

ONTARIO MUNICIPAL BOARD

RULES OF PRACTICE AND PROCEDURE

(Made under section 91 of the *Ontario Municipal Board Act* and section 25.1 of the *Statutory Powers Procedure Act*.)

**Issued: August 11, 2008, amended
November 2, 2009 and September 3, 2013**

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PART I

GENERAL

1. **Application** Part I of these Rules applies to all proceedings before the Ontario Municipal Board. Part II of these Rules applies to all Expropriation proceedings. These Rules further amend the Rules of the Board issued on August 11, 2008 that were amended on November 2, 2009. These Rules come into force and effect on September 3, 2013.

2. **Definitions** of terms in these Rules:

“affidavit” means a written statement made under oath or affirmation that is confined to facts or other evidence the deponent could give if testifying as a witness before the Board;

“applicant” means a person who makes an application to the Board and includes a person requesting a matter be referred to the Board and also a person added as a party applicant by the Board. The term *“appellant”* may also be used to describe an applicant who appeals a matter to the Board;

“Chair” means the Chair of the Ontario Municipal Board;

“document” means written and visual material and includes written and visual evidence;

“electronic hearing” means a hearing event held by teleconference, videoconference or some other form of electronic technology allowing the parties, participants, and the Board to hear or hear and see one another or their representatives, or any witnesses throughout the hearing event;

“file” means to send or deliver to the Secretary of the Board or to send or deliver to the proper authority for receiving appeals and requires that the appeal material is either deemed to be or has actually been received by the Board or authority;

“hearing event” means a procedure held by the Board at any stage of a proceeding and includes a mediation, motion, prehearing conference, and hearing, whether these are held in the form of an oral hearing, electronic hearing or written hearing, and does not include a cross-examination on an affidavit not held before the Board.

“holiday” means a Saturday or Sunday or other days that the Board offices are closed, such as the statutory holidays of New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special holiday proclaimed by the Governor General or the Lieutenant Governor in Council. Where New Year’s Day, Canada Day or Remembrance Day fall on a Saturday or Sunday, the following Monday is a holiday. Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday.

“mediation” means the intervention into a disputed matter or matters before the Board by a Board Member to facilitate negotiations among the parties and assist them in developing a mutually acceptable settlement, all of which is conducted on a confidential basis;

“motion” means a request that the Board make a decision or issue an order at any stage in a proceeding;

“*moving party*” means the person who makes the motion;

“*oral hearing*” means a hearing event at which the parties or their counsel or representatives attend before the Board Member(s) in person;

“*participant*” is an individual, group or corporation who wishes to make a statement to the Board at a time set for such statements but who does not wish to participate fully throughout a hearing and may attend only part of a hearing;

“*party*” includes a person entitled by the statute under which the proceeding arises to be a party to the appeal, or, those persons whom the Board accepts or adds as parties to fully participate in a hearing event. The role of a party is set out in these Rules and includes such activities as presenting and cross-examining witnesses, exchanging and receiving documents and presenting submissions to the Board;

“*person*” includes a corporation, and the entities included within the meaning of a person in the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22 “the SPPA”;

“*proceeding*” means a matter before the Board;

“*representative*” means a person authorized under the *Law Society Act*, R.S.O. 1990, c. L.8 or its By-Laws to represent a person in the proceeding before the Board, and this includes legal counsel or the individuals that are authorized to provide legal services;

“*responding party*” means a person other than the Board Secretary, who is served with a notice of motion by the moving party;

“*Rules of Civil Procedure*” means the Rules in effect for the Superior Court of Justice made under the *Courts of Justice Act*, R.R.O 1990, as amended;

“*settlement conference*” means a discussion held in a proceeding amongst the parties or their representatives and the Board to attempt to resolve all or part of a matter by discussion or mediation and includes a mediation session;

“*submission form*” means a form provided by the Board for the filing of appeals, referrals or applications;

“*visual evidence*” means images or images with sound intended to be introduced into evidence at a hearing event and includes computer-generated images, photographs, maps, videos, plans, surveys, models and overlays;

“*written evidence*” means material intended to be introduced into evidence at a hearing event and includes reports, letters, correspondence, notices, memos, forms, agreements, e-mails, charts, graphs, books of account, and any other written communication recorded or stored by means of any device;

“*written hearing*” means a hearing event held by means of the exchange of documents whether in written form (hard copy) or by electronic means.

2.1 Chair may designate The Chair may designate a Vice Chair to perform any of the duties provided for in these Rules.

3. **Interpretation of the Rules** These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.
4. **Matters Not Dealt With in the Rules** The Board may at any time in a proceeding make orders with respect to the procedure and practices that apply in the proceeding. If these Rules do not provide for a matter of procedure, the Board may do whatever is necessary and permitted by law to enable it to adjudicate effectively and completely on any matter before it. The Board may follow the *Rules of Civil Procedure*, where appropriate, or may exercise any of its powers under the *Ontario Municipal Board Act* or applicable legislation.
5. **Technical Objections** Substantial compliance with the requirements of these Rules is sufficient.
6. **Board May Exempt From Rules** The Board may grant all necessary exceptions from these Rules or from a procedural order, or grant other relief as it considers appropriate, to ensure that the real questions in issue are determined in a just, most expeditious and cost-effective manner.
7. **Failure to Comply With Rules** The Board expects compliance with these Rules and Board orders. If a party or participant has not complied with a requirement of these Rules or a Board Order such as a procedural order and any requirement included therein, then the Board will determine the consequences of non-compliance and may grant necessary relief or exercise any of its powers authorized by legislation.

