# The Planning Act: What's New, What Remains, What You Should Know

## Dismissal Without a Hearing

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# DISMISSAL WITHOUT A HEARING

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## 1. Dismissal Provisions of the *Planning Act*

The Ontario Municipal Board (the "Board") has a broad discretion to dismiss an appeal without holding a full hearing. The dismissal provisions of the *Planning Act* are found in sections:

- 17(45) (with respect to official plan amendments);
- 34(25) (with respect to zoning by-law amendments and interim control by-laws);
- 45(17) (with respect to minor variances);
- 47(12.1) (with respect to Minister's zoning orders);
- 51(53) (with respect to plans of subdivision); and
- 53(31) (with respect to consents).

Pursuant to the relevant provisions of the *Planning Act*, the Board may dismiss all or part of an appeal (or in the case of Minister's zoning orders, a request to hold a hearing) without holding a hearing, on its own motion or on the motion of any party, if

(a) it is of the opinion that:

(i) the reasons set out in the notice of appeal (or in the case of Minister's zoning orders, the request) do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal;[1]

(ii) the appeal (or in the case of Minister's zoning orders, the request) is not made in good faith or is frivolous or vexatious;[2] or

(iii) the appeal (or in the case of Minister's zoning orders, the request) is made only for the purpose of delay.[3]

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[1] Note that the specific language of sub-sections 17(45)(a)(i), 34(25)(a)(i), 45(17)(a)(i), 47(12.1)(a)(i), 51(53)(a)(i) and 53(31)(a)(i) of the *Planning Act* varies slightly depending on the particular land use control instrument in issue.

[2] Sub-sections 17(45)(a)(ii), 34(25)(a)(ii), 45(17)(a)(ii), 47(12.1)(a)(ii), 51(53)(a)(ii) and 53(31)(a)(ii) of the *Planning Act*.

[3] Sub-sections 17(45)(a)(iii), 34(25)(a)(iii), 45(17)(a)(iii), 47(12.1)(a)(iii), 51(53)(a)(iii) and 53(31)(a)(iii) of the *Planning Act*.

(b) the appellant did not make oral submissions at a public meeting or did not make written submissions to council (or in the case of plans of subdivision, to the approval authority) and, in the opinion of the Board, the appellant does not provide a reasonable explanation for having failed to make a submission;[4]

(c) the appellant (or in the case of Minister's zoning orders, the person or public body requesting the hearing) has not provided written reasons for the appeal (or in the case of Minister's zoning orders, the request);[5]

(d) the appellant (or in the case of Minister's zoning orders, the person or public body requesting the hearing) has not paid the fee prescribed under the *Ontario Municipal Board Act*;[6] or

(e) the appellant (or in the case of Minister's zoning orders, the person or public body requesting the hearing) has not responded to a request by the Board for further information within the time specified by the Board.[7]

Each of the dismissal sections of the *Planning Act* is followed by a section that provides that the Board will notify the appellant (or in the case of Minister's zoning orders, the person or public body requesting the hearing) and give the appellant (or in the case of Minister's zoning orders, the person or public body requesting the hearing) the opportunity to make representation on the proposed dismissal. This latter provision does not apply if the appellant (or in the case of Minister's zoning orders, the person or public body requesting the hearing) has not complied with a request made by the Board for further information as described in paragraph (e) above.[8]

This paper will address the dismissal provisions identified in paragraphs (a) and (b) above, as they are the reasons most commonly raised by parties who bring motions to dismiss appeals without a hearing.

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[4] Sub-sections 17(45)(b), 34(25)(a.1), 51(53)(b) and 53(31)(b) of the *Planning Act*.

