

OMB Reform

Discussion at FCA General Meeting of
November 7, 2016

Manotick Legion - Branch 314

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- Not on the table: Abolish
- Why reform:
 - OMB perceived as unaccountable planning authority, supplanting the will of Council
 - Communities outgunned by deep-pocket developers
 - OMB tends to accept evidence of proponents, against evidence of the City or communities (*)
 - OMB is slow, has outdated practices

(*) Robert Marinov, Land-Use Adjudication in Canada's Capital: An analysis of Ontario Municipal Board decisions affecting the preservation and development of "greenspace" in Ottawa, 9 September 2016

Fork in the road toward reform:

Continue to hold *de novo* hearings or not

(In a *de novo* hearing, the Board considers the issue as if no decision had been made, though it must have “regard” to it)

Reference: Q4 & Q5

If the Board would no longer hold *de novo* hearings:

The Board would do a judicial review, act more like a court of appeal:

- + standard of reasonableness?
- + due process?
- + in accord with local & provincial laws, regulations & policies?

As a result:

- No regurgitation of what was presented leading to Council (or Committee of Adjustment) decision
- No amassing of new evidence on the substance of the issue
- Issues of process could be appealed to the Board
- Fewer and shorter hearings likely
- If the Board upholds the appeal, then the issue would return to Council (or Committee of Adjustment) for a decision consistent with the Board's finding

Reforms that could help even if the end of *de novo* hearings would not be accepted:

- + A local appeal body for appeals of Committee of Adjustment decisions?

Would reduce the load on the OMB by more than half

- + No appeal of secondary plans for two years (Q3)

- + No appeals of interim control by-laws (Q3)

- + Requiring (“shall”, not “may”) that, when new information is presented, the issue should return to Council first (Q3)

Other reforms, cont'd:

+ Pre-2007 applications should no longer be grandfathered (Q6)

+ Working of the Citizen Liaison Office? (Q7, Q8)

Should it have its own in-house planning experts & lawyers? (Q9)

Should it maintain a searchable data base of Board and court decisions? (Q10)

+ Clarification of the *Planning Act*, section 17(50.1) on the meaning of “dealt with” (Q3)

Only what Council has decided should be subject to appeal, not everything it has considered

The biggie:

+ Intervenor funding (Q11, Q12)

- for eligible not-for-profit organizations
- prior determination that the appeal is not frivolous, vexatious or only for the purpose of delay
- no pecuniary interest in the outcome
- requested funding should pass a test of reasonableness
(Board to decide, based on published criteria)

Process reforms: (Q16 - Q19)

- + file evidence in advance on a shared drive
plus hard copies for not-for-profit groups
- + transcripts (or synopsis minutes?) for all hearings
plus hard copies for not-for-profit groups
- + pre-hearing conferences for all appeals
- + include Exhibits if the Decision references them
- + encourage “active adjudication”
- + improve the Search function on web site

Alternative dispute resolution: (Q20 - Q23)

+ current process ineffective (p 26)

+ mandatory mediation?

If the Board finds that the dispute is due to asymmetrical information

Finally: (General question, Q24)

+ amend the *Consolidated Hearings Act* so that any Party can request a Joint Board (OMB + Environmental Review Tribunal)

- Consider *Planning Act* and *Environmental Assessment Act* together
- Better than Part II Order request under the EAA

Next steps:

+ Wednesday, November 9, 5:00 – 9:30 p.m.: Town Hall
St-Anthony Banquet Hall, off Preston Street

+ FCA workshop, later in November?

+ Motion at Dec 8 meeting to approve an FCA response?

+ deadline for comments is December 19

>>>> EBR 012-7196

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>>>> Consultation document is at
<http://www.mah.gov.on.ca/Page15027.aspx>

>>>> More information at [http://greenspace-alliance.ca/index.php/
current-issues-province-of-ontario/](http://greenspace-alliance.ca/index.php/current-issues-province-of-ontario/)