays. The initial MRMP process must be finalized within a reasonable time frame – perhaps 75 days – of appeals reaching the Board. ADR processes may proceed at different paces depending on whether formal mediation is taking place or settlement discussions are happening outside the formal OMB system. In either case, OMB staff assigned to the file must be pro-active in pushing timelines and bringing parties toward resolution.

If the ADR process does not result in a settlement that can go back to Council for approval, a mandatory report by the ADR representative would be provided to the Board chair detailing the agreed progress toward resolution and listing the agreed specific issues to be resolved through any hearing process.

Effect of recommendation: Legislative and Procedural.

3.5 STEP UP

For these proposed reforms to positively impact the planning system, both the Province and municipalities need to step up their professional planning contribution to make the overall planning system work more smoothly and to eliminate the broad avenues for appeal that current practices opens up.

The OMB, as envisioned through the reforms proposed in this report, will function to resolve land use disputes in an environment where the municipal official plans and zoning by-laws clearly reflect the municipality's intentions, are up to date with provincial policy directions, and are in force and effect. Both the Province and the municipalities need to step up and be more pro-active to ensure that municipal plans can meet those requirements. Contributors to this research expressed the desire to plan in an environment where municipal comprehensive planning exercises are enforced and are given appropriate weight. The recommendations in this section aim to achieve that by outlining what the Province and municipalities can do to strengthen their role in a reformed land use planning system.

1. The Province should step up

The Province should dedicate greater resources toward issuing timely decisions on matters of Provincial Interest, policy direction and policy implementation. The Province should issue clear direction to the Board to improve procedural consistency. Accordingly, the Province must be prepared to step up in the following ways:

A) STEP UP: Clarify the requirement to "have regard to" municipal decisions.

The *Planning Act* requires that OMB decisions "shall have regard to" any decision of council, and any supporting information and materials, including oral and written decisions, that council considered in making the decision. However, this requirement is given varying and often contradictory weight in OMB decisions. The Province should provide binding interpretations of "shall have regard to" so that it can be applied consistently across all OMB decisions. This interpretation should be incorporated in to the OMB's Rules of Practice and Procedure.

Additionally, when Council is refusing, approving or adopting a requested planning amendment, it should include more detailed written reasoning for its decision. This detailed reasoning would form part of any subsequent record before the OMB and would provide the basis upon which the OMB reviews and thus "has regard to" the council decision. OMB decisions should clearly state the original municipal decision (if there was one), and explain any deviations from that original decision in the Board decision.

This recommendation cannot be applied where an appeal has been made for a non-decision of Council. The Province should explore avenues for requiring that an application resulting in a non-decision must, following the MRMP process, go back to Council for a public meeting and a decision before allowing the appeal to go to the Board.

Effect of recommendation: Legislative and Procedural.

B) STEP UP: Quickly and clearly resolve matters of Provincial conformity in municipal official plans and issue notification of conformity (or non-conformity) within reasonable time frame.

When the Province fails to efficiently process the approval or alteration of municipal official plans and policies, it contributes to the backlog of planning instruments under appeal at the OMB. This creates a scenario common to many Ontario municipalities: their planning instruments are piecemeal with some portions in effect and some portions under appeal while, in many places, development gets approved through fractured in-force regulations, creating Clergy Principle arguments [2]. The Ministry of Municipal Affairs must clearly and quickly issue conformity and approval statements for municipal official plans and official plan amendments. Alternatively, plans could be deemed approved, or in conformity, if no comment is received within a prescribed time such as 120 days.

Effect of recommendation: Procedural and Administrative.

C) STEP UP: When called upon to do so, produce provincial staff to provide evidence on the provincial policy in issue at the OMB.