REPRESENTATIVES

8. **Appearance in Person or by Authorized Representative** A party or participant may attend a proceeding in person or with their representative. Representatives who are not legal counsel must file a written confirmation of authorization to act for the party or participant. If authorization changes, the person or the representative shall immediately notify the Board and the other parties.
9. **Notices of Proceedings Provided to Representatives** Any notice given in the manner set out in these Rules to a representative is deemed to be effective notice to the party or participant for whom the representative acts.

TIME

10. **Time** Time is computed under these Rules or in a Board Order in accordance with the Rules of Civil Procedure unless otherwise provided. For greater clarity, a day shall mean a calendar day and when the time for doing anything under these Rules falls on a holiday, the time is extended to include the next day that the Board is open for business. When there is reference to two events, the time between two events is computed by excluding the day on which the first event occurs and including the day on which the second event occurs.
11. **Extension or Reduction of Time** The Board may extend or reduce any time required in these Rules or in a Board Order, with any terms or conditions, unless a statute or regulation provides otherwise. (The Board cannot extend a time period prescribed in a statute or regulation.) A request for a change in time requirements may be made by bringing a motion, or the Board may change a time requirement on its own initiative, with or without a hearing event, either before or after the time period expires. Time for serving a document or other written or

visual evidence may also be extended or reduced if all those who must be served consent in writing.

12. No Proceeding for Period if Party is Absent The Board will not proceed for at least 30 minutes after the time given for the commencement of an oral hearing event if a party or a representative has not yet appeared, unless they have given prior notice that they will not attend at the scheduled time. If an electronic hearing event, the Board or the party directed to contact the parties will attempt to link all the parties not so linked, within 15 minutes of the time scheduled for the commencement of the electronic hearing.

INITIATING A PROCEEDING

13. Form of Application, Appeal or Referral Unless a statute or these Rules provide for other methods, or the Board directs otherwise, when proceedings are initiated by filing an application, appeal or referral directly with the Board, the application, appeal or referral must be in writing and must:

- (a) be addressed to the Board Secretary;
- (b) provide the applicant's name, telephone, fax and e-mail address (if any), address and postal code;
- (c) state the nature of the matter, the reasons for it, and the order requested;
- (d) state how and when the appellant participated in the process of the application or amendment prior to its refusal by Council of the Municipality (where appropriate);
- (e) include the appropriate fee;
- (f) inform the Board of a request to assign a bilingual Member if the applicant wishes the proceeding to be conducted wholly or partly in French; and
- (g) be signed by the applicant or their representative.

14. Exceptions to Rule 13 Where a matter is appealed or referred or application is made under the *Planning Act* or another statute and the Board has prepared a submission form, that submission form should be obtained completed and filed with the Board. Where the Board has not prepared a specific form, an applicable form prescribed by the *Rules of Civil Procedure* may be used, with necessary changes.

15. Where No Fee Paid Unless the Board directs otherwise, the Board will not consider a matter or schedule a hearing event unless the appropriate fee has been paid.

NOTICES

16. Notices Any notice required by these Rules or a Board order shall be given in writing in the form authorized by the Board, unless directed otherwise.

17. Notice of Hearing or Other Proceeding The Board may direct a party to give notice of a hearing event to any person and may direct the method of providing the notice. An affidavit shall be filed with the Board within fourteen days after the notice is given to confirm the Board's direction has been properly carried out.

17.1 Hearing Format The Board may hold an oral, electronic or written hearing event. The Board shall determine the format, date and location of the hearing event.

17.2 Notice Periods Unless the Board orders otherwise, notice periods are set out in the following table.

PROVISION UNDER THE PLANNING ACT	PART I – NOTICE PERIOD REQUIRED BY THE BOARD	PART II – BY WHOM THE NOTICE IS SERVED
Official Plans – Subsection 17(24), (36) and (40)	35 days	Municipality
Amendments to Official Plans - Subsections 22(7)	60 days	Applicant
Amendment to Zoning By-law -Refusal or neglect - Subsection 34(11)	60 days	Applicant
Zoning By-law – Subsection 34(19)	35 days	Municipality
Holding By-law where municipality refuses or neglects to remove the “H” - Subsection 36 (3)	60 days	Applicant
Interim Control By-law – Subsection 38(4)	35 days	Municipality
Plan of Subdivision – Failure to decide – Subsection 51(34)	60 days	Applicant
Conditions for Approval of Draft Plan of Subdivision – Subsection 51(43)	35 days	Applicant
Plan of Subdivision - Approval or refusal & changed conditions – Subsections 51(39) and (48)	35 days	Municipality
First Prehearing Conference in respect of any matter	35 days	As above

DOCUMENTS, EXHIBITS, FILING, SERVICE

18. Form of Documents Unless otherwise directed by the Board, every document filed or introduced by a party or participant in a proceeding shall be prepared on letter size paper (8 ½” x 11”), except for large documents such as plans or surveys, and shall have each page numbered consecutively, throughout the entire text and graphic content, even if there are dividers or tabs.

19. Other Exhibits Large graphic or other such types of visual evidence should not be glued to foam or other boards. They shall be on paper and be removed from the boards following the hearing event, and folded to 8 ½” x 11”. Three-dimensional models must be photographed and the photographs must be introduced with the model. Visual evidence must be reviewed by the other parties before the hearing event or by an earlier date if set out in a procedural order.

