

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, Report No. 45, of the Committee of the Whole (Working Session), which was adopted, as amended, by the Council of the City of Vaughan on December 13, 2016, as follows:

By approving the following in accordance with Communication C9, from the Deputy City Manager, Legal & Human Resources and the Deputy City Manager, Planning and Growth Management, dated December 13, 2016:

- 1) That the attached Resolution, together with this communication and any additional comments members of Council may wish to provide, constitute the City of Vaughan's submission in response to the Provincial consultation on the Ontario Municipal Board (OMB) review; and***

By receiving the report of the Deputy City Manager, Legal and Human Resources, and the Deputy City Manager, Planning and Growth Management, dated December 7, 2016.

1 ONTARIO MUNICIPAL BOARD REVIEW ALL WARDS

The Committee of the Whole (Working Session) recommends:

- 1) That consideration of this matter be deferred to the Council meeting of December 13, 2016, and that staff submit a Communication to Council addressing the comments made by Members of Council.**

Recommendation

The Deputy City Manager, Legal and Human Resources, and the Deputy City Manager, Planning and Growth Management, recommend:

1. That this report be forwarded as the City of Vaughan's submission to the Province of Ontario in response to the Ontario Municipal Board Review.

Contribution to Sustainability

The Ministry of Municipal Affairs and the Ministry of the Attorney General are undertaking a review of the scope and effectiveness of the Ontario Municipal Board ("OMB") and are seeking input from municipalities and other stakeholders regarding the roles, responsibilities and governance of the Ontario Municipal Board. If and when the proposed changes to the Ontario Municipal Board are adopted, they will impact how the City operates as the OMB plays a major role in achieving the objectives of Green Directions Vaughan.

Green Directions Vaughan embraces a Sustainability First principle and states that sustainability means we make decisions and take action that ensure a healthy environment, vibrant communities and economic vitality for current and future generations.

Economic Impact

There is no economic impact associated with this report however, any amendments arising from the Province's Review of the OMB may have financial implications for the municipality. For instance, increased mediations at the municipal level will have budgetary and resource impacts. Should the appeal opportunities at the OMB be reduced, there may be an increase in proceedings before the courts, resulting in the potential for increased financial implications for all parties. The extent of such impacts are unknown at this time and will be further evaluated once the Province identifies any proposed amendments resulting from this Review.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(WS) Report No. 45 – Page 2

Communications Plan

The City's submission in response to the Province's Review of the OMB will be filed with the Ministry of Municipal Affairs prior to the deadline of December 19, 2016. Members of the public may also participate in a number of ways. They can submit comments through the Environmental Bill of Rights Registry at Ontario.ca/EBR (Search for OMB Review, 2016. Notice #012-7196) or can send emails to: OMBReview@ontario.ca. Submissions can also be mailed to:

Ontario Municipal Board Review
Ministry of Municipal Affairs
Provincial Planning Policy Branch
777 Bay Street (13th floor)
Toronto, ON M5G 2E5

Purpose

This report is provided in response to the Province of Ontario's Review of the Ontario Municipal Board for the purpose of providing the City of Vaughan's formal submission as part of the public consultation process which closes on December 19, 2016.

Background - Analysis and Options

The Province of Ontario, through the Ministry of Municipal Affairs and the Ministry of the Attorney General, is undertaking a review of the OMB. Through this Review, the OMB's scope (what it deals with) and effectiveness (how it operates) will be considered. The Review may result in changes to the OMB and the rules that apply to it along with potential amendments to the *Planning Act*.

The OMB Review was launched in June 2016, at which time the Province initiated public and stakeholder consultation. Following receipt of initial feedback, the Province issued a Public Consultation Document in October 2016 which sets out possible changes to improve the OMB's role and raises questions for consideration. Public and stakeholder input is being sought with a deadline for submissions of December 19, 2016. The Province is also hosting town hall meetings on specified dates. Staff attended the town hall meeting in Newmarket on October 18, 2016. The Public Consultation Document sets out five key themes which form the basis of the feedback being sought at the town hall meetings and by way of written submissions. They will be discussed later within this report.

Ontario's Current Land Use Planning System and the OMB

Ontario's land use planning system is governed by the *Planning Act* which identifies the Province's approach to planning, the roles of key participants such as municipalities and applicants, and the requirements related to official plans and zoning by-laws, among other things. It also identifies that disputes are to be adjudicated by the OMB through the filing of appeals. The *Planning Act* identifies the basis upon which appeals may be filed and what considerations the OMB must take into account in reviewing matters before it.

The *Planning Act* has been amended over the years in an effort to improve the efficiency and effectiveness of the land use planning system in the Province. It was most recently amended in 2015 by the *Smart Growth for our Communities Act* (Bill 73), which increased the recognition of municipal council decisions, restricted certain rights of appeal and granted municipalities the authority to use alternative dispute resolution to resolve appeals prior to the start of the OMB appeal process. As the OMB plays a significant role in the planning process, the Province has also initiated this Review to identify improvements that can be made to the OMB as the planning regime in Ontario evolves.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(W/S) Report No. 45 – Page 3

Through initial consultation with the public and stakeholders, the Province identified a range of viewpoints regarding the OMB, including the following:

- Citizens feel they don't have a meaningful voice in the process
- More weight should be given to municipal decisions
- OMB decisions are unpredictable
- Hearings cost too much and take too long
- There are too many hearings; more mediation should be used

In order to address these viewpoints, the Province identified the following set of guiding principles to help frame the OMB Review:

1. Protect long-term public interests
2. Maintain or enhance access to dispute resolution
3. Provide transparency in hearing processes and decision-making
4. Minimize impacts on the court system

Based on the initial feedback received and the guiding principles, the Province has identified priorities for discussion in this Review and has organized these priorities into five themes.

THEME 1: OMB'S JURISDICTION AND POWERS

This theme addresses the concern that too many appeals are filed with the OMB and that the scope of issues being addressed by the OMB is too broad. Some stakeholders have sought limits on appeals and increased recognition of decisions made by municipal councils. In addition, stakeholders have identified concerns with appeals being heard on a "de novo" basis (starting anew), specifically due to the fact that this leads to duplication of the municipal decision-making process and often results in a proposal being presented to the OMB that differs from the proposal submitted to the municipality for consideration.

A. Protecting public interests for the future and bringing transit to more people

The Province is considering limiting appeals on provincial land use planning decisions and matters related to priority infrastructure projects. Examples include:

- Specifying which parts of its decisions on official plans would not be subject to appeal (ex. preservation of farmland, orderly development of safe and healthy communities)
- Prohibiting appeals to new official plans or proposed official plan amendments where municipalities are required to implement Provincial Plans
- Restricting appeals of municipal official plans, amendments to these plans, and zoning by-laws that support provincially funded transit infrastructure

Staff Comments

The revisions to the Planning Act already go some distance in addressing this theme in regard to limitations on appeals. Further articulation of the areas to be protected from appeal are also supported. These areas should be clearly identified to ensure that they are not subject to appeal. Therefore, the relevant enabling legislation or regulations should be clear on what is or is not subject to appeal. In general, the primary areas of exemption should relate to conformity with Provincial Plans and Policies. If a policy is deemed appropriate or necessary to achieving an objective of a Provincial Plan or Policy it should be exempted from appeal. This would need to be implemented through actions by the approval authority that would flow down to the local municipalities. i.e. the Regional Plans approved by the Province would identify the unappealable sections of the Regional Plan. In making decisions on the Local Plans and amendments, the

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(WS) Report No. 45 – Page 4

Regional Municipalities would identify which sections are unappealable based on the Regional Plans. The actions of the approval authority should be exempt from OMB or court challenge in making the decision. However, in making the decision, the approval authority should provide an opportunity for submissions from interested parties, prior to making the decision on the proposed exemptions.

In defining the exemptions, one principle should be firmly entrenched. Anything that involves a systemic change to an Official Plan, such as a land budget, an urban boundary or the definition of an intensification area, should be left to a future Municipal Comprehensive Review.

B. Giving communities a stronger voice

The Province is also considering making changes to the land use planning and appeal system to ensure that more land use decisions can be made locally and to provide more certainty and stability. Examples include:

- Prohibiting appeals of a municipality's refusal to amend a new secondary plan for two years
- Prohibiting appeals of interim control by-laws
- Expand the authority of local appeal bodies to include appeals related to site plans
- Further clarify that the OMB's authority is limited to dealing with matters that are part of the municipal council's decision
- Require the OMB to send significant new information that arises at a hearing back to municipal council for re-evaluation of the original decision

Staff Comments

The following is offered for consideration:

- Prohibiting appeals of a municipal refusal to amend a new secondary plan for two years is a good measure; and combined with prohibition on certain appeals would add to the stability of the Plan; however, Councils should be allowed to make minor housekeeping amendments, should a defect be found in a Plan;
- Prohibiting appeals of Interim Control By-laws is a supportable measure, as it diverts municipal resources away from conducting the study to fighting the appeal. Often it takes close to a year to have the appeal dealt with by the OMB, so the appeal rights are often of limited benefit. If an appeal is to be retained, it should only be on the renewal of the ICB for a second year;
- Third party appeals on site plans should not be permitted to the OMB;
- Limiting appeals to the actual changes to the Plan or by-law is warranted and pre-existing policies/standards that are not subject to amendment should be exempt from appeal;
- Situations where significant information arises at an OMB proceeding indicates a fundamental flaw in the process. Municipalities and landowners go through a long process of pre-application consultation and review before matters get to Council for a final decision. If such information has not emerged by this time, the matter is fundamentally compromised. The system should be designed to hear only appeals on the basis of the information that the original approval authority had before it.

