

DECEMBER 19, 2016

# RESPONSE TO THE ONTARIO MUNICIPAL BOARD CONSULTATION



Federation of Rental-housing  
Providers of Ontario

Ministry of Municipal Affairs  
EBR # 012 - 7196

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## EXECUTIVE SUMMARY

The Federation of Rental-housing Providers of Ontario (FRPO) welcomes the opportunity to comment on the Ontario government's review of the Ontario Municipal Board (OMB).

FRPO's members believe that some of the proposed changes to the OMB will have unintended consequences by further complicating the land development process, resulting in more delays and costs. Any changes at the OMB that will lengthen the review process, will result in less affordable housing for those who are most in need.

Ontario is currently faced with a significant shortage of rental housing, and is not meeting the demand of either current, or future Ontarians. Governments at all levels have acknowledged this concern, yet as an industry, we continue to see actions that work against the goal of increasing the amount of rental housing and affordable housing available in the province. This inconsistency of action casts a negative outlook on increasing private sector investment in rental housing in Ontario, making our shared goal of building more rental housing in the province less and less attainable. It is imperative that the government immediately begin to signal that Ontario is open for business when it comes to building more rental housing in the province by addressing the barriers identified by the industry that are preventing much needed new investment.

Development of new rental housing requires a long-term investment forecast of up to 50 years, much longer than the cost recovery on new single family houses or condominium developments. Therefore, the length of the approvals process, compounded by delays caused by lengthy OMB hearings, is creating significant market uncertainty that is discouraging rental housing investment in Ontario. Where local decisions are inconsistent with provincial objectives, the OMB is the only mechanism that can restore balance to what is good for the community and the province as a whole. Without the ability to maintain the proper balance among the various interests, achieving these essential provincial goals will become unattainable.

The OMB maintains this long-term view of local planning issues, and removes the politics from local decision-making. The OMB also supports the government's objectives in the Growth Plan to build greater density and encourage intensification to support sustainable communities and reduce congestion.

FRPO supports adding additional resources at the OMB to reduce hearing delays and costs, as well as adding more members to the Board with private sector development experience.

It is becoming increasingly more expensive to build market-rate and affordable rental housing due to increased government regulation, as well as the much anticipated devastating impacts of new policies such as inclusionary zoning, which will only further encourage developers to invest in other jurisdictions. Any new policies that will further restrict development will only exacerbate these affordability issues, working against the province's objectives in the Growth Plan to build complete communities.

# FRPO RESPONSES TO CONSULTATION PAPER QUESTIONS

## THEME 1: OMB'S JURISDICTION AND POWERS

### Protect public interests for the future

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

#### FRPO Response

For the provincial government to achieve its objectives in the Growth Plan to intensify and create balanced and complete communities, the OMB must be strengthened to limit local appeals that are not consistent with provincial planning policies.

Currently, the OMB is overburdened with locally-driven issues that do not reflect the long-term economic interests of the community. Too often, developments that have already been approved are being overturned by municipal councils for strictly political reasons. The OMB currently provides the ability to take the politics out of these decisions, and looks at the long-term planning horizon of the community and the province. The OMB should also be strengthened by adding new members who represent a range of interests, including those with experience in the development community who can offer a more balanced perspective on these issues.

However, the government must ensure that limiting appeals to the OMB will not give municipal councils more power to overturn local planning decisions. This would further undermine the province's objectives to encourage municipalities to build greater densities and more transit-supportive communities, as well as reduce the development of new affordable rental housing.

The government has been clear that building new affordable rental housing is a priority, however the current system needs to be improved to achieve those goals. FRPO's members are experiencing extreme challenges with the current OMB process, and time delays, which are strongly discouraging new investment in the rental market in Ontario.

#### Development Permit System

FRPO encourages greater use of the Development Permit System to provide more transparency and certainty in the municipal planning and approvals process. We believe that the Development Permit System is also effective in reducing the issue of "under zoning" which is commonly used by municipalities to extract more fees from developers due to inaccurate planning documents. Requiring municipalities to use the Development Permit System, would help to limit the need for OMB appeals and improve the development of purpose-built rental housing.

### Bring transit to more people

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

## FRPO Response

FRPO is an advocate of transit-supportive development, as many of our tenants do not own a car and want to live near public transit. To encourage the development of more affordable rental housing in Ontario, the government should enact policies to reduce appeals of transit-supportive developments.

In order to stimulate more transit-supportive communities the government should allow for greater density bonusing within proximity to a transit corridor.

