

Planning Reform

Ontario Municipal Board Reform

PLANNING REFORM INITIATIVES

*Planning Act Reform and
Implementation Tools:
Consultation Discussion Paper #1*

*Provincial Policy Statement:
Consultation Discussion Paper #2*

*Ontario Municipal Board Reform:
Consultation Discussion Paper #3*

June 2004

This Consultation Discussion Paper contains a general description of the Ontario Municipal Board. It is one of three consultation discussion papers to get public input on planning reform and includes consultation questions asking your views on potential reforms.

The final section of this document can be removed and used to mail or fax back your comments.

To submit your comments electronically, you can complete an on-line questionnaire available at www.planningreform.ontario.ca.

Comments must be received no later than **August 31, 2004**.

For additional copies of this document or any other of the planning reform consultation documents in either French or English, please contact:

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Message from the Minister of Municipal Affairs and Housing

The strength of Ontario depends on the strength of its communities. The McGuinty government is acting on Ontarians' priorities and is delivering real, positive change that will build strong, prosperous communities with a healthy environment and quality of life that is second to none.

The Ontario government recognizes that our current planning system needs to be improved.

Over the past years, there has been a growing perception that the Ontario land-use planning system has not been working as effectively as it should. Our government intends to reform the land-use planning and development process to support our goal of stronger, better communities. We have already taken some important steps to achieve this goal.

In December 2003, I introduced Bill 26, the Strong Communities (Planning Amendment) Act, 2004, which proposes important amendments to the *Planning Act*. If passed, the reforms would bring more accountability, transparency and public input to the way land-use planning decisions are made in Ontario.

As part of our Planning Reform initiative we are:

- reviewing the planning process;
- determining the need for effective implementation tools for municipalities and other decision-makers;
- releasing draft policies of the Provincial Policy Statement for public review and input; and
- reviewing the Ontario Municipal Board.

We recognize that these initiatives are linked and that coordinated actions may be required to create a better land-use planning system.

Planning reform is one essential element of our government's strong communities agenda. Other initiatives under way to support this goal are a permanent Greenbelt in the Golden Horseshoe, the protection of source water and the development of a Growth Management Plan for the Golden Horseshoe.

Improving the land-use planning system requires input from a wide variety of individuals and groups. To hear your views, we are holding a series of public information sessions on planning reform across the province. Please read this consultation document, attend a meeting, and fill out the questionnaire.

I invite you to share your views on what is needed to improve the land-use planning system and to build strong communities where all Ontarians can thrive.

A handwritten signature in black ink, appearing to read 'John Gerretsen', with a large, sweeping flourish extending from the bottom left.

Hon. John Gerretsen
Minister

Setting the Stage for Planning Reform

Ontario's Planning System: It's important to all of us

Over the next 30 years, 4 million new residents will call Ontario home. The Ontario government is setting a course for building strong, safe and liveable communities in Ontario that offer residents a high quality of life.

Our approach for attracting healthy and sustainable growth will be clear, consistent and responsive to Ontarians' priorities. This will require making decisions that will lead to long term benefits – new economic growth, more liveable communities, enhanced transportation choices, clean and safe water and improvements to our environment.

The land-use planning system is of key importance to achieving these goals in Ontario.

Land-use planning establishes the rules for development, and helps to determine how our communities grow.

Ontario's land-use planning system defines the interests and responsibilities of all Ontarians in planning for future land uses. The system provides the framework for determining the future of our communities and for protecting valuable resources such as farmlands, wetlands, water and natural features.

Ontario needs effective land-use planning, and an effective land-use planning system. This is especially critical given the pressures confronting the province today, such as:

- Increasing gridlock as a result of urban sprawl;
- Unprecedented growth pressures in some parts of Ontario, such as the Golden Horseshoe region;
- Loss of prime agricultural land and other resources;
- The need for enhanced environmental protection; and
- The need for a strong economy.

It is also clear that Ontario's communities and the public need to have an effective voice in land-use planning. There is a need for balance between individual interests and the broad public interest. Municipalities must also have the right tools to achieve good land-use planning.

The Ontario government is responding to these challenges. Through the Planning Reform initiative, it is reviewing the land-use planning system to ensure it meets today's needs.

