SUBJECT: Report of the GTA Task Force on OMB Reform (PED05217) (City Wide) – Referred from Council on October 26, 2005

RECOMMENDATION:


(b) That City Council adopt the following resolution:

WHEREAS the Ontario Municipal Board was created to resolve municipal land use issues at a time when municipal governments were small and had limited planning expertise;

AND WHEREAS the role and mandate of the Ontario Municipal Board have not been significantly altered in response to increased municipal planning skills or expanded municipal responsibilities for land use planning under the Planning Act;

AND WHEREAS the Ontario Municipal Board has broad planning powers and can make decisions in the absence of a full municipal review of a planning application and can overturn local planning decisions;
AND WHEREAS Ontario Municipalities invest significant resources in staff time, legal and other associated costs in establishing and implementing local planning policy;

AND WHEREAS there is growing concern from municipalities and citizens that the decisions of the Ontario Municipal Board are eroding local planning authority;

AND WHEREAS there have been numerous Council Resolutions, municipal reports and reports from planning professionals and academics advocating reform of the Ontario Municipal Board;

AND WHEREAS the GTA Task Force on OMB Reform, an informed group of municipal representatives and staff, after study and consultation, made practical recommendations for improvements to the planning appeal process;

AND WHEREAS the Ontario Government has indicated their intention to introduce legislation enacting significant reforms to the OMB and the planning appeal process in the Fall 2005 session of the Legislature,

NOW THEREFORE BE IT RESOLVED THAT the Council of the City of Hamilton endorses the recommendations of the Report of the GTA Task Force on OMB Reform dated March 7, 2003 and urges the Province to enact OMB reforms by the end of 2005,

AND FURTHER BE IT RESOLVED THAT this resolution be circulated to, the Attorney General, the Minister of Municipal Affairs and Housing, local MPP's and the Chair of the GTA Task Force on OMB Reform.

(c) That the item respecting the Resolution – GTA Task Force on OMB Reform referred from Council on October 26, 2005, be identified as completed and removed from the Planning and Economic Development Committee Outstanding Business List.

______________________________
Lee Ann Coveyduck
General Manager
Planning and Economic Development Department
In March 2003, the GTA Task Force on OMB Reform released a report making recommendations to the Province for reforming the Ontario Municipal Board and Ontario’s planning appeal process (attached as Appendix “A”). The report recommended reform to the Ontario Municipal Board in the following four key areas:

- Update the role of the Ontario Municipal Board.
- Enable timely municipal decision-making, based on complete applications.
- Support citizen participation through intervener funding.
- Promote an independent and fair tribunal.

At its meeting of March 26, 2003, Council passed a resolution endorsing the Report of the GTA Task Force on OMB Reform.

In the interests of raising the priority of this issue in both the public and political arenas during the Fall sitting of the Legislature, the GTA Task Force on OMB Reform has once again requested that municipal Councils of the Greater Toronto area formally endorse the March 2003 Task Force report.

City Planning and Legal staff still concur with the contents of the report and recommend it to Council for endorsement.

**BACKGROUND:**

**GTA Task Force**

In June 2002, Durham Regional Council directed the Regional Chair to convene a meeting of Greater Toronto area officials to discuss and make recommendations on OMB reform. This direction reflected the sentiment of many Ontario municipalities’ growing frustration with the OMB’s role in the planning approval process in Ontario.

On September 16, 2002, a group of GTA and Hamilton elected officials and municipal staff (21 members) met in Whitby. Councillor Frank D’Amico, Paul Mallard and Nancy Smith attended from Hamilton. Stakeholders including academics, ratepayer groups, government agencies and development industry representatives made presentations to the Task Force. The Task Force also heard from the Liberal and New Democratic provincial parties, as well as the Chair of the the OMB. Through listening, discussion and research, the Task Force produced the Report of the GTA Task Force on OMB Reform, dated March 7, 2003 (attached as Appendix “A”). Hamilton’s Task Force members concurred with the contents of the Report and recommended it to Council for endorsement. Council passed a resolution on March 26, 2003, endorsing the report.
OMB/Planning Reforms – Ministry Sessions

In October 2005, the Ministry of Municipal Affairs and Housing held a series of working meetings with selected stakeholders to discuss the questions the government is facing in order to reform the OMB and the Planning system. The meetings were intended to help Ministry staff in shaping proposed reform options. Working sessions on the following five focus areas were held:

- Community Improvement Plans (CIPs)
  This session explored potential enhancements to the community improvement framework to promote intensification and Brownfield re-development.

- Development Control Tools
  This session explored potential enhancements to zoning and the development permit system to promote intensification and other provincial policy objectives.

- Land Use Planning Improvements
  This session explored a range of potential general enhancements to the planning process to achieve clearer rules for planning.

- Community Design
  This session explored potential enhancements to the planning system to achieve architectural control and sustainable design.

- OMB Reform
  This session explored potential enhancements to the structure and scope of the OMB.

**ANALYSIS/RATIONALE:**

Planning and Legal staff concur with the contents of the Report of the GTA Task Force on OMB Reform and recommend it again to Council for endorsement. Given the apparent commitment of the government to proceed with OMB/Planning Reform, it would be appropriate for Council to reaffirm its original endorsement of the Report.

**ALTERNATIVES FOR CONSIDERATION:**

None.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

None.

POLICIES AFFECTING PROPOSAL:

None.

RELEVANT CONSULTATION:

None.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced.  ☑ Yes  ☐ No
Participation in community life is accessible to all Hamiltonians.
The public are involved in the definition and development of local solutions.

Environmental Well-Being is enhanced.  ☑ Yes  ☐ No
Human health and safety are protected.

Economic Well-Being is enhanced.  ☑ Yes  ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines?  ☑ Yes  ☐ No
OMB reform will improve the Planning process and deliver a benefit to the City in meeting its Strategic Commitment.

