



General Meeting of 8 December 2016 from 7:15pm
Overbrook Community Centre, 33 Quill Street
Police-Community Safety - networking
Draft Agenda

1. Call to order; welcome to participants	5	5
2. Adoption of agenda	2	7
3. a) Introduction to Overbrook b) Greeting by Councillor	4 4	11 15
4. Approval/receipt of minutes of previous meetings [Move to Business]	5	20
5. Welcome to Panel on Police-Community Safety by Nancy Worsfold, Executive Director Crime Prevention Ottawa Panelists: <ul style="list-style-type: none"> • Thierry Harris, FCA Communications, Community crime concerns (results of survey) ▪ Jan Grabowiecki FCA Crime Statistics project team ▪ A/Superintendent Mark Ford, with Deputy Chief Skinner, Ottawa Police Services – the Police Service Initiative 	25	45
6. “Police – community safety networking” small group interactive on an FCA networking for community safety– putting community action forward Q&A, focusing and general discussion	25	70
BREAK	15	85
7. Other business a) Committee announcements - Planning/Zoning – FCA OMB submission review - Transportation - Communications	10	95
b) Other issues / Open Mike i) ii)	25	120

Background information for FCA-FAC General Meeting of 8 December 2016

Agenda item 5

General information about Crime Prevention Ottawa is found at <http://www.crimepreventionottawa.ca/>

In order to focus discussion about safety and security, community representatives are invited to complete a simple survey found at <https://www.surveymonkey.com/r/BSJ8R76>

Information on the Police Service Initiative is found at <https://www.ottawapolice.ca/en/news-and-community/Service-Initiative.asp>

Agenda item 7 OMB Review

The provincial government is reviewing the scope and effectiveness of the Ontario Municipal Board. A consultation document has been released which is found at <http://www.mah.gov.on.ca/Page15027.aspx>

Individuals and community groups are encouraged to submit their thoughts to the review. The target date for receipt of comments is December 19. Instructions on making a submission are included in the consultation document.

It has been proposed that FCA-FAC make a submission to the review. A draft submission is attached for discussion. At the Dec. 8 meeting, members will be asked to approve the draft. In the event that members wish to engage in further extensive discussion about an FCA submission, a supplementary meeting would need to be arranged.

The Federation of Citizens' Associations of Ottawa [FCA] is a not-for-profit corporation to bring together community associations and similar citizens' groups in the City of Ottawa. Our purposes include sharing information and views on public issues, encouraging public participation in civic matters and, on occasion, articulating common positions of our members.

The following responds to the specific questions raised in the public consultation document, but it is necessary to make some assumptions about one issue to try to envisage the effect on another. For example, if the scope of authority of the OMB is restricted, this would limit the need for additional members of the Board. Another example is that if "de novo" hearings were eliminated, there could be less need for community groups to retain experts such as planners and lawyers, which could reduce the financial burden for intervenors. As a general principle the response to each questions has been drafted in isolation – each response first assumes that no other changes to the OMB are undertaken; when appropriate a further response considers the implication of other changes on the issue under examination.

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

We are opposed to limiting appeals on matters of public interest because no clear definition of such limitation has been provided. If the question is about decisions of the provincial government which are not to be subject to appeal, this should be specified.

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

We support public transit but we oppose the blanket exemption from appeal of any matter touching on use of transit.

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

We welcome a stronger voice for communities and this position colours all our subsequent responses.

We support a prohibition on appeals of interim control by-laws which are time-limited and provide a period of stability in which policies can be clarified.

With respect to secondary plans, there is some support for a two year period in which appeals are not allowed. Another approach would be to permit appeals of secondary plans, but once the appeal process has ended, further amendment be forbidden for a period of two to five years. Our task force for the OMB review agrees with the principle of limitations of appeals but has not reached a consensus on the specific measure which would best provide for a period of stability.

We expect that disputes on minor matters, such as site plan items as disputes on landscaping, driveways and lighting, should be resolved through mediation.

Given that about half of the current appeals to the OMB are related the matters which the Committee of Adjustment has originally decided, there should be analysis of the reasons for appeals

from Committees of Adjustment. Such analysis could identify issues or practices that, if addressed, would reduce the volume of such appeals before the OMB.