RPCO members report that their municipal planners are often called upon to defend the interpretation or implementation of provincial policy in municipal plans. While provincial staff sometimes appear before the OMB at municipalities' request to speak to issues of plan conformity, most often the Province remains silent while parties at the OMB deliberate about whether a proposed piece of policy conforms to Provincial-level direction. When called upon to speak to a matter of conformity during an OMB dispute resolution process, the Province should either promptly issue letters of clarification or make appropriate staff available to appear to provide evidence on the provincial policy at issue.

Effect of recommendation: Administrative.

D) STEP UP: Issue guidance to the OMB on the weight that should be given to municipal guideline documents.

Municipalities increasingly develop design and area-specific guidelines to complement other policies and to communicate to developers and to the public how change in a certain area is envisioned. While guidelines do not have statutory weight, municipal staff generally rely on them when evaluating development proposals, as they signal Council's intentions. The OMB has treated municipal guidelines inconsistently, sometimes giving them little consideration at all although they informed staff and Council's original decision. Now that the Province has amended the *Planning Act* to include the promotion of well-designed built form as a matter of provincial interest, it should offer clear direction on how the OMB ought to consider the municipal guidelines that shape that built form. Provincial direction should be operationalized in the OMB's Rules and Procedures so that the Board can treat municipal design guidelines consistently.

Effect of recommendation: Administrative.

2. The Clergy principle states that, generally, land use planning applications must be judged on the basis of the law and policy in place on the date of the application.

2. Municipalities should step up

In some of Ontario's fastest growing cities – and certainly in Toronto which alone generates more than a quarter of the Board's business – the planning system has been described as consisting of 'permanent exceptionalism'; very little development occurs as of right. Planning departments are exposed to appeal because applications do not, nor are they expected to, conform to existing policies because the planning regulations are out of date, often unreflective of contemporary development pressures and precedents.

RPCO members seek to respond to development applications and proposals in an environment with clear planning direction in place. In order to achieve that, municipalities must pro-actively plan and must be, to some extent, insulated from appeals in order to do so. In "exchange" for reforms that reduce appeals, municipalities must be prepared to step up in the following ways:

E) STEP UP: Planners be forthright with their professional planning opinion.

RPCO members expressed concerns that municipal planners are not sufficiently empowered to offer candid planning opinions to councillors, communities, and development industry, partly because the litigious climate of planning approvals encourages planners hold their cards close to their chests until a formal application is made. In a reformed environment, when faced with a potential planning application, municipal planning staff should be straightforward and forthright in their opinion early in the process. Applicants should know very early whether municipal planning staff intend to support or oppose an application. Understanding that proposals are ever-changing from pre-application to submission (or resubmission), planning staff should offer clear and direct professional opinions throughout the process so that applications that do not conform with stated policy are not inadvertently encouraged to proceed.

Effect of recommendation: Procedural and Administrative.

F) STEP UP: Update zoning by-laws to match official plan designations.

In many Ontario municipalities, particularly those experiencing high growth pressures, zoning by-laws are not up to date with the planning and development intentions for an area and may not match official plan designations. Understanding that there are staffing and budget constraints, municipalities should make every effort to bring zoning by-laws in line with official plan policy so that more development can occur as of right with no application to amend policy and thus reducing the risk of OMB appeals. The *Planning Act* requires that municipalities bring zoning by-laws up to date with official plan policy within three years of the official plan coming into effect. Shielding official plan changes from appeal should allow municipalities to update zoning with improved timelines.

Effect of recommendation: Administrative.

G) STEP UP: Update the zoning for areas where higher densities are desired so that appropriately-scaled development can proceed as-of-right.

As an extension of the recommendation above, municipalities should implement zoning that truly reflects the heights and densities that are desired in high-growth areas such as Downtowns, redevelopment areas and major transit station areas. Earlier recommendations aim to insulate such rezonings from OMB appeals. Zoning land to reflect the intended heights and densities will encourage appropriate development and will reduce the uncertainty associated with having decisions rendered through the OMB.

Effect of recommendation: Administrative.

H) STEP UP: Where appropriate, implement community planning permit systems.

