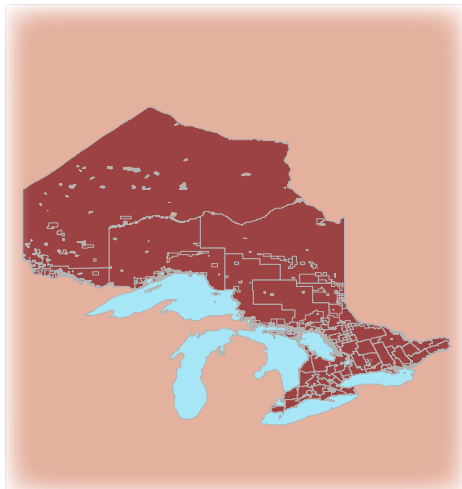


CITIZENS' GUIDE



ONTARIO MUNICIPAL BOARD



IN A SERIES
Updated 2008

Introduction

Land use planning affects almost every aspect of life in Ontario. It helps decide where in our communities homes and factories should be built; where parks and schools should be located; and where roads, sewers and other essential services should be provided.

Land use planning means managing our land and resources. It helps each community to set goals about how it will grow and develop and to work out ways of reaching those goals while keeping important social, economic and environmental concerns in mind. It balances the interests of individual property owners with the wider interests and objectives of the whole community.

Good planning leads to orderly growth and the efficient provision of services. It touches all of us and helps us to have the kind of community we want.

But often we don't see how it affects our lives and property each day. And it often seems confusing. A series of Citizens' Guides has been prepared to help you understand how the land use planning process works in Ontario. They are intended to give general information only and are not an interpretation of the Planning Act or any other act. You should refer to the legislation for specific requirements and procedures.

The titles of the guides are:

- 1. The Planning Act**
- 2. Official Plans**
- 3. Zoning By-laws**
- 4. Subdivisions**
- 5. Land Severances**
- 6. Ontario Municipal Board**
- 7. Northern Ontario**
- 8. Building Permits**
- 9. The Plan Review and Approval Process**

What is the Ontario Municipal Board?

The Ontario Municipal Board is an independent administrative tribunal responsible for hearing appeals and deciding on a variety of contentious municipal matters.

The Ontario Municipal Board is similar to a court of law, but with less formality. Board members are appointed by the Ontario Cabinet and include lawyers, accountants, architects, planners and public administrators. The Ontario Municipal Board operates under the Ontario Municipal Board Act, as well as its own rules of practice and procedure. It reports administratively to the Ministry of the Attorney General.

This guide focuses on the Ontario Municipal Board's role in dealing with land use planning matters under the Planning Act. Its main role in community planning is to hold public hearings on:

- land use planning applications, such as subdivisions, land severances and minor variances
- planning documents and applications, such as official plans and zoning by-laws.

Why is there an Ontario Municipal Board?

People don't always agree on how their communities should grow in the future. Disputes often arise over general land use planning issues, such as where industrial development should be located or what types of municipal services should be provided in the community.

When people are unable to resolve their differences on community planning issues, or have disputes with their municipal council that can't be settled, the Ontario Municipal Board provides that needed public forum. It can assemble the facts and make decisions in light of:

- environmental, social and economic considerations
- provincial interests
- rights of the individual citizens
- the best interests of the community as a whole.

Why should you participate in the land use planning process?

People can effectively express their individual or group interest in a planning matter by participating early in the process. This is important because it offers an opportunity for information exchange, especially if there are conflicting perspectives. Municipal councils will attempt to deal with concerns or disputes before making decisions on planning matters.

Alternative dispute resolution techniques can be used by a municipal council in resolving the matter locally and avoiding a hearing at the Ontario Municipal Board.

It should be noted that failure to let your views be known, either by oral presentation at a public meeting or by written submission prior to council's decision on the application for official plans, zoning by-laws, or plans of subdivision, means that you do not qualify to appeal such matters to the Ontario Municipal Board.

While some planning matters, such as consent or minor variance applications, do not specifically require that you participate in the process to appeal, the Ontario Municipal Board has the power to dismiss an appeal without holding a hearing if the person or public body that launches an appeal has not made oral and/or written submissions before municipal council makes a decision. Consent and minor variance appeals may not always be dealt with by the Ontario Municipal Board. Instead, municipalities that meet certain minimum requirements may establish their own appeal board, called a "local appeal body", to hear consent and/or minor variance appeals. Contact your municipal clerk to determine the consent and minor variance appeal body for your area.

How do you appeal to the Ontario Municipal Board?

If you are considering appealing a planning matter to the Ontario Municipal Board, you should be aware of certain requirements and limitations:

- To protect your appeal rights, you should - with respect to official plans, zoning by-laws or plans of subdivision,

- ensure that you make your views known by making an oral presentation at a public meeting or a written submission to the council/planning board or approval authority which gives the notice of decision.