However, in smaller urban markets, the province should ensure that new rental housing developments are not restricted only to transit-supportive corridors. There needs to be flexibility to reflect that while some communities do not have accessible transit services, there remains a strong demand for affordable rental housing.

### **Give communities a stronger voice**

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

## FRPO Response

The development of a new rental housing project requires a long-term investment outlook to recover the costs of development, unlike a new housing or condominium development where the investment is recovered in a few years. Therefore, allowing the local appeals process to be lengthened will provide further uncertainty, and will have a negative impact on the investment climate for new rental housing in Ontario.

FRPO does not support the expansion of local appeals bodies, and appeals on local control by-laws, that we believe will discourage the approval of new affordable rental housing projects due to NIMBY-ism that is often associated with new rental housing development applications. We believe that local appeals bodies are more likely to make decisions in line with local community concerns, rather than reflect provincial planning policies and responding to the critical need for providing more purpose-built rental housing in the province.

In addition, allowing local appeals bodies to include site plans would further complicate the appeals process, resulting in split applications for issues such as zoning and site plan matters. This would require developers to attend two hearings, increasing costs and time delays associated with a project with the application for one development potentially working on two entirely different approval time tracks.

Instead, the OMB should be better resourced to manage local issues, and appeals, to ensure that local planning policies and decisions enforce provincial plans. Furthermore, local planning policies should encourage the development of affordable and market-rate rental housing by encouraging greater intensification and discouraging municipal under zoning practices.

## **“de novo” hearings**

4. *What is your view on whether the OMB should continue to conduct de novo hearings?*
5. *If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?*

### FRPO Response

FRPO believes that de novo hearings should be maintained to stimulate the development of more mixed-income communities across the province, including more purpose-built rental housing. The removal of de novo hearings could act as a barrier to new rental housing developments in communities where there is local opposition to affordable housing.

Maintaining de novo hearings provides a more balanced, evidence-based and long-term view of local planning decisions, and will help to enforce provincial planning policies.

Furthermore, setting a definition of “a standard of reasonableness” would likely result in more appeals to the Supreme Court, resulting in years of uncertainty, and less supply of affordable rental housing in Ontario.

### **Transition and use of new planning rules**

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 the decision for applications before 2007?*

### FRPO Response

Applications should be considered against the planning documents, policies, and rules in place at the time the application was made. There is much time, effort and expense that is involved in submitting a planning application and developing a business case.

Given the length of time the process takes from time of application to submission, it is unreasonable to evaluate an application against rules that were not in place when the application was submitted. Currently, some municipalities do not require council approval before the implementation of new planning policies. As a result, developers are often negatively impacted by changing municipal decisions and timelines that increase the final costs and feasibility of a new rental housing projects.

An alternative solution would be to require municipalities to maintain accurate and transparent planning documents, with regards to zoning, to reduce the number of OMB hearings and appeals.

## THEME 2: CITIZEN PARTICIPATION AND LOCAL PERSPECTIVE

7. *If you have had experience with the Citizen Liaison Office, describe what it was like – did it meet your expectations?*
8. *Was there information you needed, but were unable to get?*
9. *Would the suggested changes support greater citizen participation at the OMB?*
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?*
11. *Are there funding tools the province could explore to enable citizens to retain their own planning experts and lawyers?*
12. *What kind of financial or other eligibility criteria need to be considered when increasing access to subject matter experts like planners and lawyers?*

### FRPO Response

FRPO supports greater transparency and the provision of clear information to all participants at OMB hearings. The consultation paper suggests that the Citizen Liaison Office (CLO) which is part of the OMB within the Environment & Land Tribunals Ontario (ELTO) make in-house planning experts and lawyers available to the public. This is a clear conflict. Providing any advice or direction beyond information strictly related to OMB processes and procedures would create a natural bias. OMB adjudicators call on staff within the OMB, as referenced twice in your consultation paper, to provide assistance and advice. Having staff within the same tribunal providing advice to one party (public/citizen) and then advise adjudicators is unacceptable. Moving the CLO out of the ELTO may reduce the conflict but may not eliminate the problem.

Providing funding tools to residents to retain their own planning experts and/or lawyers at least reduces the conflict with the CLO providing these services. However, a clear test for eligibility would need to be set. This would need to be linked to validity of the decision under appeal (as outlined under the 'de novo' section of the consultation paper). As well, there should be a minimum number of citizen appellants to trigger such use of taxpayer funding.