Since 2007, Ontario municipalities have had the option of creating community planning permit systems. Only four have successfully done so, while other attempts are currently under appeal to the OMB with little movement toward resolution. We propose that the initial implementation of community planning permit systems be removed from appeals and then call on municipalities to use the system to guide development, particularly in areas of rapid change. A community planning permit system, if implemented, would also deal with the reason many municipalities deliberately keep their planning regulation low – so that they can capture height and density benefits through Section 37 – an unintended consequence of that legislation which is clearly generating a lot of scope for appeal. The community planning permit system would also allow for the inclusion of design guidelines which will ensure that these guidelines are appropriately applied.

Effect of recommendation: Administrative.

4 CONCLUSION

The vision for Ontario's land use planning system is one in which land use permissions are developed through a public process and are adopted by elected councils; where development permissions conform to broader provincial goals and are clearly expressed; and where disputes are resolved efficiently with the broader public interest being paramount in decisions.

The 26 recommendations for reform found in this report make a contribution toward achieving this vision. The recommendations for reform are structured around five actions: Filter, Sharpen, Strengthen, Resolve, and Step Up. Each action is designed to focus and improve the operations of the OMB and the overall planning context within which it operates. The collective intent of the recommendations for reform is to retain the OMB to focus on the cases that truly require difficult dispute resolution, to assist the work of the OMB towards its prime directive of 'good planning', and to reduce the role that formal hearings play in the dispute resolution process so that the whole appeal process can run more efficiently.

The five proposed actions are:

1. **Filter** certain matters from appeal so that only issues of legitimate planning substance (that do not interfere with the implementation of provincial policy) appear before the OMB.

2. **Sharpen** the practices and procedures of the OMB so that files move through the system more efficiently.

3. **Strengthen** the professional capability of the OMB to undertake its post-reform role.

4. **Resolve.** Rigorously scope matters under appeal and resolve more disputes through mandatory mediation and alternative dispute resolution (ADR) methods prior to or in place of formal OMB hearings.

5. **Step Up.** In order for these proposed reforms to the OMB to be most effective, both the Province and municipalities need to step up their performance in the overall planning system.

Changes initiated by the Province including updates to the four Greater Golden Horseshoe plans and the use of tools such as inclusionary zoning and community planning permit systems are also steps toward a new planning future. Planning in Ontario may look very different in the coming years. The Province's land use appeal mechanism must change with the times and must become agile in resolving disputes while leaving policy-setting to elected representatives.

The Regional Planning Commissioners of Ontario can play a key role in describing and nurturing how this new emerging planning system should function. The observations, analyses and recommendations contained in this report are offered in the spirit of collaborative and progressive movement toward an improved planning dispute resolution process for all Ontarians: one that is squarely focused on the fundamental purpose of the Ontario Municipal Board - the determination of good planning.

Appendices

APPENDIX A

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APPENDIX B

Previous attempts at OMB reform

Implemented Reforms:

- Permit the Board to refer matters back to the Council (Sewell 1993). Enacted through Bill 51, 2006.
- Permit the Board to award costs (Sewell 1993).
- Allow for the approval of the unappealed portions of plans and comprehensive zoning bylaws when only site-specific appeals have been filed (Sewell 1993).
- Pilot mediation project to advance mediation initiatives (OPPI, 2002).
- Enshrine in the *Planning Act* a definition of a "complete application" that includes any information reasonably required by the municipality to make an informed decision (City of Toronto, 2004; GTA Task Force on OMB Reform, 2005). Enacted through Bill 51.
- Require the OMB to take on a case management role in mediating and/or adjudicating disputes or appeals based on failure to proceed (City of Toronto, 2004) – this recommendation has been implemented though many would argue not substantially enough.
- Give municipalities the option to establish a "local appeal board" to hear appeals of the Committee of Adjustment (City of Toronto, 2004). Additional changes enacted through Bill 51
- Require the OMB to "have regard to" decisions made by municipal councils in planning matters and the supporting information and material that was considered by council in making its decision. Enacted through Bill 51 though many argue that the impacts of this amendment have been limited.
- Restrictions on parties and evidence at the OMB (Bill 51).
- Requirements for additional public consultation (Bill 51) .
- Limit appeals to those individuals who have participated in the process or provided written comments prior to a council decision on a matter (Bill 51).
- Limit appeals to the OMB regarding official plans, official plan amendments, zoning bylaws, and targets for intensification and density that are in conformity with the policies of the four provincial Greater Golden Horseshoe plans (Crombie Advisory Panel, 2015). In part, implemented in Bill 73.