20. Copies of Documents for Parties and Clerk A party who intends to introduce a document as evidence at a hearing event shall provide a copy of the document to all the parties, at the beginning of the proceeding or by an earlier date if set out in a procedural order. If the document is an official plan, those parts of the Plan to be referred to at the hearing event should be distributed to the parties, and a copy of the entire plan must be made available to the Board Member(s). If the Board orders that the clerk of the municipality keep copies of documents, they do not need to be certified copies, unless a party objects that they are not authentic copies.

21. Prefiling of Witness Statements and Reports If a hearing is expected to last more than 10 days, the Board may require that parties calling expert or professional witnesses serve on the other parties and file with the clerk of the municipality any experts witness statements and reports prepared for the hearing, at least 30 days in advance of the commencement of the hearing, unless otherwise directed by the Board. The Board may also make this prefiling order for hearings expected to last fewer than 10 days, at the request of a party. The expert witness statement must contain:

- (a) an executed acknowledgment of expert's duty form (attached to these Rules) and expert's qualifications;
- (b) the issues the expert will address, their opinions on these issues, the reasons that support their opinions, their conclusions; and
- (c) a list of the reports or documents, whether prepared by the expert or by someone else, that the expert will refer to at the hearing.

The expert's complete report may be filed instead of this statement if it contains the required information.

An expert may not be permitted to testify if this statement or report is not served on all parties and filed with the Clerk of the municipality when so directed by the Board. Participants in the hearing wishing to examine expert witness statements and reports may do so at the Clerk's office.

21.01 Duty of the Expert Witness It is the duty of every expert engaged by or on behalf of a party who is to provide opinion evidence at a proceeding under these Rules to acknowledge, either prior to (by executing the acknowledgment form attached to the Rules) or at the proceeding, that they are to,

- (a) provide opinion evidence that is fair, objective and non-partisan;
- (b) provide opinion evidence that is related only to the matters that are within the expert's area of expertise; and
- (c) to provide such additional assistance as the Board may reasonably require to determine a matter in issue.
- (d) These duties prevail over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

21.02 Other Witnesses The Board may also require that a witness or a participant who is not presenting expert evidence provide a witness or participant statement. A witness or participant statement should contain (a) a short written outline of the person's background, experience, and interest in the matter, (b) a list of the issues that they will discuss, and (c) a list of reports that they will rely on at the hearing. A participant statement should also briefly outline the evidence to be presented. The Board may not allow the witness or participant to testify if this statement is required by the Board but is not provided to the other parties.

22. Amendment of Documents Documents filed with the Board can only be amended on the consent of the parties or by a Board Order. The Board may require that the person requesting an amendment do so by way of a motion under Rule 34.

23. Copies of Board Documents A person may examine any document filed with the Board and copy it after paying the Board's fee, unless a statute, a Court Order, a Board Order or these Rules provide otherwise.

24. Return of Exhibits Exhibits of all types introduced at a hearing will be kept for 180 days after the Board decision issues. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Board agrees. If no such request is made, the exhibit becomes the property of the Board and may be archived.

25. Final Approval of Plans of Subdivision When a final plan is prepared for the Board's approval, the following wording shall be inserted on the original plan and copies:

This plan is approved by the Ontario Municipal Board under file [insert OMB case number] pursuant to the *Planning Act*, section _____.

Date

Secretary, Ontario Municipal Board

DOCUMENT EXCHANGE

A document may be served on another party or participant by e-mail, fax or such other manner as may be directed by the Board.

26. Service by Fax or E-mail Where any document is required to be served or filed, including the one commencing a proceeding or a motion or providing notice, it shall be served by fax or e-mail (unless a statute or the Board requires another method of service) and shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented, to that party directly, where that party has provided a fax number and/or an e-mail address;
- (c) where that party is a corporation and is not represented, to the corporation directly, to the attention of an individual with apparent authority to receive the document; or
- (d) where served on or filed with the Board, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, to an individual with apparent authority to receive the document.

Subject to Rule 27, if a document is served by fax or e-mail, then service is effective on the date of service.

27. If Faxed or E-mailed After 4:30 p.m. Any document served by fax or e-mail after 4:30 p.m. is deemed to have been served on the next business day.

28. Permission to Fax if More Than 30 Pages If a document is more than 30 pages including the cover page, it may only be served by fax between 8:00 a.m. and 4.30 p.m. with the prior consent of the person receiving the document. If more than 30 pages, it cannot be served by fax at any time without prior permission.

29. Contents of Cover Page A fax cover page must include (a) the Board's case and file number, (b) the type of matter, (c) the municipality in which the matter arose, and (d) full identification of the sender and receiver.

30. Proof of Service by Fax or E-mail A confirmation printout received by the sender is proof of the full transmission and receipt of the fax or e-mail.

31. No Hard Copy Needed A hard copy of a faxed or e-mailed document need not be sent by another means of transmission unless requested, and may then be sent by ordinary mail.

ROLE OF A PARTY

32. Role of a Party A party to the proceeding before the Board may participate fully in the proceeding, and this includes the following:

- (a) Serve and file motions;
- (b) Receive copies of all documents exchanged or filed at any hearing event in the proceeding;
- (c) Present submissions at the commencement and at the end of a hearing;
- (d) Present or cross-examine witnesses at a hearing event;
- (e) Claim costs or be subject to a cost award when ordered by the Board; and
- (f) Request a review of a Board decision or order as set out in Rule 110.

