



Your Guide to Ontario Municipal Board Hearings

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Copies of this guide, as well as other OMB publications, may be obtained from the Board. For an electronic copy of this document, visit the OMB website at www.omb.gov.on.ca.

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People don't always agree on how their communities should grow. Disputes arise over community planning issues such as where to locate industrial development, or what types of municipal services to provide.

When people can't resolve their differences on community planning issues, the Ontario Municipal Board (OMB) provides a public forum for resolving disagreements.

The Ontario Municipal Board is an independent adjudicative tribunal that hears appeals and applications and resolves land use disputes under a variety of legislation.

The OMB listens to the appeals and concerns of individuals, public agencies or corporations that object to decisions made by such approval authorities as:

- local or regional councils
- committees of adjustment
- land division committees
- expropriating authorities, or
- the Ministry of Municipal Affairs.

The Ontario government appoints Members to the OMB. Members include people from different areas of the province with diverse backgrounds such as lawyers, former elected officials, engineers, surveyors, planners and public administrators.

Some of the issues that the OMB deals with include:

- official plans
- zoning by-laws
- subdivision plans
- consents to sever land
- minor variances from local by-laws
- development charges
- applications for aggregate licences, and
- compensation for expropriated land.

To make impartial decisions and resolve disputes, the OMB hears evidence on:

- environmental, social and economic issues
- provincial legislation and policy statements
- municipal planning documents (e.g. official plans or zoning by-laws)
- the rights of individuals, and
- the best interests of the whole community.

How the OMB Resolves Disagreements

The approval authority sends documents and information about the dispute to the OMB.

Because formal OMB hearings can be time-consuming and expensive, the OMB may try to settle disputes or reduce the number of issues at a hearing by bringing parties and participants together through pre-hearings or mediation meetings.

A party in a case includes an individual or corporation set out in the legislation to be parties to a matter. For example, in the case of a zoning by-law passed by a municipality and appealed to the Board, the parties would be the municipality, the applicant for the rezoning, and any persons who filed an appeal to the Board against the zoning by-law.

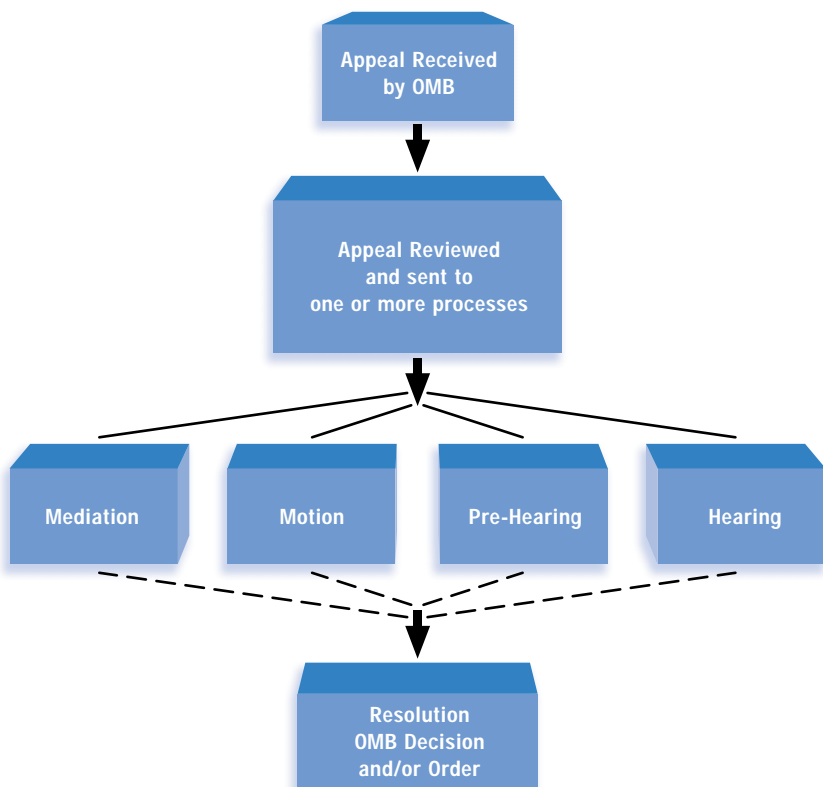
Where appropriate, the Board may add parties to a case upon request. Parties participate fully in the hearing by such activities as exchanging documents, providing testimony, presenting evidence, cross-examining witnesses and making submissions to the Board. Parties may request costs, adjournments or a review of the decision.