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  ☐ Yes  ☑ No
Report of the

GTA Task Force On OMB Reform

Recommendations for Reforming the Ontario Municipal Board and Ontario’s Planning Appeal Process

March 7, 2003
SUBJECT:
Recommendations for Reforming the Ontario Municipal Board and Ontario’s Planning Appeal Process

REPORT:

PURPOSE

The purpose of this report is to recommend reforms to the Ontario Municipal Board (OMB) and the related land use planning appeal process, and to seek endorsement of these recommendations by the local and regional governments within the Greater Toronto Area. The Task Force will then forward the endorsed recommendations to the Minister of Municipal Affairs and Housing and the Attorney General and others who may be in a position to implement or influence those reforms.

BACKGROUND

Originally created as the Office of the Provincial Municipal Auditor in 1897 to supervise account keeping by municipalities, the Ontario Railway and Municipal Board was formed in 1906 with an added responsibility for railways. Renamed the Ontario Municipal Board in 1932, its powers have expanded greatly over time and the Board now obtains its jurisdiction from more than 100 statutes. This report is concerned with its jurisdiction under the Planning Act.

The Board was created to arbitrate municipal issues in a predominantly rural society where municipal government was small and unsophisticated. After World War II, Ontario’s population became increasingly urban, planning departments began to emerge in Ontario cities and towns, and land use planning legislation began to be enacted provincially. At the dawn of the 21st century, Southern Ontario, in particular, is primarily an urban culture with rapid development in and around its major cities. Municipalities now possess considerable planning expertise. Since 1995, the Province has downloaded most land use planning responsibilities to the municipal level of government. The new Municipal Act, 2001 recognizes municipalities as an order of government.

While the OMB has undergone some administrative changes over the years and recent procedural improvements, its role and mandate have not been significantly altered in response to the increasing maturity of the municipal planning role and process.
FORMATION OF TASK FORCE

Many Ontario municipalities have expressed growing frustration with the planning appeal process administered by the Ontario Municipal Board (OMB). They feel it undermines their planning authority and is a drain on their financial and staff resources. In June 2002, Durham Regional Council discussed and endorsed a City of Mississauga resolution citing difficulties experienced by municipalities in relation to the OMB. Durham Council further directed the Regional Chair, Roger Anderson, to convene a meeting of Greater Toronto area (GTA) officials to see if, jointly, such a group could formulate and agree upon recommendations for reform of the OMB appeal process.

On September 16, 2002, a group comprising GTA and Hamilton elected officials and municipal staff met at the Region of Durham Council Chamber. A possible course of action to stimulate meaningful reform of the OMB appeal process was discussed and the group agreed to work as a Task Force to pursue this objective. Attachment 1 lists the Task Force Members. The Terms of Reference adopted by the Task Force are provided as Attachment 2. The objective was to prepare a report to the Attorney General and the Minister of Municipal Affairs and Housing recommending reforms that would address the key issues that municipalities face in the planning appeal process.

Task Force members saw it as essential to engage stakeholders in their review process, to look at the appeal mechanisms used in other jurisdictions and, with a Provincial election approaching, to hear the position of each provincial party with respect to the OMB mandate and function. The Task Force invited a variety of stakeholders in the planning process to present their views. Representatives of each of the three provincial political parties were invited to present their party’s perspective. The Ontario Municipal Board was also invited to provide information about the appeal process and any planned changes. The Task Force also hoped to generate some media interest in the process so that the broader community would become aware of the issues and the work underway.

CONSULTATION PROCESS

Based on suggestions from members of the Task Force, sixteen stakeholder groups and knowledgeable individuals including academics, ratepayer groups, government agencies and the development industry were invited to appear before the Task Force to present their recommendations for changes to the OMB appeal process. Three consultation dates were offered during December 2002 and January 2003. Nine representatives appeared before the Task Force (see Attachment 3). Of the groups invited, only 2 did not respond. Some stakeholders were unable to attend as they were involved with cases before the Board or because their schedule did not allow it. The Ontario Professional Planners Institute (OPPI) felt that their February 2002 paper fully explained their position.
GTA TASK FORCE ON OMB REFORM

In addition to the stakeholder groups, representatives of the Liberal Party and the New Democratic Party spoke to the Task Force on Feb. 3, 2003, to explain the kinds of changes they envisioned making to the OMB or the planning process, if elected.

The Chair of the OMB made a presentation on changes and improvements to the appeal process that had been made, were underway or were being considered by the OMB itself. He provided copies of their Code of Conduct, recently revised forms and some caseload statistics.

Each group or individual that appeared before the Task Force was asked to make a short presentation and then respond to questions from Task Force Members. This was an extremely informative process and covered a full spectrum of views on the OMB, from those who felt that very little or no change to the appeal process was needed, to those who felt it was beyond fixing and should be abolished.

Various municipal resolutions calling for reform of the OMB had been passed on to the Task Force by its members and by the Durham Regional Clerk’s Office. Several reports on the OMB from municipalities, planning professional groups and academics were also brought to the attention of the Task Force. These also represented quite a broad range of perspectives. Some focussed on procedural adjustments while others advocated radical reforms.

The Task Force reviewed the notes and materials from all the presentations, the municipal motions and the various reports and extracted, grouped and summarized the recommendations contained in them. See Attachment 4, Summary of Consultation and Submission Recommendations.

PLANNING APPEAL PRACTICES IN OTHER JURISDICTIONS

Task Force research showed that the nature of appeal boards, both provincial and local, and the extent of their authority on land use planning appeals vary significantly from province to province. Each province has taken a different approach to planning appeals based upon what was decided, who made the decision, and how the decision was made.

All provinces, with the exception of British Columbia and Quebec, have provincial boards that have jurisdiction to hear appeals of land use planning decisions made (or not made) by municipal councils, local or regional planning authorities, committees or boards. Generally, the range of planning instruments over which provincial boards have jurisdiction is limited. No provincial board in Canada has jurisdiction over planning-related matters as extensive as that of the Ontario Municipal Board.
In most provinces, provincial boards do not have appellate jurisdiction over official plans. The appellate jurisdiction of provincial boards with respect to other planning approvals varies from province to province. Generally, zoning by-laws cannot be appealed to provincial boards, but planning controls that affect the details of development proposals (for example, development permits and minor variances) can be appealed.

Some provinces have local boards that hear appeals. However, to the extent that they have appellate jurisdiction, these local boards typically only review decisions of administrative officials.

