



**Ontario Federation of Agriculture**

**Ontario AgriCentre**

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December 14, 2016

Mr. Ken Petersen, Manager  
Local Government and Planning Policy Office  
Ministry of Municipal Affairs  
777 Bay Street  
13<sup>th</sup> Floor  
Toronto, ON  
M5G 2E5

Dear Mr. Petersen;

**RE: EBR Registry Number 012-7196 Consultation on the role of the Ontario Municipal Board in Ontario's land use planning system**

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 36,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

Before addressing the discussion questions, we emphasize that there is only one Ontario landscape, meaning that the full range of landforms and land uses found across Ontario; urban, rural, agricultural, natural heritage, cultural heritage, mineral extraction, etc. must share that one landscape. Inherent in this perspective is the recognition that our agricultural areas not only provide us with food, fibre and fuel, but also a broad range of environmental and ecological goods and services that benefit all Ontarians.

There is also the additional expectation, at least from the Ontario Government, that Southern Ontario in general, and the Greater Golden Horseshoe in particular, will also accommodate substantial future population growth, and the jobs and infrastructure necessary to support this projected growth.

Furthermore, we emphasize that agriculture is the principle resource-based land use in Southern Ontario. The protection of Ontario's prime agricultural areas for their long-term agricultural use is a key provincial policy objective. Ontario farmers have been challenged by the Premier to double the annual growth rate and add 120,000 jobs in the agri-food sector by 2020. To achieve this, Ontario must adopt policies and programs that compliment and facilitate this goal, rather than hinder it. Based on data from the 2006 and 2011 censuses, the total area of Ontario farms declined dramatically by almost 260,000 ha (636,000 acres) between 2006 and 2011; from 5.4 Million ha (13.3 Million acres) to 5.1 Million ha (12.6 Million acres). Put in an easier to visualize form, that is 350 acres/day: the equivalent to 173 CFL football fields, each and every day! Maintaining our agricultural lands for the production of food, fibre and fuel is critical. The Ontario Municipal Board's decisions need to view the world through this lens.

1. *What is your perspective on the changes being considered to limit appeals on matters of public interest?*

OFA does not agree that appeals to the OMB should be limited to matters of provincial interest. To do so could eliminate appeals of decisions made by a Municipal Council or Committee of Adjustment that is contrary to the Provincial Policy Statement, a Provincial Plan, or to a local Official Plan or Zoning Bylaw. In the absence of some other mechanism to ensure that decisions made by a Municipal Council or Committee of Adjustment are in compliance with the Provincial Policy Statement, a Provincial Plan, or to a local Official Plan or Zoning Bylaw, we believe that limiting appeals would enable poor planning decisions.

OFA would support denying appeals of provincially- or upper tier-approved Official Plans. There should be no appeals of provisions that conform to the Provincial Policy Statement or a Provincial Plan. From OFA's perspective, appeals should be based solely upon one question, "Was the decision of municipal council or Committee of Adjustment 'consistent with' the Provincial Policy Statement or Provincial Plans or to a local Official Plan or Zoning Bylaw"? Simply disagreeing with the decision of a Municipal Council or Committee of Adjustment should not be a valid reason for an appeal and a Board hearing.

2. *What is your perspective on the changes being considered to restrict appeals of development that supports the use of transit?*

Transit-supportive densities reduce the need and/or demand to convert agricultural land to urban uses. Thus, OFA would approve of restricting appeals of development that supports the use of transit, in accordance with a provincially- or upper tier-approved Official Plan. Given that huge investments are being made in public transit, the urban form must be built at a density sufficient to support transit use.

3. *What is your perspective on the changes being considered to give communities a stronger voice?*

OFA has mixed views on this question. We understand that communities want autonomy, and that they believe they understand their community's interests and needs better than a remote appeal board. However, we also know of situations where a Municipal Council approved a Planning Act application that completely contradicted not only both Municipal Official Plans, Upper and Lower Tier, but also the Provincial Policy Statement. For that reason, OFA sees a need for a mechanism to deal with nonconforming Municipal Councils or Committees of Adjustment. In the absence of a better alternative, we support the OMB as an appeal for all planning-related matters.