A participant is an individual, group or corporation that may choose to attend only part of the proceedings but makes a statement to the Board on all or some of the issues in the hearing.

A group of individuals that has decided to participate in an appeal together, such as a Ratepayers Association, must file its complaint under the name of one of the members of the group if the group is not incorporated.

In making submissions to the Board, participants must swear to tell the truth and may be asked questions by the Board, other parties or their representatives. Participants generally do not call witnesses or cross-examine witnesses called by others without the permission of the presiding Board Member(s). Participants cannot ask for costs or request a review of the decision.

The OMB Process



Mediation Meetings

Unlike a hearing, a mediation meeting does not usually include participants. An OMB Member(s) guides the meeting, and all parties try to reach an agreement on some or all of the issues in dispute.

If the dispute is resolved, the OMB can often give a decision that day. If agreement is not reached at mediation, the OMB will schedule a public hearing at its office or in a location such as a municipal office or community centre that is easily accessible to local citizens.

At the hearing, usually a different Member(s) will hear evidence, and all parties must swear to tell the truth. The Member(s) conducting the hearing will have a Mediation Report about the issues that were resolved at mediation.

For more information on mediation, please review the *Here's What You Need to Know About Mediation Meetings* information sheet. The information sheet is available at www.omb.gov.on.ca, or by calling (416) 326-6800 or toll free 1-866-887-8820.

Motions

If you want someone to do something before or at a hearing, such as provide documents you've been unable to get, or if you need clarification of an appropriate procedure, you may ask the OMB to order that it be done. To do this, you need to ask for a hearing to present your request (motion).

Send the OMB a letter describing what you want done. The OMB will let you know if it will hear your request formally, or if it can resolve the issue in another way. The OMB will also tell you the documents you must prepare and if you have to notify others about the motion. For details, refer to the OMB's *Rules of Practice and Procedure* (Rules 34-39).

For more information on motions, please review the *Here's What You Need to Know About Motions* information sheet. The information sheet is available at www.omb.gov.on.ca, or by calling (416) 326-6800 or toll free 1-866-887-8820.

Pre-Hearings

The OMB may hold a preliminary meeting of the parties and participants before a hearing, especially if the matter in dispute is expected to be long or complicated. Pre-hearings can help make hearings more efficient by:

- identifying issues, parties and participants
- organizing complicated hearings
- determining what documents should be exchanged, and
- determining procedures before and during the hearing.

If you want to take part in a hearing, you must attend the pre-hearing. If you are going to be represented at the hearing, your representative should attend the pre-hearing. If you send someone else to speak for you, that person should have a letter giving your permission.

A Member(s) presides at the pre-hearing. At the meeting, parties and participants for the hearing:

- identify their roles and responsibilities
- deal with preliminary issues and motions
- discuss procedures for the hearing
- clarify the questions and issues that will be dealt with at the hearing
- discuss and possibly settle some issues
- determine the length and date(s) of the hearing, and
- set any additional pre-hearing or mediation dates.

Clarifying the issues is one of the most important reasons for holding a pre-hearing.

If a pre-hearing is scheduled, the parties will be notified by mail. There may also be a notice in the newspaper for large pre-hearings.

For more information on pre-hearings, please review the *Here's What You Need to Know About Pre-Hearings* information sheet. The information sheet is available at www.omb.gov.on.ca, or by calling (416) 326-6800 or toll free 1-866-887-8820.

Hearings

A Member(s) conducts the hearing. Hearings usually follow the established pattern of courtroom practice. **OMB hearings are less formal than a court proceeding but more formal than a committee or council meeting.** For example, when you give your evidence you must swear to tell the truth and those parties opposed to your opinion may ask you questions (cross-examine you).

All written documents, including photographs, that are entered into evidence must be proven by the witness.

If the hearing is complex, it may involve lawyers, many witnesses and lengthy presentations. In addition to local residents and concerned citizens, parties often call expert witnesses in land use planning and other disciplines to testify about an issue. All witnesses are placed under oath.

A hearing can be as brief as a couple of hours if it involves few witnesses and only one or two planning issues. In more complex situations, the hearing could last several days or weeks. When the hearing is expected to last more than a week, the Board may hold a pre-hearing.

For more information on hearings, please review the *Here's What You Need to Know About Hearings* information sheet. The information sheet is available at www.omb.gov.on.ca, or by calling (416) 326-6800 or toll free 1-866-887-8820.