DISCOVERY

33. Order for Discovery The Board may make an order for discovery for a party to obtain necessary information from another party. Such an order will be made only on motion and only if the party has requested information and it has been refused or no answer has been received. The notice of motion shall be accompanied by an affidavit, which sets out the efforts made to obtain the desired information and the reasons that demonstrate that the information sought is both necessary and relevant to the disposition of the issues in the proceeding. The Board may order:

- (a) any person to provide an affidavit containing a list of relevant documents in the possession of the person;
- (b) the delivery of relevant documents;
- (c) an oral examination or cross-examination of any person or party;
- (d) an examination for discovery by written questions;
- (e) the inspection and testing of property;
- (f) the examination of a witness before the commencement of a proceeding (under the *Rules of Civil Procedure*); or
- (g) any other form of discovery;
- (h) and the Board may impose conditions concerning the timing and scope of discovery.

33.01 Rules of Civil Procedure Apply to Proceedings Following Order for Discovery If an order for discovery is obtained under Rule 33, the *Rules of Civil Procedure* pertaining to discovery apply to subsequent Board proceedings unless the Board orders otherwise.

MOTIONS

34. Notice of Motion A motion brought before the commencement of a hearing event shall be made by notice of motion.

35. Date for Motion A moving party shall obtain from Board staff a motion date if the motion is to be heard in person or by electronic hearing. A person may request or the Board may order that the motion be heard in person or by electronic hearing.

36. Motion in Writing A party bringing a motion before the commencement of a hearing event may request a motion be held writing, or the Board may make its own determination that the motion be held in writing, in which case the Board will notify the moving party and all other parties. The moving party shall serve a notice of written motion within 15 days of receipt of this notice. Parties wishing to respond to a written motion shall serve a response within 10 days of the date of the moving party's notice of written motion. A moving party may reply to a response within 3 days of the date of the written response.

37. Content of Motion Material The notice of motion to be heard orally, by electronic hearing or in writing shall:

- (a) state the day, time and location of the motion;
- (b) state the precise relief sought;
- (c) state the grounds to be argued, including a reference to any statutory provision or rule to be relied on;
- (d) list the documentary evidence to be used at the hearing of the motion;
- (e) be accompanied by an affidavit setting out a brief and clear statement of the facts upon which the moving party will rely; and
- (f) state the names and addresses of the responding parties or their representatives and all persons to whom the notice of motion is to be given.

38. Service of the Notice of Motion A notice of motion and all supporting material, as set out in Rule 37, shall be served at least 10 days before the date of the motion to be held in person or by electronic hearing unless the Board orders otherwise. A notice of motion shall be served on all parties, on any other person as directed by the Board, and on the Board Secretary. An affidavit of service shall be filed with the Board prior to or at the hearing of the motion.

39. The Notice of Response to Motion A responding party shall serve a notice of response that:

- (a) states the response to be made, including a reference to any statutory provision or rule to be relied on;
- (b) lists the documentary evidence to be used at the hearing of the motion; and
- (c) includes an affidavit setting out a brief and clear statement of the facts upon which the responding party will rely.

40. Service of the Notice of Response to Motion The notice of response to motion and all supporting material as set out in Rule 39 shall be served no later than 2 days before the date of the motion to be held in person or by electronic hearing unless the Board orders otherwise. The notice of response shall be served on all parties, on any other person as directed by the Board, and on the Board Secretary. An affidavit of service shall be filed with the Board prior to or at the hearing of the motion.

41. Reply Submissions A moving party may serve reply submission, prior to the commencement of the hearing of the motion.

42. Oral Submissions All the parties to a motion which is heard in person or by electronic hearing may make oral submissions.

43. Motions Made at Oral Hearing Events A motion may be made at an oral hearing event with leave of and in accordance with any procedures ordered by the presiding Member.

SETTLEMENT BEFORE BOARD PROCEEDINGS

44. Procedure if Settlement Held Before Board Hearing Event The Board may hold a hearing on the terms of a settlement if parties agree to a settlement prior to a hearing event. If all statutory requirements and the public interest are satisfied, the Board may issue an order approving the settlement, with any necessary amendments.

COMPELLING ATTENDANCE OF WITNESSES BY SUMMONS

45. a) Who May Summons a Witness A party who wishes to compel the appearance before the Board of a person in Ontario who has not agreed to appear as a witness for that party may serve a summons on that person for that person to attend any hearing event before the Board to:

- (i) give relevant and admissible evidence under oath or affirmation; or
- (ii) produce any relevant and admissible documents or things.

b) How to Obtain a Summons A party who wishes to summons a witness shall make a request in writing to the Secretary of the Board.

c) When Summons Will Issue A party requesting a summons must set out in its request to the Board the issues and the evidence that a witness is to address and explain the relevance of that evidence. If that information is not contained in the request for summons, the summons shall not be issued. If the requisite information is contained in the request for summons and the Board is satisfied that the evidence to be given by the witness named in the request for summons is relevant to the issue(s) before the Board and is admissible, the summons shall be signed and issued by the Board Secretary.

d) When Summons Requires a Motion If the Board is not satisfied from the information in the request for summons that the evidence to be given by the named witness is relevant to the issues before the Board or admissible, the summons shall not issue. The party requesting the summons may then:

- i. submit a further request for summons, with more details in respect of the nature of the evidence to be given by the proposed witness and the relevance and admissibility of that evidence, or
- ii. bring a motion in accordance with these Rules seeking an order of the Board for the issuance of the summons.