Planning reform is a key component of the government's commitment to building strong communities in Ontario. The government believes a strong and effective planning system is critical to: building strong communities, providing a clean and healthy environment, and sustaining a strong economy. This lays the foundation for enhancing the overall quality of life for Ontarians.

There are a number of interrelated initiatives to support strong communities that are currently underway. These initiatives will depend on a stronger land-use planning system for effective implementation. They include:

Strong Communities

Several initiatives are under way to support strong communities, including a new deal for our cities and towns, a “seat at the table” with provincial and federal governments, and an enhanced rural development program.

Golden Horseshoe Greenbelt

In December 2003, the McGuinty government took the first steps toward permanent protection of a greenbelt across the Golden Horseshoe region by introducing Bill 27, the Greenbelt Protection Act, 2004. If passed, the Act would create a greenbelt study area within the Golden Horseshoe and impose a one-year moratorium on new urban development on rural and agricultural lands within this area.

The Greenbelt Task Force, a team of respected, knowledgeable and diverse stakeholder representatives, was established by the government to develop recommendations on the scope, content and implementation of the greenbelt. It is conducting public consultations in May and June 2004 for the purposes of developing recommendations on how the Province could effectively establish a permanent Golden Horseshoe Greenbelt.

Growth Management in the Golden Horseshoe

This year, the government will release a Growth Management Plan for the Golden Horseshoe that will articulate a long-term strategic vision and tools for how the Golden Horseshoe and surrounding areas should grow over the next 30 years. The plan will identify priority growth areas where new population and economic investment will be encouraged and will prioritize infrastructure through the development of a 10-year infrastructure plan to ensure those areas are adequately serviced. At the same time, the plan will identify and protect those areas that provide our food, water and recreation. An important feature of the Growth Management Plan will be a transportation strategy that promotes the efficient movement of people, goods and services throughout the Golden Horseshoe.

Source Water Protection

In mid-February 2004, the Ministry of the Environment began consultations on how best to deliver watershed-based source protection as a way of securing the long-term quality and quantity of water resources throughout the province. The initiative will result in policy, procedures and proposed legislative changes that will further affect communities in Ontario.

Summary

Planning Reform and related initiatives recognize that comprehensive solutions are needed to build a strong Ontario. Consultations on these initiatives are being coordinated, and information from the other initiatives will also be coordinated and shared.

Planning Reform

As a first step in Planning Reform, the government introduced Bill 26, the Strong Communities (Planning Amendment) Act, 2004, which would amend the *Planning Act* and provide an enhanced framework for planning in Ontario.

If passed, Bill 26 would give municipalities more time to make decisions on planning applications. It would strengthen the requirement that provincial land-use policies are followed, and would empower municipalities to determine their own local growth boundaries.

Bill 26 would also provide the Ontario government with the ability to make final decisions on matters before the Ontario Municipal Board where a provincial interest has been declared.

The Ontario government recognizes that more needs to be done in reforming key aspects of the planning system. Through consultation with stakeholders and the public, the government is seeking input and advice on the following Planning Reform components:

- Whether further changes need to be made to the *Planning Act* and to Bill 26;
- The need for implementation tools to help support and implement a strong and effective land-use planning framework in Ontario;
- Proposed revisions to the Provincial Policy Statement, which provides policy direction on land-use planning; and
- The need for Ontario Municipal Board Reform. The Board is an independent tribunal that hears appeals from landowners, the public and others on land-use planning matters. It hears appeals of municipal decisions, and appeals where no decision has been made on planning applications within timelines set out in the *Planning Act*.

Consultation Booklets

This booklet and two others have been written to help you understand the initiatives and provide a range of discussion points for your consideration. They are also designed to make it easier for you to provide your thoughts and suggestions on each of the Planning Reform components (*Planning Act* Reform and Implementation Tools; draft policies of the Provincial Policy Statement; and Ontario Municipal Board Reform).

Your input on the Planning Reform components will help the provincial government to move forward with proposed land-use planning reforms and will help shape the land-use planning system of the future.

How to Participate

We want your views on the **Ontario Municipal Board**.

The Ontario government will be holding public information sessions on planning reform in communities across Ontario. Please visit our website at www.planningreform.ontario.ca to check for further information on dates and locations, or call us at 1-866-751-8082.

