

***Ontario East Municipal  
Conference  
Kingston, Ontario***

**Sea Change or Plus Ça  
Change: Planning Reform  
and the OMB**

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September 11, 2008

*The views expressed in this paper are those of the author and do not necessarily represent the views or opinions of the Ministry of the Attorney General or the Legal Services Branch of the Ministry of Municipal Affairs and Housing.*

# Ontario Municipal Board

## What is it?

- Created by the Province in 1898 and originally called the Ontario Railway and Municipal Board.
- Independent quasi judicial tribunal that hears all appeals for planning matters.
- More informal and speedy process than court.
- Ministry of the Attorney General is administratively responsible for the *Ontario Municipal Board Act* and the OMB.
  
- Holds hearings under *Planning Act* and over 100 other pieces of legislation, including:
  - ✓ *Expropriations Act*;
  - ✓ *Municipal Act, 2001*;
  - ✓ *Development Charges Act, 1997*;
  - ✓ *Aggregate Resources Act*;
  - ✓ *Consolidated Hearings Act*.

# Ontario Municipal Board

## How does it do it?

- ⌘ Hearings adjudicated by full-time members appointed by the Province.
- ⌘ Hearings held throughout Province
- ⌘ OMB hearings before the OMB do not review the decision of municipality, but rather determine what is good planning.
- ⌘ Not conducted solely in order to make a determination with respect to an issue between the parties, but take public policy into account.
- ⌘ Decisions/orders of the OMB are final, subject to an appeal with leave to Divisional Court on a point of law or a request for review of the decision under section 43 of the *Ontario Municipal Board Act*.
- ⌘ OMB decisions do not bind other OMB panels.

# Ontario Municipal Board

## Who is it?

- 1 Chair – Marie Hubbard
- 6 Vice-Chairs
- 20 members approximately



# Ontario Municipal Board

## Where is it at?

- Numerous members appointed within the last two years.
- Changes the hearing landscape.
- Under section 91 of the *Ontario Municipal Board Act*, the OMB has created Rules of Practice and Procedure.
- The Rules govern the conduct of the appeal process including document exchange, witness statements, format of evidence and conduct of hearings, etc.
- Latest set of Rules issued August 11, 2008.

# *Strong Communities (Planning Law) Amendment Act, 2004 (Bill 26)*

- Four major changes to land use planning system in Ontario:
  - o Standard of consideration and advice/comments changed from “shall have regard” to “shall be consistent”;
  - o Time periods within which to consider various planning applications were lengthened (before can appeal to OMB);
  - o No settlement area boundary appeals where Council refused third party application;
  - o Minister of MAH can issue a declaration that an appeal before the OMB could adversely affect a matter of provincial interest.

*Planning and Conservation  
Land Statute Law  
Amendment Act, 2006 (Bill  
51)*

- Numerous changes to the *Planning Act*.
- Changes came into force January 1, 2007.
- Intended that municipalities will make use of the “tools” in the Act as a mechanism to achieve their objectives.
- Changes to the *Planning Act* intended to shift the process to the front end.
- Municipalities will need to review their processes to take the shift into account.

# *Planning and Conservation Land Statute Law Amendment Act, 2006*

## ❑ Changes to land use planning process:

- no appeals for proponent initiated applications to remove land from employment areas unless supported by municipality;
- requirement for up-to-date official plans and zoning by-laws;
- optional local appeal body can hear appeals on minor variance and consent matters;
- approval authorities and OMB to “have regard to” municipal decisions;
- planning matters not subject to consolidated hearings until Council decision or decision timeframes under the *Planning Act* have expired.

# *Planning and Conservation Land Statute Law Amendment Act, 2006*

## ☐ Changes to conduct of OMB hearings:

- significant new information at OMB could be sent back to Council for reconsideration;
- participate at local level (written or oral comments prior to decision by Council) in order to appeal;
- individuals who don't participate can only be added as a party to a hearing if OMB determines there are reasonable grounds;
- appeal restriction does not apply if the municipality makes no decision on the application;
- enhanced authority for OMB to dismiss includes "repeat" applications and applications substantially different from that considered by Council.

# Cases of Interest

- OMB is now issuing decisions that relate to various aspects of the Bill 26 and Bill 51 changes to the *Planning Act*



# Cases of Interest

## “Shall be consistent with”

### **Policy statements and provincial plans – Section 3**

- (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,
- (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and
  - (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.
- (6) Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government,
- (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and
  - (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

# Cases of Interest

"Shall be consistent with"

- ❖ *Dew v. Municipality of Lambton Shores*, Decision/Order #0894 issued April 3, 2007 (OMB case PL061005)



"... a higher implementation standard and ... a more demanding test"

# Cases of Interest

## Settlement area boundary

### **Appeal to O.M.B.**

(7) When a person or public body requests an amendment to the official plan of a municipality or planning board, any of the following may appeal to the Municipal Board in respect of all or any part of the requested amendment, by filing a notice of appeal with the clerk of the municipality or the secretary-treasurer of the planning board, if one of the conditions set out in subsection (7.0.2) is met:

1. The person or public body that requested the amendment.
2. The Minister.
3. The appropriate approval authority.

...