The Board Member hearing the motion shall determine whether the summons shall issue, based on a determination of the nature of the evidence to be given by the proposed witness, the relevance of the evidence to the matter before the Board, and the admissibility of the evidence.

e) Application to Quash a Summons Any person who has been served with a summons issued by the Board may apply to quash the summons by notice of motion in accordance with these Rules.

f) Summons Without a Named Witness A summons may be issued by the Board without the witness' name identified thereon if a sufficient case has been made to the Board as to the need

for the summons or the urgency of the matter. A party seeking such a summons shall do so by notice of motion in accordance with these Rules.

g) Serving the Summons Except in the event that it is impossible or impractical to do so, a summons must be served on the witness by personal service, no later than 5 days before the time for attendance. At the same time, the attendance money to be paid for attendance before the Superior Court of Justice shall be paid or offered to the witness.

46. Attendance of the Witness Once the summons is served on a witness, the witness shall attend the hearing of the Board at a time and place stated in the summons (or as otherwise arranged with the person serving the summons), and shall bring with them all documents and things within their possession as required by the terms of the summons.

LANGUAGE OF PROCEEDINGS

47. Use of English and French The Board may conduct a hearing event in English or French or partly in English and partly in French.

48. Where French is Used A person who wishes a hearing event to be conducted wholly or partly in French or who wishes to give evidence or make submissions in French must request that the Board assign a bilingual Member at least 25 days before the hearing event.

49. Documents in English or French Where written evidence or a submission is provided in either English or French, the Board may order that the person presenting such evidence or submissions also provide it in the other language if the Board considers it necessary for the fair determination of the matter.

50. Where Interpreter is Required If an interpreter is required for a witness whose language is not English or French, the party calling the witness must provide the interpreter.

SCREENING

51. Administrative Screening Board staff shall conduct administrative screening of matters initiated with the Board to determine whether,

- (a) the matter has been submitted to the Board within the statutory filing period;
- (b) the matter has been submitted to the Board in accordance with any statutory requirements;
- or
- (c) the matter has been initiated in accordance with the provisions of Rule 13.

52. Notice Before Dismissal The Board may dismiss a matter administratively, on its own initiative and without a hearing event if the matter was not submitted to the Board within the statutory filing period, or in accordance with statutory requirements or was not commenced in accordance with Rule 13. However, before dismissing a matter administratively, Board staff will notify the applicant of the deficiencies in the application under Rule 51 and will provide the applicant with a specific date to respond. Board staff will review the applicant's response and make a determination whether the matter is to be dismissed administratively.

53. Board May Dispense With Requirement At the request of the applicant, the Board may cancel a request for further information where it is satisfied that there is good reason to do so.

54. Applicant to Serve Additional Materials Requested If the Board notifies the applicant, pursuant to Rule 52, that the information submitted is incomplete, then the applicant shall provide a copy of the supplementary information to all other parties and the Board.

55. Completed Matter Deemed Filed on Original Date If the defect set out in a notice sent out under Rule 52 is resolved to the satisfaction of the Board, then the matter is deemed to have been properly filed on the day it was first received rather than the day the further required information was received.

56. Adjudicative Screening by Board Member A Board Member may dismiss a proceeding without holding a hearing event if:

- (a) satisfied that the Board is without jurisdiction to hear the application or,
- (b) in official plan or zoning by-law, minor variance, subdivision and consent appeals, or referrals of the Minister's decision on an application to revoke or amend a Minister's Zoning Order, the Board finds that:
 - i. the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which all or part of the appeal could be allowed;
 - ii. the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;
 - iii. the appellant did not make oral submissions at a public meeting, or provide written submissions before the decision of Council or Committee;
 - iv. the appellant has not paid the prescribed fee;
 - v. the appellant has persistently and without reasonable grounds commenced proceedings before the Board that constitute an abuse of process; or
 - vi. the application to which the appeal relates is substantially different from the application that was before Council of the Municipality at the time of its decision.

CONSOLIDATION

57. Combining Proceedings or Hearing Matters Together In accordance with Ontario Regulation 30/02 of the *Ontario Municipal Board Act*, the Board may order that matters be consolidated, heard at the same time or heard one after the other, or stay or adjourn any matter until the determination of any other matter.

58. Effect of Consolidating Proceedings When two or more proceedings are consolidated,

- (a) statutory procedural requirements for any of the original separate proceedings apply, where appropriate, to the consolidated proceeding;
- (b) parties to each of the original separate proceedings are parties to the consolidated proceeding; and
- (c) evidence to be presented in each of the separate proceedings is evidence in the consolidated proceeding.

59. Effect of Hearing Matters Together When two or more proceedings are heard together but not consolidated,

- (a) statutory requirements for each proceeding apply only to that particular proceeding and not to the others;
- (b) parties to the hearing are parties to their individual proceedings only and not parties to the other proceedings; and
- (c) unless otherwise ordered by the Board, evidence in the hearing is evidence in each proceeding to which it could apply.

60. Board May Reverse Decision for Consolidated Proceedings The Board may separate consolidated proceedings or matters heard together at any time if it finds that the proceedings have become unduly complicated, delayed or repetitive or a party is unduly prejudiced.