C. "De novo" hearings

The Province is also seeking input on changes that would give more weight to municipal and provincial decisions by moving the OMB away from de novo hearings. The term "de novo" is used to describe the manner in which the OMB deals with appeals, by considering the same

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(WS) Report No. 45 – Page 5

issue that was before the municipality as though no previous decision had been made. It involves a fresh review of all of the evidence and information filed with the municipality in support of a proposal. It has been proposed by some that “de novo” hearings be eliminated and replaced by having the OMB review the validity of a municipality's decision. This could include requiring the OMB to review decisions using a standard of reasonableness wherein if a decision is found to have been made within a range of defensible outcomes within the authority of the municipality, the OMB would not be able to overturn it. This may also include authorizing the OMB to overturn decisions that are contrary to local or provincial policies.

Staff Comments

The use of “de novo” hearings should be ended in all instances where the approval authority has made a decision. The concept is antithetical to a system that relies on local government processes and decision-making, where a local municipality amends its plan, which is approved by a senior approval authority (i.e. a Region), which has the right to modify the adopted plan. Under this system, the current “appeal” is actually an application for a re-hearing or potentially a mediation process. It is troubling that the municipality is given 180 days to make a decision on an Official Plan, while the Ontario Municipal Board is given unlimited time to deal with the appeal, which can exceed a year and be an on-going financial drain on the municipality. If “appeals” arise, they should be based on the policies adopted by the Local Council and approved by the Region (for Official Plans), based on the information the Council(s) had before them. As such, the concept should be eliminated altogether, or there should be a higher barrier to entry. This could involve making a motion to the Board for leave to proceed with a hearing “de novo”.

The criteria identified above for the alternatives are worth considering and should be assessed further. The test of a municipal decision should be whether it was reasonable and maintained the intent of the Provincial and Regional Plans.

The procedural matters should also be considered as well, as these are often time consuming and the cause of much delay. Efficiency of process should be an objective. The appeal should be confined to the Council's decision; the appeal should be heard on the basis of the information the Council had before (to maintain the integrity of the system); and it should be adjudicated only on the basis of the supporting documents and a written submission and argument by the respective counsel. It should also be backed by a defined period for mediation to provide a deadline to better focus the parties.

D. Transition and use of new planning rules

Finally, the Province is reviewing potential changes related to transition and the application of new planning rules. There are two perspectives:

1. All planning decisions should be made on the most up-to-date planning documents.
2. Fairness requires that planning decisions be based on the planning documents that were in place when the process was started (i.e. when an application is filed).

Staff Comments

This needs to be carefully considered. The second perspective would normally be preferred. There may be processes that have continued for years, based on older approved municipal plans, that could be effectively terminated by a new Provincial Policy or Plan. This could lead to years of work being wasted and proponents (including municipal Secondary Plans) being required to start over to address the new requirements. The counter argument is that an application may have been dormant for years, with “grandfather” status that might be reactivated, based on the old policies. Such instances should also be avoided.

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(WS) Report No. 45 – Page 6

Like the municipalities, the OMB should have clear direction on the transition provisions for the Provincial Plans and Policies. An alternative would be to allow for existing applications and processes, already underway, to be allowed to continue to the point of approval by the municipal approval authority, provided that the decision is reached within a specified timeframe, e.g. 3-years. Time-limiting the transitioned matters would serve to provide greater certainty in the process.

THEME 2: CITIZEN PARTICIPATION AND LOCAL PERSPECTIVE

Initial feedback received from the Province confirmed that citizens want to ensure that the local perspective is heard and respected when decisions are made. Concerns have been raised with respect to the cost of participating in hearings, which can discourage participation. Fairness is another consideration as individual citizens or community groups do not have the same resources and access to subject matter experts as municipalities or developers do. OMB procedures have also been identified as an area where improvements could be made to support a more citizen-friendly process. This includes making information about the OMB and the cases before it accessible and easy to understand.

A. The role of the Citizen Liaison Office

The Citizen Liaison Office was established in 2006 to assist the public with questions about the OMB, its process and the citizen's role. This office is currently staffed by one person. The Province is considering expanding the Citizen Liaison Office, by either hiring more staff or reconfiguring it and moving it outside of the tribunal. It might include in-house planners or lawyers who would be available to assist the public, subject to eligibility criteria.

Staff Comments

There would be benefit in expanding the Citizen Liaison Office and use it as a teaching tool, to ensure that potential appellants understand the role of the various levels of policy that shape planning decisions. This may serve to give the public a more realistic understanding of what they may accomplish as a result of an appeal.

Having in-house planners and lawyers to advise the public would be of some assistance. However, the potential demand on the service might be overwhelming unless it is well targeted. The information would have to be based on procedure and not on the merits of the appeal so as to avoid a perception of bias. The provision of training materials would be important to this service, which could include a website with various types of information including webinars and even a mock hearing to familiarize the public with the procedural aspects of a hearing and the role of the individual parties.

Making materials on on-going hearings and mediations more readily available to the public in an easily understood format would allow for greater inclusion and participation of the public. Responsibility, for the availability of this information would be an appropriate role for a Citizens Liaison Office.

B. Funding tools to enable citizens to retain their own planning experts and/or lawyers

The Province is also exploring funding tools to enable citizens to retain their own planning experts and lawyers. Input on the types of funding tools and type of financial or other eligibility criteria to support increased access to subject matter experts is being sought.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(WS) Report No. 45 – Page 7

Staff Comments

City staff regularly encounter a high level of public cynicism over the role the public plays in the planning process. The general feeling of the public is that they are being ignored and that the consultation is futile and that they are wasting their time. It is very difficult for staff to convey the idea that the municipality is obligated to fulfill certain requirements that are set out in Provincial plans and policies, which ultimately have to be reflected in the Regional and City Official Plans.

The public concerns most often relate to density and intensification (which are mandated at the Provincial and Regional levels), current traffic conditions, and the traffic impacts of new development. There is also skepticism over the positive impacts of transit on reducing or moderating traffic impacts.

Many of the issues that are of great public concern may ultimately be deemed to be beyond appeal as a result of this process. As such, it is unlikely that the Province would be inclined to fund opposition to its policies. Therefore, eligibility criteria would have to be carefully considered and be based on the broader public interest, if financial support was to be provided to public appellants. In addition, any funding sources should not result in financial implications for the municipalities, which are already burdened by the high cost of responding to OMB appeals.

THEME 3: CLEAR AND PREDICTABLE DECISION-MAKING

This theme focuses on the need for good decision-makers and clear and predictable decision-making processes.

A. Qualifications for OMB adjudicators

The Province is considering increasing the number of OMB adjudicators and ensuring they possess necessary skills. There are currently 20 full time members (including six Vice Chairs and one Associate Chair) and four part-time members. The members include lawyers with backgrounds in environmental, municipal and planning law, planners, former elected officials and people with adjudication and mediation experience. Current qualifications for OMB members include criteria such as experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal. They also receive training about the administrative justice system and decision-writing. Additional qualifications and increased training are being considered.

Staff Comments

The City has no concerns with the qualifications of the current OMB members. However, Board members' skills and expertise should reflect the fact that land use planning processes are informed by a variety of disciplines. The OMB would benefit from members who have a range of experience in these matters and have a deep understanding of the issues at hand. At this time, the City's main concern relates to the availability of members to conduct hearings and mediations. Board membership should be increased to meet demand. This would also introduce an opportunity to explore the addition of a more diverse range of expertise among the Board members.

B. Multi-member panels

OMB hearings are typically conducted by one member who is responsible for hearing cases and writing decisions, which are then reviewed by senior board members. Multi-member panels have become less common over the years due to cost. The Province is considering increasing the use of multi-member panels with panel members representing a broad range of skills and backgrounds to ensure clarity and consistency of decision-making. Specifically, feedback as to

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(W/S) Report No. 45 – Page 8

whether the use of multi-member panels should be increased and if so, whether they should be used to conduct all hearings or complex hearings only is being sought.

Staff Comments

Multi-member panels are supported for complex cases only. The additional cost and time added to have multi-member panels adjudicate all hearings would not be beneficial. Criteria for identifying hearings requiring multi-member panels should be set out to provide clarity and predictability. Criteria may include cases with issues involving a variety of specialized experts (environmental, transportation, noise, market or economic, etc.) or cases that involve multiple parties, increasing the number of issues to be adjudicated (such as a Regional or Municipal Official Plan). . In assigning members to complex multi-disciplinary hearings, the assigned member(s) should have experience and expertise commensurate with the need to arrive at fair, impartial and sound technical decisions.

THEME 4: MODERN PROCEDURES AND FASTER DECISIONS

Initial feedback regarding the OMB's rules of practice and procedure is that they should be updated and streamlined to make the system more accessible and to promote timely decisions. Specific concerns raised include the need for faster screening and scheduling of appeals, and more flexibility in how evidence can be presented. Hearing processes have been criticized as being too lengthy and too formal or court-like. Increased simplicity, predictability and transparency have been requested.