Overall, there needs to be an assessment of the merit of the citizen's appeal before public resources are committed to an issue that is not consistent with good planning policy. These issues could have a negative impact on affordability if additional resources are committed to fund appeals without merit, or those driven by NIMBY-ism.

### THEME 3: CLEAR AND PREDICTABLE DECISION-MAKING

- 13. Qualifications for adjudicators are identified in the job descriptions posted on the OMB website (Ontario.ca/cxif). What additional qualifications and experiences are important for an OMB member?*
- 14. Do you believe that multi-member panels would increase consistency of decision-making? What should be the make-up of these panels?*
- 15. Are there any types of cases that would not need a multi-member panel?*
- 16. How can OMB decisions be made easier to understand and be better related to the public?*

#### FRPO Response

FRPO recommends that the OMB should be more adequately resourced to address the current case backlog and delays in the system that are impacting the feasibility and affordability of new purpose-built rental housing. Currently, FRPO's members are experiencing delays of up to a year and a half to resolve a case, significantly above and beyond the government's targets.

FRPO also agrees that increasing the number of adjudicators and improving training could also strengthen the OMB's effectiveness and efficiency.

However, FRPO is concerned that multi-member panels could further complicate the OMB's decision-making process, increase costs, and use up existing limited resources. There should be specific criteria where multi-member panels could be allowed, at the discretion of the Board Chair. The Board Chair should also retain final discretion for a decision when a multi-member panel is required.

Finally, FRPO recommends that OMB members should represent a broader range of stakeholders, including those with private sector experience and knowledge of the rental housing sector.

### THEME 4: MODERN PROCEDURES AND FASTER DECISIONS

- 17. Are the current OMB timelines appropriate given the nature of appeals to the OMB? What would be appropriate timelines?*
- 18. Would the suggested measures help to modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?*
- 19. What types of cases/situations would be most appropriate to a written hearing?*

#### FRPO Response

The current process takes too long. Many appeals take substantially longer to be completed than the government's targets. In some cases, FRPO's members have waited up to nine months for an initial hearing, and another nine months for a second hearing before even reaching a

decision point. Shortening the government's timelines and setting a maximum number of hearing days are both needed.

Furthermore, FRPO does not support the allowance of written hearings which lacks transparency and access to justice for all parties.

The addition of more adjudicators and improved training could result in faster decision-making. Improved scoping of issues and establishing clear issue lists would also ensure that only the matters and evidence relevant to the planning decision would be heard, thereby removing delays due to discussion of extraneous concerns.

## **THEME 5: ALTERNATIVE DISPUTE RESOLUTION AND FEWER HEARINGS**

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

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

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

*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?*

### **FRPO Response**

FRPO supports greater use of mediation in OMB cases, as long as it does not prolong the already lengthy process or add additional costs for applicants. We also believe that mediation should be completed by an OMB Board member, similar to the process at the Landlord and Tenant Board.

Improved case management would scope issues would remove extraneous issues that simply add time to the hearing but are not pertinent to the decision. FRPO also supports setting timelines and targets for scheduling cases, however these timelines must include a mediation component. FRPO does not recommend the use of mediation for complicated appeals issues.

In addition, FRPO recommends that the OMB should improve its use of technology to reduce the length of hearings, allow use of email, and expand the use of conducting hearings by phone.

## **GENERAL QUESTION**

*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?*

### **FRPO Response**

This OMB Review is trying to address a symptom (i.e. volume of appeals) of a more significant underlying problem. Inherent issues within the municipal planning processes are often the cause of so many appeals to the OMB.

There are two fundamental problems at the municipal planning level: (1) municipal councilors often ignore evidence-based planning decisions due to political and community pressure; and (2) municipal plans are often not up-to-date, or under zoned, as a means of raising additional development revenue.

- (1) Municipal council decisions on local planning matters are often inconsistent with the municipal Official Plan or Provincial Plan. In many cases, a development project may be signed off by the planning department, only to be overturned by the municipal council. In these cases, the OMB is critical to remove the politics from local decision-making and maintain the intent of the approved planning documents. Non-decision by a municipality on a local planning matter is another issue which un-necessarily increases the number of appeals to the OMB. The province should consider how to avoid issues of non-decision to improve the planning and development process, and limit the number of appeals to the OMB.
- (2) Many municipalities are using misleading planning documents, or “under zoning,” as a means to trigger Section 37 Agreements under the Planning Act. Under zoning makes it extremely difficult for rental housing developers to plan projects and budgets based on inaccurate and out-of-date planning documents. In cases where lengthy negotiations with city planning staff and municipal councilors is not successful, the developer is left with no choice but to appeal to the OMB. Without a neutral, non-political appeal body, many purpose-built rental applications would not proceed.