We support the creation of local appeal boards to receive all appeals from Committee of Adjustment decisions in municipalities with a population of 200,000 or more. No such local appeal bodies have been established by municipalities to date for the simple reason that it is more convenient (and is of no cost) to have the province provide facilities through the OMB. If larger municipalities were required to establish local appeal bodies and this reduces the cost of the OMB to the province, some of the saving should be passed on to the respective municipalities.

The idea of sending new information garnered through OMB activity back to the municipality concerned is worthwhile. This practice should be obligatory, not optional as at present. Depending on the nature of change introduced as a result of the current review, the type of new information generated by OMB activity might also change.

Greater clarity and consistency is required in the application of the Planning Act provision authorizing the OMB to consider matters “dealt with” by municipalities. Our understanding is that the courts have determined that this authority is limited to matters appearing in “notices of decision”. Either this limitation on OMB authority should be respected by the Board or the Legislature should amend the Planning Act to extend OMB authority. We see no need for extension of OMB authority in this respect.

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

The practice of hearing matters de novo should be ended. This approach has driven up costs for participants (and for the Province). It has led municipalities to neglect their responsibilities, leaving the difficult decisions to be decided by the OMB.

The OMB ought to decide only whether the municipal council’s decision was reasonable, whether the municipality followed the requirements of due process, and whether the decision is in accordance with the municipality’s official plan, by-laws and policies as well as with provincial laws, regulations and policies. We seek to see the OMB transformed into an appeals tribunal rather than hearing matters again “de novo”. Accordingly the OMB would not rehash a matter but send it back to the originating municipality should that be deemed necessary.

Our view that the OMB should stop repeating a complete review of each case under appeal (i.e. to stop acting like a trial court and to become an appeal tribunal) is based on an assumption that democratic deliberation and comprehensive public engagement is achieved in each municipality. Unfortunately this standard is not always respected in Ottawa. Although the particulars of this city cannot be the focus of the current review, action from the Province may be appropriate to stimulate improvement by the municipalities.

Ending “de novo” hearings would remove from the OMB the ability to assert as a unelected body that it has the right to declare, in contradicting an elected assembly, what constitutes “good planning”.

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

Rather than examining an application in detail, replicating a procedure which was or should have been followed at the municipal level, the OMB could become a genuine appeal body. The OMB would shift to examining appeals to determine if the decision at the municipal level was reasonable, if procedures were properly followed and if consistency with relevant policies assured. If the examination of procedures, policies and reasonableness indicates that an appeal has validity, the matter should be sent back with direction to the municipality for remedial action. If the OMB determines that processes and policies were respected and the municipal decision was reasonable, the appeal should be denied.

Q 6. From your perspective, should the government be looking at changes related to 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 is made?***
- ***what is your perspective on having updated provincial planning rules apply at the time of decision for applications before 2007?***

Planning decisions should be based on the policies in effect at the time of the decision. There should be no provision for applying policies in force at the time of application, whether that application was submitted prior to 2007 or yesterday. There should be no provision for applications “sneaking in” just prior to policies coming into effect.

With respect to decisions rendered prior to 2007, projects which are underway should be allowed to proceed on the basis of the decision taken prior to 2007. For any decision taken prior to 2007 applicable to an undertaking which has yet to begin implementation, the old decision should be declared void and a new application demanded.

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

We have had no meaningful experience with the Citizen Liaison Office. Most of the otherwise well-informed members of our OMB task force had no knowledge of its existence.

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

The most basic of information – the existence of the Citizen Liaison Office and the nature of its services – was unknown.

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

If the above changes mean that the existence of the Citizen Liaison Office will be made known, it would be a first step. The idea of moving the CLO outside the ELTO is worth exploring.

The vast majority of lawyers and planners in Ontario consider that working for anyone other than developers or municipalities will impede their ability to secure future retainers from the development industry. Thus it would be helpful for the CLO to retain a list of lawyers and planners who are available to work with community groups and individuals. Funding in support of intervenors should be considered. Alternately the Province might work with the Institutes of Planning to discuss an

approach similar to what exists for 'legal aid' and encourage the provision of a small percentage of community work by each registered planner or planning firm.

Q 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?