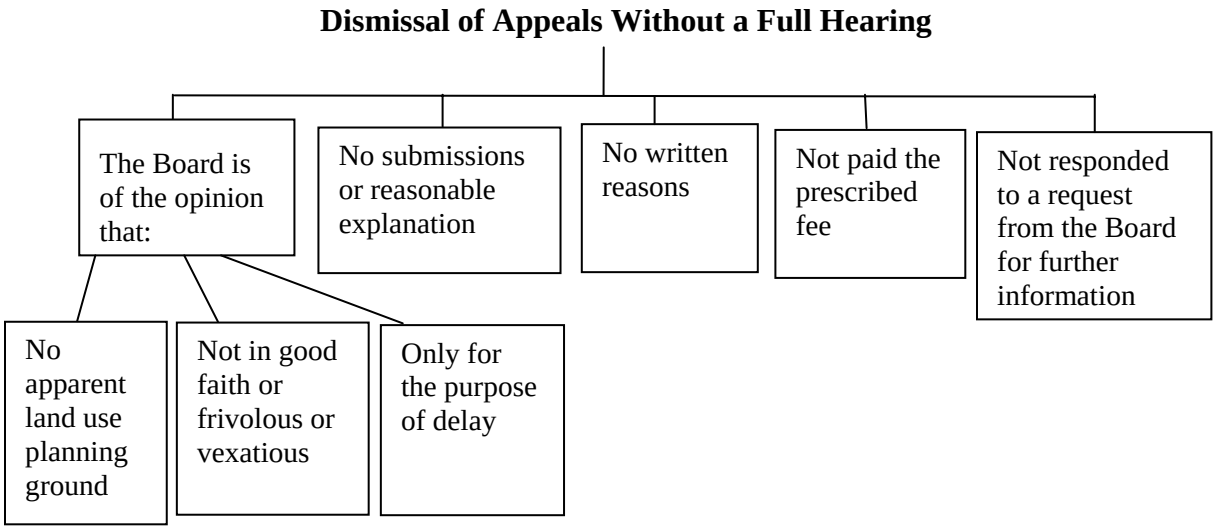
[5] Sub-sections 17(45)(c), 34(25)(b), 45(17)(b), 47(12.1)(b), 51(53)(c) and 53(31)(c) of the *Planning Act*.

[6] Sub-sections 17(45)(d), 34(25)(c), 45(17)(c), 47(12.1)(c), 51(53)(d) and 53(31)(d) of the *Planning Act.* The prescribed fee is $125.00.

[7] Sub-sections 17(45)(e), 34(25)(d), 45(17)(d), 47(12.1)(d), 51(53)(e) and 53(31)(e) of the *Planning Act*.

[8] Sub-sections 17(46), 34(25.1), 45(17.1), 47(12.2), 51(54) and 53(32) of the *Planning Act*.

**Chart illustrating *Planning Act* provisions**




**Historical Perspective**

The Board's dismissal powers with respect to zoning matters, minor variances and consents were first introduced into the *Planning Act* in 1983 and provided for the dismissal of appeals without a full hearing where the Board was of the opinion that the objection or reasons set out in the appeal were "insufficient".

In March 1995, pursuant to Bill 163, dismissal provisions were introduced into the *Planning Act* with respect to official plan matters, Minister's zoning orders and plans of subdivision, and amended language was introduced with respect to zoning matters, minor variances and consents. As a result, Bill 163 amendments significantly expanded the discretionary powers of the Board to dismiss appeals.

The thrust of the new provisions was to provide the Board with greater tools to manage its hearings by allowing for the dismissal of appeals that are without merit and advanced for non-planning purposes. In *Leamington (Town) Zoning By-law 4407-98 (Re)*, the Board noted as follows:

> *the Legislature, in its wisdom, faced with concerns and complaints as to the costs and time involved in protracted (Board) hearings, has provided a mechanism for the Board to "rein in" clear abuses of its adjudicative system.*[9]

The Divisional Court on a motion for leave to appeal, in *Zellers Ltd. v. Royal Cobourg Centres Ltd.*, took the opportunity to comment as follows on why the *Planning Act* provides grounds upon which the Board may dismiss an appeal before resources are invested in a full hearing:

> *Through a motion to dismiss, members of the OMB, people who have the background and expertise in planning matters, are given the power to ensure that steps open to participants in the planning process are employed for legitimate purposes. Decisions to participate in this process and particularly to launch an appeal are serious and must be pursued diligently. The legislation and related jurisprudence make it clear that it is not sufficient that appellants raise land use issues in the Notice of Appeal. Such issues have to be worthy of adjudication and the responsibility falls on the shoulders of the appellants to demonstrate through their conduct in pursuing the appeal, including their gathering of evidence to make their case, that the issues raised in their Notice of Appeal justifies a hearing.*[10]

The dismissal provisions in the *Planning Act* are disjunctive. Accordingly, in order to dismiss an appeal, the Board need only find that one of the tests for dismissal has been satisfied.[11] As the Board's jurisprudence illustrates, the Board has often dismissed appeals solely on the basis that the notice of appeal does not disclose any apparent land use planning ground.