Every province has statutorily codified processes that provide for property owners and other interested parties to have a full and fair opportunity to present their views to the original decision-maker and/or an appeal board on planning-related matters. Where the provinces differ is in their views as to whether appeals to a provincial board and/or a local board are necessary to ensure that the rules of natural justice or procedural fairness are respected in the decision-making process. In provinces where appeals of certain municipal decisions are not allowed (for example, official plans and zoning bylaws in British Columbia and Alberta), the legislation sets out stringent procedural requirements. In these situations, a hearing before an appeal board is not seen as required to ensure that the process is fair.

For those limited matters in respect of which provincial boards have appellate jurisdiction, the legislation typically provides for de novo hearings\(^1\).

**ISSUES IDENTIFICATION**

The following key issues were identified as a result of the consultation and research:

**Role and Jurisdiction of the Board**

- The OMB:
  - can overrule or support decisions of elected councils
  - is not accountable to the electorate
  - often makes decisions that undermine local Official Plans created through considerable public consultation
  - deals with much more than Provincial Policy Statement (PPS) issues and approval of Official Plans

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\(^1\) "de novo" hearing: According to the Guide to the Ontario Municipal Board, p.9, a hearing before the OMB is "usually a new presentation of the issues. This means that the Member(s) look at each application or appeal from the beginning as if no decision had ever been made by a previous tribunal such as a municipal council, a committee of adjustment, land division committee or the Assessment Review Board (therefore you must prove your case again). The Board can make any decisions that the earlier tribunal could have made and the decision may be different."
• No other Canadian jurisdiction has an appeal body with a similar scope of planning appeal powers
  • Guidelines & limits on the OMB mandate are unclear.

Procedural Complaints
• 90 day appeal period is perceived as an unrealistic processing timeframe for municipalities
• Hearing is not a true appeal or review, but a de novo hearing
• Pre-hearing process and mediation often are not used.

Barriers to Public Participation
• OMB procedures are complex, legalistic and are perceived as a barrier to public participation
• 90 day appeal provision can circumvent local planning process and may limit opportunity for public input
• Citizen input is given less weight as evidence than professional opinion
• Cost, time requirements are a barrier to public participation

Cost of Municipal/Agency Participation
• Deters municipal participation
• Potential of costly OMB hearing affects local planning decisions
• Diverts scarce municipal/agency resources from other planning needs and local expenditure priorities
• Municipalities are forced to spend large sums if they are to defend local planning decisions

Credibility/Impartiality of OMB
• Appointment process, length of tenure could be revised to enhance the Board's independence
• There is no transparent process for evaluating the performance of the OMB or its members

Strength of the Planning Policy Framework
• Planning Act could give the Provincial Policy Statement (PPS) more weight
• Provincial Policy Statements are vague in some respects
• Local planning process/ Official Plans could be given more weight

Value Added by the OMB Process
• No evidence to demonstrate that decisions of the Board are better planning decisions than those made at the municipal level
• OMB perceived as being less open to innovative planning than it is to more traditional planning
• Little evidence to show that the OMB is successful in taking into account cumulative impacts of discrete planning decisions.
ANALYSIS

Two basic principles seemed to be at the heart of the issues discussed by stakeholders and form the basis for the Task Force’s recommendations:

- Planning decisions of democratically elected Municipal Councils should not be replaced by the decision of a Provincially appointed body unless there is demonstrable evidence of error or impropriety on the part of the Council.

- Property rights are important and aggrieved parties should be entitled to some relief and remedy when a Municipal Council acts improperly, arbitrarily or outside of its jurisdiction.

In balancing these two guiding principles, the Task Force rejected the option of advocating the abolition of the Ontario Municipal Board. While abolition would clearly recognize the authority of elected Municipal Councils, it may not adequately provide for the rights and remedies of aggrieved parties. While the courts could play this role, the Task Force felt that the Ontario Municipal Board does possess helpful qualifications and experience with respect to municipal planning matters. These could not be easily duplicated and replaced by the Courts. Some stakeholders viewed the courts as a potentially more expensive and less inclusive mechanism for appeal.

The Task Force believes that the current system of OMB planning appeals does not give adequate deference to the process that municipalities go through in developing their Official Plans. Changes should be made to the planning system that support and validate the plans and decisions generated through the municipal planning process.

Therefore, in formulating its recommendations, the Task Force focused on what they felt were the primary flaws of the present system and the reforms that would most effectively address the issues identified in the research and consultation process. The Task Force anticipates that its recommendations would work best in conjunction with a stronger, clearer Provincial Policy Statement that should result from the PPS review currently underway.

RECOMMENDATIONS

The Task Force recommendations focus on four key areas of improvement:

   1. Update the role of the Ontario Municipal Board
   2. Enable timely municipal decisions based on complete information
   3. Support citizen participation through intervener funding
   4. Promote an independent and fair tribunal.
The Task Force believes that these improvements are achievable with the changes proposed.

1. Update the Role of the OMB

Municipalities have grown and matured since the OMB was created. Provincial planning legislation and policy have also matured and support a rigorous public process for the development of municipal planning instruments such as Official Plans. The new Municipal Act recognizes municipalities as an order of government. The Province has delegated approvals of local Official Plans to single and upper tier municipalities. The role and mandate of the OMB should be updated to recognize and respond to these changes. The Board should provide a true appeal or review mechanism as a last resort for dealing with faulty decisions, rather than substituting themselves as the planning decision-maker.

Provincial legislation gives the primary responsibility for land use planning within a community to the municipal government. The Planning Act sets out a detailed procedure that municipalities are expected to follow in discharging that responsibility. A municipality is, and should be, required to go through a full, complete and open public process to establish or amend its Official Plan, zoning regulations and other planning instruments. Having gone through that mandated process, the municipality's decisions should be final and binding unless it can be demonstrated that a significant error or impropriety has taken place. The onus of demonstrating the error or impropriety should be placed on the complaining party.

However, under the present system, appeals result in hearings de novo that effectively void the municipal planning process and decision, and allow the Board to substitute its own process and decision. The Task Force believes that an applicant's rights of appeal should arise only where a Municipal Council makes a clearly improper or unreasonable decision or deprives the parties of their rights to natural justice.