A. Improving the OMB's hearing procedures and practices

The Province is considering allowing the OMB to adopt less complex and more accessible tribunal procedures. In addition, active adjudication is being considered. This would permit adjudicators to be more active during hearings, which may include explaining the rules and procedures, scoping issues and evidence and questioning witnesses.

Staff Comments

The City supports active adjudication, particularly in cases where there are unrepresented parties or participants or significant community interest. A more involved hearing panel could assist the public in better understanding the process and the evidence presented at hearings.

B. Timelines for scheduling hearings and issuing decisions

Currently, the OMB sets targets for the scheduling of hearings or pre-hearings within a certain period of time. Targets are also set for the issuance of decisions. For instance, the first hearing for a minor variance case is currently expected to be scheduled within 120 days of receipt of a complete appeal package in 85% of cases. In 2015-2016, this target was achieved in 67% of cases. OMB decisions are to be issued within 60 days of the end of a hearing in 85% of cases. This target was achieved in 80% of cases in 2015-2016.

In order to improve timelines, the Province is considering options such as setting new timelines for decisions, introducing a maximum number of days for hearings, conducting more hearings in writing where appropriate, increasing flexibility for how evidence can be heard, and establishing rules for issues lists to ensure that hearings are focused and conducted in the most cost-effective and efficient way possible.

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(WS) Report No. 45 – Page 9

Staff Comments

Many of the above-noted actions, such as increasing the number of OMB members and reducing the matters that can be appealed should improve the OMB's ability to meet existing timelines.

While flexibility in the presentation of evidence may be worthy of consideration, predictability is important for all parties in preparing their cases. Each party needs to be clear on the case they are required to meet in advance of a hearing to ensure fairness. Any additional flexibility should be balanced against the need for predictability and fairness.

Written hearings should be introduced, where appropriate, to address matters that would largely be dependent on documentary evidence. Written hearings may be best utilized for matters involving legal interpretation issues.

THEME 5: ALTERNATIVE DISPUTE RESOLUTION AND FEWER HEARINGS

The use of mediation has increased in recent years at the OMB. It has been recognized as successfully assisting parties in reaching mutually acceptable solutions to land use planning issues, while avoiding the formal appeal process. It has been suggested that the OMB more actively promote mediation and that more members should be available to conduct mediations. This could also lead to fewer and/or shorter OMB hearings. It has also been suggested that case management be strengthened. This includes using the pre-hearing process more efficiently to clarify issues, focus the hearing and ultimately shorten hearing time.

A. Using mediation to resolve disputes

The Province encourages the increased use of alternative dispute resolution. Bill 73 is an example where municipalities have been given the opportunity to engage in alternative dispute resolution before an appeal is forwarded to the OMB. If initiated, a municipality is granted an additional 60 days to try to resolve disputes before an appeal is sent to the OMB. Through this Review, the Province is also considering more actively promoting the use of mediation at the OMB. This may include requiring all appeals to be considered by a mediator before scheduling a hearing. It may also include offering the support of mediators during the application process, such as before an application is considered by a municipal council, which could help reduce appeals. Input is sought on whether mediation should be mandatory, even if it has the potential to lengthen the process.

Staff Comments

The City of Vaughan has used mediation successfully for many OMB appeals. This has included site specific appeals and multi-party Official Plan and Secondary Plan appeals. While mediation can lengthen the process in complex cases, it also results in an outcome that all parties are more satisfied with, while reducing the risk of an unknown outcome and the adversarial nature of OMB hearings. It also increases the dialogue between the parties at the table and promotes the ability to identify creative solutions that may be more suitable in the circumstances. It could be improved if the mediation process is time limited and should also be subject to agreed upon deadlines.

The City strongly supports promoting increased use of mediation with the addition of the necessary resources to meet the current caseload at the OMB. Often, during lengthy and complex mediations, months can go by before another formal mediation session can be scheduled. This can slow momentum where progress is being made on certain issues. An increase in the number of trained mediators on the OMB roster is supported.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(WS) Report No. 45 – Page 10

In the alternative, it may be worthwhile devoting OMB members solely to the hearing activities and having a roster of trained mediators that could be brought in to facilitate an agreed upon mediation process. Since the number of Board members will always be limited, this would broaden the opportunity for guided settlement negotiations. Also, it would ensure that momentum can be maintained with more consistent availability of mediators.

The City supports the canvassing of parties early on in the appeal process to identify cases that may benefit from mediation. It does not support mandatory mediation which can only serve to lengthen the process in cases where hearings are necessary to resolve disputes that the parties have been unable or unwilling to narrow or resolve on their own. This is particularly relevant in situations where a municipality applies the Bill 73 provision permitting mediation prior to sending an appeal to the OMB. Subsequently requiring mediation at the OMB would be duplicative and inefficient.

Where parties agree to participate in mediation it should be on the basis that:

- The mediator should have the authority to require all parties who have agreed to participate in mediation attend all mediation sessions where their attendance is deemed necessary. Failure to participate in mediation sessions once it has commenced should result in specific consequences, such as a costs award where the failure to attend is deemed to be frivolous or without merit;
- One of the products of the mediation should be a scoping of the issues in the event that a full settlement cannot be achieved and the matter must proceed to a hearing;
- There is consistent availability of the mediator to maintain the momentum of the mediation process;
- Mediation timelines should recognize the need and process involved for municipalities to seek direction.

B. Strengthening case management

The Province is seeking input on how it could strengthen case management to better stream, scope issues in dispute, and identify areas that can be resolved at pre-hearings. It is also exploring the creation of timelines and targets for scheduling cases, including mediation.

Staff Comments

The City also supports strengthened case management, including the requirement that issues be scoped early in the process and using pre-hearing conferences to identify issues that can be resolved in advance of subsequent hearing events. This could be akin to the courts' pre-trial or settlement conference process.

Additional Comments

A Clear Process Model Must be Developed

A clear process model must be provided to guide the appeal processes. Therefore, any draft amendments to the Act or Regulations governing the operations of the Ontario Municipal Board must be supported by information illustrating how the resulting system is intended to function. Without such information, it will be difficult to provide comments on the proposed changes to statutes and regulations. This will allow the participants to provide better quality input into the finalization of the legislation.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(WS) Report No. 45 – Page 11

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

The proposed City responses to the Ontario Municipal Board review are prepared to support the Term of Council priority to “Continue to advance a culture of excellence in governance” consistent with the Service Excellence Strategic Initiative to achieve continuous improvement in our Operational Performance.

Regional Implications

York Region

There is widespread interest amongst municipalities in providing comment on Ontario Municipal Board Reform. City staff have been advised that a Regional staff response will be proceeding directly to York Region Council on December 15, 2016 for its consideration. Staff have met with the Regional staff and representatives of York Region's other local municipalities, to discuss measures that would improve the operations of the OMB. This discussion has assisted in preparing the responses recommended herein.

Regional Planning Commissioners of Ontario (RPCO)

The Regional Planning Commissioners of Ontario commissioned a report to provide input into the Province's review of the Ontario Municipal Board. Based on a number of background studies, a survey of RPCO members and interviews with key stakeholders, the report concluded:

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 solve disputes, and resolving matters through alternative dispute resolution techniques wherever possible. Reform also requires that the Province and the 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.

Conclusion

The issues associated with the OMB are serious and affect many sectors of society. The Board exerts an indirect influence on all planning matters in that the actions of the participants are now focused on predicting what a potential OMB member might or might not decide if the matter goes to hearing. This detracts from the role that the municipal planning process and approval authorities play; and in some instances results in a third level of approval for some local planning matters (e.g. Official Plans that also require Regional approval). The appeal process is overly judicial and costly to all parties, even if a matter is resolved through mediation. The public has essentially been priced out of participation by the need for legal counsel and expert witnesses,

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, CW(WS) Report No. 45 – Page 12

which contributes to public disaffection with the system. The additional time consumed can result in major delays to development processes that contribute to economic inefficiencies.

The Board does play a role in ensuring that decisions of the approval authorities are not out of line with reasonable norms governed by Provincial, Regional and local policies and good planning practice. It will be important to maintain this balance. Therefore, the approach to refocus the role of the OMB into a true appeal body with well-defined limits on its responsibilities and procedures is supported. The issues are widely known and are well-articulated in the Provincial consultation document, which sets out a range solutions that, if applied, would improve the OMB's performance. This report has identified a number of priority changes that should be considered for implementation through the OMB review.

It is recommended that this report and resulting Council minutes be forwarded to the Ministry of Municipal Affairs as the City of Vaughan comments on the Ontario Municipal Board Review.

Attachments

None.

Report prepared by:

Claudia Storto, Deputy City Manager, Legal & Human Resources
Roy McQuillin, Director, Policy Planning
Bill Kiru, Manager, Development Planning
Mauro Peverini, Manager, Development Planning



c9 orig

c9
Communication
COUNCIL: Dec 13/16
CW (w) rpt. No. 45 Item 1

DATE: DECEMBER 13, 2016

TO: MAYOR AND MEMBERS OF COUNCIL

FROM: CLAUDIA STORTO, DEPUTY CITY MANAGER, LEGAL & HUMAN RESOURCES
JOHN MACKENZIE, DEPUTY CITY MANAGER, PLANNING AND GROWTH
MANAGEMENT

RE: ITEM NO. 1, REPORT NO.45 , COMMITTEE OF THE WHOLE (WORKING SESSION),
DECEMBER 7, 2016
ONTARIO MUNICIPAL BOARD REVIEW

Recommendation

It is recommended that the attached Resolution, together with this communication and any additional comments members of Council may wish to provide, constitute the City of Vaughan's submission in response to the Provincial consultation on the Ontario Municipal Board (OMB) review.