How to Make an Appeal

The decision that you disagree with usually tells you how to appeal. In some cases, you must have participated in the public meetings about your issue for the OMB to consider the appeal.

The OMB hears appeals under a variety of legislation. The legislation that applies to your issue describes who may appeal and how.

Tips to Help You Make an Appeal

1. Discuss your concerns with the municipal clerk or your local planning office while the issue is still being considered at the municipal level. Usually any person, public body, or incorporated group can appeal to the OMB either a decision or a failure to make a decision. An unincorporated neighbourhood association must appeal under the name of one of its members.
2. File your appeal with the approval authority that made the decision you disagree with. In some cases you will file your appeal directly with the OMB.
3. Make sure you appeal within the time specified. Time limits for filing appeals are set out in legislation. Usually, the OMB cannot extend the time limit or accept late appeals.
4. Describe the part of the decision you are appealing. For example, if you are appealing a zoning by-law or official plan, specify whether you are appealing part or all of the by-law or plan. When appealing a draft subdivision plan, specify whether you are appealing the decision to approve or the conditions of approval.
5. Provide written reasons for your appeal.
6. Pay the filing fee, usually \$125. The OMB can confirm the amount. For *Planning Act* applications, always include the fee with the Notice of Appeal.

Launching an appeal? Be well prepared for your hearing and ready to present detailed evidence in support of your views. Depending on the complexity of the issue, you may want to hire a lawyer or representative.

Common Appeals

OFFICIAL PLANS

Description	Appeal Filed in Writing with	Time Limit for Appeal
Appeal a decision to adopt (pass) an official plan or amendment	Approval authority	Not later than 20 days after the date of written notice of the decision of the approval authority
Appeal when an approval authority fails to announce a decision on an application to amend an official plan after receipt of a complete application – OR – the refusal of the application	Approval authority	Any time after the number of days outlined in the <i>Planning Act</i> has elapsed from the filing of a complete application with the approval authority

ZONING BY-LAWS

Description	Appeal Filed in Writing with	Time Limit for Appeal
Appeal a by-law passed by a municipality	Municipal clerk – letter must include the reasons for appeal	Not later than 20 days after the notice of passing was given by the municipality
Appeal when a municipality refuses or neglects to make a decision on an application to amend a zoning by-law after receipt of a complete application – OR – the refusal of the application	Secretary of the OMB Contact the OMB to receive a list of the material that must be filed with the appeal	Any time after the number of days noted in the <i>Planning Act</i> has elapsed from the filing of a complete application with the municipality

PLANS OF SUBDIVISION

Description	Appeal Filed in Writing with	Time Limit for Appeal
Appeal a decision of the approval authority related to: 1. Approval of a plan 2. Refusal to approve a draft plan	Approval authority in all cases	No(s). 1 and 2: Not later than 20 days after the date of written notice of the decision of the approval authority

PLANS OF SUBDIVISION (cont'd)

Description	Appeal Filed in Writing with	Time Limit for Appeal
<p>Appeal a decision of the approval authority related to:</p> <ul style="list-style-type: none"> 3. Conditions of approval 4. Change to the conditions of approval 	Approval authority in all cases	<p>No. 3: At any time before approval of the final plan (limited to applicant or public body)</p> <p>No. 4: Not later than 20 days after the date of written notice of the decision of the approval authority (if appellant other than applicant or public body)</p> <p>For applicant or public body – at any time before approval of the final plan</p>
Appeal when an approval authority fails to make a decision on an application plan after receipt of a complete application	Approval authority	Any time after the number of days noted in the <i>Planning Act</i> has elapsed from the filing of a complete application with the approval authority

CONSENTS (SEVERANCES)

Description	Appeal Filed in Writing with	Time Limit for Appeal
<p>Appeal a decision of council or the Minister (or delegated body) related to:</p> <ul style="list-style-type: none"> • Granting or denying the consent • Conditions imposed • Change of conditions 	Municipal clerk or the Minister (or delegated body)	Not later than 20 days after the date notice of the decision was given
Appeal when the council of a municipality or the Minister (or delegated body) fails to make a decision on the application after receipt of the application	Municipal clerk or the Minister (or delegated body)	Any time after the number of days noted in the <i>Planning Act</i> has elapsed from the filing of the application

MINOR VARIANCES

Description	Appeal Filed in Writing with	Time Limit for Appeal
Appeal a decision of a committee of adjustment	Secretary-Treasurer of the committee of adjustment	Within 20 days of the making of the decision by the committee

DEVELOPMENT CHARGES

Description	Appeal Filed in Writing with	Time Limit for Appeal
Appeal a charge	Municipal clerk	Within 20 days after notice of decision or notice of by-law adopted
Object to a front-ending agreement	Municipal clerk	Within 21 days of notice

EXPROPRIATION

Description	Appeal Filed in Writing with	Time Limit for Appeal
Ask for compensation for expropriated land	File a notice of arbitration and statement of claim with the OMB	No time limit

Note: The approval authority may be the regional, county, or district level of government or the Ministry of Municipal Affairs.