4. *What is your view on whether the OMB should continue to conduct de novo hearings?*

OFA does not support continuing with de novo hearings. In lieu of these hearings, OFA recommends that OMB appeal hearings should focus on the merits of the appeal itself. Relevant questions could be asked, such as: Did the decision conform to applicable law and policy? Did Council act outside its jurisdiction and/or authority?

Appeals should focus on the "correctness" of the decision, in light of applicable legislation, regulations, and policy. Denying de novo hearings and refocusing the Board on considering the "merits" of an appeal may give municipalities the sense that they are reflecting their community's interests, along with the possibility that the Board will receive fewer applications.

5. *If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?*

OFA believes that OMB appeal hearings should focus on the merits of the appeal itself. Questions could be asked, such as: Did the local decision conform to applicable law and policy? Did Council act outside its jurisdiction and/or authority? These questions should be the sole basis for OMB appeal hearings. Rehearing the matter from the beginning is a wasteful and unnecessary undertaking.

Furthermore, OFA believes that the OMB should never consider “new” information in the context of an appeal. Should “new” information surface, the Board should automatically refer the matter back to the municipality to reconsider its earlier decision. The basic planning decision should reside with the Municipality. The Board’s role as an appeal body for planning decisions should be limited to determining if the local municipality erred in applying Provincial law, the Provincial Policy Statement or Provincial Plans, or to a local Official Plan or Zoning Bylaw.

6. *From your perspective, should the government be looking at changes related to the transition and the use of new planning rules? If so;*
- *what is your perspective on basing planning decisions on municipal policies in place at the time the decision was made?*

OFA supports applying the most recent provincial planning policies to earlier applications. It can take years before municipal policies change. Relying on outdated policies perpetuates poor planning outcomes.

- *what is your perspective on having updated provincial planning rules apply at the time of decision for applications before 2007?*

OFA supports applying the most recent provincial planning policies to earlier applications. We recognize that such a stance may negatively impact longstanding applications, but we believe that policy changes subsequent to 2007 have moved the yardsticks in terms of land use policy and the protection of our finite and shrinking agricultural land base.

7. *If you have had experience with the Citizen Liaison Office, describe what it was like – did it meet your expectations?*

OFA has had no experience with the Citizen Liaison Office.

8. *Was there information you needed, but were unable to get?*

Based on our lack of experience with the Citizen Liaison Office, OFA offers no comments on this.

9. *Would the above changes support greater citizen participation at the OMB?*

Based on our lack of experience with the Citizen Liaison Office, OFA offers no comments on this.

10. *Given that it would be inappropriate for the OMB to provide legal advice to any party or participant, what type of information about the OMB’s processes would help citizens to participate in mediations and hearings?*

OMB already publishes its “Rules of Practice and Procedure”. Perhaps the Board, or the Ministry of the Attorney General, should review the Rules of Practice and Procedure to ensure that they are complete and up-to-date. This review would help appellants to the Board be aware of how Board hearings are conducted, how appellants should prepare for a Board hearing, and the obligations appellants take on. The Rules of Practice and Procedure or a second document should be a technical guide on appeals to the OMB.

*11. Are there funding tools the province could explore to enable citizens to retain their own planning experts and lawyers?*

OFA does not support funding tools (i.e. intervenor funding) to enable citizens to retain their own planning experts and lawyers. We see too many opportunities to abuse intervenor funding. In all likelihood, the introduction of intervenor funding would quickly lead to an increase in matters appealed to the Board, which would be an added burden on municipalities forced to defend more of their decisions. It would also add significantly to the government’s costs of operating the Board. We do not see funding tools as government’s role or responsibility.

*12. What kind of financial or other eligibility criteria need to be considered when increasing access to subject matter experts like planners and lawyers?*

Since OFA does not support funding tools (i.e. intervenor funding), we see no need to propose eligibility criteria.

*13. Qualifications for adjudicators are identified in the job description posted on the OMB website. What additional qualifications and experiences are important for an OMB member?*

Panel members who have direct experience in, and knowledge of, Ontario agriculture, and those who recognize its importance in rural planning and to the Ontario economy, would be helpful in hearing appeals involving agricultural land use issues. OFA recommends that the panel of OMB Board members include persons with agricultural experience and knowledge.