ADJOURNMENTS

61. Hearing Dates Fixed Hearing events will take place on the date set unless the Board agrees to an adjournment.

62. Requests for Adjournment if All Parties Consent If all of the parties agree, they may make a written request to adjourn a hearing event. The request must include the reasons, a suggested new date, and the signed consents of all parties. However, the Board may require that the parties attend in person or convene an electronic hearing to request an adjournment, even if all of the parties consent.

63. Requests for Adjournment Without Consent If a party objects to an adjournment request, the party requesting the adjournment must bring a motion at least 10 days before the date set for the hearing event. If the reason for an adjournment arises less than 10 days before the date set for the hearing event, the party must give notice of the request to the Board and to the other parties and serve their motion materials as soon as possible. If the Board refuses to consider a late request, any motion for adjournment must be made in person, at the beginning of the hearing event.

64. Emergencies Only The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses, so close to the hearing date that another representative or witnesses cannot be obtained. The Board must be informed of these emergencies as soon as possible.

65. Powers of the Board upon Adjournment Request The Board may,

- (a) grant the request;
- (b) grant the request and fix a new date or, where appropriate, the Board will schedule a prehearing conference on the status of the matter;
- (c) grant a shorter adjournment than requested;
- (d) deny the request, even if all parties have consented;
- (e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
- (f) grant an indefinite adjournment, if the request is made by the applicant or proponent and is accepted by the Board as reasonable and the Board finds no substantial prejudice to the other parties or to the Board's schedule. In this case the applicant or proponent must make a request that the hearing be rescheduled;
- (g) convert the scheduled date to a mediation or prehearing conference; or
- (h) make any other appropriate order.

MEDIATION

66. Mediation A party or parties may request the Board to conduct a mediation of any issue raised in a proceeding. Prior to the Board granting this request, the Chair or a Vice-Chair designated by the Chair will conduct a mediation assessment of the proceeding to determine whether the issue or proceeding is suitable for mediation. If the Chair or designated Vice-Chair determines that mediation should proceed, then the Board will convene a mediation, with the participation of all or two or more of the parties, should they provide their consent to each other

and the Board. The Board shall set the date of the mediation and direct how notice of the mediation will be given.

67. Procedure at a Mediation If a mediation request is granted, the Board will appoint a mediator who is a Member of the Board, and the mediator may make use of any appropriate dispute resolution techniques to help the parties involved in the mediation enter into a voluntary resolution of the issues in dispute.

68. Member to Preside at Hearing Event Only with Parties' Consent A Board Member who conducts a mediation in which one or more of the issues have not been resolved may not preside at any hearing event of those unresolved issues unless all of the parties consent and the Board Member agrees.

69. Mediation or Settlement Discussions Confidential The details of proceedings during a mediation are confidential. Any information or documents provided or exchanged during the mediation and any suggestion for resolution of the issues or offer to settle made during a mediation shall remain confidential and cannot be disclosed in evidence in the same or other proceeding, nor be placed on the Board file. A Board Member's notes of a mediation shall remain confidential and shall not be released to any person or admitted into evidence in any proceeding. A Board Member that participates in mediation is not competent or compellable in any proceeding to give evidence or produce documents regarding the mediation discussions.

PREHEARING CONFERENCES

70. Prehearing Conference At the request of a party or on its own initiative, the Board may direct parties to participate in a prehearing conference, which can include settlement conferences, motions or preliminary hearing matters, in order to:

- (a) identify the parties and participants and determine the issues raised by the appeal;
- (b) identify facts or evidence the parties may agree upon or on which the Board may make a binding decision;
- (c) obtain admissions that may simplify the hearing;
- (d) provide directions for exchange of witness lists, expert statements and reports, for meetings of experts to address the disclosure of information, including the disclosure of the information that was not provided to the Municipality before Council made its decision that is the subject of the appeal, and for further disclosure where necessary;
- (e) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
- (f) fix a date and place for the hearing and estimate its length, and encourage the parties to agree upon the dates for any procedural steps;
- (g) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public or to seal documents;
- (h) address the production and cost sharing of joint document books; and
- (i) deal with any other matter that may assist in a fair, cost-effective, and expeditious resolution of the issues.

71. Sample Procedural Order and Meeting Before Prehearing Conference The Board may provide a sample procedural order to the parties before the prehearing conference. The parties are expected to meet before the prehearing conference to consider the matters set out in Rule 70 and present recommendations to the Board for the conduct of the hearing.

72. Serving Notice of a Conference The Board will give the applicant a Notice of Conference which provides the time and place of the prehearing conference. The applicant must serve this on those persons entitled to notice of the conference and provide an affidavit to the Board, at the conference, to prove service of the motion.

73. Board Member Presides The Chair will assign a Board Member to conduct the conference.

74. Public Attendance at a Prehearing A prehearing conference held in person will be open to the public. A prehearing conference held by electronic hearing will be open to the public where practical.

75. Conversion From One Procedure to Another The Board Member may, at any time, conduct a procedural discussion or a preliminary hearing and may convert from one to another. The Board will state in the notice of a prehearing conference that the parties are expected to arrive prepared for a procedural and settlement conference as well as a preliminary hearing, where evidence or formal statements may be heard. Even if no settlement is reached, the Board may proceed to make a final decision on any evidence received during the conference.

76. Results of Failure to Attend a Conference If a party fails to attend the conference in person or by authorized representative, the Board may proceed without that party. The non-attending party is not entitled to notice of subsequent hearing events in the proceedings.