Recommendation:
The Task Force strongly recommends that the OMB process should be a review or true appeal of the municipal planning decision and not an automatic hearing de novo. To achieve this, the Task Force recommends that a two stage process be adopted.

At the first stage, the Board would review the planning process and the complaint and determine whether leave to appeal should be granted. Leave to appeal would be granted only if the objecting party establishes to the Board's satisfaction that the Council has acted unreasonably. To make this determination, the Task Force suggests that Board could apply a test such as the following:
That no reasonable Council, applying sound planning principles and acting in good faith, could have made the same decision or have failed to make a decision.

Only if the Board finds that the Municipal Council demonstrably failed to act reasonably could an appeal proceed to the second stage, a hearing de novo.

This screening process should greatly reduce the number of appeals by granting proper deference to the municipal planning process and requiring an appellant to demonstrate a substantial error as the basis for appeal. A de novo hearing should become an exception, reducing costs to all parties and providing for a more timely resolution of planning matters.

2. Enable Timely Municipal Decisions Based on Complete Information

Most submissions to the Task Force highlighted difficulties related to the 90 day appeal provision in the Planning Act. This provision allows an applicant to launch an OMB appeal 90 days after submitting an application, if the municipality has not yet rendered a decision. Stakeholders cited numerous cases where the studies to support a proper planning decision could not possibly be completed in 90 days (e.g. a four-season environmental impact study) or where an applicant provided required studies only a few days before the 90 day deadline. These situations made it impossible for the municipalities or other commenting agencies to review the information before the deadline. Resources have to be diverted from normal business to hastily review last minute submissions. Only the Urban Development Institute and the Greater Toronto Homebuilders were satisfied with the present 90 day rule and felt that abuse of the rule was rare.

If a duly elected Council has the primary responsibility and authority to render well-considered planning decisions for its community, that Council must have sufficient time and reliable information to make such decisions. Based on the consultations, the Task Force believes that the 90 day appeal provision presents a major problem in this regard.

A fundamental problem is the present definition of a “complete” application in the Planning Act and regulations. Currently, an applicant need only submit a planning application form and cheque for the application fee to “start the 90 day clock ticking”. This definition of “completeness” fails to recognize that an applicant should provide necessary studies and information related to their application in a timely way, to permit municipalities to render an informed planning decision.

Before removing the municipality from the decision-making process and substituting the Board, the municipality should be given a reasonable opportunity to make an informed decision. Based on statistics presented by David Johnson, Chair of the OMB, 75% of appeals are not referred in any case until 150 days after municipal receipt of the
application. The Task Force believes it is sensible that an appeal period should not commence until a truly complete application is in the hands of the municipality.

Where an application is submitted with all the information needed to make a decision, municipalities would be able to render a properly considered planning decision within 150 days on most applications. Straight-forward applications may be dealt with more quickly. There will also be complex applications that require a municipal review period of more than 150 days due to the need for extensive public consultation, multi-season studies or peer review of studies.

The Province has seen fit to vest municipalities with land use planning responsibilities. Thus, the starting assumption for the planning appeal system should be that elected Municipal Councils can be trusted to properly fulfill legislative requirements, to act in good faith and to make timely, well-considered planning decisions.

**Recommendations:**

Therefore the Task Force recommends the following:

- Amend the *Planning Act* to create a definition of “complete application” that includes information and documentation required by a municipality to properly process the application and make an informed decision. The information required to constitute a complete application will include:
  1) any requirements of general application contained in municipal planning documents (e.g. Official Plan) and
  2) any other information reasonably required to make a sound planning decision on that specific application.

A municipality could reject an incomplete application.

- Amend the *Planning Act* to mandate pre-consultation between the municipality and the applicant on all Official Plan amendment applications. Municipalities should provide written confirmation of the information requirements to the applicant within a specified time after the pre-consultation.

- Amend the *Planning Act* to provide that a dispute, in regard to the information required in order to constitute a complete application, could be brought to the Board or arbitrated at any time.

- Give the OMB the jurisdiction and direction to stay any appeal process, including a request for leave to appeal, if it determines that any information required to make a decision has not been made available to the municipality or that the municipality has not had sufficient time to consider such necessary information.
Establish a time period of 150 days from receipt of a complete application for municipal review and processing of an application. Only after 150 days could leave to appeal a lack of decision be obtained by convincing the Board that the lack of decision is unreasonable (see the test for “reasonableness” proposed on page 8).

3. Support Citizen Participation – Intervenor Funding

All of the stakeholders who presented to the Task Force commented on the obstacles faced by ordinary citizens in participating in the OMB process. Expense, time commitment and legal complexity were repeatedly cited as barriers to citizen participation in the OMB process. Citizen groups often cannot effectively present and defend a public interest at an OMB hearing without legal representation and expert evidence.

The 90 day appeal provision was seen as a means for developers to circumvent public participation. The frequent shift of a hearing into a negotiation of settlement was also noted as sometimes eliminating the public voice from the proceedings.

The Task Force feels that public and third party participation in the OMB hearing process, especially on complex Official Plan and zoning matters, is no longer possible without expert assistance. Creating an intervenor funding mechanism may be the only way to ensure that citizens groups are able to participate on a level playing field with other parties in a de novo hearing.

However the Task Force believes the best way to support public participation in planning matters is to make full use of the municipal planning process. That process includes both informal and structured opportunities for public involvement and is geared toward gathering citizen input into such things as Official Plans, secondary plans and zoning changes. Participation is inexpensive for citizens and does not require special expertise. This aspect of the planning process should be made as effective as possible to ensure that balanced plans and good decisions are made at the local level. Public participation should be supported and validated by an OMB process that affords an appropriate respect and deference to the plans developed and decisions made utilizing this public input.