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[9] *Leamington (Town) Zoning By-law 4407-98 (Re)* (1999), 38 O.M.B.R. 506, at page 510.

[10] *Zellers Ltd. v. Royal Cobourg Centres Ltd.*, [2001] O.J. No. 3792 (Div. Ct.), at para 32.

[11] *Ibid*, at paras 8 and 26; see also *London (City) Official Plan Amendment No. 332 (Re)*, [2005] O.M.B.D. No. 390, at para 43.

## 2. No Apparent Land Use Planning Ground

The statutory provisions (sub-sections 17(45)(a)(i), 34(25)(a)(i), 45(17)(a)(i), 47(12.1)(a)(i), 51(53)(a)(i) and 53(31)(a)(i)) provide that an appeal (or in the case of Minister's zoning orders, a request to hold a hearing) may be dismissed if the Board is of the opinion that the reasons set out in the notice of appeal (or in the case of Minister's zoning orders, the request) do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal.

These provisions of the *Planning Act* apply a lower threshold for dismissal of an appeal than the "triable issue" test that was applied by the Board, prior to the Bill 163 amendments, to determine the "sufficiency" of the reasons set out in the notice of appeal.[12]

In interpreting this ground, it is noteworthy that the legislature has founded it on the "opinion" of the Board, thereby making it a subjective test, residing with the Board.

In interpreting the dismissal provisions (i.e. those introduced through Bill 163), the Board has consistently inquired into the following:

(a) Whether there is authenticity in the reasons stated;

(b) Whether the issues raised by the reasons would affect the decision of the Board in a hearing; and

(c) Whether the issues raised by the reasons are worthy of the adjudicative process.[13]

The Board is entitled to go behind the stated reasons of the appeal to see whether they constitute genuine, legitimate and authentic planning reasons, and has commented that it

[12] See *Leamington (Town) Zoning By-law 4407-98 (Re*), *supra* note 9, at page 510; *Hanover (Town) Zoning By-law 2458-04 (Re)*, [2005] O.M.B.D. No. 749, at para 13.

[13] See *East Beach Community Assn. v. Toronto (City)*, [1996] O.M.B.D. No. 1890, at para 9; *Anclare Holdings Inc. v. Brampton (City)*, [1998] O.M.B.D. No. 330, at para 7; *Leamington (Town) Zoning By-law 4407-98 (Re)*, *ibid*, at pages 510-511; *Owen Sound (City) Official Plan Amendment No. 20 (Re)*, [2001] O.M.B.D. No. 249, at para 4.

is not good enough for an appellant to merely "mouth planning jargon".[14] In *Mississauga (City) Zoning By-law No. 0113-2000 (Re)*, the Board noted as follows:

> *the test is not simply whether or not a land use planning concept, term, or hypothesis has been referenced in the grounds, but whether or not such a reference and the evidence and argument that it begs provide a meaningful, logical and permissible basis for the Board to allow all or part of the appeal.*[15]

The Board has held that the grounds of appeal must anticipate the clear scope of the appellant's concerns and hold the promise for contrary sustainable evidence to be called. It is not sufficient to simply raise an issue – the issue must be capable of support.[16] Accordingly, the Board has dismissed appeals where the appellant has not undertaken any analysis or empirical work to support the assertions in the appeal, and the Board has reiterated that apprehension alone does not raise a planning issue that justifies a hearing.[17]

The Board has taken into account the interest of the appellant in considering the credibility or sincerity of the grounds of appeal and whether the appeal reveals authentic planning reasons. Matters relating to the interest of the appellant include the distance of the appellant's lands from the proposed development, the lack of concrete impact on the appellant or his/her property, and failure to object to similar proposals.[18]

In cases where there is a commercial and competitive relationship between the parties, the Board has also considered the *bona fides* of the appellant in considering whether there are apparent land use planning issues that warrant a hearing.[19] In commercial

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[14] See *East Beach Community Assn. v. Toronto (City)*, *ibid*, at para 9; *Toronto (City) Official Plan Amendment No. 502 (Re)*, [2001] O.M.B.D. No. 1113, at para 11.