## CONCLUSION

FRPO believes that the OMB's role is essential to provide a counterbalance between local community issues and enforcement of provincial planning policy. The OMB needs to be strong and effectual to fulfill the province's goals of creating more dense, affordable, and sustainable communities across Ontario.

Our members share the government's desire to build more affordable rental housing, however there are still many obstacles that negatively affect achieving these shared goals. FRPO's members often face community opposition to new rental housing developments, therefore the OMB's perspective is essential to fight NIMBY-ism and to move forward to achieve the province's growth objectives, which includes increasing the availability of purpose-built rental housing to meet the growing consumer demand.

In a modern society where the population is increasingly transient, and demographics are rapidly changing, the OMB also protects the long-term planning interests of a community without politics getting in the way. This long-term perspective is essential to create a stable climate for investment in purpose-built rental housing in Ontario. In addition, municipalities must be required to keep their documents up to date to prevent under zoning, and reduce development appeals. This current practice is a key barrier to getting more rental housing built in Ontario in a cost-efficient manner. The OMB is the only available mechanism available to developers of rental housing to counter short-sighted local objections that can prevent the province's ability to provide much needed rental housing to Ontarians.

In closing, we support the addition of more resources at the OMB to address the case backlog and speed up the appeals and review process. Time delays are one of the most significant risk factors for rental housing developers, which only contributes to higher costs for development. We also believe that the OMB can be strengthened by adding a new compliment of members with private sector development experience. FRPO would be pleased to recommend some representatives from the rental housing sector that can offer a balanced perspective on these issues.

Thank you for the opportunity to provide input into the review of the Ontario Municipal Board and its role within the land use planning system.

Sincerely,



Scott Andison  
President and CEO

*FRPO is the largest association of rental housing providers in Ontario, representing 2,200 members who supply rental homes to over 350,000 Ontario households. In total, approximately one-third of Ontarians live in rental housing, and that number increases to 50% renting their home in the City of Toronto.*

## APPENDIX A—Summary of FRPO Responses

<b>Theme 1: OMB’s Jurisdiction and Powers</b>	
<p><i>Stated Provincial Objective:</i></p> <ul style="list-style-type: none"> <li>• limit appeals on provincial land use planning decisions</li> </ul>	<p><i>FRPO Response:</i></p> <ul style="list-style-type: none"> <li>• the OMB must be strengthened to limit local appeals that are not consistent with provincial planning policies</li> <li>• the government must ensure that limiting appeals to the OMB will not give municipal councils more power to overturn local planning decisions</li> <li>• FRPO’s members are experiencing extreme challenges with the current OMB process, and time delays, which are strongly discouraging new investment in the rental market in Ontario</li> <li>• FRPO encourages greater use of the Development Permit System to provide more transparency and certainty in the municipal planning and approvals process which would help to limit the need for OMB appeals and improve the development of purpose-built rental housing</li> </ul>
<p><i>Stated Provincial Objective:</i></p> <ul style="list-style-type: none"> <li>• restrict appeals for development that supports provincially funded transit infrastructure</li> </ul>	<p><i>FRPO Response:</i></p> <ul style="list-style-type: none"> <li>• FRPO is an advocate of transit-supportive development, many tenants do not own a car and want to live near public transit</li> <li>• the government should enact policies to reduce appeals of transit-supportive developments</li> <li>• in order to stimulate more transit-supportive communities the government should allow for greater density bonusing within proximity to a transit corridor</li> </ul>
<p><i>Stated Provincial Objective:</i></p> <ul style="list-style-type: none"> <li>• change the land use planning and appeal system so that more land use decisions can be made locally giving communities a stronger voice</li> </ul>	<p><i>FRPO Response:</i></p> <ul style="list-style-type: none"> <li>• FRPO does not support the expansion of local appeals bodies, and appeals on local control by-laws, that we believe will discourage the approval of new affordable rental housing projects due to NIMBY-ism that is often associated with new rental housing development applications</li> <li>• allowing local appeals bodies to include site plans would further complicate the appeals process, resulting in split applications for issues such as zoning and site plan matters</li> </ul>
<p><i>Stated Provincial Objective:</i></p> <ul style="list-style-type: none"> <li>• move the OMB away from de novo hearings</li> </ul>	<p><i>FRPO Response:</i></p> <ul style="list-style-type: none"> <li>• de novo hearings should be maintained to stimulate the development of more mixed-income communities across the province, including more purpose-built rental housing</li> <li>• removal of de novo hearings could act as a barrier to new rental housing developments in communities where there is local opposition to affordable housing</li> </ul>
<p><i>Stated Provincial Objective:</i></p> <ul style="list-style-type: none"> <li>• require all planning decisions to be based on legislation and planning documents in effect at the time of the decision</li> </ul>	<p><i>FRPO Response:</i></p> <ul style="list-style-type: none"> <li>• applications should be considered against the planning documents, policies, and rules in place at the time the application was made</li> <li>• there is much time, effort and expense that is involved in submitting a planning application and developing a business case</li> </ul>

