



SUBJECT: Burlington Response to Provincial Consultation on Ontario Municipal Board Reform

TO: Community and Corporate Services Committee

FROM: Planning and Building Department

Report Number: PB-97-16

Wards Affected: All

File Numbers: 110-03.s-2

Date to Committee: December 12, 2016

Date to Council: December 19, 2016

Recommendation:

Endorse *Halton Area Planning Directors' Submission: Review of the Ontario Municipal Board: Public Consultation Document, October 2016*, as contained in appendix B to planning and building department report PB-97-16; and

Endorse the *Additional Burlington Comments* to the Province on OMB Reform, as contained in appendix A to planning and building department report PB-97-16; and

Direct the City Clerk to forward the resolution of Council, subject to endorsement of the recommendations contained in planning and building department report PB-97-16, as well as report PB-97-16 with appendices A to B to the Ministry of Municipal Affairs.

Purpose:

The purpose of this report is to provide Council with the opportunity to:

1. review and endorse the *Halton Area Planning Directors' Submission: Review of the Ontario Municipal Board: Public Consultation Document, October 2016*;
2. review and endorse staff's recommended comments that are additional to the Halton Joint Submission; and,
3. add to the list of matters identified by staff as further feedback to the Province.

The subject report relates to the following Strategic Plan direction:

An Engaging City

- Good Governance

Background and Discussion:

The Province of Ontario is conducting a review of the Ontario Municipal Board (OMB). The OMB is component of the land use planning system in Ontario and enables people to appeal land use decisions that affect their properties and communities.

The Province sees a continuing need for the OMB as a component of the land use planning system and is exploring changes to ensure that the Board's role is appropriate, open and fair, and is reviewing the scope and effectiveness of the OMB.

The Province has identified five key themes for discussion in its consultation document titled, "[Review of the Ontario Municipal Board: Public Consultation Document, October 2016](http://www.mah.gov.on.ca/Page15027.aspx)", or can be accessed here: <http://www.mah.gov.on.ca/Page15027.aspx>. The themes are outlined below:

- Theme 1: OMB's jurisdiction and powers
- Theme 2: Citizen participation and local perspective
- Theme 3: Clear and predictable decision making
- Theme 4: Modern procedures and faster decisions
- Theme 5: Alternative dispute resolution and fewer hearings

Halton Joint Submission

On November 9, 2016, Regional Council approved Halton staff report LPS118-16 – Ontario Municipal Board Review. That report outlined the process and objectives of the Province's consultation on OMB Review. The staff report identified three key recommendations, as outlined below:

1. Scoping appeals

- *Amend the Planning Act to restrict the scope of matters that can be appealed to the Ontario Municipal Board (e.g. municipally-initiated comprehensive and area wide official plan amendments)*
- *Amend the Planning Act and OMB procedures to effectively scope matters under dispute to restrict appeals that are broad and without basis (e.g. require appeal letters to provide a sound planning rationale for the appeal and include specific policy wording and mapping for those changes being requested).*
- *Restrict appeals (especially third party appeals) that implement municipal comprehensive reviews establishing urban structure.*

2. Mediation

- *Amend the Planning Act and OMB procedures to utilize Alternative Dispute Resolution (ADR) as a 'first' solution to resolve land use disputes rather than OMB hearings.*
- *Service delivery of mediation – improving timelines to expedite resolutions.*
- *Apply a merit based approach to appeals.*

3. De Novo Hearings

- As a decision making authority, the OMB currently has the ability to hear land use planning matters “de novo” (i.e. from the beginning) even though the matter was previously considered by a municipal council.*
- *Amend the Planning Act to limit the opportunities for de novo hearings at the OMB and give validity to Council’s decisions on land use matters. (Halton staff report, LPS118-16, pp. 3-4)*

The Halton staff report also contained a detailed response to the OMB Review Public Consultation document, as attached in Appendix B of subject report PB-97-16. The detailed response is titled, *Halton Area Planning Directors’ Submission: Review of the Ontario Municipal Board Public Consultation Document, October 2016*, or commonly referred to as the “Halton Joint Submission”.