The following sections provide important background information. Specific consultation questions are included in the final section of this document. You can remove the consultation questions section and mail or fax back your comments to the Ministry of Municipal Affairs and Housing.

To submit your comments electronically, you can complete an online questionnaire available at www.planningreform.ontario.ca.

You may send written comments to:

Planning Reform Initiative
Ministry of Municipal Affairs and Housing
Provincial Planning and Environmental Services Branch
777 Bay St, 14th Floor
Toronto, ON M5G 2E5
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Fax: (416) 585-4006
E-mail: planningreform@mah.gov.on.ca
Or visit www.planningreform.ontario.ca

Comments must be received no later than August 31, 2004.

Thank you for helping to shape planning in Ontario.

Reforming the Ontario Municipal Board

The Government recognizes that a clean, healthy environment and a vibrant economy are the cornerstones for the quality of life for which Ontario's communities have become well known. Strong communities make this province a better place to live, work and play, and, as well, create a more attractive environment for investors from around the globe. A credible, efficient land-use planning system is a key element in meeting these goals. The Ontario Municipal Board (OMB) plays an important role in this system and if it is to function effectively as an independent adjudicative tribunal, the OMB's mandate should reflect today's values. For these reasons, the government is committed to proposing reforms to the OMB that are consistent with improvements to the system as a whole, and which would equip the Board to carry out its responsibilities effectively and efficiently.

The revisions proposed to the *Planning Act* through Bill 26 emphasize the Government's desire to reinforce the importance of local municipalities in the planning process. Key changes include preventing appeals to the OMB on urban expansions that are opposed by municipal councils and increasing the length of time available for review and public consultation of planning applications before they may be appealed to the OMB.

Another change proposed in Bill 26 that is likely to affect the OMB is the proposal to require that land-use decisions "be consistent with" provincial policies. This would replace the current wording of the Act, which says that decision-makers should "have regard to" provincial policies.

The Government has heard a variety of concerns with respect to the OMB. Key among these concerns is that the OMB substitutes its opinions for those of elected municipal councils, is inaccessible to the public, and requires municipalities to devote scarce resources to defending decisions that have already been dealt with through the planning process. The Government has also heard that the OMB is needed for intensification projects because of the often strong neighbourhood concerns with such projects. There is also a perception that the concerns of ordinary citizens are not dealt with fairly or given the same attention as the interests of developers.

Many observers have also noted that although the OMB has responded positively to the changing environment in which it operates, a number of key concerns raised by the development community, the general public and other stakeholders stem from modifications made to the *Planning Act* over time that require municipalities to respond to development applications within specific timeframes. Reforms to the OMB cannot be made without considering their impact on the land-use planning system as a whole.

We want to hear your views on the reform of the OMB. Some of these issues raised are governed by the *Planning Act* and the *Ontario Municipal Board Act*. Others relate to the administrative process of the Board and are the prerogative of the OMB. Recommendations to the OMB will be made based on your views on these administrative issues. We have posed a number of key questions throughout the paper. Each question is accompanied by a brief discussion of the issues as a way to focus the consultation.

OMB Reform

Given the magnitude of changes in the municipal environment since the OMB's creation in 1897 and the heightened understanding of the role that planning and development activities play in our communities, it is important to review the role of the OMB in the context of land-use planning reform.

Areas to be reviewed include:

- The OMB's mandate, which encompasses the most complex projects to backyard additions.
- Accountability of the OMB to stand in the place of elected councils.
- The qualifications of OMB members and their length of tenure that affect the public's perception with respect to the Board's independence.
- The public's ability to participate in OMB hearings.

Although the OMB traces its roles and responsibilities back to more than 100 statutes, this paper focuses on those aspects of the OMB's mandate that relate specifically to the *Planning Act* and the *Ontario Municipal Board Act*.

Questions for Your Consideration

Information on the OMB and questions for your consideration are identified throughout this consultation paper to generate ideas and solicit reaction. We encourage you to send your comments on issues raised in this paper and ideas of your own to the Ministry of Municipal Affairs and Housing.

For your convenience, please remove the final section of this consultation discussion paper and use it to mail or fax back your comments to the Ministry of Municipal Affairs and Housing.