[15] *Mississauga (City) Zoning By-law No. 0113-2000 (Re)*, [2000] O.M.B.D. No. 879, at para 6.

[16] *Owen Sound (City) Official Plan Amendment No. 20 (Re)*, *supra* note 13, at para 13.

[17] See *Zellers Ltd. v. Royal Cobourg Centres Ltd.*, *supra* note 10, at para 31; *Wal-Mart Canada Corp. v. Fort Frances (Town)*, [2003] O.M.B.D. No. 430, at para 14; *London (City) Official Plan Amendment No. 332 (Re)*, *supra* note 11, at para 55; *Hanover (Town) Zoning By-law 2458-04 (Re)*, *supra* note 12, at para 13.

[18] See *Smith v. Goldman Group* (1998), 36 O.M.B.R. 193, at page 197.

[19] See *Leamington (Town) Zoning By-law 4407-98 (Re)*, *supra* note 9, at page 510; *Zellers Ltd. v. Royal Cobourg Centres Ltd.*, *supra* note 10, at para 35; *Hanover (Town) Zoning By-law 2458-04 (Re)*, *supra* note 12, at para 13; *Hamilton (City) Official Plan Amendment No. 21 (Re)*, [2005] O.M.B.D. No. 1078, at paras 17-18.

competition cases, particularly in cases that the Board has described as "store wars" cases, the Board has held that it is not appropriate for a commercial competitor, who may derive an economic benefit by delaying the entry of a competitor into the marketplace, to take on the role of defender of the public interest. In these situations, the Board has clarified that the primary protector of the public interest is the municipality, and not a commercial competitor. [20]

## 3. Not in Good Faith or Frivolous or Vexatious

The statutory provisions (sub-sections 17(45)(a)(ii), 34(25)(a)(ii), 45(17)(a)(ii), 47(12.1)(a)(ii), 51(53)(a)(ii) and 53(31)(a)(ii)) provide that an appeal (or in the case of Minister's zoning orders, a request to hold a hearing) may be dismissed if the Board is of the opinion that the appeal (or in the case of Minister's zoning orders, the request) is not made in good faith or is frivolous or vexatious.

In interpreting this ground, it is noteworthy that the legislature has founded it on the "opinion" of the Board, thereby making it a subjective test, residing with the Board.

In *Gaudaur v. Toronto (City)*, in finding that the appeals were frivolous or vexatious, the Board noted as follows:

> *The term "frivolous or vexatious" has come to mean that the actions instituted are without reason or grounds, or when the party bringing the proceedings is acting from duplicitous motives to bring about results that are jejune or ludicrous. It would include proceeding with matters that have been settled and determined by the competent tribunal, matters that are said to be re judicata.*[21]

In the context of a motion for costs, in *Midland (Town) Zoning By-law 94-50 (Re)*, the Board similarly noted that frivolous means "characterized by lack of seriousness", and

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[20] See *Leamington (Town) Zoning By-law 4407-98 (Re)*, *ibid*, at pages 510-511; *London (City) Official Plan Amendment No. 332 (Re)*, *supra* note 11, at para 54; *Hanover (Town) Zoning By-law 2458-04 (Re)*, *ibid*, at para 18.

[21] *Gaudaur v. Toronto (City)*, [1998] O.M.B.D. No. 1508, at para 14.

vexatious, particularly in legal parlance, describes an action "instituted without sufficient grounds for the purpose of causing trouble or annoyance"[22].