Also, the Halton staff report recommended that the Regional Clerk forward a copy of the staff report including the Joint Submission to the province. The Joint Submission was signed by Region of Halton, City of Burlington, Town of Oakville, Halton Hills, Milton, Conservation Halton, Grand River Conservation Authority, and Credit Valley Conservation.

Additional Burlington Comments

City staff concur with the recommendations of Halton report LPS118-16. Staff have also identified the following additional items for the Province's consideration:

- 1. The current time frame before an official plan or rezoning amendment can be appealed to the OMB based on "Non-Decision" is inadequate; extension of the time frame should be extended to 12 months for OPAs and 9 months for rezonings.**

Currently, an applicant can appeal a development application to the OMB if Council has not made a decision within 180 days of an Official Plan amendment application or 120 days of a Zoning By-law amendment application being deemed complete.

While it is acknowledged that Bill 73 has provided the option of extending the timeline by 90 days for OPA's, the City remains of the position that this is not an adequate extension.

Burlington is a municipality that is accommodating the majority of its growth within the built-up area of the city. The applications being received within intensification areas are increasingly complex, requiring significant public and stakeholder engagement, as well as supporting technical studies. The current 180 day and 120 day time periods are inadequate for processing development applications in this context.

Further, the current time frames do not consider the realities of internal report review processes or Committee/Council meeting cycles typical in municipal government. To place a report on an agenda for Committee/Council consideration typically means that the report is complete up to 1.5-2 months previous to that date. This shortens the period of "Non-Decision" even further to a 4-5 month processing window, placing the municipality in an even more unrealistic position for processing complex applications.

The existing 180-day and 120-day time frames have a number of impacts:

- It puts more applications before the OMB, when the ultimate goal should be to keep applications within the local decision making authority where best efforts are being made to resolve issues outside of the OMB system.
- It penalizes a municipality for striving to conduct a meaningful public consultation process.
- It penalizes a municipality for striving to ensure that quality technical submissions are received to appropriately assess an application.
- It places the municipality in the position of recommending a refusal to Council, taking an adversarial position with the applicant, when in fact, there could still be

the opportunity and interest in working through the issues with the applicant, stakeholders and community.

- It places the municipality in a position of risk and uncertainty for making best effort to continue work through issues beyond the 180-days/120 days with increased risk of appeal for every day that passes.
- It does not recognize that it might be advantageous for some applicants to only fulfill the requirements for a complete application, with the intention of triggering an appeal so that a decision would be made through an OMB hearing rather than by a local Council.
- It places a municipality in an unrealistic position for processing a complex development application as it does not consider the time it takes to: resolve issues with the application; fill information gaps in technical studies; consult with the public; and consult with stakeholders and agencies some of which have their own challenges in resourcing application review and preparation of comments.

2. Alternative dispute resolution should be supported by additional provincial funding, and not downloaded to municipalities.

The City is supportive of avenues that reduce the need for an OMB hearing and that places more decision making authority within the local context, and is therefore supportive of the alternative dispute resolution process. However, the dispute resolution process also requires resourcing which should be supported by the Province and not downloaded to municipalities.

3. The period in which to conduct an interim-control study should be an automatic 2-year period, rather than a 1-year period and subject to renewal.

A municipality typically only invokes an interim-control by-law planning tool when a significant matter arises. A significant matter, is often a complex matter, requiring time to conduct a study. Components of a study process include: issue identification and project scoping; potentially outsourced procurement for technical assistance; public and stakeholder consultation; research and analysis; policy analysis; formulation of recommendations; and, preparation of a staff recommendation report to Council. A one year-time frame can be aggressive, particularly if outsourced consulting support is required as part of the study due to timelines and requirements of the procurement process. The study period should be revised to an automatic 2-year period, rather than a 1-year period, subject to renewal.

4. The scoping of matters that can be subject to OMB appeal should be further expanded and clarified.

To avoid the necessity of re-hearing of local Official Plan matters which have already been resolved by the Province or the Board at the Senior Plan level, the Province should specify that the following matters are not eligible for appeal:

- Regional official plan conformity through local official plan amendments;
- Any local official plan or amendment which is designed as a conformity exercise to an approved provincial plan (except for those provisions of the local plan that may be more restrictive than the senior-level plan).