### **Appeals restricted re certain amendments**

(7.1) Despite subsection (7) and subsections 17 (36) and (40), there is no appeal in respect of,

- (a) a refusal or failure to adopt an amendment described in subsection (7.2); or
- (b) a refusal or failure to approve an amendment described in subsection (7.2).

### **Application of subs. (7.1)**

(7.2) Subsection (7.1) applies in respect of amendments requested under subsection (1) or (2) that propose to,

- (a) alter all or any part of the boundary of an area of settlement in a municipality;
- (b) establish a new area of settlement in a municipality;

...

# Cases of Interest

## Settlement area boundary



*Ringas v. Township of  
Hamilton, Decision/Order  
#1691 issued June 19, 2007  
(OMB case PL060892)*

“... the proposal is a de facto attempt to expand a settlement area or introduce a new area of settlement”

# Cases of Interest

## Shall Have Regard to Council's Decision

### **Decisions of councils and approval authorities – s. 2.1**

**2.1** When an approval authority or the Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to,

(a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and

(b) any supporting information and material that the municipal council or approval authority considered in making the decision described in clause (a).

# Cases of Interest

## Shall Have Regard to Council's Decision

- ❖ *Trudell v. City of London*, Decision/Order #1765 issued June 26, 2007 (OMB case PL061264)
- ❖ *1456867 Ontario Inc. v. City of Niagara Falls*, Decision/Order issued February 11, 2008 (OMB case PL070779)
- ❖ *Hutka v. Gold*, Decision/Order issued July 3, 2008 (OMB case PL080260)
- ❖ *Arnon Corp. and Vered v. City of Ottawa*, Decision/Order issued Aug. 18, 2008 (OMB case PL080239)

THE MORAL? You can't always get what you want.

# Cases of Interest

## New Information

### **New evidence at hearing – Section 17**

- (44.3)** This subsection applies if information and material that is presented at the hearing of an appeal under subsection (24) or (36) was not provided to the municipality before the council made the decision that is the subject of the appeal.
- (44.4)** When subsection (44.3) applies, the Municipal Board may, on its own initiative or on a motion by the municipality or any party, consider whether the information and material could have materially affected the council's decision and, if the Board determines that it could have done so, it shall not be admitted into evidence until subsection (44.5) has been complied with and the prescribed time period has elapsed.
- (44.5)** The Municipal Board shall notify the council that it is being given an opportunity to,
- (a) reconsider its decision in light of the information and material; and
  - (b) make a written recommendation to the Board.
- (44.6)** The Municipal Board shall have regard to the council's recommendation if it is received within the time period referred to in subsection (44.4), and may but is not required to do so if it is received afterwards.

# Cases of Interest

## New Information

- Also found at subsections 34(24.4) and 51 (52.4) of the *Planning Act* for zoning by-laws and plans of subdivision.
- O. Reg. 549/06 prescribes a 60-day period of time within which council can provide comments to the OMB.

# Cases of Interest

## New Information

❖ *1456867 Ontario Inc. v. City of Niagara Falls*, Decision/Order issued February 11, 2008 (OMB case PL070779)

❖ *Pembest Limited v. City of Pembroke*, Decision/Order issued April 8, 2008 (OMB case PL071100/PL071101)

The MORAL: No surprises (... just like the Holiday Inn)

# Cases of Interest

## Complete Application

### **Prescribed information – Section 22**

- (4) A person or public body that requests an amendment to the official plan of a municipality or planning board shall provide the prescribed information and material to the council or planning board.

### **Other information**

- (5) A council or a planning board may require that a person or public body that requests an amendment to its official plan provide any other information or material that the council or planning board considers it may need, but only if the official plan contains provisions relating to requirements under this subsection.

# Cases of Interest

## Complete Application

 *Top of the Tree Developments Inc.*  
*v. City of Toronto*, Decision/Order  
2897 issued November 6, 2007  
(OMB case PL070814)



THE MORAL: ... If you want it, if you really, really want it ...

# Cases of Interest

## Application of Clergy

### **Policy statements and provincial plans – Section 3**

- (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,

  - (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and
  - (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.
  