As noted above, in cases where there is a commercial and competitive relation between the parties, the Board has also considered the *bona fides* of the appellant.[23]

## 4. Only for the Purpose of Delay

The statutory provisions (sub-sections 17(45)(a)(iii), 34(25)(a)(iii), 45(17)(a)(iii), 47(12.1)(a)(iii), 51(53)(a)(iii) and 53(31)(a)(iii)) provide that an appeal (or in the case of Minister's zoning orders, a request to hold a hearing) may be dismissed if the Board is of the opinion that the appeal (or in the case of Minister's zoning orders, the request) is made only for the purpose of delay.

In interpreting this ground, it is noteworthy that the legislature has founded it on the "opinion" of the Board, thereby making it a subjective test, residing with the Board.

Since it is an inevitable result of an appeal that a proposed development will be delayed by an appeal, the ground speaks to an intention by an appellant to achieve delay as being the sole basis for the appeal.

The Board has considered the conduct and other interests of the appellant when considering whether an appeal is brought only for the purpose of delay.[24]

In *Leamington (Town) Zoning By-law 4407-98 (Re)*, the Board commented that the dismissal provisions of the *Planning Act* provide a basis for dismissal should the Board

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[22] *Midland (Town) Zoning By-law 94-50 (Re)* (1995), 32 O.M.B.R. 4, at page 10.

[23] See *Heritage Place Shopping Centre Ltd. v. Owen Sound (City)*, [1999] O.M.B.D. No. 356; *Zellers Ltd. v. Royal Cobourg Centres Ltd.*, *supra* note 10, at para 35; *Hanover (Town) Zoning By-law 2458-04 (Re)*, *supra* note 12, at para 13.

[24] See *Zellers Ltd. v. Royal Cobourg Centres Ltd.*, *ibid*, at para 34; *Mississauga (City) Official Plan Amendment No. 112 (Re)*, [2002] O.M.B.D. No. 385, at para 7.

find that delay for competitive advantage is the real reason for the appeal, notwithstanding how well clothed it may be in planning language.[25]

In *Hamilton (City) Official Plan Amendment No. 21 (Re)*, the Board, after considering all the facts, found that the making of the appeals was for the purpose of delay. The Board noted that such delay would assist the appellant in selling its land without having to compete with the applicant's lands which were similarly zoned and in the immediate vicinity.[26]

## 5. Failure to Make Submissions

With respect to official plan amendments, zoning by-law amendments, plans of subdivision and consents, the *Planning Act* (sub-sections 17(45)(b), 34(25)(a.1), 51(53)(b) and 53(31)(b)) provides that an appeal may be dismissed if,

- the appellant did not make oral submissions at a public meeting or did not make written submissions to council (or in the case of plans of subdivision, to the approval authority), and
- in the opinion of the Board, the appellant does not provide a reasonable explanation for having failed to make a submission.

As the dismissal provisions in the *Planning Act* are disjunctive, the Board is entitled to dismiss an appeal simply on the basis that an appellant did not satisfy the two tests of this subsection.[27]

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[25] *Leamington (Town) Zoning By-law 4407-98 (Re)*, *supra* note 9, at page 510. See also *Wal-Mart Canada Corp. v. Fort Frances (Town)*, *supra* note 17, at para 19; *Heritage Place Shopping Centre Ltd. v. Owen Sound (City)*, *supra* note 23, at para 8.

[26] *Hamilton (City) Official Plan Amendment No. 21 (Re)*, *supra* note 19, at para 18.

[27] See *Lincoln (Town) Zoning By-law No. 01-35-Z228 (Re)*, [2001] O.M.B.D. No. 1013, at para 6; *Zellers Ltd. v. Royal Cobourg Centres Ltd.*, *supra* note 10, at paras 26-28.

In addressing this ground, a person seeking to dismiss an appeal bears the onus of providing evidence that the appellant failed to make submissions. This requires a finding of fact by the Board. Once this is done, the onus falls on the appellant to provide the "reasonable explanation". In this case, the legislature has made the finding one of opinion by the Board to made on the basis of the evidence before it, therefore it is a subjective test.

## 6. Costs

The Board derives its authority to award costs from section 97 of the *Ontario Municipal Board Act*. Pursuant to section 97 of the *Ontario Municipal Board Act*, the Board has the discretion to award the costs of and incidental to any proceeding. The Board's *Rules of Practice and Procedure* dealing with costs provide a framework and offer direction with respect to the exercise of the Board's discretion to award costs relating to the expenses incurred for preparation and attending a proceeding.

