

Identifying and Analyzing Natural Hazard Based Appeals At the Ontario Municipal Board

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Executive Summary

This report investigated written decisions by OMB members on land use planning appeals between the years of 2006 and 2011. This report examined specific planning appeals made to the OMB under the 2005 Provincially Policy Statement that contained a significant natural hazard component, i.e. flooding, erosion, and dynamic beach hazards.

The impetus for this report was to expand and strengthen the research on OMB appeals dealing with natural hazards that was initiated by Jocelyn Chandler (2007). Chandler's report was developed in response to recommendations made by the Ministry of Natural Resources and Forestry in a 2004 report entitled "Evaluation of Water Resource Management Strategies and Flood Damages". The Ministry of Natural Recourses' report identified a need to develop appropriate measures for gauging the success of the Provincial Policy Statement in regards to redirecting development away from flood susceptible areas.

Based on the fact that research focused on the OMB's interpretation and application of natural hazard polices is limited, this report is intended to address current information gaps that exist on the topic. The information of this report will also be useful to individuals and agencies that are involved with these specific types of OMB cases, as it will provide additional insight into how to allocate their resources when preparing for a hearing and what types of arguments may find favour at the Board.

The research questions addressed in this report include:

- **What are the characteristics of the appeals made to the Board?**
- **What types of evidence are most commonly considered in reaching a decision?**
- **Are there discernable trends in the decisions rendered by OMB members in regards to appeals based on natural hazard constraints?**

In order to adequately address the research questions methods used in previous studies by Chandler (2007), Gibson (2009), and Chipman (2002), which investigating the written decisions of Board Members, were adopted. These studies employed similar methodological frameworks, involving the coding and categorization of specific aspects of OMB appeals, in order to perform textual and numerical analysis of the relevant appeal decisions. Specifically, the methodology involved four key steps to undertake an analysis of the written decisions of Board members:

- The first step involved identifying relevant cases using keyword searches through the OMB E-Decision online database. This initial search resulted in 187 potentially relevant decisions
- The second step involved further examination of cases found through preliminary keyword searches to filter out non-relevant cases. This screening resulted in 34 decisions to be further analyzed.

- The third step consisted of utilizing existing coding keys to categorize the characteristics of the relevant cases and the evidence cited by Board members in their final decisions.
- The final step involved an in-depth analysis of a series of questions (see **appendix E**) associated with the three research questions.

Key Characteristics of Appeals Made to the OMB

The first task of the analysis was to examine the trends associated with the characteristics of the selected OMB appeals. The intent of this analysis was to identify trends in regard to appellants and defendants, planning application types, natural hazard constraints, and witnesses involved in the appeals. The findings of the report indicate that private development proponents were most likely to appeal a decision to the OMB. The majority of appeals made by private development proponents were in response to denial of an application by a local decision making authority. Appeals by a third party, which including neighbouring land owners and special interest groups were the second highest, with the majority of the appeals based on an approval of an application at the local level. Furthermore, Zoning By-Law Amendments and Minor Variances were the most common application to be appealed (35% of cases). The most common natural hazard constraint featured in the analyzed appeals was Flooding/Floodplain issues, which was discussed in 53% of the appeals.

What Types of Evidence Were Most Commonly Considered?

Identifying the most frequent types of evidence/witness cited by Board members in their written decisions was undertaken to provide insight on the key policies and information Board members were founding their judgements on. Through the examination of the 34 cases chosen for review, 14 factors were highlighted as frequent considerations in the written decision of presiding Board members. The factors cited ranged from provincial and municipal policy documents to layperson evidence. The most common factors cited by Board members in their written decisions were policies from local official plans. Official plan documents were cited in 88% of cases. The next most commonly cited factor was expert evidence provided by witnesses, which was cited in 85% of cases.

The predominate type of witness utilized within the 34 cases were professional planners. Based on the nature of the OMB as a land use planning tribunal it was expected that professional planners would play a substantial role in providing testimony on planning legislation and policies. The next most frequently used witnesses were technical professionals. They were generally tasked with providing testimony on technical matters associated with identifying, delineating, and mitigating natural hazard constraints. In the majority of the cases the presiding Board member explicitly provided these two types of witnesses with the highest level of deference.

Were Natural Hazard Constraints Properly Respected?

The findings of this report indicate that Board members adjudicating appeals with a significant natural hazard between the years of 2006 to

2011 consistently implemented the natural hazard policies of the 2005 Provincial Policy Statement. Of the 34 cases identified for analysis in this report, 26 resulted in a decision by the Board member in which the natural hazard constraint was properly respected, either through physical avoidance of the hazard or through the implementation of mitigation techniques that were approved by a local conservation authority.

The overall results of this report suggest that the decisions made by members of the OMB on appeals containing a significant natural hazard component have been in keeping with the intent of both provincial and municipal natural hazard avoidance policies. Furthermore, The findings of this report, although limited in regard to sample size, can be used as evidence to support the argument that members of the OMB are effectively implementing natural hazard avoidance policies within provincial legislation and municipal planning policy documents.