To submit your comments electronically, you can complete an on-line questionnaire at www.planningreform.ontario.ca.

Role of OMB in the Land-Use Planning System

1. Accountability

Although the OMB often supports the decisions of municipal councils, it is in those instances where municipal decisions are overturned on planning grounds that the credibility of the formal planning process is harmed in the minds of some members of the public. There are those who argue that allowing un-elected OMB members, appointed by the province, to substitute their own land-use planning opinions for those of elected councillors is undemocratic and has the effect of undermining the authority of elected councils.

The rationale in support of the current practice is that the OMB acts as an appellate body to protect the public against decisions that may not be following provincial or municipal planning policies. It must also be recognized that there are instances when a council may defer making a difficult or unpopular decision, and is prepared to have the matter appealed to the OMB. Any review of the criteria or tests for appeals should make provision to guard against this kind of use of the system.

A recent municipal report on the future of the OMB recommends that the OMB should become a limited appeal body, dealing only with matters of provincial interest or with matters where it is clear that the municipal council has not acted properly from a land-use planning perspective.

The public good requires that it is necessary to have a mechanism to appeal against demonstrable error or impropriety on the part of a council. Some argue, that it is possible for the appeal function to be handled through the courts. This approach can be more costly and time-consuming and the courts do not have any specific expertise in land-use planning. The net result of such an approach may be to raise new barriers to the public's involvement or their ability to receive fair treatment.

In the century or more that the OMB has been in existence, the Board, in hearing cases, has dealt with both the collective rights identified as the public interest and articulated through the land-use policies of municipal councils, and the interests of the individual – this includes both the private citizen reacting negatively to a development proposal and a proponent seeking to protect its property interests by appealing a project that has not been approved by Council. The concept of natural justice suggests that anyone likely to be affected by the outcome of a decision has a right to be heard. Some of the OMB's longest hearings have occurred because of the Board's insistence that *all parties* have an opportunity to make their views known. It could be argued that throughout the formal planning approval process, the rights of the individual tend to be subordinate to the broader benefits with respect to the public interest, so retaining an appeal mechanism provides an appropriate counterbalance to council's role.

As well, Ontario municipalities are organized on a ward system, where the local councilor plays a very important role in determining the fate of a project. In some cases, a municipal council will respect arguments – pro or con – made by a councilor because all of the other councilors hope to find similar support on decisions to be made with respect to projects in their own wards. The right to appeal a municipal council decision is, therefore, an important counterbalance in protecting the minority view.

Should there be some appeal mechanism for land-use planning decisions?

Should the courts be used as the appeal body for land-use planning decisions?

The dictionary defines an "appeal" as "a request of a review of a decision by an authority." If a municipal council, hypothetically speaking, rejects an application for a 12- storey building on the basis that the project does not conform to duly adopted council policies (or approves the application over the objections of local residents), the job of the OMB in dealing with an appeal, on the merits of the case presented, is to effectively decide if that decision should be upheld on the basis of good planning principles.

An issue has been raised by those seeking OMB reform concerning whether the OMB should be able to substitute its decision for that of an elected council. One approach might be for the Board to send the matter back to the municipal council, with a recommendation and a detailed explanation of why it disagrees with the council decision. The municipal council may choose to accept the OMB's recommendation or decide to modify or reaffirm its original decision.

Should the OMB's ability to substitute its decision for that of an elected council be modified?

2. Onus

The *Planning Act* generally requires the Board to conduct each hearing “de novo” – literally, to start anew. This means that the OMB hears a presentation of evidence as if the municipal council has made no decision. A key point in this regard is that the Board is reviewing the merits of a case on the evidence being presented, rather than challenging the decision of the municipal council. That challenge has already been made by the party launching the appeal.

Holding a “de novo” hearing provides the opportunity for the Board to take a fresh look at the evidence related to a case. It can also be argued that the OMB is able to take a broader view than that of the municipal council. Critics of this approach argue that the case presented before the OMB often bears little resemblance to the matter dealt with by the municipal council.

