

Potential significant changes to the Ontario Municipal Board on the horizon

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Overview

The Government of Ontario (the Province) is conducting a formal review of the Ontario Municipal Board (the OMB), which may result in significant changes to the Board's jurisdiction and procedures. The mandate of the review is broad, focusing on the scope of matters that may come before the OMB and the manner in which the Board operates. Notable proposed changes include eliminating the concept of *de novo* hearings, constricting the types of appeals that the OMB has jurisdiction to hear, and instituting procedural changes to help create a more efficient and accessible adjudicative venue. Full particulars on proposed changes are detailed in the "[Review of the Ontario Municipal Board – Public Consultation Document](#)."

The impetus for the review is based on feedback that the Province has received from consultations with stakeholders, interested in improving the OMB's overall operations. Based on these consultations, the objective of the review has been narrowed to identifying changes to: (i) allow for more meaningful and less costly resident participation; (ii) give more weight to local decisions and allow for more alternative ways to settle disputes; (iii) bring fewer municipal and provincial decisions to the OMB; and (iv) support clearer and more predictable decision-making.

Background on the OMB

The OMB is one of Ontario's oldest administrative tribunals. It derives its jurisdiction from the *Ontario Municipal Board Act* and from several other statutes, such as the *Planning Act*, the *Expropriations Act*, the *Development Charges Act* and the *Ontario Heritage Act*. While an independent tribunal, in recent years the OMB has been administratively clustered with other boards as part of Environment and Lands Tribunals Ontario.

The proposed amendments to the Board's powers relate primarily to its jurisdiction under the *Planning Act*. Currently, the Board functions as an appellate body, hearing appeals from decisions of municipal councils on planning applications, or from the refusal or failure of municipal councils to make decisions. While appeals before the Board are intended to be less formal than court proceedings, in practice, Board hearings are similar to trials, subject to the Board's procedural rules. While sophisticated parties such as developers and municipalities — who are typically represented by legal counsel and experts such as land use planners — are used to this format, it is often intimidating and expensive for community stakeholders and residents who wish to participate in OMB hearings. To the Board's credit, hearings are conducted fairly in accordance with the Board's procedures, and unrepresented parties are

given generous scope to have their views heard.

Highlights of Changes

Currently, appeals to the OMB from decisions of municipal or approval authorities are conducted *de novo*. Notwithstanding provisions in the *Planning Act* that require the Board to “have regard to” decisions by a municipal council relating to the same planning matter, the Board, on hearing appeals, is able to make its decision independent of, and without deference to, the initial decision.

The most significant proposal in the Province’s review is to move away from *de novo* hearings. Rather than re-hearing the same factual and evidentiary submissions that were made to a municipal or approval authority, the OMB would, instead, be tasked with considering the validity of the original decision-maker’s determination. Although details on this proposal are not immediately available, the Province has posited that a redesigned OMB might review municipal or approval authority decisions on a standard of reasonableness. Under this approach, the OMB would be tasked with determining whether the original decision was within a range of defensible outcomes within the authority of the initial decision-maker. Another proposal is to enable the OMB to overturn a decision of a municipal or approval authority only if that decision does not follow local or provincial policy. Under this approach, the OMB would have to be persuaded that the original decision under review is contrary to local or provincial policies, expressed in, for example, provincial policy statements or a municipality’s official plan.

The Province is also considering limiting the availability of appeals to the OMB in certain instances, in order to reduce the number of matters that come before the Board. Specifically, the Province is contemplating limiting appeals on land use planning decisions in the following scenarios:

1. the Province could delineate which aspects of its decisions on official plans cannot be appealed;
2. the Province’s decisions on new official plans or proposed official plan amendments would not be subject to appeal; and
3. when the Minister of Municipal Affairs establishes zoning provisions by way of a Minister’s Zoning Order, the Minister would have exclusive authority to make the final decision on any requests to amend that zoning.

Further proposals include prohibiting appeals of municipal interim control by-laws and requiring the Board to send significant new information that arises in a hearing back to the municipal council for reconsideration of the original decision. This latter proposal would significantly constrain the OMB’s powers should fresh evidence be proffered at an OMB hearing that was not before the original decision-maker.

In addition, the Province is also considering changes that are intended to result in a faster decision-making process and provide a more accessible venue for all stakeholders, including community stakeholders and residents. In an effort to expedite the decision-making process, the Province is considering setting timelines for decisions, conducting more hearings in writing, and introducing maximum days allowed for hearings, among other changes. To improve accessibility, the Province is considering increased use of active adjudication (allowing OMB members to focus on the issues in dispute and the process for resolving those issues), exploring funding tools to help citizens retain their own planning experts, and providing increased access to mediators.

Commentary

These proposed changes are still under review by the Province. If adopted, they will likely diminish the current scope of the OMB's powers and further enhance the authority of local municipal councils to make final land use planning decisions. While these changes, if implemented, will likely advance the Province's desired objectives of further enhancing local municipal control and resident participation in the planning process, whether they will result in clearer and more predictable decision-making and better land use planning decisions remains to be seen.