

City of Ottawa response re OMB Reform

Council Action Summary, 23Nov2016

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Vote on the staff recommendation, as amended by three Leiper motions at Planning Committee:

The Committee Recommendations, as amended by the Harder/Egli Motion set out below, were CARRIED on a division of 15 YEAS to 5 NAYS, as follows:

YEAS (15): Councillors D. Deans, K. Egli, A. Hubley, J. Mitic, G. Darouze, S. Qadri, S. Moffatt, M. Wilkinson, T. Tierney, E. El-Chantiry, J. Harder, R. Brockington, M. Taylor, S. Blais, J. Cloutier

NAYS (5): Councillors T. Nussbaum, J. Leiper, C. McKenney, D. Chernushenko, M. Fleury

Moved by: Councillor J. Harder

Seconded by: Councillor K. Egli

WHEREAS the Province has proposed in its OMB Reform consultation paper related to de novo hearings that it might “Require the OMB to review municipal/approval authority decisions on a standard of reasonableness;” and

WHEREAS the Province suggests that this approach would meet its goal that the OMB focus on “the validity of the decision under appeal”; and

WHEREAS the intent of this approach would be to “give more weight to municipal and provincial decisions by moving the OMB away from *de novo* hearings;”and

WHEREAS the *Planning Act* already has provisions that do not provide for true *de novo* hearings by requiring that the OMB must have regard to a decision made by a municipal council/approval authority as it relates to the same planning matter; as well as having regard to any information and material that the municipal council/approval authority considered to arrive at its decision; and

WHEREAS there is also a mechanism in the *Planning Act* to provide an opportunity for a municipal council to reconsider its decision where new material information and evidence is presented at an appeal, and such was not provided to the municipal council prior to the decision that is the subject of the appeal; and

WHEREAS a number of other changes being considered by the Province for OMB reform include limiting appeals to comprehensive planning documents, clarifying that the OMB's authority is limited to dealing with matters that are part of Council's decision, providing for new material to be provided to Council for its consideration prior to the OMB dealing with a matter where new information is brought forward, and providing for the operations of the OMB to be more focused on mediation and alternative dispute resolution in addition to improving supports for citizens to engage and participate in OMB processes; and

WHEREAS the Province, to improve accessibility for citizens to effectively engage and participate in OMB processes as part of its OMB reform, is also considering an expansion of the Province's Community Liaison Office including making available in-house planning experts/lawyers who would be available to the public and is considering exploring funding options to help citizens retain their own planning experts/lawyers; and

WHEREAS these changes and those that Staff recommend be supported will serve to provide more autonomy for local municipalities to set overarching policy and regulatory directions and will improve the operations and decisions of the Board and provide for the OMB to be more accessible to the public with a focus on providing support for citizens to engage and participate in OMB processes and working with stakeholders to resolve issues outside of a formal hearing to reduce the number and length of hearings and provide for more focused hearings with OMB decisions being more responsive to the local interests as reflected through Council decisions; and

WHEREAS the concerns that have been expressed to the Province relating to "de novo" hearings would be considerably minimized by having clearer direction provided by the Province on the interpretation of the "shall have regard to" provision as set out in the *Planning Act*; and

WHEREAS providing clearer direction to the OMB in interpreting and applying the "shall have regard to" provisions in the Planning Act will provide for Council decisions and the reasons for Council decisions to weigh more significantly in OMB decisions to provide for further reflecting local interests within a framework that supports good planning principles set out in Municipal Planning documents and Provincial Policy Statements; and

WHEREAS the initiatives to provide for supporting citizens to participate and effectively engage in OMB processes is considered important to ensure improved OMB processes with respect to public access;

THEREFORE BE IT RESOLVED THAT the Province include within its considerations for changes to reform the OMB the following:

"The Province provide clear direction or binding interpretations with respect to the phrase "shall

have regard to” as set out in the *Planning Act* so that it can be applied consistently across all OMB decisions and that this interpretation be incorporated into the OMB’s Rules of Practice and Procedure; and

BE IT FURTHER RESOLVED that Council strongly endorse the initiatives being considered by the Province for expanding the Province’s Community Liaison Office and providing funding supports to citizens to retain their own planning experts and/or lawyers and encourage the Province to move forward with the implementation of these.

CARRIED on a division of 17 YEAS to 6 NAYS, as follows:

YEAS (17): Councillors D. Deans, M. Qaqish, K. Egli, A. Hubley, R. Chiarelli, J. Mitic, B. Monette, G. Darouze, M. Fleury, S. Moffatt, M. Wilkinson, T. Tierney, E. El-Chantiry, J. Harder, M. Taylor, S. Blais, J. Cloutier

NAYS (6): Councillors T. Nussbaum, J. Leiper, C. McKenney, D. Chernushenko, S. Qadri, R. Brockington

The following motion was also put to Council and LOST:

MOTION

Moved by: Councillor T. Nussbaum

Seconded by: Councillor J. Leiper

BE IT RESOLVED that the Harder Motion be amended to include:

The Province also require the OMB to review Municipal Council decisions on a standard of reasonableness.

LOST on a division of 9 YEAS to 14 NAYS, as follows:

YEAS (9): Councillors D. Deans, M. Qaqish, T. Nussbaum, J. Leiper, C. McKenney, D. Chernushenko, S. Qadri, M. Fleury, R. Brockington

NAYS (14): Councillors K. Egli, A. Hubley, R. Chiarelli, J. Mitic, B. Monette, G. Darouze, S. Moffatt, M. Wilkinson, T. Tierney, E. El-Chantiry, J. Harder, M. Taylor, S. Blais, J. Cloutier