On the other hand, the knowledge that all reports and opinions rendered by municipal staff or by consultants for an applicant could potentially be put into evidence at the OMB has an important influence on planners and others who may be required to give expert testimony. This knowledge might have an influence over the consideration given to planning reports and other materials produced during the course of dealing with an application or other matter that could potentially be appealed to the OMB.

The Association of Municipalities of Ontario (AMO) and other stakeholders suggest that “de novo” hearings should become the exception rather than the rule. Their recommendation is that a hearing be allowed only when “the appellant could show that there was an error of fact or law ... bad faith so serious that council made a wrong decision as a result of it.”

Although it may be reasonable to suggest that “de novo” hearings become the exception rather than the rule, this would require a major shift in approach, effectively requiring the OMB to function more like a court by focusing on the validity of the appeal rather than the merits of the case on planning grounds. It is likely that as much effort would be expended in hearing the merits of an appeal per se as is currently devoted to “de novo” hearings. It would also effectively eliminate the authority of the OMB to rule on appeals of decisions of municipal councils except on narrow legal grounds.

Should the OMB continue to conduct “de novo” hearings looking at the full merits of a planning matter?

3. Scope

The current scope of the OMB is that they are the final arbitrator on all *Planning Act* decisions. There are several possible options for addressing the issue of the Board’s scope of operations in this regard. The first is to leave things as they are. Another approach is to look at options for a municipal model of secondary appeal.

Should the scope of matters which can be appealed to the OMB be narrowed? If so, how should it be done?

Independence of the OMB

For the OMB to function effectively, it is important that the general public, municipal representatives, the development industry and the many professionals actively engaged in the planning process perceive the Board to be an independent and fair tribunal.

Independence of OMB

Members of the OMB are appointed to make land-use planning decisions that have a direct impact on local neighbourhoods. OMB appointments are made by the Lieutenant Governor in Council through Orders in Council that are reviewed by the Standing Committee on Government Agencies. The membership includes a wide range of professions, including lawyers, planners, engineers, accountants, economists, teachers, professors, and municipal administrators. Although the headquarters of the OMB is in Toronto, members are selected with a regional focus.

Transparency of Recruitment Policies for OMB Members

To avoid any suggestion that appointments are not made on merit, it may be appropriate for specific criteria to be developed and published with respect to qualifications and experience to be met by new members, and for formal recruitment processes to be undertaken.

**What qualifications and experience are important for a member of the OMB?
How can we create a more open process for recruiting and appointing qualified applicants?**

Terms of Appointment

Currently, appointment to the OMB is for a three-year term, with a possible appointment to another three-year term. There are those who argue that the three-year term is not long enough to allow new members to acquire the background knowledge of practice and procedures of the Board.

Various stakeholders have suggested increasing the terms of appointment from three to five or even seven years.

Will increasing the appointment term make for better decisions by the members and remove the perception that decisions are being made under pressure?

The need for a transparent process to hear and deal with complaints against members as well as the introduction of a formal probationary period should be considered. The probationary period could be based on objective performance criteria.

**Is a probationary period of one year desirable?
How should a complaint against a member be dealt with?**

Compensation

The role of an OMB member is demanding. The pay levels for OMB members therefore need to be set at appropriate levels. The challenge is to establish a compensation package that not only reflects the experience of an individual as a member of the OMB but which bridges the range of expectations found in the diverse range of professions from which the membership is selected. The reality is that some professions earn more than others. An attractive salary for one profession may be unacceptable for another.

If the OMB is to attract and retain top people, adequate pay scales are necessary. Building on the criteria for OMB appointments described above, levels of remuneration should be established to allow the Board to attract and retain the best talent.

What comparables and criteria should be considered in establishing compensation levels for OMB members?

Competence and Accessibility of the OMB

The OMB hears evidence on a wide variety of planning matters. Hearings often involve contentious issues, based on highly complex and technical evidence. It is important that OMB members have the required skills and competences to hear and decide matters. The Board's processes must also be accessible to the public.

1. Decision-Making at the OMB

Performance

A challenge facing the Board Chair in a large institution like the OMB is the difficulty in effectively monitoring the performance of Board members. The demeanour of members during a hearing, the way they interact with witnesses and the general public during a hearing and their success in comprehending a vast range of expert evidence are all matters subject to interpretation and difficult to assess in an objective manner. The quality of the decisions may be easier to monitor because they are available in written form. Another area of member performance that requires monitoring is their ability to keep up with case-loads.