Other Suggestions for Reform (not implemented):

- Allow minor variance appeals to be heard by Council, not the OMB (Sewell 1993).
- Convene a procedural meeting of the parties within 30 days after an appeal has been received by the Board (Sewell, 1993).
- If the Board member concludes at a procedural meeting that the appellant on any planning matter does not have an objection which merits a full hearing, the member may order a time and place for the appellant to make representations as to the merit of the appeal (Sewell, 1993).
- Provide Intervenor Funding to fund third-party for public participation in OMB *de novo* hearings (Sewell, 1993; GTA Task force on OMB Reform, 2005).
- Institute a pre-hearing procedural meeting process to deal with the current backlog of cases before the Board (Sewell, 1993).
- Ensure that the Ontario Municipal Board has the necessary resources to carry out its responsibilities – Board member appointment/reappointment process and remuneration (Sewell, 1993; OPPI 2002).
- Require that the Board prepare a plain language hearing guide for the broader community (OPPI, 2002).
- Require that the Board undertake a review of its pre-hearing practices and objectives to ensure that its own practices support the preceding initiatives (OPPI, 2002).
- Require that the OMB refer back to Council those matters that are "failure to proceed" (City of Toronto, 2004).
- The role of the OMB should be to determine whether City Council has acted within its rules and regulations and if it determines that City Council has not, the decision be referred back to Council (City of Toronto, 2004).
- *De novo* hearings should occur only if the Board first finds that a municipality has acted unreasonably, or in a manner not consistent with the Provincial Policy Statement (City of Toronto, 2004; GTA Task force on OMB Reform, 2005; Crombie Advisory Panel, 2015).
- Deny appeals on non-municipally endorsed Official Plan amendments (City of Toronto, 2004).
- Require revisions to Board practices and procedures to facilitate improved public participation in OMB hearings and proceedings and administrative practices with respect to OMB appointments (City of Toronto, 2004; GTA Task force on OMB Reform, 2005; Crombie Advisory Panel, 2015).
- Give the OMB the jurisdiction and direction to stay any appeal process, including a request for leave to appeal (GTA Task force on OMB Reform, 2005).
- Improve support for public participation and fair access to OMB processes, including a user-friendly online tool providing information on OMB hearings (Crombie Advisory Panel, 2015).

APPENDIX C

RPCO Members Surveyed (as of March 2016)

Current RPCO Member*	City/Region/County	Title
Alex Georgieff	Durham Region	Commissioner of Planning and Economic Development
Arvin Prasad	Region of Peel	Director of Planning Policy & Research
Bruce McAllister	City of Chatham-Kent	Director of Planning Services
Craig Manley	Haldimand County	General Manager of Planning & Economic Development
David Parks	County of Simcoe	Director of Planning, Development & Tourism
Jason Ferrigan	City of Greater Sudbury	Director of Planning Services
John Fleming	City of London	Director of Land Use Planning
Kerri Voumvakis	City of Toronto	Director, Strategic Initiatives, Policy & Analysis City Planning
Lanie Hurdle	City of Kingston	Commissioner of Community Services
Michael Mizzi	City of Ottawa	Acting General Manager, Planning & Growth Management
Rino Mostacci	Niagara Region	Commissioner, Planning & Development - Niagara Region
Rob Horne	Region of Waterloo	Commissioner of Planning, Development and Legislative Services
Ron Glenn	Halton Region	Director of Planning Services & Chief Planning Official
Samantha Hastings	District of Muskoka	Commissioner of Planning & Economic Development
Thom Hunt	City of Windsor	Executive Director & City Planner
Todd Salter	City of Guelph	General Manager
Valerie Shuttleworth	York Region	Chief Planner