The Citizen Liaison Office or a similar body should organize and maintain a compendium and synthesis of OMB and pertinent judicial decisions indexed to subject matter and issues. With the support of such a compendium, self-representing community appellants would not be as disadvantaged as they are now when faced with Books of Authorities prepared by much better funded parties before the OMB.

Processes of the OMB with less formality and innovations such as active adjudication would assist citizen participation.

The exclusive reliance on "expert" witnesses in the "de novo" re-examination of decisions before the OMB is a significant barrier to citizen participation. Not only are most "experts" unwilling to support a citizen's or community's appeal, such appellants lack the financial resources to retain the few willing "experts", and opinion by the citizen is given no weight whatever in deliberations. To gain greater legitimacy, the OMB should be given new rules, whereby the evidence and testimony of lay persons is welcomed and supported in the OMB process. This should be backed up by the provision of some basic 'primer' training and guidance for laypersons.

If the processes of the OMB are to be changed as a result of this review, a broad information initiative would be needed, for everyone – citizens, planners, lawyers, developers and municipal officials.

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

Funding for intervenors would address the financial disparity among the parties appearing before the OMB. At present citizens who have no prospect of financial gain from an appeal are put up against either a municipality with taxing authority as source of funds, or a developer with prospect of financial gain and the possibility of claiming costs as a legitimate business expense, or in many cases, both the municipality and a developer.

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

If a funding mechanism is to be established, applications for funding should be examined to determine that:

- a) the appeal is not frivolous, vexatious or only for the purpose of delay;
- b) the appellant has no pecuniary interest in the outcome;
- c) the appeal may clarify an issue of public interest; and
- d) the amount of funding sought is reasonable.

We expect that both individuals and incorporated groups could qualify for intervenor funding.

Q 13. Qualifications for adjudicators are identified in the job description posted on the OMB website (Ontario.ca/cxjf). What additional qualifications and experiences are important for an OMB member?

Qualifications of a member of the OMB should continue to be that they have "Experience in interpreting and applying legislation with specific knowledge of the laws, regulations, policies, procedures and rules that are relevant to the tribunal(s) to which they are appointed". Moreover we believe there would be benefit in having special expertise in local communities and land use knowledge which is the prime focus of the OMB. In addition members would benefit from expertise in special knowledge areas such as gravel mining, cost accounting, economics, etc. that are relevant to individual case decisions. Members will need to be aware of and apply judicial decisions that related to the issues under consideration in a decision. In complex judicial decisions special training may be needed to understand the import of the ruling. Training should be provided to OMB Members on an ongoing basis.

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

It is not evident that multi-member panels would increase consistency in the nature of OMB decisions, but having members with diverse experience together writing a decision would bring a wider appreciation and balance to the process. If possible, each multi-member panel should include a member with experience in municipal government, either as elected official or as staff.

If OMB processes remain largely unchanged, Inclusion in a multi-member panel of a member with local knowledge (i.e. an understanding of the community involved) would be helpful because this could shorten the need for extensive explanatory introduction in "de novo" hearings.

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

Multi-member panels would be useful for complex cases, especially when a variety of expertise is required. However the entire panel (all members) should hear an entire case; there should be no segmentation of a single hearing in which members hear a case on a "tag-team" basis. If agreed by all parties, complex cases could be split into distinct parts if the aspects of an appeal can be separated.

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

An executive summary should be added to every OMB decision. The executive summary should very briefly set out the decision, the reasoning for the decision and identify how the Board decision is to be implemented.

The first page of each decision, in addition to the date of issuance, should show the "name" of the case (such as 123 Elm Street or Official Plan Amendment 99), the date of the hearing, "key words" (to facilitate searches), the sections of law or policy discussed in the decision (not just under which section of the Planning Act the appeal has been launched) and the name of the Member(s). Listing of parties, their representatives and detailed property descriptions could follow the executive summary.

Decisions which make reference to a specific exhibit should provide the reader with the ability to access the exhibit in question (for example through a URL linked to the Board's website). If required to make the decision understandable, the exhibit must be accessible.

Results of searches of e-decisions on the OMB website must be improved. numbers of irrelevant decisions are returned and the teaser lines are not informative. Duplication of e-decisions in Word and PDF format is not needed.