77. Board Order Following The Member conducting the prehearing conference will issue an order that may decide any of the matters considered at the conference and provide procedural directions for any subsequent hearing event.

78. Hearing Member Bound The Member conducting the hearing or any subsequent hearing event is bound by the order resulting from the prehearing conference unless the Member is satisfied that there is good reason to vary the order.

79. Methods of Holding Hearing Events The Board may, in a proceeding, hold any or a combination of written, electronic or oral hearing events.

ELECTRONIC HEARINGS

80. Hearing Events by Teleconference or Videoconference The Board may hold a hearing event by electronic hearing for the determination of any issue in the proceeding. Where the Board directs that a hearing event be held by electronic hearing, the Board may direct a party to make the necessary arrangements and to give notice of those arrangements to the Board and other parties.

80.01 Objection to the Electronic Format A party who objects to a hearing event being held as an electronic hearing shall notify the Board and all other parties of its objection within the time period specified in the notice of the electronic hearing. The objecting party shall set out the reasons why the electronic hearing is likely to cause the objecting party significant prejudice and may refer to the matters set out in Rule 81.

80.02 Response to Notice of Objection The Board may request a written response from other parties to the objection of electronic hearing within a time period set out by the Board.

80.03 Procedure When Objection is Received If the Board receives an objection to hold a hearing event by electronic hearing, it may:

- (a) accept the objection, cancel the electronic hearing, and schedule an oral or written hearing or,
- (b) if the Board is satisfied, after considering any responding submissions and the factors included in Rule 81, that no significant prejudice will result to a party, then the Board will reject the objection and proceed with the electronic hearing.

81. Factors the Board May Consider The Board may consider any relevant factors in deciding to hold a hearing event by electronic hearing, such as,

- (a) the convenience to the parties and the Board;
- (b) the likelihood of the process being less costly, faster and more efficient;
- (c) whether it is a fair and accessible process for the parties;
- (d) the desirability or necessity of public participation in or public access to the Board's process;
- (e) whether the evidence or legal issues are suitable for an electronic hearing;
- (f) whether credibility may be an issue and the extent to which facts are in dispute; or
- (g) whether an electronic hearing is likely to cause significant prejudice to any party or participant.

82. Directions for the Electronic Hearing The Board may direct the arrangements for the electronic hearing or designate an approved location for videoconference to protect the integrity of the hearing process, including the security and confidentiality of evidence. The Board will not permit a party or participant to take part in a teleconference while using a cellular telephone.

83. Videoconferences The Board shall pre-approve all arrangements for conducting a hearing event by videoconference, including the pre-filing and exchange of motion materials, documents, written submissions or any visual and written evidence, and the locations for the conference. If a party or participant intends to request that the Board accept any information or material as an exhibit at a videoconference, such information or material shall be prefiled with the Board and provided to all parties or participants in accordance with the Board's directions for conducting a hearing event by videoconference.

83.01 The View of the Camera A party's representative or a witness in a videoconference shall be in view of the camera, with minimal visual obstructions, in the course of their presentations or submissions to the Board. Any document that may be referred to by parties or their witnesses shall be visible to the Board and all other parties to the conference, either by the camera or by referring to a copy of the document exchanged in accordance with the Board's directions.

WRITTEN HEARINGS

84. Power to Hold Hearing Events by Written Submissions The Board may conduct the whole or any part of a hearing event in writing, unless a party satisfies the Board that there is good reason for not doing so. Any objection must be filed within 10 days of the date of the Board's notice of a written hearing. Notice of a written hearing will be sent only to the known parties.

85. Factors Board May Consider In deciding whether to hold a written hearing, the Board may consider any relevant factors, such as:

- (a) the fairness and convenience to the parties;
- (b) the likelihood of the process being less costly, faster and more efficient;
- (c) the effect on public access to the Board's process;

- (d) whether facts and evidence may be agreed upon;
- (e) whether most of the issues are legal issues; and
- (f) whether oral testimony is likely to be necessary.

86. How to Object A party who objects to a written hearing shall file and provide a copy of a written objection to the other parties, setting out details of its claim that there is a good reason for not holding the hearing event in written form, within 10 days of the date of the notice of written hearing.

87. Procedure for Exchange of Documents in Written Hearings If no notice of objection is received, the moving party shall provide to the Board and the other parties copies of its affidavit(s) and submissions within 30 days after the date of the Board's notice of the written hearing. The submissions shall include the reasons for the proceeding and the order requested, and any law relied on. The affidavit shall include the facts relied on and the evidence supporting the facts.

The other parties wishing to respond to the submissions shall do so by copy to all parties and the Board within 20 days of the date that the applicant's affidavit and submissions were served. The responding submissions shall include an affidavit of the facts and the evidence relied upon and state if that party has no submissions or evidence on any of the issues raised, if this is the case.

The applicant may reply to the other parties' responses, with a copy to the Board, within 10 days after the date for service of the responses, and the reply shall be limited to any new evidence in the responses.

88. Requirement that Evidence be Sworn or Affirmed Evidence in a written hearing must be by affidavit, and any documents filed shall be attached to an affidavit of a person having personal knowledge of the document. The Board may permit evidence to be filed in a different form or in electronic form as approved by the Board upon request of a party.

CONDUCT OF PROCEEDINGS

89. Hearings to be Public All Board hearing events will be open to the public except where the Board Member determines that the hearing event is to be heard in private, such as a mediation or the exceptions to a public hearing, set out in the *Statutory Powers Procedure Act* .