## Theme 2: Citizen Participation and Local Perspective

### *Stated Provincial Objective:*

- ensure that individuals and parties without legal representation are able to be involved in local land use planning, including appeals

### *FRPO Response:*

- FRPO supports greater transparency and the provision of clear information to all participants at OMB hearings
- enabling the Citizen Liaison Office (CLO) which is part of the OMB within the Environment & Land Tribunals Ontario (ELTO) to make in-house planning experts and lawyers available to the public is a clear conflict
- providing any advice or direction beyond information strictly related to OMB processes and procedures would create a natural bias
- there needs to be an assessment of the merit of the citizen's appeal before public resources are committed to an issue that is not consistent with good planning policy

## Theme 3: Clear and Predictable Decision-Making

### *Stated Provincial Objective:*

- improve decision-making through increasing the number of and training of adjudicators and reintroducing multi-member panels

### *FRPO Response:*

- the OMB should be more adequately resourced to address the current case backlog and delays in the system that are impacting the feasibility and affordability of new purpose-built rental housing
- increasing the number of adjudicators and improving training could also strengthen the OMB's effectiveness and efficiency
- OMB members should represent a broader range of stakeholders, including those with private sector experience and knowledge of the rental housing sector
- multi-member panels could further complicate the OMB's decision-making process, increase costs, and use up existing limited resources
- there should be specific criteria where multi-member panels could be allowed, at the discretion of the Board Chair

## Theme 4: Modern Procedures and Faster Decisions

### *Stated Provincial Objective:*

- shift to a less formal and adversarial culture, modernize procedures, and promote faster decisions

### *FRPO Response:*

- the current process takes too long; shortening the government's timelines and setting a maximum number of hearing days are both needed
- the proposal to allow written hearings would lack transparency and access to justice for all parties
- more adjudicators and improved training could result in faster decision-making
- improved scoping of issues and establishing clear issue lists would also ensure that only the matters and evidence relevant to the planning decision would be heard, thereby removing delays due to discussion of extraneous concerns

## Theme 5: Alternative Dispute Resolution and Fewer Hearings

<p><i>Stated Provincial Objective:</i></p> <ul style="list-style-type: none"> <li>encourage more land use disputes to be resolved using alternative dispute resolution leading to fewer and shorter hearings</li> </ul>	<p><i>FRPO Response:</i></p> <ul style="list-style-type: none"> <li>FRPO supports greater use of mediation in OMB cases, as long as it does not prolong the already lengthy process or add additional costs for applicants</li> <li>mediation should only be completed by an OMB Board member, similar to the process at the Landlord and Tenant Board</li> <li>improved case management would scope issues and remove extraneous issues that simply add time to the hearing but are not pertinent to the decision</li> <li>FRPO also supports setting timelines and targets for scheduling cases, however these timelines would need to include a mediation component</li> <li>FRPO does not recommend the use of mediation for complicated appeals issues</li> <li>the OMB should improve its use of technology to reduce the length of hearings, allow use of email, and expand the use of conducting hearings by phone</li> </ul>
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## General Feedback

<p><i>Stated Provincial Objective:</i></p> <ul style="list-style-type: none"> <li>seek input from stakeholders about other opportunities to improve the scope and effectiveness of the OMB with regards to its role in land use planning</li> </ul>	<p><i>FRPO Response:</i></p> <ul style="list-style-type: none"> <li>this OMB Review is trying to address a symptom (i.e. volume of appeals) of a more significant underlying problem -- inherent issues and failings within the municipal planning processes are often the cause of so many appeals to the OMB</li> <li>there are two fundamental problems at the municipal planning level: (1) municipal councilors often ignore evidence-based planning decisions due to political and community pressure; and (2) municipal plans are often not up-to-date, or under zoned, as a means of raising additional development revenue</li> </ul>
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