- (6) Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government,

  - (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and
  - (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

# Cases of Interest

## Application of Clergy

- ❖ *Niagara Escarpment Commission v. Paletta International Corp. and Region of Halton et al.*, Decision of Ontario Divisional Court (Court File No. DC-06-0065 ML) released September 5, 2007 from an appeal of OMB Decision/Order #1798 issued June 22, 2006) (OMB case PL970953/PL000353)

THE MORAL: It's a brave new world

# Cases of Interest

## Right to Appeal

### **Right to appeal – Section 17**

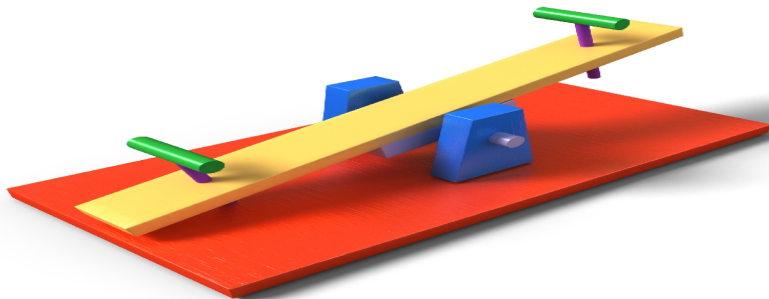
(24) If the plan is exempt from approval, any of the following may, not later than 20 days after the day that the giving of notice under subsection (23) is completed, appeal all or part of the decision of council to adopt all or part of the plan to the Municipal Board by filing a notice of appeal with the clerk of the municipality:

1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.
2. The Minister.
3. The appropriate approval authority.
4. In the case of a request to amend the plan, the person or public body that made the request.

# Cases of Interest

## Right to Appeal

- ❖ *Goldstein v. City of Toronto*,  
Decision/Order issued May 2, 2008  
(OMB case PL071134)



THE MORAL: If you don't participate now,  
you can't play later

# Cases of Interest

## Conversion of Employment Areas – Section 22

- (7.1)** Despite subsection (7) and subsections 17 (36) and (40), there is no appeal in respect of,
- (a) a refusal or failure to adopt an amendment described in subsection (7.2); or
  - (b) a refusal or failure to approve an amendment described in subsection (7.2).
- (7.2)** Subsection (7.1) applies in respect of amendments requested under subsection (1) or (2) that propose to,
- (a) alter all or any part of the boundary of an area of settlement in a municipality;
  - (b) establish a new area of settlement in a municipality; or
  - (c) amend or revoke official plan policies that are adopted to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or rowhouse situated in an area where residential use, other than ancillary residential use, is permitted.
- (7.3)** If the official plan contains policies dealing with the removal of land from areas of employment, subsection (7.1) also applies in respect of amendments requested under subsection (1) or (2) that propose to remove any land from an area of employment, even if other land is proposed to be added.
- (7.4)** Despite subsection (7.1), a person or public body may appeal to the Municipal Board in respect of all or any part of a requested amendment described in clause (7.2) (a) or (b) if the requested amendment,
- (a) is in respect of the official plan of a lower-tier municipality; and
  - (b) conforms with the official plan of the upper-tier municipality.


# Cases of Interest


## Conversion of Employment Areas


- ❖ *North American Acquisition Inc. v. Barrie*, Decision/Order #3067 issued October 31, 2006 (OMB case PL050527)
  
- ❖ *Towerhill Developments Inc. v. Peterborough*, Decision #1064 dated April 19, 2007 (OMB case PL060427)
  
- ❖ *1693534 Ontario Inc. v. Toronto*, Decision dated January 3, 2008 (OMB case PL070485)
  
- ❖ *Tesmar Holdings Inc. v. Vaughan*, Decision dated February 19, 2008 (OMB case PL070347)

# Cases of Interest

## Development Permit System

 Authorized under s. 70.2 *Planning Act* and O. Reg. 608/06.

 *Van Den Broek v. Township of Lake of Bays*, Decision/Order #1051 issued April 18, 2007 (OMB case PL060970)

 *Snell v. Township of Lake of Bays*, Decision/Order issued February 11, 2008 (OMB case PL070698)

# Changes to OMB Rules of Practice and Procedure

- All commentary has been deleted
- Additional rules to take new technology into account
- Increased notice requirements
- Changes to certain time limits
- Motion rules have been substantially revised
- Section 43 rules have been substantially revised
- Grounds for screening appeals have been changed
- Changes to make certain procedures less formal

# Odds & Ends

- **Does the Board have any friends?**

- *Lake Waseosa Ratepayers Association v. Huntsville*,  
Decision/Order #0043 issued  
January 9, 2007 (OMB case  
PL051311)

“... the Board can be said to have  
no friends...”