Live streaming of OMB hearings should be considered. This would increase awareness of the OMB and its function. Such initiative would add to the transparency and openness of OMB hearings.

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

The timelines seem adequate if there is no change to the OMB process. If major reforms are implemented, it should be possible to shorten considerably the time provided. For example, if “de novo” hearings are eliminated and the OMB concentrates on process and policy, it should be possible to speed up the OMB decision-making process considerably. Similarly if all Committee of Adjustment and site plan appeals are to go to local appeals bodies, timelines should be tightened greatly.

There is reason to believe that use of mediation could permit cases to be resolved more quickly. The idea that there is a mediation assessment for every OMB case is news to us. We have no idea how this process, invisible to us, affects the achievement of timelines. If the mediation assessment is undertaken without any contact with the parties involved, we do not see how this can have any positive effect.

One aspect of timing that is of great importance for community groups is the identification of willing counsel and experts. Most of these resources are highly reluctant to associate with community appellants. The Ministry should try to overcome this; some suggestions have been made in our replies to Question #9.

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

Active adjudication and flexibility in presenting evidence would be helpful and could accelerate the process. Filing evidence in electronic format is one possible improvement but may cause difficulties for some community groups or individual citizens. The time allowed for response to motions may also present problems for some parties, particularly those without counsel. However such minor adjustments in OMB procedure would not have the beneficial effect expected of major reform.

Mandatory consultation among the parties prior to a hearing should be considered. Not only could this lead to clearer issues lists but may avoid the need for a hearing entirely.

At present, the only minutes of a hearing are the matters highlighted by the Member of the Board in the final decision. Consideration should be given to some other means by which a record is retained of the arguments presented – preferably synopsis minutes or, less desirable, streamed recording of the proceedings.

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

We have difficulty in envisaging a useful written hearing unless the OMB is radically changed in the current review. We are not aware of any written hearing example by the OMB.

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

One reason that mediation does not work is that it often is not attempted. If the parties do not meet, clear issues lists may not appear.

Mediation may not be attractive for a party engaged in stretching out the process to exhaust the resources of the other party. This is frequently the case in which the various parties have vastly different financial backing. However in mediation a similar tactic of pushing up the costs of the less endowed party can also be used with effect.

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

Cases in which the parties involved have similar levels of resources have greater chances of resolution at mediation because a strategy of attrition is not a viable approach. Cases in which there is a lack of information or knowledge by one of the parties may be resolved in mediation. But a willingness to listen to the other party and to compromise is essential to resolution through mediation.

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

Mediation should be required. It may not lengthen the process but is likely to produce a better decision.

However if mediation is not made mandatory in the current review, a procedure should be adopted in which parties are asked if they are willing to engage in mediation. For parties that refuse to engage in mediation, they should be required to state in writing the basis of their refusal and that document should be made public and become an exhibit at any subsequent hearing.

Q 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?

OMB staff should screen applications which are out of the scope of the OMB's responsibility. In the event that mandatory mediation is introduced, there should be OMB staff skilled in such an approach and those mediators might not necessarily be OMB members.

The idea of government mediators being involved in the municipal decision-making process has is attractive but those officials would probably have to be separate from the OMB. Surely this raises the issue of the involvement of officials from the Ministry of Municipal Affairs in the process, not personnel from a tribunal.

Q 24. Do you have 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?

The OMB should use its powers to send decisions back to the municipality rather than taking the decision in place of the municipality.

The OMB should not just have regard for the decision of the municipality, its obligation is to accept that decision or establish that the decision is in error – and send it back to the municipality. The OMB should be charged with ensuring that an inclusive and transparent deliberation process is in place in the municipality. Sending a decision back to the municipality is the tool to establish that due process is followed.

The OMB should stop once and for all asserting that it can determine what is “good planning”.

Under the Consolidated Hearings Act, greater provision should be made for OMB hearings to be combined with those of the Environmental Review Tribunal.

One size may not be suitable for all. Smaller municipalities cannot be expected to be as well informed or as well-resourced as large cities. The OMB needs to respond appropriately to such differences.

In its examination of issues, and particularly in its treatment of citizens who do not have recognition as “experts”, the OMB must recognize the right of all citizens to be engaged in the development of their community.