Preparing for a Hearing

Once you file an appeal, you should be prepared for a hearing at any time, even on short notice.

Prepare for a hearing by reading the appropriate provincial legislation, such as the sections of the *Planning Act* that relate to your appeal. You should also read related municipal documents, such as by-laws or official plans.

Read the OMB's *Rules of Practice and Procedure* for details on what to expect at hearings. You can get copies from the OMB for a fee, or read them online at www.omb.gov.on.ca.

During meetings or the hearing, OMB Member(s) may assist you with the appropriate procedures.

Once the OMB processes your application for an appeal, your case will be assigned a unique number and a two-letter case code. This should be referenced in all written correspondence or telephone calls with the Board.

Hiring a Lawyer or Representative

Lawyers and representatives question 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 use lawyers or representatives.

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 OMB at the hearing.

Using Expert Witnesses

It's a good idea to hire expert witnesses to give evidence about technical questions at the hearing. Expert witnesses may have to prepare written statements that include details about their education, experience and their opinions on the issues, as well as a list of the reports they will use at the hearing. You may have to send the other parties and their representatives copies of your expert witnesses' statements and reports before the hearing begins, depending on pre-hearing requirements issued by the OMB.

Calling Witnesses

If you want to make sure that someone who you want to give evidence attends an OMB hearing, you should ask the OMB for a Summons Request form. The witness must receive the summons in person. You cannot mail or courier it.

You must have appropriate justification for requesting a summons. The OMB will advise you if you must provide a sworn statement about the relevance of the witness to justify issuing a summons.

An OMB summons:

- tells witnesses that they must attend
- gives them details about the hearing, and
- lists any documents they need to bring to the hearing.

Be sure to send the OMB a list of people who have received a summons, so they can give evidence at the hearing.

For more information on calling witnesses, please review the *Here's What You Need to Know About Calling Witnesses for a Hearing* information sheet. The information sheet is available at www.omb.gov.on.ca, or by calling (416) 326-6800 or toll free 1-866-887-8820.

Gathering Evidence

You can give the OMB evidence in the form of photographs, reports, letters, videotapes and models. Paper exhibits must be in a form that can be folded or reduced to letter size (8 1/2" by 11").

All material that you file with the OMB before or at a hearing is placed in the public file. Nothing is confidential unless the OMB orders it. This lets all parties and the panel hearing the case consider all relevant information.

You may view a file at the OMB office in Toronto but you must call ahead to make an appointment. Some files may have to be retrieved from storage or from a Member.

Postponing a Hearing

The OMB does not often postpone hearings. It may postpone a hearing if:

- all parties agree to the delay, and
- it believes that the hearing should be delayed.

For example, if discussions are nearing a settlement, the OMB may agree to postpone the hearing. However, hiring a lawyer, representative or planner shortly before a hearing is not a good reason for delaying it.

In an emergency, the OMB may postpone a hearing even if all parties do not agree.

For more information on postponing a hearing, please review the *Here's What You Need to Know About Postponing a Hearing* information sheet. The information sheet is available at www.omb.gov.on.ca, or by calling (416) 326-6800 or toll free 1-866-887-8820.

Requesting a Hearing in French

To have a hearing in French, write to the OMB at least 25 days before the hearing. For services in other languages, you must bring an interpreter.

Ontario Municipal Board Procedures

The Chair of the OMB assigns Members to conduct hearings. The OMB may hold a hearing in person (orally), electronically (by telephone or video conferencing) or in written form.

A hearing is usually considered a new presentation of the issues. This means that the OMB looks at each appeal from the beginning as if no decision has ever been made by an approval authority such as a municipal council, a committee of adjustment or a land division committee. This also means that you must present and prove your case again.

The OMB makes its decisions based on submissions and evidence presented at the hearing. Submissions may include statements from witnesses, written reports, maps, diagrams, photographs, videos or other graphic material.

The OMB can make any decisions that the original approval authority can make, and its decisions may be different.