5. Further clarity should be provided on the Province's proposal to restrict appeals of planning applications for development that supports provincially funded transit infrastructure such as subways and bus stations.

Staff support, in principle, the restriction of appeals for applications that support transit infrastructure; however, staff question how such appeal restrictions would be implemented. There are many aspects of local official plans, such as the City of Burlington's current Official Plan, which support transit infrastructure, and many of these aspects will be continued in expanded in future planning, such as the new impending Official Plan and the Mobility Hub Area-Specific Planning which is currently underway. Staff question how to feasibility separate out those aspects of a Plan which are transit-related, and therefore not subject to appeal, from other overlapping aspects of a Plan which are designed to achieve other objectives, and which would be subject to appeal.

6. The Province's proposal to require land use decisions to reflect current Provincial policy is strongly supported.

Since 2007, the *Planning Act* has required that land use decisions on applications made after that time must reflect provincial policies in place when the decision is made, not when the application is made. The Province is proposing to extend this change by requiring that all planning decisions, including those for applications made prior to 2007, be based on planning documents in effect at the time of the decision.

Staff strongly support this Provincial proposal. At the present time, there are some dormant pre-2007 applications in the City that were originally submitted in anticipation of new future planning policies coming into force. These applications were essentially submitted as "placeholders" in order to ensure that the previous planning regime would continue to apply, and these applications could be re-

activated at any time. Some of these applications are incomplete and do not reflect current planning policies and practices. This proposed Provincial change would ensure that decisions on these applications, if and when they are re-activated, would be able to reflect the current policies.

Strategy/process

Subject to Council endorsement of the subject report recommendations, the City Clerk will forward a copy of the Council Resolution, any additional Burlington comments, and resubmit a copy of the Halton Joint Submission to the Ministry of Municipal Affairs.

Options considered

Not applicable

Financial Matters:

There are no financial impacts directly related to the subject report. The comments contained within the report encourage the Province to consider revising the scope and effectiveness of the Board. There is potential that changes made as part of this review could require or permit municipalities to take on new and/or different roles and responsibilities which generate financial impacts to municipalities.

Connections:

The subject Burlington staff report is related to Halton Region's staff report LPS118-16 and related appendices.

Public Engagement Matters:

Public consultation related to the *Review of the Ontario Municipal Board: Public Consultation Document* has been led by the province.

Conclusion:

The City of Burlington supports the changes to the OMB that are being considered by the Province. In addition, staff recommend endorsement of the Halton Joint Submission

as contained in Appendix B, and Additional Burlington Matters, as contained in Appendix A.

Respectfully submitted,

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Appendices:

- A. Additional Burlington Comments to Province on OMB Reform
- B. Halton Area Planning Director's Submission: Review of the Ontario Municipal Board: Public Consultation Document, October 2016

Notifications:

- i) Ron Glenn, Director of Planning Services, Chief Planning Official
- ii) Ontario Municipal Board Review
Ministry of Municipal Affairs
Provincial Planning Policy Branch
777 Bay Street (13th Floor)
Toronto, ON M5G 2E5

Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.

Appendix A:
Additional Burlington Comments to Province on OMB Reform

The comments provided below are highlights of Burlington staff report PB-97-16; the staff report should be referenced for a full discussion of the matters.

1. The current time frame before an official plan or rezoning amendment can be appealed to the OMB based on “Non-Decision” is inadequate; extension of the time frame should be extended to 12 months for OPAs and 9 months for rezonings.
2. Alternative dispute resolution should be supported by additional provincial funding, and not downloaded to municipalities.
3. The period in which to conduct an interim-control study should be an automatic 2-year period, rather than a 1-year period and subject to renewal.
4. The scoping of matters that can be subject to OMB appeal should be further expanded and clarified.
5. Further clarity should be provided on the Province’s proposal to restrict appeals of planning applications for development that supports provincially funded transit infrastructure such as subways and bus stations.
6. The Province’s proposal to require land use decisions to reflect current Provincial policy is strongly supported.