- However, you should be aware that there are limitations on appeals in some circumstances if the matter appealed relates to:
 1. the alteration of, or establishment of a new "area of settlement"
 2. the removal of land from an "area of employment"
 3. policies adopted to permit second unit residential dwellings.
- Appeals must be made within the time frame allowed. In most cases, appeals must be made no later than 20 days after the day the council/planning board or approval authority gives its notice of decision on the planning proposal.
- Your appeal to the Ontario Municipal Board should be made to the council/planning board or approval authority which gives the notice of decision. In most cases, they are required to send your appeal to the Ontario Municipal Board within 15 days after the appeal period expires.
- You should cite the portion of the decision you are appealing. For example, in an appeal of a zoning by-law or official plan matter, you should specify whether you are appealing part of or all of the zoning by-law or official plan; in an appeal of a draft plan of subdivision, you should specify whether you are appealing the decision, a particular condition or all of the draft approval conditions and/or the lapsing provision.
- Written reasons for your appeal must be provided.
- The appeal fee required by the Ontario Municipal Board under the Ontario Municipal Board Act must be provided. For more information on the Ontario Municipal Board fee schedule, contact your municipal clerk, the approval authority or the Ontario Municipal Board.

To find out more about the specific appeal process for each type of planning application, see the guides to Official Plans,

Zoning by-laws, Subdivisions, and Land Severances, Nos. 2, 3, 4 and 5 of the series. Discuss your plan to appeal with the municipal clerk or local planning office.

How will you be informed about an Ontario Municipal Board hearing?

Written notice of a public hearing must be given in advance, usually through local newspapers or by mail. Depending on the type of application, the Ontario Municipal Board will give notice itself or will require that the person initiating the appeal or the municipality provide notice, subject to the Ontario Municipal Board's directions. For most planning applications, notice is sent out at least 35 days in advance of the hearing. However, in cases involving appeals against a municipal council's refusal of an official plan amendment or rezoning application, a 60-day notice is usually required. While the scope and method of notice has been standardized by the Ontario Municipal Board, the board may direct more or less notice of a particular proceeding if it feels this is appropriate. Usually, notice is given by mailing directly to those affected, although for some hearings, where there is significant public interest, notice may be published in a general newspaper.

What are the alternative ways that the Ontario Municipal Board may use to deal with appeals?

The Ontario Municipal Board has been exploring various ways of improving its effectiveness and efficiency by introducing alternatives to full public hearings. Also, it has new procedures and formats for conducting hearings. In this way, people may avoid or reduce the expense and formality involved in a formal hearing.

Some of the Ontario Municipal Board's practices are:

- **Telephone conferencing.** This is used where appropriate, for example, to deal with procedural matters that arise.
- **Mediation.** This is used to bring together parties in dispute to see if they can settle the matter with the guidance of a mediator. Usually, mediation takes place

within three months of the receipt of the appeal. It is often done through telephone conferencing. If not completely successful, a shortened hearing is scheduled.

Mediation is a valuable process because:

- an impartial person (mediator) helps disputing parties try to reach a voluntary, mutually acceptable resolution on some or all of the issues of their dispute.
- it can take place at any time, before or during a pre-hearing or hearing. It may replace a hearing if the parties come to an agreement.
- at the mediation meeting, the Ontario Municipal Board member(s) will advise parties how the mediation will proceed and will set out the ground rules. The member guiding the mediation will help make discussion of the issues easier and may offer innovative solutions. All documents and anything said in the mediation are confidential. Unlike a hearing, a mediation meeting does not include the public.
- Ontario Municipal Board members are bound by the Code of Conduct for Ontario Municipal Board Mediators to guide their conduct and promote confidence in mediation as a process for resolving disputes.
- Pre-hearing conferences are held in advance of a full hearing to better organize complicated hearings, to shorten the hearing time required and to make hearings more efficient by:
 - identifying the parties and participants
 - narrowing the issues
 - establishing the rules for pre-filing of documents
 - setting out the order and presentation of evidence.

How is a formal Ontario Municipal Board hearing conducted?

First, documents, data and relevant information are sent to the Ontario Municipal Board by the municipality, approval authority or planning board, and made available for public review in advance of the hearing.

Next, the hearing date is scheduled in a location that is easily accessible to local citizens, such as a municipal office or community centre.

The hearings are conducted by one or more appointed members of the Ontario Municipal Board and are similar to a court of law. Hearings usually follow a set pattern of courtroom practice according to the rules of natural justice. If the hearing is complex, it may involve lawyers, many witnesses and lengthy representations.

In addition to local residents and concerned citizens, expert witnesses in land use planning and other disciplines are often called on to testify about the specifics of a contentious application. All witnesses are placed under oath or affirmed, but Ontario Municipal Board members go out of their way to put local residents at ease by treating them in a relatively informal manner.

A hearing can be as brief as a couple of hours if it involves few witnesses and only one or two planning issues. But in more complex situations, the hearing could last several days, sometimes several weeks.