If municipal planning decisions are shown greater deference in the OMB appeal process, as suggested in the previous recommendations, and de novo hearings become the exception instead of the rule, the need for intervenor funding as a means to ensure public participation should be significantly reduced.
GTA TASK FORCE ON OMB REFORM

Recommendation:
The Task Force recommends that the Province establish a program to fund 3rd party public participation in OMB de novo hearings with clear criteria defining eligibility. To qualify for funding a citizen’s group should:

- be incorporated or appropriately organized to take on the rights and responsibilities of participating in an OMB proceeding
- have participated in the local planning process
- have the ability to raise a portion of the funds required for the appeal process.

In addition, to qualify for funding, the case in which the group wishes to participate should involve issues of broad public or provincial interest (e.g. protection of environment, affordable housing or farmland). The province should allocate an amount annually to support intervenor funding, possibly supplemented with a small surcharge on development applications, and set a cap on the amount available to a single group. The government may wish to specify how funding could be used (e.g. to retain legal counsel).

4. Promote an Independent and Fair Tribunal

The Task Force feels that generally the OMB members are well qualified and discharge their duty effectively. While statistics presented to the Task Force do not support the notion that the OMB is "a captured agency" in terms of its decisions, there is definitely a public perception that the Board and the appeal process, as currently structured, favour developers.

Recommendation:
The Task Force believes that several changes could be made to enhance both the reality and the perception of the Board as an impartial and fair arbiter. It is therefore recommended that:

- The term of appointment be increased to 6 years
- A job description, outlining the qualifications and expertise required of Board Members, be developed and used in the selection process
- An open process be adopted for soliciting qualified applicants
- A non-partisan, multi-stakeholder screening committee be created to interview and recommend to Cabinet candidates for appointment or reappointment
- A more open performance evaluation process for Board Members be implemented.
If the all the Task Force recommendations are implemented, the Province may find that fewer Board members are needed as the incidence of appeals and hearings should be significantly reduced.

CONCLUSION

In summary, the Task Force feels that if implemented, the recommendations above will substantially address the criticism of the current planning appeal process that was documented in our consultations.

By updating the role of the OMB to make it primarily a review body, with a specific standard of review to guide it, the number of hearings should be significantly reduced, lowering the costs for all parties. The continued availability of a *de novo* hearing in the case of egregious error offers an incentive for municipalities to make sure they conduct themselves properly in planning matters. It also offers applicants and appellants recourse if a serious mistake occurs.

However, the starting assumption must be that Municipal Councils properly fulfill their legislated duty and responsibility to make good planning decisions for their communities. Official Plans and zoning bylaws are a result of the community input process mandated in the *Planning Act*. The OMB must not intervene to assume decision-making authority unless such intervention is demonstrably justifiable. This is essential to build citizen confidence in the process and will provide greater certainty for the development industry. If every planning decision of a Municipal Council can be challenged, then that confidence and certainty does not exist. The planning process loses credibility and the Municipal Council is considered ineffectual on planning matters.

Municipal Councils must also live up to their plans in order to provide this certainty. Without the palpable threat of a full OMB hearing hovering over each planning decision, a Council's resolve to stand by their plan should be enhanced. With the system proposed, where a mistake is the basis for an appeal, municipalities will have added incentive to make sure their process is solid, that public input is widely sought and well reflected in their reports and decisions. This public input will be acquired in a setting which is much more informal and accessible than an OMB hearing.

The "justified appeal" process recommended by the Task Force gives greater weight to both the local planning process and the public input that are part of that process. Documentation of both would be examined during the review stage of the two step process the Task Force has proposed. By reducing the incidence of appeals, costs should be reduced for all parties. Providing intervenor funding for exceptional cases that do warrant the full hearing *de novo*, due to some grave error, would ensure that effective participation by citizens in the more complex process can occur.
While the OMB may never enjoy public popularity, its credibility as an impartial arbiter on important issues rests in part on a public perception of fairness and independence. The current 3 year terms for Board members, the political appointment process, a real or imagined association with a business-oriented government and the barriers to citizen participation have somewhat tarnished the public reputation of the Board. Revisions to the selection, appointment and tenure of Board members, as well as regular performance evaluation, would help considerably in achieving both the factual and perceptual independence critical for a quasi-judicial body.

Various stakeholders expressed the desire for greater clarity and direction from the Province within planning legislation and the Provincial Policy Statement (PPS). The Task Force agreed that the vagueness of the current PPS and the “have regard for” provision of the Planning Act are problematic. A key theme of John Chipman’s study\(^2\) of the OMB is that the Board developed and applied its own planning policy in the absence of clear provincial policy direction. Clearer provincial policy should strongly support municipal Official Plans and the municipal role in delivering land use planning at the local level. Since a review of the Provincial Policy Statement is currently underway and municipalities have been active participants in that process, the Task Force decided to confine its recommendations to the planning appeal process. However the Task Force encourages the Province to expeditiously resolve these broader planning framework issues through the PPS review process.

The GTA Task Force on OMB Reform has developed these recommendations with the objectives of resolving some specific issues and improving the planning appeal process for all involved. We hope our municipal colleagues will see fit to endorse these recommendations and that the Province will act upon them.

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ATTACHMENT 1

GTASK FORCE ON OMB REFORM

Membership List

Chair: Roger Anderson
      Chair, Region of Durham

Members:

Andrew Allison
Senior Solicitor
Region of Durham

Frank D'Amico
Councillor
City of Hamilton

Alex Georgieff
Commissioner of Planning
Region of Durham

Paul Mallard
Manager, Development Planning
Planning & Development Department
City of Hamilton

Gary Muller
Senior Planner
Planning & Development
Town of Ajax

Patrick O’Connor
Director of Legal Services
Region of Peel

Arvin Prasad
Director of Planning Policy and Research
Planning Department
Region of Peel

Nancy L. Smith
Assistant Corporate Counsel
City of Hamilton

William F. Bell
Mayor
Town of Richmond Hill

Kevin Daniel Flynn
Regional Councillor
Ward 1 - Oakville
Region of Halton

Mark Holland
City/Regional Councillor
City of Pickering

Howard Moscoe
Councillor
City of Toronto

Ann Mulvane
Mayor
Town of Oakville (alternate)

Steve Parish
Mayor
Town of Ajax

Don Sinclair
Director, Development Law
Corporate & Legal Services Department
Region of York
Staff Technical Support:

Debi Bently  
Deputy Clerk  
Clerk’s Department  
Region of Durham

Christine Drimmie  
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Regional Chair & CAO’s Office  
Region of Durham

Stan Floras  
Assistant Corporate Counsel  
Legal Services  
Region of Halton

Lino Trombino  
Planner  
Planning Department  
Region of Durham

Jody Wellings  
Manager of Current Planning  
Planning & Transportation Services  
Region of Halton

Kai Yew  
Manager, Plan Implementation  
Planning Department  
Region of Durham
GTA TASK FORCE ON OMB REFORM

ATTACHMENT 2

GTA TASK FORCE ON OMB REFORM
Terms of Reference
(Revised @20020916)

In response to a motion from the City of Mississauga, the Region of Durham Council instructed Chair Roger Anderson to invite GTA municipalities to form a task force on the Ontario Municipal Board (OMB).