Presenting Evidence

To give evidence a witness must swear to tell the truth. Some evidence, such as the municipality's official plan or a by-law, is accepted without a witness. But you will have to provide a certified copy of the relevant parts of the plan or by-law, unless the municipality provides it.

All evidence must be relevant to the issue and on a topic that the OMB has the authority to deal with. The OMB will stop a witness who strays from giving relevant evidence.

Legislation sometimes states who should present evidence first. If not, the OMB decides the order at the pre-hearing or at the start of the hearing. You should always be prepared to go first.

The party going first gives all of his or her evidence, followed by the other parties who support that position. Then the parties who oppose that position give evidence. Each witness may be questioned by those parties in opposition.

The first party then has a right to reply to the opposing parties' submissions. He or she must reply only to the issues raised in the evidence of the opposing parties and not repeat earlier statements.

At the end, both parties may give their final arguments or summary of all the evidence presented.

Recording a Hearing

Hearings are not usually recorded, except for land compensation cases.

You may record the hearing on video, audio, film or in photographs, if the presiding Member(s) gives you permission. While recording, you must not disrupt the hearing or move about the room while the hearing is in progress.

You may also arrange, at your expense, for a court reporter to transcribe the hearing.

The OMB may give its decision verbally at the end of a hearing or in writing at a later date (a reserved decision). The Member(s) who hears the appeal delivers the decision. The decision does not refer to all of the evidence presented at a hearing but only to the evidence and issues that the OMB considers most relevant.

The decision comes into effect only when the OMB issues its written Decision and Order.

Copies of decisions are mailed to:

- all parties and their representatives
- members of the public who gave evidence at the hearing and requested a copy of the decision
- anyone who has written to request a copy before the decision is issued, and
- certain public agencies and officials.

The public can find out about written decisions two business days after the OMB has issued its decision. All decisions from January 2001 are available on the OMB's website.

An OMB Order

Decisions of the OMB become final only when it issues a formal Order. The OMB usually issues the Decision and the Order in one document. Sometimes, it may issue a Decision but delay the Order until certain conditions are met.

Usually the municipality, not the OMB, must enforce the Order if it is not followed. A party may also file the Order in the Superior Court of Justice to have it enforced as a Court Order.

Costs of a Hearing

Although hearings can be expensive, the OMB will not usually order one party to pay for another party's expenses unless the party being asked to pay has appealed incorrectly or acted improperly. The OMB's *Rules of Practice and Procedure* (Rules 99-107) state that where a party believes that another party has acted clearly unreasonably, frivolously, vexatiously, or in bad faith considering all of the circumstances, it may ask for an award of costs.

For more information on getting repaid for expenses, please review the *Here's What You Need to Know About Getting Repaid for Your Expenses* information sheet. The information sheet is available at www.omb.gov.on.ca, or by calling (416) 326-6800 or toll free 1-866-887-8820.

Reviewing an OMB Decision

The OMB rarely grants reviews of its decisions and rarely changes a decision.

For the OMB to consider a review, you need to prove that it made an error that if known may have changed the decision. The OMB would need proof that it:

- acted outside its jurisdiction
- violated justice such as by not giving notice of the hearing
- heard false or misleading evidence that could have changed the decision, or
- should consider new evidence not available at the time of the hearing that could change the decision.

The OMB will turn down review requests that provide the same evidence or re-argue the issues. Requests for a review of an OMB decision must usually be within 30 days of the date of the decision.

Appealing an OMB Decision

If you think that the OMB made an error in a question of law (not in the evidence) in its decision, you may bring a motion to the Divisional Court for an order of the Court allowing the appeal to proceed.

In certain rare circumstances, you may be able to seek Judicial Review in the Divisional Court.

People usually hire a lawyer to appeal to a court or to ask for a Judicial Review because of the complicated procedures and issues.

For more information on reviewing a decision, please review the *Here's What You Need to Know if You Disagree With an OMB Decision* information sheet. The information sheet is available at www.omb.gov.on.ca, or by calling (416) 326-6800 or toll free 1-866-887-8820.



Ontario

The **Ontario Municipal Board** is an independent adjudicative tribunal established under statute by the Province of Ontario. The Board hears appeals and applications on a wide range of municipal and land-related matters including official plans, zoning by-laws, subdivision plans, consents and minor variances, land compensation, development charges, ward boundaries, and aggregate resources. The Board operates under approximately 100 different pieces of legislation, including the *Planning Act*. Visit the OMB at www.omb.gov.on.ca.

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