Background

At the December 7, 2016 Committee of the Whole (Working Session) meeting, the Committee deferred this report to Council for further information from staff. The following is provided in response to the comments received at the Working Session meeting.

Context

The City of Vaughan receives multiple OMB appeals annually and most recently, has engaged in ongoing appeals of its Official Plan arising from the Growth Plan review. The City received 164 appeals of the Vaughan Official Plan 2010, which was adopted in September 2010, and has spent approximately \$2.5 million over the past five years in order to defend the Plan and related Secondary Plans, with the majority of efforts focused on mediation rather than formal hearings. This includes costs for consultants and external lawyers. It does not reflect the cost of existing staff resources, which have been strained by the magnitude of the appeals. Multiple departments have been impacted as a result of their involvement, including the Policy Planning Department, Development Planning Department, Urban Design Department, Development Engineering and Infrastructure Planning Department, Parks Development Department, Development Finance Department, Real Estate Department, Economic Development Department and the Legal Services Department. To date, approximately 96 appeals remain outstanding. The *Planning Act* appeals process and OMB practices have resulted in a significant drain on the City's resources. Unfortunately, this is not a unique circumstance in the Province.

The Provincial review of the OMB is long overdue and welcomed by the City of Vaughan. Vaughan Council members have been at the forefront of this matter, participating in the Municipal Summit on OMB Reform in May, 2016 and attending Provincial town hall meetings as part of the Provincial consultation. The City of Vaughan considers the reform of the OMB to be a matter that raises serious administrative and jurisdictional concerns and is of the view that substantial changes are required in order to improve the current situation.

Basic Principles To Be Considered in the OMB Review

While there are a number of considerations to be addressed in this review, the basic principles which are the foundation of Vaughan's perspective on the matter are as follows:

1. The OMB and its decisions should reflect the existing mature level of planning being done at the municipal level.
2. Local planning decisions must be predominant.

3. The public should have an opportunity to participate in OMB matters in a substantial way.
4. Appeals to an Official Plan resulting from a municipal comprehensive review that is approved by a local municipality, regional municipality and/or the Province should be prohibited, particularly in light of the extensive public consultation involved in the process.
5. Mediation is key and must involve the public in a more meaningful way.

Conclusion

There is support by both Vaughan staff and Council for the changes being proposed through the Provincial review of the OMB. It is believed that substantial change is needed, beyond what is being proposed through the public consultation, particularly to reflect the complex processes occurring at the local level and the significant public input which occurs in developing an official plan as a result of a municipal comprehensive review. The public input into the planning process at the local level should be mirrored through the appeal process at the OMB, ensuring that the community can remain involved and informed.

Attached to this communication as Schedule 1 is a proposed Council resolution which reflects the consolidated comments of Vaughan Council and staff, representing the municipality's submission in response to the Provincial consultation on the OMB review. It is recommended that this resolution be submitted to the Province, together with this communication and any additional comments members of Council may wish to provide.

Respectfully submitted,



Claudia Storto
Deputy City Manager,
Legal & Human Resources



John MacKenzie
Deputy City Manager,
Planning and Growth Management

Attachment 1: Proposed Council Resolution

c.c. Daniel Kostopoulos, City Manager
Jeffrey Abrams, City Clerk

RESOLUTION

Whereas the City of Vaughan, as a sophisticated urban municipality, provides a comprehensive process, utilizing highly skilled staff, external experts and input from the public to consider and approve a variety of land uses under the Planning Act of Ontario; and

Whereas the City of Vaughan utilizes significant external resources and funds in order to defend its Official Plan that was endorsed by the Region and the Province before the Ontario Municipal Board (OMB), recently calculated to be approximately \$2.5 million; and

Whereas the current planning environment in Ontario has resulted in a process increasingly dominated by the powers of the OMB rather than the comprehensive local municipal planning procedures; and

Whereas Vaughan City Council has serious administrative and jurisdictional concerns related to the role and function of the OMB; and

Whereas the Province of Ontario is currently undertaking a review of the OMB and seeking input from all stakeholders, including municipalities; and

Whereas Vaughan Council members have been actively engaged in the broad discussions surrounding OMB reform, including participation in a Municipal Summit on OMB reform and attendance at the Provincial town hall meetings; and

Whereas substantial change to the role and functioning of the OMB is required, particularly with respect to the engagement of members of the local community in planning matters, both before an appeal and throughout the appeal process; and

Whereas the OMB and its decisions should reflect the existing mature level of planning being done at the municipal level; and

Whereas the OMB review has been based upon five themes for discussion; and

Whereas the Council of the City of Vaughan has considered the matter within those five themes; and

Whereas there is support by both Vaughan staff and Council for the changes being proposed through the Provincial review of the OMB; and

Whereas it is believed that substantial change is needed, beyond what is being proposed through the public consultation, particularly to reflect the complex processes occurring at the local level and the significant public input which occurs in developing an official plan as a result of a municipal comprehensive review; and

Whereas it should be explicitly recognized that local planning decisions must be predominant; and

Whereas the public should have an opportunity to participate in OMB matters in a substantial way; and

Whereas the public input into the planning process at the local level should be mirrored through the appeal process at the OMB, ensuring that the community can remain involved and informed; and

Whereas mediation is key and must involve the public in a more meaningful way; and

Whereas Schedule '1' to this resolution is a consolidation of Vaughan staff's and Council's comments for submission to the Province in response to the OMB review;

Now therefore be it resolved that Vaughan City Council request that the Government of Ontario, in its review of the OMB, give serious consideration to the significant administrative, financial and capacity jurisdictional concerns being raised by municipalities; and

Be it further resolved that the City Clerk be directed to submit this resolution, along with Schedule "1", for the Province of Ontario's consideration in the course of its review of the Ontario Municipal Board.

Attachments

Schedule 1

**OMB Review
City of Vaughan Submissions
December 13, 2016**

THEME 1: OMB'S JURISDICTION AND POWERS

A. Protecting public interests for the future and bringing transit to more people

The revisions to the Planning Act already go some distance in addressing this theme in regard to limitations on appeals. Further articulation of the areas to be protected from appeal are also supported. These areas should be clearly identified to ensure that they are not subject to appeal. Therefore, the relevant enabling legislation or regulations should be clear on what is or is not subject to appeal. In general, the primary areas of exemption should relate to conformity with Provincial Plans and Policies. If a policy is deemed appropriate or necessary to achieving an objective of a Provincial Plan or Policy it should be exempted from appeal. This would need to be implemented through actions by the approval authority that would flow down to the local municipalities. i.e. the Regional Plans approved by the Province would identify the unappealable sections of the Regional Plan. In making decisions on the Local Plans and amendments, the Regional Municipalities would identify which sections are unappealable based on the Regional Plans. The actions of the approval authority should be exempt from OMB or court challenge in making the decision. However, in making the decision, the approval authority should provide an opportunity for submissions from interested parties, prior to making the decision on the proposed exemptions.

In defining the exemptions, one principle should be firmly entrenched. Anything that involves a systemic change to an Official Plan, such as a land budget, an urban boundary or the definition of an intensification area, should be left to a future Municipal Comprehensive Review.

In particular:

- appeals to an Official Plan resulting from a municipal comprehensive review that is approved by a local municipality, regional municipality and/or the Province should be prohibited, particularly in light of the extensive public consultation involved in the process
- OMB decisions should be consistent with the decisions of municipalities
- the quality of decisions being made at the local level are complex and interactive and should not be influenced by what the OMB "might do"
- it is acknowledged that there is a role for an appeal process however it is in the form of a significantly different body with different powers to reflect the current sophisticated planning regime being implemented by local municipalities
- certain matters should not be within the OMB's jurisdiction, including ward boundary decisions, interim control by-laws
- placeholder appeals by landowners who do not have specific plans for their lands should not be permitted
- Committee of Adjustment appeals should not be permitted to proceed to the OMB; alternative avenues of appeal should be considered first (local or regional appeal body, Council adjudication)

B. Giving communities a stronger voice

Prohibiting appeals of a municipal refusal to amend a new secondary plan for two years is a good measure; and combined with prohibition on certain appeals would add to the stability of the Plan; however, Councils should be allowed to make minor housekeeping amendments, should a defect be found in a Plan.

Prohibiting appeals of Interim Control By-laws is a supportable measure, as it diverts municipal resources away from conducting the study to fighting the appeal. Often it takes close to a year to have the appeal dealt with by the OMB, so the appeal rights are often of limited benefit. If an appeal is to be retained, it should only be on the renewal of the ICB for a second year.

Third party appeals on site plans should not be permitted to the OMB; limiting appeals to the actual changes to the Plan or by-law is warranted and pre-existing policies/standards that are not subject to amendment should be exempt from appeal.