OBJECTIVE
The purpose of the task force is to review the mandate, purpose and function of the OMB, the OMB appeal process and related matters and make recommendations for its reform to the local and regional governments within the 905/705/416 areas and Minister of Municipal Affairs and Housing and the Attorney General.

DELIVERABLE

RESOURCE COMMITMENT
Time of Councillors and staff to attend several meetings; to research, read, review materials, prepare comments and suggestions; undertake tasks as assigned including consultations with invited stakeholders, research or writing; Council review of the resulting report.

OPERATING PRINCIPLES FOR TASK FORCE
- Members of the Task Force are asked to participate as equals, based on their expertise with OMB issues, not as representatives of their municipality.
- Decision-making will be based on consensus.
- Task Force minutes will be recorded and distributed by staff of the Clerk’s Department, Region of Durham.
- Meetings to be open to public.

REPORTING
Members of the Task Force will be responsible for making information on the activities of the Task Force available to their respective Councils.

APPROVAL PROCESS & DISTRIBUTION
Final report will be sent to Councils in the GTA for their endorsement. Councils are asked to send notice of their endorsement to the Task Force. The Task Force will then submit the endorsed report to the Minister of Municipal Affairs and Housing and the Attorney General, the Opposition parties and AMO. Copies of the report could also be sent to the Red Tape Commission and the Central Ontario Smart Growth Panel.

EVALUATION OF PROGRESS AND IMPACT OF FINAL PRODUCT
- Check at the end of each meeting that the tasks are on target.
- Monitor changes to OMB legislation, Planning Act etc. that reflect the suggestions of the Task Force. Follow up with Ministers.
Stakeholders and Sources consulted by the Task Force in the preparation of this report:

**MUNICIPAL RESOLUTIONS AND REPORTS RECEIVED BY TASK FORCE**
- Aurora – Sept. 24, 2002
- Burlington – Mar. 18, 2002
- Caledon – Sept. 21, 2001
- Durham Region – June 19, 2002
- Halton Region – June 19, 2002
- Missisauga – May 8, 2002
- Oakville – April 2, 2002
- Oshawa – Sept. 9, 2002
- Ottawa – June 26, 2002
- Peel Region – Aug. 8, 2002
- Pickering – Feb. 4, 2002
- Toronto – May 23, 2002
- Whitchurch-Stouffville – Oct. 15, 2002

**STAKEHOLDER PRESENTATIONS TO GTA TASK FORCE:**
- Dr. John Chipman – Jan. 20, 2003
- Joshua Creek Ratepayers Association Inc. – Jan. 13, 2003
- Ontario Municipal Board, Chair, David Johnson – Feb. 3, 2003
- Toronto Region Conservation Authority - Jan. 20, 2003
- Urban Development Institute (Ontario and Peel Chapter) - Jan. 20, 2003