**Should member performance be reviewed and assessed annually?
How should member performance be reviewed and assessed?**

Education and Training

The education and training of Board members has been made more challenging in recent years by the increasing complexity of the issues at both OMB hearings and joint board hearings.

Progress has been made in the area of member training and education. Recent administrative changes have seen the issue of education and training explicitly addressed through the formal application of modern time-management techniques that reserve dedicated time for members to undertake their own research and training, hear cases, and prepare the written decisions.

Members benefit from formal programs of continuous professional learning through courses, conferences, and other learning opportunities. There is a need for knowledge of statutes and law, mediation and alternative dispute resolution training. There may also be a need for a member to meet with and hear from diverse stakeholders to facilitate a full appreciation of the issues and interest groups that are involved in planning and development.

What learning and training initiatives would benefit OMB members?

Decision-making and Consistency

The obvious challenge for the OMB is to not only ensure that their members have the necessary skills and competencies to handle their challenging roles but that the Board is able to communicate the facts to the general public in an appropriate manner. An occasional source of concern among stakeholders is a perception that decisions by members lack consistency across the province and from year to year.

The OMB is not bound to follow decisions of other panels of the Board. This is different from the court system. The Board focuses on the “unique facts and circumstances” surrounding each case. However, the OMB promotes consistency without establishing precedent through internal processes that the public may not be aware of. The Board in the past five years has, in fact, increased its staff capacity by bringing on professional planning staff to support the administration of the OMB.

The issues of consistency and competence are inter-related. Although the Board provides a rigorous orientation for its new members and on-going guidance through a mentoring program utilizing skills of more experienced members, this is not well known.

What else can the Board be doing to promote consistency?

How could the OMB better communicate its decisions and decision-making processes?

Evidence

The challenge of reaching decisions on land use and related issues is that such matters are rarely black and white but require absorption of large amounts of technical evidence, analysis and interpretation before a member is able to render a decision. Sometimes the results of a hearing are likely to come down to the credibility of expert witnesses on technical matters or even matters of legal jurisdiction that require an expert legal opinion.

During complex hearings, Board members typically rely on the testimony of expert witnesses called by parties to the hearing. Although rarely used, Board members have the power to summon witnesses to provide expert testimony.

How should the Board ensure that it has the best evidence on which to base a decision?

Decisions

Members who attend the hearings are responsible for writing the decisions. This has many obvious benefits. The Board has also taken steps to make decisions available electronically. Both professionals and the general public increasingly rely on internet-based research. It is important that there is easy access to the decisions of the Board as well as the components of evidence and argument that comprise the building blocks of a decision.

It may be that the introduction of a decision format by the Chair could provide some efficiency while allowing flexibility within the system without unduly affecting the freedom of each member to express an opinion or the unique aspects of a particular case. The creation of a system of keywords (created in consultation with experts in library science and a panel of practitioners representing the land-use professions) for application and inclusion in written decisions could provide the public (and professionals) with a greatly enhanced tool for analysis and informal monitoring and commentary on the effect of OMB decisions.

Are there any improvements to the decision-writing process and the accessibility of decisions that should be made by the OMB?

2. Accessibility of the OMB

Case Management

In looking at opportunities to improve the public's understanding and accessibility to the OMB and its processes, an obvious place to start is the range of options available for not proceeding to a hearing in the first place.

An innovation introduced several years ago was enhanced case management. The Board hired a staff of professional planners and other advisors to both provide support to members and to liaise with parties involved in a hearing. This has helped not only to reduce the length of hearings when they *do* take place but in many instances has improved the potential to reduce the number of appeals that require the attention of a Board member. An additional benefit has been that all the activities of the Board (pre-hearings, mediations and hearings) are scheduled more quickly.

What improvements could be made to case management at the OMB?

Alternative Dispute Resolution

As well, the Board has moved quickly in recent years to shift emphasis wherever feasible to pre-hearing conferences – where the parties are often able to reach a satisfactory resolution without needing to proceed to a full hearing. As members receive training in and become more expert in alternative dispute resolution techniques more cases are dealt with in this cost-efficient manner. While not all cases are suited to mediation, there are also numerous occasions when one might be expected to agree to mediation. A number of commentators have called for the Board to be given the power to require mediation before proceeding with a hearing.