* The above is a list of the RPCO Members that were sent questionnaires in March 2016.

APPENDIX D

Statistical Data

Table 1: Types of Appeals to the Ontario Municipal Board, 2003-2014

	2003 - 2004	2004 - 2005	2005 - 2006	2006 - 2007	2007 - 2008	2008 - 2009	2009 - 2010	2010 - 2011	2011 - 2012	2012 - 2013	2013 - 2014	Average
Minor Variances	636	660	612	551	578	552	363	495	607	581	532	**561**
Consents	311	311	445	341	279	260	176	229	321	231	209	**283**
Zoning By-laws	276	282	290	340	275	190	187	197	285	250	602	**289**
Official Plans and Amendments	478	239	226	210	198	162	169	172	382	256	316	**255**
Zoning Refusal or Inaction	183	148	203	188	172	163	146	160	125	146	166	**164**
Plans of Subdivision/ Condo	83	108	108	109	95	68	76	98	76	62	73	**87**
Municipal Structure (incl. Site Plans)	133	147	146	119	92	83	68	90	117	87	114	**109**
Development Charges	28	91	20	15	16	15	60	9	48	27	44	**34**
Land Compensations	12	34	55	47	25	29	42	34	31	55	54	**38**
Capital Expenditures	12	19	23	11	8	9	11	9	5	9	7	**11**
Total	**2,152**	**2,039**	**2,128**	**1,931**	**1,738**	**1,531**	**1,298**	**1,493**	**1,997**	**1,704**	**2,117**	**1,830**

	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	Average
Minor Variances	30%	32%	29%	29%	33%	36%	28%	33%	30%	34%	25%	**31%**
Consents	14%	15%	21%	18%	16%	17%	14%	15%	16%	14%	10%	**15%**
Zoning By-laws	13%	14%	14%	18%	16%	12%	14%	13%	14%	15%	28%	**16%**
Official Plans and Amendments	22%	12%	11%	11%	11%	11%	13%	12%	19%	15%	15%	**14%**
Zoning Refusal or Inaction	9%	7%	10%	10%	10%	11%	11%	11%	6%	9%	8%	**9%**
Plans of Subdivision/ Condo	4%	5%	5%	6%	5%	4%	6%	7%	4%	4%	3%	**5%**
Municipal Structure (incl. Site Plans)	6%	7%	7%	6%	5%	5%	5%	6%	6%	5%	5%	**6%**
Development Charges	1%	4%	1%	1%	1%	1%	5%	1%	2%	2%	2%	**2%**
Land Compensations	1%	2%	3%	2%	1%	2%	3%	2%	2%	3%	3%	**2%**
Capital Expenditures	1%	1%	1%	1%	0%	1%	1%	1%	0%	1%	0%	**1%**
Total												**100%**

Note: beginning in 2011-2012, the ELTO Annual Reports began to distinguish between the number of files received and the number of appeals received. For 2011-2014, the number of appeals received by the OMB are noted in this table.