What role do ratepayers' groups play?

The Ontario Municipal Board carefully considers comments made by the ratepayers' groups. When they represent themselves as "community spokespersons", the Ontario Municipal Board usually tries to find out how representative they are.

A community association or ratepayers' group does not need to be incorporated to be added as a party. However, it needs to be incorporated if it wants to file an appeal in the name of the group. If your group has not been incorporated, a notice of appeal may be made in the name of an individual who is a member of the association or the group on its behalf.

What costs are involved in an Ontario Municipal Board hearing?

The Ontario Municipal Board charges a filing fee for certain kinds of appeals. Contact your municipal clerk, the

approval authority or the Ontario Municipal Board for the fee schedule. In addition, the Ontario Municipal Board may also award costs at the end of the hearing. This depends on the circumstances of the dispute or when, for example, the appellant fails to appear at the hearing.

Do you need a lawyer?

If you intend to launch an appeal, you should be well prepared for your hearing and ready to present detailed information in support of your views. Depending on the complexity of the issue, you may wish to hire a lawyer to represent you.

Lawyers and representatives question the witnesses and make statements and arguments based on the evidence presented. You do not have to be represented by a lawyer or representative but most municipalities and people making appeals do.

If you don't hire a lawyer or representative, you will have to:

- obtain the documents you need to present your case
- make copies for all parties (except of public documents like official plans), and
- present relevant facts (evidence) clearly and logically to prove your case and convince the Ontario Municipal Board at the hearing.

What are the powers of the Ontario Municipal Board?

When a matter is appealed to the Ontario Municipal Board, the Board takes the place of the approval authority and can make any decision that the approval authority could have made. For example, if an official plan amendment is being considered, the Board takes the place of the approval authority and can approve, change or refuse the amendment.

After the hearing has been held, the Ontario Municipal Board may either implement its decision directly, or order the usual approval authority to do so.

The Ontario Municipal Board has expanded powers to

dismiss an appeal without a hearing based on a number of grounds which, depending on the matter appealed, can include:

- appeal is not based on any apparent land use planning grounds
- appeal is not made in good faith or is frivolous or vexatious, or is made only for the purpose of delay
- appeal constitutes an abuse of process, such as repeating the submission of an application that has recently been dealt with
- appeal is substantially different from that which was before council at the time of its decision
- appellant did not make oral submissions at a public meeting or provide written submissions to the municipal council/approval authority before a decision was made
- appellant has not provided written reasons for the appeal
- appellant has not paid the fee required by the Ontario Municipal Board
- appellant did not respond to the Ontario Municipal Board's request for further information within the time specified by the Ontario Municipal Board.

Can you contact the Ontario Municipal Board directly?

Yes. The Ontario Municipal Board has opened a Citizen Liaison Office to provide information and assistance to the public regarding the processes and to provide information on how to participate at Ontario Municipal Board hearings.

The Ontario Municipal Board's Citizen Liaison Officer will be glad to answer any questions about appeals and hearings. Call (416) 326-6792 or toll free 1-866-887-8820. You may also write the Ontario Municipal Board at 655 Bay Street, 15th Floor, Toronto, ON M5G 1E5.

How can you find out more?

For more information about land use planning in your community contact your municipal clerk or planning department. For more information about land use planning in Ontario, or how to obtain copies of Citizens' Guides visit the Ministry of Municipal Affairs and Housing website at: www.mah.gov.on.ca or contact your nearest Municipal Services Office (MSO):

Central Municipal Services Office

777 Bay Street, 2nd Floor
Toronto ON M5G 2E5
General Inquiry: 416-585-6226
Toll Free: 800-668-0230

Western Municipal Services Office

659 Exeter Road, 2nd Floor
London ON N6E 1L3
General Inquiry: 519-873-4020
Toll Free: 800-265-4736

Northwestern Municipal Services Office

435 James Street South, Suite 223
Thunder Bay ON P7E 6S7
General Inquiry: 807-475-1651
Toll Free: 800-465-5027
(Thunder Bay, Kenora, Rainy River)

Eastern Municipal Services Office

8 Estate Lane, Rockwood House
Kingston ON K7M 9A8
General Inquiry: 613-545-2100
(Frontenac, Leeds & Greenville, Lennox & Addington)
Toll Free: 800-267-9438
(Ottawa, Prescott-Russell, Prince Edward, Stormont, Dundas/Glengarry, Kawartha Lakes, Renfrew, Peterborough, Haliburton, Hastings, Lanark, Northumberland)

Northeastern Municipal Services Office

159 Cedar Street, Suite 401
Sudbury ON P3E 6A5
General Inquiry: 705-564-0120
Toll Free: 800-461-1193
(Cochrane, Algoma, Manitoulin, Sudbury, Parry Sound, Nipissing, Timiskaming)

For More Information

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING
Provincial Planning Policy Branch (416) 585-6014
Website: www.mah.gov.on.ca

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