The Board does not make awards of costs on the basis of success, that is, who won and who lost. It is the conduct or course of conduct of a party during the proceedings that is the focus of a consideration for costs. This test is reflected in the Board's *Rules of Practice and Procedure*. Awards of costs are made only where the conduct of a party has been "clearly unreasonable, frivolous, vexatious or in bad faith".[28]

The Board has clarified that for a costs order to be made conduct need only be one of clearly unreasonable, frivolous, vexatious or in bad faith.[29]

In *London (City) Official Plan Amendment No. 332 (Re)*, the Board noted that the test for "clearly unreasonable" conduct is that which is described in the Commentary to the Board's rules on costs, namely:

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[28] Board's *Rules of Practice and Procedure*, Commentary to Rules 99 to 107 and Rule 99.

[29] See *Wal-Mart Canada Corp. v. Peterborough (City)*, [2004] O.M.B.D. No. 1234, at para 4; *London (City) Official Plan Amendment No. 332 (Re)*, [2005] O.M.B.D. No. 1069, at para 25.

> *Would a reasonable person having looked at all of the circumstances of the case, the conduct or course of conduct of a party proven at the hearing and the extent of his familiarity with the Board's Practice and Procedure exclaim "that's not right, that's not fair, that person ought to be obliged to another in some way for that kind of conduct*.[30]

In the *London* case, the Board also commented that "vexatious" has come to mean "actions instituted for duplicitous motives" and noted that an appeal is vexatious "if it is for the purpose of causing trouble or annoyance". The Board went on to note that an appeal is in bad faith "if it is not serious or caused for the purpose of delay".[31]

In considering whether to award costs on a substantial indemnity basis, the Board has adopted the test used by the courts, namely, was the conduct of the party against which costs are sought reprehensible, scandalous or outrageous?[32].

**Award of Costs on Successful Dismissal Motion**

In the context of a motion to dismiss, the Board has noted that costs awards are "for situations where the Board finds that a party wrongly brought an appeal or participated in an unacceptable manner in preparing or participating in a hearing". Costs are also awarded where the motivation of the party bringing the appeal has been found by the Board to be improper.[33]

Even where the Board dismisses an appeal only on the basis that the appeal does not rise to the standard of being an apparent land use planning ground, the Board has awarded costs. For instance, in *Collingwood (Town) Zoning By-law No. 00-07 (Re)*, the Board entertained a costs request by Loblaw Properties Limited and awarded costs against A&P

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[30] *London (City) Official Plan Amendment No. 332 (Re), ibid*, at para 32.

[31] *Ibid*, at para 33.

[32] See *Murano v. Bank of Montreal*, [1995] O.J. No. 1434, at paras 1 and 8; *Wal-Mart Canada Corp. v. Peterborough (City), supra* note 29, at paras 11 and 16.

[33] See *Toronto (City) Official Plan Amendment No. 1055 (Re)*, [2001] O.M.B.D. No. 238, at para 9.

Properties Limited where the Board found that the appeal did not rise to the standard of being an apparent land use planning ground. While the Board made no explicit finding of frivolous or vexatious conduct in reaching this determination, the Board commented that "A&P is a sophisticated appellant and is well aware of the Board's distaste for unwarranted competition battles masked as planning disputes. Its claim of altruism in defence of the Town's planning policies is not credible".[34]

The Board also considered the sophistication of the appellant with respect to the planning process and its familiarity with the Board's process in *London (City) Official Plan Amendment No. 332 (Re)*, when reviewing conduct and awarding costs with respect to a motion to dismiss.[35]

**Award of Costs Where Dismissal Motion Not Successful**

On occasion the Board has awarded costs relating to a motion to dismiss that was not successful. In *Halloway Holdings Ltd. v. Oshawa (City)*, the appellant was awarded costs arising out of an unsuccessful motion brought to dismiss its appeals without a full hearing. In commenting on the motion to dismiss, the Board noted as follows:

> *The emphasis in motions such as these must be on the appellant's grounds for appeal and NOT on the evidence to be called by those in opposition. The focus must be on the reasons for the appeal; whether there has been a substantive review and analysis of the situation which supports the reasons for the appeal, whether there will be witnesses present at the hearing to provide substantive support for the appeal; and whether the reasons for the appeal constitute reasons on which, should the Board agree with them, the Board could allow the appeal*.[36]

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[34] *Collingwood (Town) Zoning By-law No. 00-07 (Re)*, [2000] O.M.B.D. No. 395, at paras 23-24.