Table 2: Duration of OMB hearing events, 2012-2014

Percentage of hearing events	**2012-2013**	**2013-2014**	**Average**
one day or less	85	88	**87**
1-3 days	10	7	**9**
4-5 days	2	2	**2**
6-10 days	1.5	2	**2**
11-20 days	1	1	**1**
more than 20 days	>1	>1	**>1**
Percentage of hearing days	**2012-13**	**2013-14**	**Average**
one day or less	54	53	**54**
1-3 days	16	10	**13**
4-5 days	**7**	**7**	**7**
6-10 days	7	9	**8**
11-20 days	**10**	**9**	**10**
more than 20 days	6	12	**9**

Table 3: Number of OMB Hearings, 2003-2014

	2003 - 2004	**2004 - 2005**	**2005 - 2006**	**2006 - 2007**	**2007 - 2008**	**2008 - 2009**	**2009 - 2010**	**2010 - 2011**	**2011 - 2012**	**2012 - 2013**	**2013 - 2014**	**Average**
Scheduled hearings	2302	2384	2458	2406	2189	2165	1850	1862	2026	1938	1942	**2,138**
Hearing Events Held	1674	1744	1836	1638	1652	1271	1213	1261	1320	1226	1282	**1,465**
Percentage of files that go to hearing (%)	73%	73%	75%	68%	75%	59%	66%	68%	65%	63%	66%	**68%**
Mediation Events	58	51	-	60	76	72	66	52	90	85	-	**68**

APPENDIX E: Biographies

URBAN STRATEGIES INC.

JOE BERRIDGE FCIP, RPP, FIUD

Joe Berridge, a partner at Urban Strategies, has played a key role in some of the largest and most complex urban regeneration projects in Canada, the U.S. the U.K., Europe and Asia. His extensive planning for the Toronto waterfront and the growth management and transportation plans for the Toronto region continue to help shape the future of that city.

Joe is currently an advisor on the planning of the next phase of Sydney Harbour and preparing a master plan for Cardiff Bay. He has played a major role in the regeneration of Manchester, first as strategic advisor to the reconstruction after the 1996 city centre bombing and more recently by preparing a regeneration plan for Hulme, an extensive public housing project, and other decayed inner city districts. He is the masterplanner of Manchester Airport City and the Manchester City Etihad Campus. He has master-planned several European large-scale developments, including the waterfront of Cork, Ireland and Belfast's city centre, as well as several London docklands developments. He has prepared master plans for Governors Island in New York harbour, and for several major developments in Singapore.

He has extensive campus planning experience, having recently led the Queen's University and Western University's campus master plans, also providing ongoing advice to the University of Waterloo, most recently in the design of their new 120-acre Research and Technology Park. He led a number of neighbourhood and city centre plans in Sudbury, London, and Kingston, Ontario.

Joe was responsible for coordinating the master planning for the Trade Centre Complex at Exhibition Place and was the master planner for Festival Plaza. For almost a decade Joe was the master planning coordinator for Waterfront Toronto, helping shape the future of the Toronto waterfront. Most recently, he played a central role in outlining a new direction for planning the city's Port Lands, and is currently masterplanning the area around Billy Bishop Airport. He has had extensive involvement in the preparation of Places to Grow and The Big Move; respectively the land use and transportation plans for the Greater Toronto and Hamilton Area. He has appeared on several occasions before the Ontario Municipal Board.

Joe has lectured at universities in Canada, the US, the UK and Europe and has served on many urban design award and competition juries. He is a frequent conference speaker and contributor to planning journals, writes book reviews on urban issues for the Globe and Mail, The Walrus, and the Literary Review of Canada, and is a regular TV and radio commentator. He is a recipient of the Toronto Arts Award and was made a Fellow of the Canadian Institute of Planners and of the Institute for Urban Design in 2002. In 2009 he was appointed to the Enabling Panel of the Commission on Architecture and the Built Environment, the English design review agency. He teaches in the Program in Planning at the University of Toronto and is a Fellow in the School of Public Policy and Governance.