**OTHER REPORTS CONSULTED:**
- Ontario Association of Chief Planning Officials (OACPO) – 1999 report to OMB
<table>
<thead>
<tr>
<th>ISSUES IDENTIFIED</th>
<th>RECOMMENDATIONS MADE</th>
<th>BY WHOM</th>
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<tbody>
<tr>
<td>Role and Jurisdiction of OMB</td>
<td></td>
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<tr>
<td>• Mandate/Scope of Board</td>
<td>Disband/abolish OMB</td>
<td>Sewell, Pickering, Joshua Creek</td>
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<tr>
<td>• Nature of Appeals heard</td>
<td>Use divisional court for appeals on egregious errors</td>
<td>Sewell</td>
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<td>• Nature of Hearings held</td>
<td>Eliminate OMB planning appeal role and strengthen municipal planning process to cover any outstanding quasi-judicial needs.</td>
<td>Chipman, TRCA</td>
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<td></td>
<td>Create a local appeal mechanism within planning process</td>
<td>Toronto, Ottawa, Sewell, Chipman, Liberals</td>
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<td></td>
<td>Put Cabinet back as an appeal body.</td>
<td>Joshua Creek</td>
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<td></td>
<td>Province should review OMB role and function and include consultation with public and municipalities</td>
<td>GTSB, Halton Hills, Mississauga, Aurora, Caledon, Burlington, Halton, Durham, Oshawa, Liberals, NDP</td>
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<tr>
<td></td>
<td>Province should review Planning Act, OMB Act re: appeal process and role of OMB</td>
<td>Whitchurch-Stouffville, Sewell, Toronto</td>
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<td></td>
<td>AMO should apply pressure on behalf of Ontario municipalities to dissolve or radically alter the OMB's role</td>
<td>Burlington, Caledon, Halton, Halton Hills,</td>
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<td></td>
<td>Retain OMB with current mandate and role</td>
<td>OPP, UDI, GTBHA</td>
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<td></td>
<td>Retain board but drastically overhaul it</td>
<td>Liberals</td>
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<td>Change/ reduce OMB role to an inter-municipal dispute resolution body only</td>
<td>Chipman, PESCA</td>
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<td>Change /reduce mandate of OMB to eliminate “minor” issues</td>
<td>Liberals, NDP</td>
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<tr>
<td>Screening Mechanism/Gatekeeper</td>
<td>Eliminate appeals of approved Official Plans, policy decisions on growth, land use</td>
<td>Caledon, Mississauga, Durham, Oakville, Oshawa</td>
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<td>Developer should not be allowed to appeal an urban boundary</td>
<td>Joshua Creek</td>
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<td>Restrict OMB role in review of municipal policy decisions to a review of the quality of the planning process</td>
<td>Caledon, Oakville</td>
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<td>Limit role of OMB to planning issues that have broad public interest</td>
<td>Liberals</td>
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<td></td>
<td>Set strict, narrow grounds for appeal</td>
<td>PESCA, Joshua Creek, Chipman, NDP</td>
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<td></td>
<td>Need clear jurisdictional guidelines for OMB</td>
<td>Liberals</td>
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<td></td>
<td>Have a subcommittee that screens cases requesting appeal and make appeals the exception rather than the rule</td>
<td>PESCA</td>
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<td>Burden of Proof</td>
<td>Increase burden of proof required of appellants before hearing granted</td>
<td>Sewell, OACPO</td>
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<td></td>
<td>Where no clear provincial interest is defined, should have less costly, local alternative forum for dispute resolution</td>
<td>Toronto, Ottawa</td>
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<tr>
<td>Process Abuses/Complaints</td>
<td>Change appeal period to 90 days from receipt of all required information</td>
<td>Liberals, TRCA</td>
</tr>
<tr>
<td>90 day appeal period is an unrealistic processing timeframe for municipalities</td>
<td>Change to a 180 day process with all municipal documentation requirements to be met within 1st 90 days or applicant must reapply.</td>
<td>NDP</td>
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<td></td>
<td>Amend Planning Act to allow for more realistic timeframes based on application type</td>
<td>Toronto, Oakvillegreen, TRCA</td>
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<tr>
<td>Amend Planning Act to enable municipality to detail information required for their review to constitute a complete application</td>
<td>OACPO, TRCA</td>
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<tr>
<td>If Planning Act changed (previous recommendation), municipalities should define “complete application” in Official Plan or their application procedures</td>
<td>Ottawa</td>
<td></td>
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<tr>
<td>OMB should change procedure to not deal with 90 day appeals where information required for municipal review has not been provided in timely way and apply case management techniques</td>
<td>Toronto, Ottawa, OACPO, OPPI</td>
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<tr>
<td>• 90 day provision used to circumvent public input</td>
<td>Don’t allow piggy-back appeals</td>
<td>TRCA</td>
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<tr>
<td>• Appeal process can be used either to delay or speed up planning process</td>
<td>OMB needs to further improve administrative practices and procedures</td>
<td>OPPI, Halton, Joshua Creek, PESCA, GTHBA, Whitchurch-Stouffville</td>
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<td></td>
<td>Don’t allow site-specific “strategic” appeals by developers seeking to have a future proposal considered under existing rules in a municipality where a planning policy review is about to begin.</td>
<td>TRCA</td>
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<td></td>
<td>Improve pre-hearing process, reduce appeal times and costs by using mediation and dispute resolution</td>
<td>OPPI, Toronto, TRCA, OACPO, Whitchurch-Stouffville</td>
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<td></td>
<td>Pilot use of pre-hearing to agree to information requirements to agree to timelines</td>
<td>OMB</td>
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<td></td>
<td>Mandatory mediation should be required for certain types of applications</td>
<td>OPPI</td>
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<tr>
<td>• Hearing process</td>
<td>Increase routine use of pre-hearing mediation</td>
<td>UDI, GTHBA, Toronto, OAPCO</td>
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<td>Develop mediation protocol</td>
<td>OMB</td>
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<td>Hearings should be true review, not “de novo” process</td>
<td>PESCA</td>
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<tr>
<td>Cost of Municipal, Agency Participation</td>
<td>OMB should review its own practices and procedures</td>
<td>Ottawa, Whitchurch-Stouffville</td>
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<tr>
<td>- Deters public and municipal participation</td>
<td>Reduce costs by improving administrative process</td>
<td>UDI, GTHBA, Toronto, TRCA</td>
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<tr>
<td>- Threat of potential OMB costs affects municipal planning decisions</td>
<td>Make appeals the exception, not the rule</td>
<td>PESCA</td>
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<td>Enact consequences for threatening with OMB appeal.</td>
<td>Joshua Creek</td>
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<tr>
<td>- Diverts scarce municipal and commenting agency resources from other planning</td>
<td>Increase amount of time for application review by municipalities and commenting</td>
<td>TRCA, GTSB, Mississauga,</td>
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<tr>
<td>needs and local expenditure priorities</td>
<td>agencies</td>
<td>Durham, Oshawa</td>
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<td></td>
<td>Require a complete application before review period clock is started</td>
<td>TRCA, GTSB, Mississauga,</td>
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<td></td>
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<td>Durham, Oshawa</td>
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<td></td>
<td>Require appellant to indemnify commenting agency for costs involved, especially in</td>
<td>TRCA</td>
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<td></td>
<td>tight timeline situation</td>
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<td>- Double costs to municipalities first for planning process with public input</td>
<td>Reduce costs by strictly limiting what can be appealed</td>
<td>Caledon, Oakville, Pickering,</td>
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<td>then to defend plan at OMB.</td>
<td>Reduce cost and duplication having review rather than “de novo” hearing</td>
<td>Aurora</td>
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<td>Oshawa, Chipman</td>
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<tr>
<td>Barriers to Public Participation</td>
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<tr>
<td>• Legalistic nature of process</td>
<td>Create a separate more informal part of OMB hearing process to obtain greater citizen input</td>
<td>UDI, GTHBA, OPPI</td>
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<td></td>
<td>Review prehearing practices to create greater involvement by all stakeholders in an appeal</td>
<td>OPPI, UDI</td>
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<td>Assign case officer to assist citizen groups in understanding the process</td>
<td>Joshua Creek</td>
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<td></td>
<td>Clearer citizen's guidebook to OMB procedures is needed</td>
<td>OPPI, OACPO, OMB</td>
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<tr>
<td>• Timing of hearings</td>
<td>Hold some hearings in evenings</td>
<td>Joshua Creek, Oakvillegreen, PESCA</td>
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<tr>
<td>• Notification process</td>
<td>Increase notification time, geographic area and modes of communication</td>
<td>Oakvillegreen</td>
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<td>Allow audio/video recordings of hearings</td>
<td>Oakvillegreen, Joshua Creek</td>
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<tr>
<td>• 90 Day appeal reduces public input opportunities</td>
<td>Increase pre-hearing notification to public</td>
<td>Joshua Creek</td>
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<td></td>
<td>OMB should exercise its right to dismiss appeals where grounds for appeal are weak, where local public process being avoided</td>
<td>TRCA</td>
</tr>
<tr>
<td>• Intervenor funding</td>
<td>Provide intervenor funding to citizen 3rd parties, participants</td>
<td>PESCA, Oakvillegreen, NDP</td>
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<td></td>
<td>Finance intervenor funding from hearing costs paid by developers</td>
<td>Joshua Creek, TRCA</td>
</tr>
<tr>
<td>• De novo hearing ignores any previous public input</td>
<td>Make hearing a true review, not &quot;de novo&quot; process</td>
<td>PESCA, TRCA</td>
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<tr>
<td>• 3rd Parties stigmatized by Board</td>
<td>Citizen opinion and written citizen statements should be given</td>
<td>Oakvillegreen,</td>
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<td>more weight by board</td>
<td>Joshua Creek</td>
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</table>
| **Credibility/Impartiality of OMB** | Request Attorney General to review OMB appointment procedures  
Establish professional qualifications for Board members  
Increase tenure of appointment (5 to 10 years)  
Increase remuneration to attract qualified candidate, to reflect scope of responsibilities  
Create transparent, impartial selection/appointment process *(most groups listed mentioned multiple aspects of the appointment process)*  
Have AMO comment on/vet OMB member selection | OPPI, GTHBA, UDI, Sewell, Whitchurch StouffvilleHalton, Burlington, Oakville, Oshawa, Oakvillegreen, Joshua Creek, Liberals, NDP |
|                   | Competence, expertise, impartiality of Board members questioned                      |                         |
|                   | Increase training for Board members                                                 | Toronto                 |
|                   | Institute performance reviews by impartial panel                                     | Whitchurch-Stouffville, Oakvillegreen |
|                   | Create multi-stakeholder panel to annually review OMB member performance against specific parameters and publicly report | Liberals               |
|                   | Create stronger integrity/conflict guidelines for members                            | Pickering               |
| **Planning Policy Framework** | Provide clearer provincial planning legislation and policy statements as framework for planning decisions | Sewell, TRCA            |
|                   | Provincial Policy Statements should give clear direction on issues like environment, transit, affordable housing, farmland | Liberals, NDP           |
|                   | Amend Planning Act to require “consistency with PPS” rather than “regard for”        | Liberals, NDP           |
### GTA Task Force on OMB Reform

