



REFERRAL OF MEMBER MOTION BY CITY COUNCIL

Removing Toronto from the jurisdiction of the Ontario Municipal Board (OMB) and asking the Province of Ontario to abolish the OMB

Date:	September 23, 2011
To:	Planning and Growth Management Committee
From:	City Council
Wards:	All

City Council Decision

City Council on September 21 and 22, 2011, referred Motion MM11.7 to the Planning and Growth Management Committee.

Recommendations

Councillor Kristyn Wong-Tam, seconded by Councillor Josh Matlow, recommends that:

1. City Council request the Minister of Municipal Affairs and Housing to amend the Planning Act, the Heritage Acts, and all other legislation under which the OMB operates and has jurisdiction to abolish the OMB and to provide that decisions of municipal councils are only appealable to the courts on questions of law.
2. City Council send a copy of this resolution to the Minister of Municipal Affairs and Housing, all local members of Provincial Parliament and GTA municipalities.
3. Upon confirmation of the dissolution of the OMB, City staff and the Planning and Growth Management Committee continue the process of establishing the local appeal body for decisions of the Committee of Adjustment.
4. City Council support the request of the City of Mississauga to the Minister of Municipal Affairs and Housing for public consultations on these requests, and advise the Minister of its support in writing and offer of assistance to liaise with local stakeholders including business owners, property owners, residents, and individuals and corporations working in land use development and planning.

5. Should during the Ministry and City-lead public consultations, it be revealed that municipal jurisdictions wish to remain subject to OMB hearings, then Toronto City Council and other municipal jurisdictions by a majority vote, be granted the option of removal from the OMB's purview.

Summary

Municipal councils in Ontario are directly elected by their constituents, and have general responsibility for land use planning in the public interest.

Since the establishment of the Ontario Municipal Board (OMB) in 1906—initially as the Ontario Railway and Municipal Board—it has evolved from an approval authority into an appeal body in matters of land use planning. As municipal councils developed increasingly sophisticated expertise and resources over decades, they have become qualified and better equipped to make informed and prudent decisions.

Toronto City Council is advised and informed by an established and experienced full-time Planning Department staffed with accredited professionals, and is capable of making decisions in the public interest.

City Councillors are eager to adopt the responsibilities their constituents expect of them. Councillors have the benefit of ongoing engagement with the communities they represent, and extensive knowledge of local issues, opinions and needs both large and small, on which they base their decisions.

City Councillors and the planning staff's ability to plan is undermined if applicants calculate that it is in their interests to treat City processes as a mere formality en route to an OMB hearing. Although many applicants are fair and reasonable in their dealings with the City, the OMB appeal process is not conducive to fostering good-faith negotiations and efforts.

The current OMB hearing process is too cumbersome, too expensive, too time-consuming and too legalistic to facilitate wide-ranging citizen participation and is therefore unfair to the local residents as well as the community at large.

The current OMB process is also a drain on City Planning and Legal resources. Great urban planning is about looking forward using planning documents/guidelines/frameworks with the benefit of past professional experience, and this should be what planners should spend their time doing. Instead, much of their time is spent defending appeals based on personal or private interests to the OMB. This situation also creates a disincentive for the City to appeal its own decisions, even where they are correct and in the public interest. All these matters impinge on the City's ability to meet its obligations to its constituents, including applicants expecting responses to their proposals.

The OMB tends to act as an arbitrator between the public and private interests, a function more suited to the Courts, which are a more appropriate venue for legal disputes.

The Planning Act treats appeals of municipal planning decisions to the OMB as de novo hearings and allows the OMB to substitute its decisions for those taken by democratically elected councils, generally having little regard for the public interest as expressed through these councils.

The Ontario Divisional Court held in the decision *Minto Communities Inc. v. the City of Ottawa* that the OMB's powers on appeal of municipal planning decisions have not been altered by the requirement that it consider municipal decisions.

The Ontario Divisional Court has stated that a "more clear and specific expression of legislative intent" would be required to change the traditional role and practices of the OMB.

Certain planning matters respecting land severance applications and minor variances heard by the Committee of Adjustment, as well as heritage designations established by Council, are also subject to appeal to the OMB.

It is manifestly undemocratic for an appointed board such as the OMB to substitute its opinions for the considered judgment of elected councillors and professional city staff on matters affecting municipalities in which the councillors and city staff will continue to live and in which the OMB has no ongoing presence.

Furthermore, on June 22, 2011, the Council of the City of Mississauga voted unanimously to abolish the OMB.

(Submitted to City Council on September 21 and 22, 2011 as MM11.7)