EDUCATION

1971
Masters of Arts,
Urban Geography
University of Toronto
Toronto, ON

1968
Bachelor of Arts
Social Studies
University of Sussex
Brighton, UK

PROFESSIONAL BACKGROUND

1986 - Present	Partner, Urban Strategies Inc.
1978 - 1985	Partner, Coombes Kirkland Berridge Ltd., Toronto, Canada
1977 - 1978	Project Coordinator, Frankel Lambert Development, Toronto Housing
1973 - 1977	Manager, City of Toronto, Planning Department
1971 - 1973	Economist, Province of Ontario

PROFESSIONAL ASSOCIATIONS

Fellow, Canadian Institute of Planners
Fellow, Institute of Urban Design
Fellow, School of Public Policy and Governance, University of Toronto
Enabling Panel, UK Commission on Architecture and the Built Environment
Hon. Campaign Chair, Environmental Studies, University of Waterloo
Governors Council, Toronto Library Board

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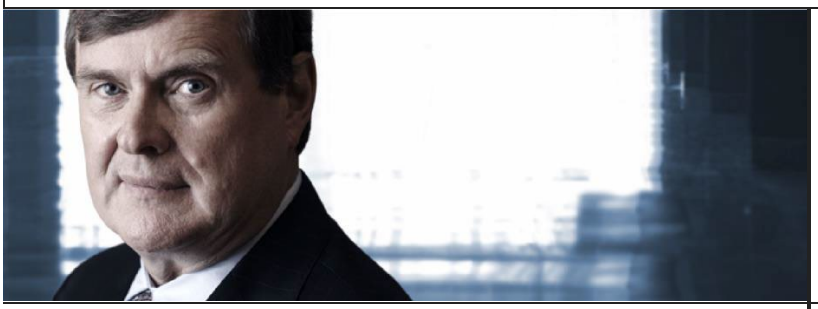
Ian James Lord



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Ian Lord is recognized as one of Canada's leading counsel, litigators and facilitators in dispute resolution involving land development problems.

Since 1977, Ian's practice has concentrated on provincial, regional, and municipal development approvals for private interest, NGO's and public sector entities. His practice in administrative and public law includes counsel to development companies, municipalities, university and hospital corporations, foundation, recreation, ratepayer, and disciplinary boards and tribunals. His specialties include planning applications, expropriations, local government law, municipal and hospital redevelopment and restructuring, court and tribunal work, and complex public-private partnership project approvals. Ian has been counsel to several municipalities and boards.

In 2014 Ian restricted his practice to conducting mediation in administrative law, specifically, municipal and land-use planning dispute resolution and adjunct fields.

Ian specializes in complex leading edge property development disputes. His counsel includes complex P3 assembly and development projects and all manner of site specific project approvals. He has defended and projected municipal public sector objectives. Equally, he has been a leading practitioner in scoping court and tribunal attitudes to the use of interim control by-laws and compelling the issuance of building permits and planning permissions or entitlements. He is a leading practitioner in specialized areas relating to the use and application of provincial policy, heritage designations, community improvement plans, complex development approvals, planning advocacy, expropriation and development charges.

He is a practitioner, lecturer, counsel, editor and author.

Practice Areas

Dispute Resolution in:

- Land Development
- Municipal and Land Use Planning
- Litigation

Called to the Bar

Ontario (1977)

Education

Osgoode Hall Law School
LL.B. 1975

University of Toronto
M.Sc. (Pl.) 1972

Queen's University
B.A. (Hons) 1970

Professional Activities

Elected President of Lambda Alpha International (2012-2014), Past President 2014-15.

Director, Simcoe Chapter, Lambda Alpha International, 2014-15.

Past President and Director, Simcoe Chapter, Lambda Alpha International (Honourary Land Economics Society)

Past First Vice President, Secretary and Regional Vice President (Mid West), Lambda Alpha International

Lecturer, Ryerson University (1976-2013)

Lecturer, LLM Program in Municipal Law, Osgoode Hall Law School (2007-2008;

2011-2012)

Editor, Ontario Municipal Board Reports, Thomson Reuters

Lecturer, Ontario Professional Planners Institute (present)