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<tr>
<th>Issues Identified</th>
<th>Recommendations Made</th>
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<tr>
<td>Weight of official plans in OMB appeal process</td>
<td>Province should provide clearer guidelines on interpretation, implementation of Provincial interest provisions</td>
<td>Toronto, Sewell, TRCA</td>
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<td></td>
<td>Increase Board’s deference to Official Plans and municipal planning process and decisions</td>
<td>Oakville, Mississauga, Durham, Pickering, Oshawa, PESCA, Aurora, Burlington, Oakvillegreen, Liberals, NDP</td>
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<td><strong>Value Added of OMB Appeal Process</strong></td>
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<tr>
<td>No “performance measurement” of OMB, no evaluation that shows OMB improves planning outcomes</td>
<td>Detailed Review/assessment of OMB role, process and results should be conducted every 10 years</td>
<td>Sewell</td>
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<td>Role of OMB should be reviewed as part of the review of the Provincial Policy Statement</td>
<td>Caledon, Oakville, Halton Hills</td>
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<td>Determine whether OMB decisions are significantly better than planning decisions made by Councils</td>
<td>Halton Hills, Caledon</td>
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<td>No other Province or State has an OMB type appeal body</td>
<td>Abolish OMB or eliminate planning appeal function</td>
<td>Sewell, Chipman</td>
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<td></td>
<td>Review of OMB should consider process used in other Canadian jurisdictions</td>
<td>Oshawa</td>
</tr>
<tr>
<td>Credibility of planning process and Official Plans undermined</td>
<td>Increase Board’s deference to Official Plans, municipal planning process and decisions.</td>
<td>Oakville, Mississauga, Durham, Pickering, Oshawa, PESCA, Aurora, Burlington, Oakvillegreen, Liberals, NDP</td>
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<tr>
<td>Difficult to promote or protect innovative planning at the OMB</td>
<td>OMB needs flexibility to incorporate new ideas (i.e. Smart Growth) into their decisions.</td>
<td>Oakvillegreen</td>
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## GTA Task Force on OMB Reform

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<td>Hearing focus is very site-specific; broader issues, cumulative impacts often not considered</td>
<td>Need stronger policy statements at the Provincial level to require greater attention to cumulative impacts on environment.</td>
<td>TRCA</td>
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### Other Issues

| Developer influence in political process | Amend municipal election legislation to eliminate developer funding of political candidates. | Joshua Creek |
| Some OMB decisions display “US style” of regard to private property rights which has little basis in Canadian law. | OMB should have more regard to applicable laws, Provincial policy. | Joshua Creek |

Municipalities that requested or supported the creation of a municipal committee or task force to make recommendations on reform of the OMB by Council resolution:

- Burlington
- Caledon
- Durham
- Halton
- Halton Hills
- Oakville
- Oshawa
- Ottawa
- Peel
- Pickering
- Toronto

Acronyms used in chart:

- AMO=Association of Municipalities of Ontario
- GTBHA= Greater Toronto Home Builders Association
- GTSB= Greater Toronto Services Board
- NDP=New Democratic Party (Ontario)
- OACPO= Ontario Association of Chief Planning Officials
- OMB= Ontario Municipal Board
- OPPI= Ontario Professional Planners Institute
- PESCA= Pickering East Shore Community Association
- TRCA= Toronto Region Conservation Authority
- UDI – Urban Development Institute