Situations where significant information arises at an OMB proceeding indicates a fundamental flaw in the process. Municipalities and landowners go through a long process of pre-application consultation and review before matters get to Council for a final decision. If such information has not emerged by this time, the matter is fundamentally compromised. The system should be designed to hear only appeals on the basis of the information that the original approval authority had before it. For historic or existing appeals filed under the existing legal framework the OMB should strive to provide additional notice and opportunities for public input. Such communication efforts are helpful, particularly if a development application is significantly altered during the course of an OMB procedure.

C. De novo hearings

The use of "de novo" hearings should be ended in all instances where the approval authority has made a decision. The concept is antithetical to a system that relies on local government processes and decision-making, where a local municipality amends its plan, which is approved by a senior approval authority (i.e. a Region), which has the right to modify the adopted plan. Under this system, the current "appeal" is actually an application for a re-hearing or potentially a mediation process. It is troubling that the municipality is given 180 days to make a decision on an Official Plan, while the Ontario Municipal Board is given unlimited time to deal with the appeal, which can exceed a year and be an on-going financial drain on the municipality. If "appeals" arise, they should be based on the policies adopted by the Local Council and approved by the Region (for Official Plans), based on the information the Council(s) had before them. As such, the concept should be eliminated altogether, or there should be a higher barrier to entry. This could involve making a motion to the Board for leave to proceed with a hearing "de novo".

The criteria identified above for the alternatives are worth considering and should be assessed further. The test of a municipal decision should be whether it was reasonable and maintained the intent of the Provincial and Regional Plans.

The procedural matters should also be considered as well, as these are often time consuming and the cause of much delay. Efficiency of process should be an objective. The appeal should be confined to the Council's decision; the appeal should be heard on the basis of the information the Council had before (to maintain the integrity of the system); and it should be adjudicated only on the basis of the supporting documents and a written submission and argument by the respective counsel. It should also be backed by a defined period for mediation to provide a deadline to better focus the parties.

D. Transition and use of new planning rules

This needs to be carefully considered. The second perspective (requiring planning decisions to be based on the planning documents that were in place when the process was started) would normally be preferred. There may be processes that have continued for years, based on older approved municipal plans, that could be effectively terminated by a new Provincial Policy or Plan. This could lead to years of work being wasted and proponents (including municipal Secondary Plans) being required to start over to address the new requirements. The counter argument is that an application may have been dormant for years, with "grandfather" status that might be reactivated, based on the old policies. Such instances should also be avoided.

Like the municipalities, the OMB should have clear direction on the transition provisions for the Provincial Plans and Policies. An alternative would be to allow for existing applications and processes, already underway, be allowed to continue to the point of approval by the municipal approval authority, provided that the decision is reached within a specified timeframe, e.g. 3-years. Time-limiting the transitioned matters would serve to provide greater certainty in the process.

THEME 2: CITIZEN PARTICIPATION AND LOCAL PERSPECTIVE

A. The role of the Citizen Liaison Office

There would be benefit in expanding the Citizen Liaison Office and use it as a teaching tool, to ensure that potential appellants understand the role of the various levels of policy that shape planning decisions. This may serve to give the public a more realistic understanding of what they may accomplish as a result of an appeal.

Having in-house planners and lawyers to advise the public would be of some assistance. However, the potential demand on the service might be overwhelming unless it is well targeted. The information would have to be based on procedure and not on the merits of the appeal so as to avoid a perception of bias. The provision of training materials would be important to this service, which could include a website with various types of information including webinars and even a mock hearing to familiarize the public with the procedural aspects of a hearing and the role of the individual parties.

Making materials on on-going hearings and mediations more readily available to the public in an easily understood format would allow for greater inclusion and participation of the public. Responsibility, for the availability of this information would be an appropriate role for a Citizen's Liaison Office.

B. Funding tools to enable citizens to retain their own planning experts and/or lawyers

City staff regularly encounter a high level of public cynicism over the role the public plays in the planning process. The general feeling of the public is that they are being ignored and that the consultation is futile and that they are wasting their time. It is very difficult for staff to convey the idea that the municipality is obligated to fulfill certain requirements that are set out in Provincial plans and policies, which ultimately have to be reflected in the Regional and City Official Plans.

The public concerns most often relate to density and intensification (which are mandated at the Provincial and Regional levels), current traffic conditions, and the traffic impacts of new development. There is also skepticism over the positive impacts of transit on reducing or moderating traffic impacts.

Many of the issues that are of great public concern may ultimately be deemed to be beyond appeal as a result of this process. As such, it is unlikely that the Province would be inclined to fund opposition to its policies. Therefore, eligibility criteria would have to be carefully considered and be based on the broader public interest, if financial support was to be provided to public appellants. In addition, any funding sources should not result in financial implications for the municipalities, which are already burdened by the high cost of responding to OMB appeals.

In addition:

- Vaughan is supportive of provincial funding being provided for the public
- criteria and the process for accessing provincial funding need to be established
- intervenor funding should be considered to facilitate public access to the OMB

- an expert resources strategy should be developed, offering legal and planning support to the public
- the Citizen Liaison Office needs to be properly resourced
- the Province should better define community interest in order to determine who can speak on behalf of that interest – clarity is sought on this
- public education is important and should be emphasized
- independent legal advice should be offered to assist community groups/members involved in settlements
- a minimum set amount of time for expert consultations may be considered

THEME 3: CLEAR AND PREDICTABLE DECISION-MAKING

A. Qualifications for OMB adjudicators

The City has no concerns with the qualifications of the current OMB members. However, Board members' skills and expertise should reflect the fact that land use planning processes are informed by a variety of disciplines. The OMB would benefit from members who have a range of experience in these matters and have a deep understanding of the issues at hand. At this time, the City's main concern relates to the availability of members to conduct hearings and mediations. Board membership should be increased to meet demand. This would also introduce an opportunity to explore the addition of a more diverse range of expertise among the Board members.

B. Multi-member panels

Multi-member panels are supported for complex cases only. The additional cost and time added to have multi-member panels adjudicate all hearings would not be beneficial. Criteria for identifying hearings requiring multi-member panels should be set out to provide clarity and predictability. Criteria may include cases with issues involving a variety of specialized experts (environmental, transportation, noise, market or economic, etc.) or cases that involve multiple parties, increasing the number of issues to be adjudicated (such as a Regional or Municipal Official Plan). In assigning members to complex multi-disciplinary hearings, the assigned member(s) should have experience and expertise commensurate with the need to arrive at fair, impartial and sound technical decisions.

In addition:

- Vaughan is supportive of more expert panel members which should also include those with community perspective
- Vaughan is supportive of more resources being allocated to the OMB, including appropriate remuneration for OMB members in order to attract the most qualified adjudicators

THEME 4: MODERN PROCEDURES AND FASTER DECISIONS

A. Improving the OMB's hearing procedures and practices

The City supports active adjudication, particularly in cases where there are unrepresented parties or participants or significant community interest. A more involved hearing panel could assist the public in better understanding the process and the evidence presented at hearings.

B. Timelines for scheduling hearings and issuing decisions

Many of the above-noted actions, such as increasing the number of OMB members and reducing the matters that can be appealed should improve the OMB's ability to meet existing timelines.

While flexibility in the presentation of evidence may be worthy of consideration, predictability is important for all parties in preparing their cases. Each party needs to be clear on the case they are required to meet in advance of a hearing to ensure fairness. Any additional flexibility should be balanced against the need for predictability and fairness.

Written hearings should be introduced, where appropriate, to address matters that would largely be dependent on documentary evidence. Written hearings may be best utilized for matters involving legal interpretation issues.

In addition:

- timing issues need to be addressed as appeals currently take too long to be resolved
- a substantive change in timelines is needed
- deadlines for hearing appeals should be emphasized
- site visits by OMB adjudicators should be mandatory

THEME 5: ALTERNATIVE DISPUTE RESOLUTION AND FEWER HEARINGS

A. Using mediation to resolve disputes

The City of Vaughan has used mediation successfully for many OMB appeals. This has included site specific appeals and multi-party Official Plan and Secondary Plan appeals. While mediation can lengthen the process in complex cases, it also results in an outcome that all parties are more satisfied with, while reducing the risk of an unknown outcome and the adversarial nature of OMB hearings. It also increases the dialogue between the parties at the table and promotes the ability to identify creative solutions that may be more suitable in the circumstances. It could be improved if the mediation process is time limited and should also be subject to agreed upon deadlines.

The City strongly supports promoting increased use of mediation with the addition of the necessary resources to meet the current caseload at the OMB. Often, during lengthy and complex mediations, months can go by before another formal mediation session can be scheduled. This can slow momentum where progress is being made on certain issues. An increase in the number of trained mediators on the OMB roster is supported.

In the alternative, it may be worthwhile devoting OMB members solely to the hearing activities and having a roster of trained mediators that could be brought in to facilitate an agreed upon mediation process. Since the number of Board members will always be limited, this would broaden the opportunity for guided settlement negotiations. Also, it would ensure that momentum can be maintained with more consistent availability of mediators.

The City supports the canvassing of parties early on in the appeal process to identify cases that may benefit from mediation. It does not support mandatory mediation which can only serve to lengthen the process in cases where hearings are necessary to resolve disputes that the parties have been unable or unwilling to narrow or resolve on their own. This is particularly relevant in situations where a municipality applies the Bill 73 provision permitting mediation prior to sending an appeal to the OMB. Subsequently requiring mediation at the OMB would be duplicative and inefficient.

