

Ontario Municipal Board Reform

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First Principles

- Need strong, independent Board
 - Independence means independence from undue influence from either government or other participants in the process.
 - Administers government policy, whether provincial or municipal.
 - The Province obliges municipalities to make tough decisions that are difficult and unpopular – such as protecting agricultural land and wetlands, intensification, infill and redevelopment.
 - When municipalities neglect/refuse this duty, it becomes the Board's responsibility to perform this function. Thus, Board decisions are inherently controversial.

First Principles

- Provincial governments give mixed messages
 - On the one hand, the Board continues to be the resting place of new jurisdiction
 - For e.g. the *Ontario Heritage Act* has given the Board new and increasing jurisdiction.
 - On the other hand, recent legislation – such as Bill 135 (the *Greenbelt Act, 2004*) and Bill 136 (the *Places to Grow Act, 2004*) – is bypassing the Board by giving jurisdiction to special purpose bodies (e.g. hearing officers under Bills 135 and 136).

First Principles

- The courts are not suitable to do the work of the Board
 - The Board is a reservoir of specialized expertise.
 - The Board considers matters affecting the public interest, while considering government policy, in the context of rules of procedural fairness.
 - The Board provides easy access to the public in a non-intimidating environment.

First Principles

- A strong government commitment to the Board is needed
 - Support independence of the Board and acknowledge the inherently controversial nature of its exercise of jurisdiction.
 - Support commitment by the provision of adequate financial resources.
 - Support commitment by the appointment and re-appointment of the Chair and members based on merit, competence and professional distinction.

Jurisdiction of the Board: Standard of Review

- Overturning a municipal decision: should the bar be raised?
 - Presently, decisions are made “on the merits”.
 - Should there be a standard of review upon which the Board must make a finding before overturning a decision by a municipal council (i.e. “correctness”, “reasonableness”, “patently unreasonable”).
 - Should the standard of review be different according to the jurisdiction exercised?
 - Council initiated Official Plan provisions: appeals
 - Amendments to Official Plan provisions.
 - Appeals to publicly initiated amendments
 - Private appeals from Council refusals to amend.
 - Zoning amendments.
 - Appeals to publicly initiated amendments
 - Private appeals from Council refusals to amend.

Jurisdiction of the Board: Standard of Review

- Tie goes to the runner/municipality rule
 - Should there be a principle that where the evidence is balanced - that is, where there is no discernible difference between the evidence of the municipality and that of its opponents (either developers or objecting citizens) - the decision of the municipality should prevail?

Toward the Reform of the Board: Procedural Reform

- Establish clear, comprehensive procedural guidelines
 - cost guidelines
 - conduct of hearings
 - admissibility of evidence
 - cross examination
 - controlling the length of hearings
 - participation by lay persons and unrepresented parties

Toward the Reform of the Board: Procedural Reform

- Address complaints regarding long and costly hearings
 - Recognize that most hearings are short, simple and low cost.
 - A few are necessarily long, complicated and costly.
 - Encourage case management that identifies and scopes, streams and manages hearings by type.
 - Explore opportunities for short, low-tech hearings (no lawyers, few experts and agents).
 - Acknowledge strengths and limitations of mediation processes (i.e. mediation only succeeds where all parties seek resolution of issues).

Improved Public Access and Participation in Board Proceedings

- Public Information
 - Level the playing field so as to improve public access to Board resources and understanding of the process.
- Public Education
 - Board staff be empowered to provide more assistance in the form of public education about participating before the Board.
 - Staff person capable of assisting the public with procedural assistance and substantive guidance on particular cases (without taking sides).

Toward the Reform of the Board: Appointment and Qualification of Members

- **Basic Appointment Principle**

- Appointments and re-appointments to the Board should result in a knowledgeable, productive Board consisting of 25 to 28 well qualified and hard working members.

- **Appointment of the Chair**

- The Board requires clear leadership in the form of a Board Chair who receives government and Board member support.

Toward the Reform of the Board: Appointment and Qualification of Members

- Acknowledge that recruitment may be political, but must also be based on proven professional accomplishments in one of the participating disciplines, and/or distinguished record of political accomplishment at municipal or provincial level.
- Establish criteria and qualifications for prospective Board members based on professional requirements.
- Term of appointment for members and the Chair: minimum 10 years with opportunities for renewal based on merit.
- Should there be an advisory body to suggest and screen applicants and prospective members, based in stakeholder organizations and participating professions?

Toward the Reform of the Board: Re-appointment of Members

- Re-appointment should be based on performance in hearings and quality of decision-writing – not on the nature of decisions or on political considerations. This acknowledges the inherently controversial nature of Board decisions.
- Re-appointment should be the prerogative of the Board Chair (or by mutual consensus of the Chair and the Government).

Toward the Reform of the Board: Remuneration

- Salary and benefits
 - Should reflect the importance of the work.
 - Should be sufficient to attract competent appointments.
 - Should compensate for absence from an alternate, successful professional career.