*14. Do you believe that multi-member panels would increase consistency of decision-making? What should be the make-up of these panels?*

We are not aware of any evidence that multi-member panels would increase consistency in decisions or not. Multi-member panels could lead to greater delays in between application and hearing date, delaying the hearings due to effectively fewer Board members available. However, multi-member panels could necessitate having a larger pool of Board members to draw from. Multi-member panels would increase Board costs.

*15. Are there any types of cases that would not need a multi-member panel?*

OFA recommends that the Board should limit the use of multi-member panels to complex planning appeals, and leave simpler appeals to be heard by a single Board member.

*16. How can OMB decisions be made easier to understand and be better relayed to the public?*

OFA is not sufficiently familiar with OMB decisions to comment on this.

*17. Are there timelines in the chart above appropriate, given the nature of appeals to the OMB? What would be appropriate timelines?*

None of the timelines in the chart appear to be appropriate. For example, putting the timelines in the context of an individual appealing a minor variance or consent, a 120-day wait for a hearing to be scheduled, combined with a 60-day wait for a decision could push construction into the next year to avoid adverse weather. Delays of this magnitude are unacceptable, in our opinion, and costly for the applicant. The Board should have sufficient staff to be able to schedule a hearing, hold it and then produce a decision in much less time.

*18. Would the above measures help to modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?*

The Consultation Document proposes setting appropriate timelines for decisions, increased flexibility in how evidence can be heard, conducting more hearings in writing, establishing clear rules for issue lists, and introducing maximum days for hearings.

The Board should adopt timelines for starting a hearing after receiving a complete application, conduct a hearing with minimal deferrals in as few days as possible, and conclude with timely decisions.

Given the diversity of planning matters that can come before the Board, combined with the complexity of some appeals, we doubt that any plans to set maximum lengths for hearings is reasonable or workable. OFA encourages enhanced use of pre-hearing mediation, combined with elimination of de novo hearings. In addition, appeals should be refocused to consider if the decision was consistent with the applicable law, Provincial Policy Statement, a Provincial Plan or the municipality's Official Plan or Zoning By-law. These measures will bring about timely processes and improved decisions.

*19. What types of cases/situations would be most appropriate for a written hearing?*

OFA is not sufficiently familiar with OMB hearings and decisions to comment on this.

*20. Why do you think more OMB cases don't settle at mediation?*

OFA has very little direct experience with Board hearings, making this difficult to comment on. That being said, mediation may be seen as conceding to the "other side", a desire to win, and resistance to compromise.

*21. What types of cases/situations have a greater chance of settling at mediation?*

OFA offers no comments on this.

*22. Should mediation be required, even if it has the potential to lengthen the process?*

Ideally, mediation should be a mandatory first step. It does have the possibility of lengthening hearings, particularly if one or more of the parties are intransigent. That being said, at minimum, pre-hearing mediation should be able to clarify and scope the issue or issues that underlie the appeal, the evidence that will be introduced, including the number of witnesses. Overall, OFA sees the benefits of pre-hearing mediation outweighing the potential to lengthen the process in some cases.

*23. What role should OMB staff play in mediation, pre-screening applications and in not scheduling cases that are out of the OMB's scope?*

The Board staff or a Board-approved mediator should conduct the pre-hearing mediation. Ideally, mediation could lead to a settlement. In the absence of a settlement, mediation would focus the scope of the hearing.

Board staff should have the authority to deny applications that are out of the OMB's scope. No one is served by the Board hearing matters outside of its jurisdiction.

*24. Do you have any other comments or points you want to make about the scope and effectiveness of the OMB with regards to its role in land use planning?*

OFA offers no additional comments.

OFA appreciates the opportunity to present its perspective on this consultation on the role of the Ontario Municipal Board in Ontario's land use planning system. We look forward to seeing our recommendations incorporated into any changes to the Board's role, responsibilities and practices.

Sincerely,



Keith Currie  
President

KC/pj

cc: The Honourable Bill Mauro, Minister of Municipal Affairs  
The Honourable Jeff Leal, Minister of Agriculture, Food and Rural Affairs  
OFA Board of Directors