Where parties agree to participate in mediation it should be on the basis that:

- The mediator should have the authority to require all parties who have agreed to participate in mediation attend all mediation sessions where their attendance is deemed necessary. Failure to participate in mediation sessions once it has commenced should result in specific consequences, such as a costs award where the failure to attend is deemed to be frivolous or without merit;
- One of the products of the mediation should be a scoping of the issues in the event that a full settlement cannot be achieved and the matter must proceed to a hearing;

- There is consistent availability of the mediator to maintain the momentum of the mediation process;
- Mediation timelines should recognize the need and process involved for municipalities to seek direction.

In addition:

- all parties/participants should be allowed to participate in mediation
- encourage parties involved in successful mediations to share the outcome with all parties and participants in advance of hearing start dates

B. Strengthening case management

The City also supports strengthened case management, including the requirement that issues be scoped early in the process and using pre-hearing conferences to identify issues that can be resolved in advance of subsequent hearing events. This could be akin to the courts' pre-trial or settlement conference process.

Additional Comments

A Clear Process Model Must be Developed:

A clear process model must be provided to guide the appeal processes. Therefore, any draft amendments to the Act or Regulations governing the operations of the Ontario Municipal Board must be supported by information illustrating how the resulting system is intended to function. Without such information, it will be difficult to provide comments on the proposed changes to statutes and regulations. This will allow the participants to provide better quality input into the finalization of the legislation.

COMMITTEE OF THE WHOLE (WORKING SESSION) DECEMBER 7, 2016

ONTARIO MUNICIPAL BOARD REVIEW ALL WARDS

Recommendation

The Deputy City Manager, Legal and Human Resources, and the Deputy City Manager, Planning and Growth Management, recommend:

1. That this report be forwarded as the City of Vaughan's submission to the Province of Ontario in response to the Ontario Municipal Board Review.

Contribution to Sustainability

The Ministry of Municipal Affairs and the Ministry of the Attorney General are undertaking a review of the scope and effectiveness of the Ontario Municipal Board ("OMB") and are seeking input from municipalities and other stakeholders regarding the roles, responsibilities and governance of the Ontario Municipal Board. If and when the proposed changes to the Ontario Municipal Board are adopted, they will impact how the City operates as the OMB plays a major role in achieving the objectives of Green Directions Vaughan.

Green Directions Vaughan embraces a Sustainability First principle and states that sustainability means we make decisions and take action that ensure a healthy environment, vibrant communities and economic vitality for current and future generations.

Economic Impact

There is no economic impact associated with this report however, any amendments arising from the Province's Review of the OMB may have financial implications for the municipality. For instance, increased mediations at the municipal level will have budgetary and resource impacts. Should the appeal opportunities at the OMB be reduced, there may be an increase in proceedings before the courts, resulting in the potential for increased financial implications for all parties. The extent of such impacts are unknown at this time and will be further evaluated once the Province identifies any proposed amendments resulting from this Review.

Communications Plan

The City's submission in response to the Province's Review of the OMB will be filed with the Ministry of Municipal Affairs prior to the deadline of December 19, 2016. Members of the public may also participate in a number of ways. They can submit comments through the Environmental Bill of Rights Registry at Ontario.ca/EBR (Search for OMB Review, 2016. Notice #012-7196) or can send emails to: OMBReview@ontario.ca. Submissions can also be mailed to:

Ontario Municipal Board Review
Ministry of Municipal Affairs
Provincial Planning Policy Branch
777 Bay Street (13th floor)
Toronto, ON M5G 2E5

Purpose

This report is provided in response to the Province of Ontario's Review of the Ontario Municipal Board for the purpose of providing the City of Vaughan's formal submission as part of the public consultation process which closes on December 19, 2016.

Background - Analysis and Options

The Province of Ontario, through the Ministry of Municipal Affairs and the Ministry of the Attorney General, is undertaking a review of the OMB. Through this Review, the OMB's scope (what it deals with) and effectiveness (how it operates) will be considered. The Review may result in changes to the OMB and the rules that apply to it along with potential amendments to the *Planning Act*.

The OMB Review was launched in June 2016, at which time the Province initiated public and stakeholder consultation. Following receipt of initial feedback, the Province issued a Public Consultation Document in October 2016 which sets out possible changes to improve the OMB's role and raises questions for consideration. Public and stakeholder input is being sought with a deadline for submissions of December 19, 2016. The Province is also hosting town hall meetings on specified dates. Staff attended the town hall meeting in Newmarket on October 18, 2016. The Public Consultation Document sets out five key themes which form the basis of the feedback being sought at the town hall meetings and by way of written submissions. They will be discussed later within this report.

Ontario's Current Land Use Planning System and the OMB

Ontario's land use planning system is governed by the *Planning Act* which identifies the Province's approach to planning, the roles of key participants such as municipalities and applicants, and the requirements related to official plans and zoning by-laws, among other things. It also identifies that disputes are to be adjudicated by the OMB through the filing of appeals. The *Planning Act* identifies the basis upon which appeals may be filed and what considerations the OMB must take into account in reviewing matters before it.

The *Planning Act* has been amended over the years in an effort to improve the efficiency and effectiveness of the land use planning system in the Province. It was most recently amended in 2015 by the *Smart Growth for our Communities Act* (Bill 73), which increased the recognition of municipal council decisions, restricted certain rights of appeal and granted municipalities the authority to use alternative dispute resolution to resolve appeals prior to the start of the OMB appeal process. As the OMB plays a significant role in the planning process, the Province has also initiated this Review to identify improvements that can be made to the OMB as the planning regime in Ontario evolves.

Through initial consultation with the public and stakeholders, the Province identified a range of viewpoints regarding the OMB, including the following:

- Citizens feel they don't have a meaningful voice in the process
- More weight should be given to municipal decisions
- OMB decisions are unpredictable
- Hearings cost too much and take too long
- There are too many hearings; more mediation should be used

In order to address these viewpoints, the Province identified the following set of guiding principles to help frame the OMB Review:

1. Protect long-term public interests
2. Maintain or enhance access to dispute resolution
3. Provide transparency in hearing processes and decision-making
4. Minimize impacts on the court system

Based on the initial feedback received and the guiding principles, the Province has identified priorities for discussion in this Review and has organized these priorities into five themes.

THEME 1: OMB'S JURISDICTION AND POWERS

This theme addresses the concern that too many appeals are filed with the OMB and that the scope of issues being addressed by the OMB is too broad. Some stakeholders have sought limits on appeals and increased recognition of decisions made by municipal councils. In addition, stakeholders have identified concerns with appeals being heard on a "de novo" basis (starting anew), specifically due to the fact that this leads to duplication of the municipal decision-making process and often results in a proposal being presented to the OMB that differs from the proposal submitted to the municipality for consideration.

A. Protecting public interests for the future and bringing transit to more people

The Province is considering limiting appeals on provincial land use planning decisions and matters related to priority infrastructure projects. Examples include:

- Specifying which parts of its decisions on official plans would not be subject to appeal (ex. preservation of farmland, orderly development of safe and healthy communities)
- Prohibiting appeals to new official plans or proposed official plan amendments where municipalities are required to implement Provincial Plans
- Restricting appeals of municipal official plans, amendments to these plans, and zoning by-laws that support provincially funded transit infrastructure

Staff Comments

The revisions to the Planning Act already go some distance in addressing this theme in regard to limitations on appeals. Further articulation of the areas to be protected from appeal are also supported. These areas should be clearly identified to ensure that they are not subject to appeal. Therefore, the relevant enabling legislation or regulations should be clear on what is or is not subject to appeal. In general, the primary areas of exemption should relate to conformity with Provincial Plans and Policies. If a policy is deemed appropriate or necessary to achieving an objective of a Provincial Plan or Policy it should be exempted from appeal. This would need to be implemented through actions by the approval authority that would flow down to the local municipalities. i.e. the Regional Plans approved by the Province would identify the unappealable sections of the Regional Plan. In making decisions on the Local Plans and amendments, the Regional Municipalities would identify which sections are unappealable based on the Regional Plans. The actions of the approval authority should be exempt from OMB or court challenge in making the decision. However, in making the decision, the approval authority should provide an opportunity for submissions from interested parties, prior to making the decision on the proposed exemptions.

In defining the exemptions, one principle should be firmly entrenched. Anything that involves a systemic change to an Official Plan, such as a land budget, an urban boundary or the definition of an intensification area, should be left to a future Municipal Comprehensive Review.