Disputes between people and the means by which they are settled are central to civil society. When those disputes involve land use, it is understandable that feelings run high, particularly when property interests or the future of an environmentally sensitive area is the subject of dispute. There are, nevertheless, times when reasonable people should be able to resolve their differences through mediation. Provided that criteria for mandatory mediation prior to a hearing are developed and discussed before hand, it is possible the Board members could be given the authority to require parties to participate in mediation when it is clearly in the public interest to do so.

Should the OMB have the authority to require parties to mediate?

Information

Statistics on the Board's caseload activities are partially summarized in its annual reports. Although the Board is inherently an adversarial process, the degree to which the Board is able to work with parties to resolve disputes is an important contribution to the effective functioning of the land-use planning process and as such merits a high priority with respect to how the success of the Board is communicated to the public.

How can the OMB inform the public of the option of avoiding hearings through mediation and settlement?

Participation at the OMB

An important concept was enshrined by the Ontario Court of Appeal nearly 50 years ago when it stated that the legislation creating the OMB had "made clear its intention that proceedings before the Board should be conducted in a manner less rigid and less formal than proceedings conducted before established Courts of Law." The OMB should be user-friendly and parties should be encouraged to provide testimony without having to retain legal counsel.

However, there is mounting frustration among the general public that OMB cases are becoming increasingly complex and that the time needed to follow a complex case from beginning to end is making it more difficult for the public to be adequately involved, effectively creating a barrier to the public's participation in the OMB process. As well, there is a concern that, although the OMB indeed provides a forum for presenting the public's position on issues, such views cannot compete effectively with the weight of professional and highly technical evidence presented to the Board. In addition, when participants are unfamiliar with the processes followed by the OMB, this can inadvertently cause delays and misunderstandings that result in the misuse of resources by all parties.

One way to address concerns that OMB processes and procedures are hard to comprehend is to provide the public with more education materials. Although the Board has made an excellent start in developing such materials, and making them available in print and on the OMB website, such materials can always be enhanced.

How can the public be better informed about process at the OMB?

Another way to make the OMB more accessible to the public might be to provide improved guidance and advice before a decision is made to proceed with a hearing as well as during the actual hearings. One stakeholder group has suggested that the OMB hire staff dedicated to providing advice on policies and procedures to citizen groups or other third parties unfamiliar with how the Board operates.

This could have two benefits. The first is to provide an additional resource for the public to help private citizens or groups of citizens to decide if proceeding with an appeal is in their interests. The second more direct benefit is to give private individuals increased confidence in proceeding with an appeal without having to resort to retaining counsel or hiring expert witnesses. Such a person could help private citizens make the best use of their scarce resources.

Should there be an “adviser” at the OMB to perform this role?

Summary

The preceding information and questions are designed to establish context, and perhaps generate some ideas, for your consideration of OMB reform. You may have recommendations on the issues raised or on matters not addressed in this consultation document. We welcome and encourage all your ideas as they will form a base for the government’s consideration of OMB reform.

CONSULTATION QUESTIONS

Ontario Municipal Board Reform

These consultation questions aim to stimulate discussion and collect your input.

You can remove this section of the consultation paper and mail or fax it back with your comments to:

Planning Reform Initiative
Ministry of Municipal Affairs and Housing
Provincial Planning and Environmental Services Branch
777 Bay St., 14th Floor
Toronto ON M5G 2E5
Tel: (416) 645-8082 or 1-866-751-8082
Fax: (416) 585-4006

To submit your comments electronically, you can complete an on-line questionnaire available at www.planningreform.ontario.ca.

The government values your input and thanks you for your comments. Public input is essential to ensure that we have a land-use planning system that supports a strong Ontario.

Comments must be received no later than August 31, 2004.

Your Contact Information

Name

Organization

Address

Telephone

Fax

E-mail Address



- 1. Are there other reforms of the Ontario Municipal Board that you believe should be considered?**

Comments and Suggestions:

[illegible]

2. Do you have any additional comments or questions?

Comments and Suggestions:

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