[35] *London (City) Official Plan Amendment No. 332 (Re)*, *supra* note 29, at paras 36-37. See also, *Wal-Mart Canada Corp. v. Peterborough (City)*, *supra* note 29, at para 5.

[36] *Halloway Holdings Ltd. v. Oshawa (City)*, [2005] O.M.B.D. No. 198, at para 9.

The Board found that the bringing of the motion to dismiss was clearly unreasonable "in view of the clarity" of the nine-page appeal letter filed by the appellant.[37]

## 7. Bill 51 – Proposed Changes to the Dismissal Provisions

**Additional Ground for Dismissal: Where Persistent Conduct Constitutes an Abuse of Process**

Bill 51, the *Planning and Conservation Land Statute Law Amendment Act, 2005*, proposes to give the Board the additional power to dismiss all or part of an appeal (or in the case of Minister's zoning orders, a request to hold a hearing) without holding a hearing, on its own motion or on the motion of any party, if it is of the opinion that:

> *the appellant (or in the case of Minister's zoning orders, the person requesting the hearing) has persistently and without reasonable grounds commenced before the Board proceedings that constitute an abuse of process*.[38]

The language of the above provision appears to be intended to discourage a person who files successive applications relating to the same or similar development proposal from repeatedly appealing a refusal from council to the Board.

On the other hand, it may also be used to discourage appellants who may be inclined to repeatedly appeal favourable decisions of council relating to development proposals of competitors, in particular retail commercial competitors.

There may be a problem with the drafting of the language insofar as the words "proceedings that constitute an abuse of process" appear to suggest that the Board would have had to determine previously that a proceeding brought by the person was an abuse of process.

To address this problem, the language might read as follows:

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[37] *Ibid*, at paras 10 and 12.

[38] See sub-sections 8(10), 14(14), 17(2), 18(1), 21(9), and 22(2) of Bill 51.

*the appellant (or in the case of Minister's zoning orders, the person requesting the hearing) has persistently and without reasonable grounds commenced proceedings before the Board.*

Or

*the appellant (or in the case of Minister's zoning orders, the person requesting the hearing) has persistently and without reasonable grounds commenced proceedings before the Board which in the opinion of the Board constitute an abuse of process.*

**Removal of Ground for Dismissal: Failure to Make Submissions**

Bill 51 proposes to repeal subsections 17(45)(b), 34(25)(a.1) and 51(53)(b) of the *Planning Act*.[39] These latter provisions permit the Board to dismiss an appeal where the appellant has failed to make submissions and, in the opinion of the Board, does not provide a reasonable explanation for having failed to make a submission.

**Right of Appeal Only Given to Persons Who Make Submissions**

The repeal of subsections 17(45)(b), 34(25)(a.1) and 51(53)(b) has to be considered in the context of related provisions in Bill 51 that would accord a right to appeal only to a person (other than a public body) who made oral submissions at a public meeting or written submissions to council (or in the case of plans of subdivision, to the approval authority).[40]

**Board May Add Parties On Reasonable Grounds**

On the other hand, the Board is given the discretion to give party status to a person who did not make oral submissions at a public meeting or written submissions to council (or in the case of plans of subdivision, to the approval authority), if in the Board's opinion

[39] See sub-sections 8(11), 14(15) and 21(10) of Bill 51.

[40] See sub-sections 8(6), 8(8), 14(5), 14(12), 21(6) and 21(7) of Bill 51.

there are reasonable grounds to add the person as a party.[41] Of course, if there is no appeal and thus no proceeding before it, the Board could not exercise this power.

[41] See sub-sections 8(9), 14(13) and 21(8) of Bill 51.