B. Giving communities a stronger voice

The Province is also considering making changes to the land use planning and appeal system to ensure that more land use decisions can be made locally and to provide more certainty and stability. Examples include:

- Prohibiting appeals of a municipality's refusal to amend a new secondary plan for two years
- Prohibiting appeals of interim control by-laws
- Expand the authority of local appeal bodies to include appeals related to site plans

- Further clarify that the OMB's authority is limited to dealing with matters that are part of the municipal council's decision
- Require the OMB to send significant new information that arises at a hearing back to municipal council for re-evaluation of the original decision

Staff Comments

The following is offered for consideration:

- Prohibiting appeals of a municipal refusal to amend a new secondary plan for two years is a good measure; and combined with prohibition on certain appeals would add to the stability of the Plan; however, Councils should be allowed to make minor housekeeping amendments, should a defect be found in a Plan;
- Prohibiting appeals of Interim Control By-laws is a supportable measure, as it diverts municipal resources away from conducting the study to fighting the appeal. Often it takes close to a year to have the appeal dealt with by the OMB, so the appeal rights are often of limited benefit. If an appeal is to be retained, it should only be on the renewal of the ICB for a second year;
- Third party appeals on site plans should not be permitted to the OMB;
- Limiting appeals to the actual changes to the Plan or by-law is warranted and pre-existing policies/standards that are not subject to amendment should be exempt from appeal;
- Situations where significant information arises at an OMB proceeding indicates a fundamental flaw in the process. Municipalities and landowners go through a long process of pre-application consultation and review before matters get to Council for a final decision. If such information has not emerged by this time, the matter is fundamentally compromised. The system should be designed to hear only appeals on the basis of the information that the original approval authority had before it.

C. "De novo" hearings

The Province is also seeking input on changes that would give more weight to municipal and provincial decisions by moving the OMB away from de novo hearings. The term "de novo" is used to describe the manner in which the OMB deals with appeals, by considering the same issue that was before the municipality as though no previous decision had been made. It involves a fresh review of all of the evidence and information filed with the municipality in support of a proposal. It has been proposed by some that "de novo" hearings be eliminated and replaced by having the OMB review the validity of a municipality's decision. This could include requiring the OMB to review decisions using a standard of reasonableness wherein if a decision is found to have been made within a range of defensible outcomes within the authority of the municipality, the OMB would not be able to overturn it. This may also include authorizing the OMB to overturn decisions that are contrary to local or provincial policies.

Staff Comments

The use of "de novo" hearings should be ended in all instances where the approval authority has made a decision. The concept is antithetical to a system that relies on local government processes and decision-making, where a local municipality amends its plan, which is approved by a senior approval authority (i.e. a Region), which has the right to modify the adopted plan. Under this system, the current "appeal" is actually an application for a re-hearing or potentially a mediation process. It is troubling that the municipality is given 180 days to make a decision on an Official Plan, while the Ontario Municipal Board is given unlimited time to deal with the appeal, which can exceed a year and be an on-going financial drain on the municipality. If "appeals" arise, they should be based on the policies adopted by the Local Council and approved by the Region (for Official Plans), based on the information the Council(s) had before them. As such,

the concept should be eliminated altogether, or there should be a higher barrier to entry. This could involve making a motion to the Board for leave to proceed with a hearing “de novo”.

The criteria identified above for the alternatives are worth considering and should be assessed further. The test of a municipal decision should be whether it was reasonable and maintained the intent of the Provincial and Regional Plans.

The procedural matters should also be considered as well, as these are often time consuming and the cause of much delay. Efficiency of process should be an objective. The appeal should be confined to the Council's decision; the appeal should be heard on the basis of the information the Council had before (to maintain the integrity of the system); and it should be adjudicated only on the basis of the supporting documents and a written submission and argument by the respective counsel. It should also be backed by a defined period for mediation to provide a deadline to better focus the parties.

D. Transition and use of new planning rules

Finally, the Province is reviewing potential changes related to transition and the application of new planning rules. There are two perspectives:

1. All planning decisions should be made on the most up-to-date planning documents.
2. Fairness requires that planning decisions be based on the planning documents that were in place when the process was started (i.e. when an application is filed).

Staff Comments

This needs to be carefully considered. The second perspective would normally be preferred. There may be processes that have continued for years, based on older approved municipal plans, that could be effectively terminated by a new Provincial Policy or Plan. This could lead to years of work being wasted and proponents (including municipal Secondary Plans) being required to start over to address the new requirements. The counter argument is that an application may have been dormant for years, with “grandfather” status that might be reactivated, based on the old policies. Such instances should also be avoided.

Like the municipalities, the OMB should have clear direction on the transition provisions for the Provincial Plans and Policies. An alternative would be to allow for existing applications and processes, already underway, to be allowed to continue to the point of approval by the municipal approval authority, provided that the decision is reached within a specified timeframe, e.g. 3-years. Time-limiting the transitioned matters would serve to provide greater certainty in the process.

THEME 2: CITIZEN PARTICIPATION AND LOCAL PERSPECTIVE

Initial feedback received from the Province confirmed that citizens want to ensure that the local perspective is heard and respected when decisions are made. Concerns have been raised with respect to the cost of participating in hearings, which can discourage participation. Fairness is another consideration as individual citizens or community groups do not have the same resources and access to subject matter experts as municipalities or developers do. OMB procedures have also been identified as an area where improvements could be made to support a more citizen-friendly process. This includes making information about the OMB and the cases before it accessible and easy to understand.

A. The role of the Citizen Liaison Office

The Citizen Liaison Office was established in 2006 to assist the public with questions about the OMB, its process and the citizen's role. This office is currently staffed by one person. The

Province is considering expanding the Citizen Liaison Office, by either hiring more staff or reconfiguring it and moving it outside of the tribunal. It might include in-house planners or lawyers who would be available to assist the public, subject to eligibility criteria.

Staff Comments

There would be benefit in expanding the Citizen Liaison Office and use it as a teaching tool, to ensure that potential appellants understand the role of the various levels of policy that shape planning decisions. This may serve to give the public a more realistic understanding of what they may accomplish as a result of an appeal.

Having in-house planners and lawyers to advise the public would be of some assistance. However, the potential demand on the service might be overwhelming unless it is well targeted. The information would have to be based on procedure and not on the merits of the appeal so as to avoid a perception of bias. The provision of training materials would be important to this service, which could include a website with various types of information including webinars and even a mock hearing to familiarize the public with the procedural aspects of a hearing and the role of the individual parties.

Making materials on on-going hearings and mediations more readily available to the public in an easily understood format would allow for greater inclusion and participation of the public. Responsibility, for the availability of this information would be an appropriate role for a Citizens Liaison Office.

B. Funding tools to enable citizens to retain their own planning experts and/or lawyers

The Province is also exploring funding tools to enable citizens to retain their own planning experts and lawyers. Input on the types of funding tools and type of financial or other eligibility criteria to support increased access to subject matter experts is being sought.

Staff Comments

City staff regularly encounter a high level of public cynicism over the role the public plays in the planning process. The general feeling of the public is that they are being ignored and that the consultation is futile and that they are wasting their time. It is very difficult for staff to convey the idea that the municipality is obligated to fulfill certain requirements that are set out in Provincial plans and policies, which ultimately have to be reflected in the Regional and City Official Plans.

The public concerns most often relate to density and intensification (which are mandated at the Provincial and Regional levels), current traffic conditions, and the traffic impacts of new development. There is also skepticism over the positive impacts of transit on reducing or moderating traffic impacts.

Many of the issues that are of great public concern may ultimately be deemed to be beyond appeal as a result of this process. As such, it is unlikely that the Province would be inclined to fund opposition to its policies. Therefore, eligibility criteria would have to be carefully considered and be based on the broader public interest, if financial support was to be provided to public appellants. In addition, any funding sources should not result in financial implications for the municipalities, which are already burdened by the high cost of responding to OMB appeals.

THEME 3: CLEAR AND PREDICTABLE DECISION-MAKING

This theme focuses on the need for good decision-makers and clear and predictable decision-making processes.

A. Qualifications for OMB adjudicators

The Province is considering increasing the number of OMB adjudicators and ensuring they possess necessary skills. There are currently 20 full time members (including six Vice Chairs and one Associate Chair) and four part-time members. The members include lawyers with backgrounds in environmental, municipal and planning law, planners, former elected officials and people with adjudication and mediation experience. Current qualifications for OMB members include criteria such as experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal. They also receive training about the administrative justice system and decision-writing. Additional qualifications and increased training are being considered.

Staff Comments

The City has no concerns with the qualifications of the current OMB members. However, Board members' skills and expertise should reflect the fact that land use planning processes are informed by a variety of disciplines. The OMB would benefit from members who have a range of experience in these matters and have a deep understanding of the issues at hand. At this time, the City's main concern relates to the availability of members to conduct hearings and mediations. Board membership should be increased to meet demand. This would also introduce an opportunity to explore the addition of a more diverse range of expertise among the Board members.

B. Multi-member panels

OMB hearings are typically conducted by one member who is responsible for hearing cases and writing decisions, which are then reviewed by senior board members. Multi-member panels have become less common over the years due to cost. The Province is considering increasing the use of multi-member panels with panel members representing a broad range of skills and backgrounds to ensure clarity and consistency of decision-making. Specifically, feedback as to whether the use of multi-member panels should be increased and if so, whether they should be used to conduct all hearings or complex hearings only is being sought.

Staff Comments

Multi-member panels are supported for complex cases only. The additional cost and time added to have multi-member panels adjudicate all hearings would not be beneficial. Criteria for identifying hearings requiring multi-member panels should be set out to provide clarity and predictability. Criteria may include cases with issues involving a variety of specialized experts (environmental, transportation, noise, market or economic, etc.) or cases that involve multiple parties, increasing the number of issues to be adjudicated (such as a Regional or Municipal Official Plan). . In assigning members to complex multi-disciplinary hearings, the assigned member(s) should have experience and expertise commensurate with the need to arrive at fair, impartial and sound technical decisions.

THEME 4: MODERN PROCEDURES AND FASTER DECISIONS

Initial feedback regarding the OMB's rules of practice and procedure is that they should be updated and streamlined to make the system more accessible and to promote timely decisions. Specific concerns raised include the need for faster screening and scheduling of appeals, and more flexibility in how evidence can be presented. Hearing processes have been criticized as being too lengthy and too formal or court-like. Increased simplicity, predictability and transparency have been requested.

A. Improving the OMB's hearing procedures and practices

The Province is considering allowing the OMB to adopt less complex and more accessible tribunal procedures. In addition, active adjudication is being considered. This would permit adjudicators to be more active during hearings, which may include explaining the rules and procedures, scoping issues and evidence and questioning witnesses.

Staff Comments

The City supports active adjudication, particularly in cases where there are unrepresented parties or participants or significant community interest. A more involved hearing panel could assist the public in better understanding the process and the evidence presented at hearings.

B. Timelines for scheduling hearings and issuing decisions

Currently, the OMB sets targets for the scheduling of hearings or pre-hearings within a certain period of time. Targets are also set for the issuance of decisions. For instance, the first hearing for a minor variance case is currently expected to be scheduled within 120 days of receipt of a complete appeal package in 85% of cases. In 2015-2016, this target was achieved in 67% of cases. OMB decisions are to be issued within 60 days of the end of a hearing in 85% of cases. This target was achieved in 80% of cases in 2015-2016.

In order to improve timelines, the Province is considering options such as setting new timelines for decisions, introducing a maximum number of days for hearings, conducting more hearings in writing where appropriate, increasing flexibility for how evidence can be heard, and establishing rules for issues lists to ensure that hearings are focused and conducted in the most cost-effective and efficient way possible.

Staff Comments

Many of the above-noted actions, such as increasing the number of OMB members and reducing the matters that can be appealed should improve the OMB's ability to meet existing timelines.

While flexibility in the presentation of evidence may be worthy of consideration, predictability is important for all parties in preparing their cases. Each party needs to be clear on the case they are required to meet in advance of a hearing to ensure fairness. Any additional flexibility should be balanced against the need for predictability and fairness.

Written hearings should be introduced, where appropriate, to address matters that would largely be dependent on documentary evidence. Written hearings may be best utilized for matters involving legal interpretation issues.

THEME 5: ALTERNATIVE DISPUTE RESOLUTION AND FEWER HEARINGS

The use of mediation has increased in recent years at the OMB. It has been recognized as successfully assisting parties in reaching mutually acceptable solutions to land use planning issues, while avoiding the formal appeal process. It has been suggested that the OMB more actively promote mediation and that more members should be available to conduct mediations. This could also lead to fewer and/or shorter OMB hearings. It has also been suggested that case management be strengthened. This includes using the pre-hearing process more efficiently to clarify issues, focus the hearing and ultimately shorten hearing time.

A. Using mediation to resolve disputes

The Province encourages the increased use of alternative dispute resolution. Bill 73 is an example where municipalities have been given the opportunity to engage in alternative dispute

resolution before an appeal is forwarded to the OMB. If initiated, a municipality is granted an additional 60 days to try to resolve disputes before an appeal is sent to the OMB. Through this Review, the Province is also considering more actively promoting the use of mediation at the OMB. This may include requiring all appeals to be considered by a mediator before scheduling a hearing. It may also include offering the support of mediators during the application process, such as before an application is considered by a municipal council, which could help reduce appeals. Input is sought on whether mediation should be mandatory, even if it has the potential to lengthen the process.

Staff Comments

The City of Vaughan has used mediation successfully for many OMB appeals. This has included site specific appeals and multi-party Official Plan and Secondary Plan appeals. While mediation can lengthen the process in complex cases, it also results in an outcome that all parties are more satisfied with, while reducing the risk of an unknown outcome and the adversarial nature of OMB hearings. It also increases the dialogue between the parties at the table and promotes the ability to identify creative solutions that may be more suitable in the circumstances. It could be improved if the mediation process is time limited and should also be subject to agreed upon deadlines.

The City strongly supports promoting increased use of mediation with the addition of the necessary resources to meet the current caseload at the OMB. Often, during lengthy and complex mediations, months can go by before another formal mediation session can be scheduled. This can slow momentum where progress is being made on certain issues. An increase in the number of trained mediators on the OMB roster is supported.

In the alternative, it may be worthwhile devoting OMB members solely to the hearing activities and having a roster of trained mediators that could be brought in to facilitate an agreed upon mediation process. Since the number of Board members will always be limited, this would broaden the opportunity for guided settlement negotiations. Also, it would ensure that momentum can be maintained with more consistent availability of mediators.

The City supports the canvassing of parties early on in the appeal process to identify cases that may benefit from mediation. It does not support mandatory mediation which can only serve to lengthen the process in cases where hearings are necessary to resolve disputes that the parties have been unable or unwilling to narrow or resolve on their own. This is particularly relevant in situations where a municipality applies the Bill 73 provision permitting mediation prior to sending an appeal to the OMB. Subsequently requiring mediation at the OMB would be duplicative and inefficient.

Where parties agree to participate in mediation it should be on the basis that:

- The mediator should have the authority to require all parties who have agreed to participate in mediation attend all mediation sessions where their attendance is deemed necessary. Failure to participate in mediation sessions once it has commenced should result in specific consequences, such as a costs award where the failure to attend is deemed to be frivolous or without merit;
- One of the products of the mediation should be a scoping of the issues in the event that a full settlement cannot be achieved and the matter must proceed to a hearing;
- There is consistent availability of the mediator to maintain the momentum of the mediation process;
- Mediation timelines should recognize the need and process involved for municipalities to seek direction.

B. Strengthening case management

The Province is seeking input on how it could strengthen case management to better stream, scope issues in dispute, and identify areas that can be resolved at pre-hearings. It is also exploring the creation of timelines and targets for scheduling cases, including mediation.

Staff Comments

The City also supports strengthened case management, including the requirement that issues be scoped early in the process and using pre-hearing conferences to identify issues that can be resolved in advance of subsequent hearing events. This could be akin to the courts' pre-trial or settlement conference process.

Additional Comments

A Clear Process Model Must be Developed

A clear process model must be provided to guide the appeal processes. Therefore, any draft amendments to the Act or Regulations governing the operations of the Ontario Municipal Board must be supported by information illustrating how the resulting system is intended to function. Without such information, it will be difficult to provide comments on the proposed changes to statutes and regulations. This will allow the participants to provide better quality input into the finalization of the legislation.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

The proposed City responses to the Ontario Municipal Board review are prepared to support the Term of Council priority to "Continue to advance a culture of excellence in governance" consistent with the Service Excellence Strategic Initiative to achieve continuous improvement in our Operational Performance.

Regional Implications

York Region

There is widespread interest amongst municipalities in providing comment on Ontario Municipal Board Reform. City staff have been advised that a Regional staff response will be proceeding directly to York Region Council on December 15, 2016 for its consideration. Staff have met with the Regional staff and representatives of York Region's other local municipalities, to discuss measures that would improve the operations of the OMB. This discussion has assisted in preparing the responses recommended herein.

Regional Planning Commissioners of Ontario (RPCO)

The Regional Planning Commissioners of Ontario commissioned a report to provide input into the Province's review of the Ontario Municipal Board. Based on a number of background studies, a survey of RPCO members and interviews with key stakeholders, the report concluded:

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 solve disputes, and resolving matters through alternative dispute resolution techniques wherever possible. Reform also requires that the Province and the 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.

Conclusion

The issues associated with the OMB are serious and affect many sectors of society. The Board exerts an indirect influence on all planning matters in that the actions of the participants are now focused on predicting what a potential OMB member might or might not decide if the matter goes to hearing. This detracts from the role that the municipal planning process and approval authorities play; and in some instances results in a third level of approval for some local planning matters (e.g. Official Plans that also require Regional approval). The appeal process is overly judicial and costly to all parties, even if a matter is resolved through mediation. The public has essentially been priced out of participation by the need for legal counsel and expert witnesses, which contributes to public disaffection with the system. The additional time consumed can result in major delays to development processes that contribute to economic inefficiencies.

The Board does play a role in ensuring that decisions of the approval authorities are not out of line with reasonable norms governed by Provincial, Regional and local policies and good planning practice. It will be important to maintain this balance. Therefore, the approach to refocus the role of the OMB into a true appeal body with well defined limits on its responsibilities and procedures is supported. The issues are widely known and are well-articulated in the Provincial consultation document, which sets out a range solutions that, if applied, would improve the OMB's performance. This report has identified a number of priority changes that should be considered for implementation through the OMB review.

It is recommended that this report and resulting Council minutes be forwarded to the Ministry of Municipal Affairs as the City of Vaughan comments on the Ontario Municipal Board Review.

Attachments

None.

Report prepared by:

Claudia Storto, Deputy City Manager, Legal & Human Resources
Roy McQuillin, Director, Policy Planning
Bill Kiru, Manager, Development Planning
Mauro Peverini, Manager, Development Planning

Respectfully submitted,

Claudia Storto
Deputy City Manager
Legal & Human Resources

John MacKenzie
Deputy City Manager
Planning & Growth Management