90. Procedure at a Hearing The Board may by order establish the procedure at a hearing event unless an Act provides differently.

91. Media Coverage - Photographic, Audio or Video Recording

No person shall take or attempt to take a photograph, motion picture, video recording, or other recording capable of producing visual or aural representations by electronic means, or otherwise, at any proceedings of the Board otherwise open to the public, unless the presiding Board Member authorizes the recording and the following conditions have to be satisfied by the person making the request:

- (a) authorization for the request was submitted to the presiding Board Member or the Chair;
- (b) the Board Member determines that the proceedings will not be disrupted or delayed if approval is given;
- (c) the Board Member determines that the approval will not result in any prejudice to any party to the proceedings;

- (d) the equipment must be of a type approved by the Board and be placed in locations approved by the presiding Board Member; and
- (e) photographing and/or visual recording may take place only within the times designated by the Board Member prior to the commencement of the Board's proceedings and no approval of the Board shall apply to any time during which the proceedings actually occur or in which the proceedings are in session.

92. Submissions to a Request The Board Member shall afford the parties to the proceeding an opportunity to make submissions to the Board of any of the items set out in Rule 91 and respond to those submissions. The Board may impose conditions to any approval necessary to ensure the items in Rule 91 are satisfactorily addressed.

93. Withdrawal of Approval The Board may withdraw permission to record temporarily or permanently if the conditions are not met, if any of the factors in Rule 91 become relevant, or if the Board in the circumstances cannot conduct a full and fair hearing.

94. Verbatim Reporters Any party may arrange for the attendance of a qualified verbatim reporter, at his or her own expense, for the purpose of recording all testimony and submissions during a hearing event. Before a qualified verbatim reporter is permitted to record only part of a proceeding, the party retaining the qualified verbatim reporter must obtain the consent of the Board. In considering whether to provide its consent, the Board will consider, among other matters, whether to permit a record of only part of the proceedings would result in prejudice to a party.

95. Transcripts If a party orders a transcript or partial transcript of the hearing event, the party must notify the Board, and the other parties to the proceedings that it has done so, and the Board shall receive a copy free of charge, if the Board requests a copy. The party must furnish the copy of the transcript to the Board within three days of the date of the party's receipt of the transcript. The Board may at its own expense and on notice to the parties, order a transcript or partial transcript from the qualified verbatim reporter without furnishing a copy of the transcript to the parties; however, in any such case the Board will advise the parties that it has ordered the transcript and where the Board orders a partial transcript, the Board shall notify the parties as to the part of the transcript the Board has ordered.

COSTS

96. Who May Request an Order for Costs Only a party may ask for an award of costs at the end of a hearing event. If the request for costs is not made before the Board renders its decision at the end of the hearing event, the party must notify the Board within 30 days after the written decision is issued that the party will be seeking costs, against whom the costs are sought, and an indication of the approximate amount of costs being sought.

97. Disposition of Request Where Request Made Before Issuance of Written Decision If the request for costs is made before the end of the hearing event and prior to a Decision, the Board may:

- (a) make an order on the basis of oral submissions made at the hearing event, or
- (b) direct that the request be considered at a later date in the manner directed by the Board.

98. Disposition of Request Where Request Made After Issuance of Decision If the request for costs is made within 30 days after the written decision is issued, or if the Board directs at the hearing event that the request for costs is to be considered at a later date, the Board may direct the party or parties requesting costs to:

(i) attend before the Board, on notice to the party or parties against whom costs are sought, on a date fixed by the Board, and make oral submissions with respect to the application for costs provided that the party or parties against whom costs are sought shall also be permitted to make oral submissions with respect to the application for costs;

or

(ii) within thirty five days of the Board's direction, file written submissions on the application for costs and serve each party against whom costs are sought, provided that, in addition to any other document the Board directs be provided, the documentation shall include:

- (a) the reasons for the request and the amount requested;
- (b) an estimate of any extra preparation or hearing time caused by the conduct alleged to attract costs;
- (c) copies of supporting invoices for expenses claimed or an affidavit of a person responsible for payment of those expenses verifying that the expenses were properly incurred; and
- (d) an affidavit verifying that the costs claimed were incurred directly and necessarily for the time period in question;

or

(iii) within thirty five-days of the Board's direction, file and serve a notice of motion for costs in accordance with the Board's Rules on Motions. A motion for costs shall proceed as an oral or electronic hearing, as directed by the Board, and the notice of motion must contain the following information:

- (a) the reasons for the request and the amount requested;
- (b) an estimate of any extra preparation or hearing time caused by the conduct alleged to attract costs;
- (c) copies of supporting invoices for expenses claimed or an affidavit of a person responsible for payment of those expenses verifying that the expenses were properly incurred; and
- (d) an affidavit verifying that the costs claimed were incurred directly and necessarily for the time period in question.

99. Response by Other Party Where the Board directs a proceeding in writing in accordance with Rule 98, the party or parties against whom the request for costs is made shall provide a written response to the Board and the other parties to whom the request for costs relates, within fifteen days of service of the documentation from the party requesting costs.

100. Reply by Party Seeking Costs Where the Board directs a proceeding in writing in accordance with Rule 98, the party requesting costs may provide to the Board and other parties to whom the request for costs relates a reply to a written response, within 10 days of the service of the response.

101. Member Seized to Consider Costs Order The Member who conducted the hearing event on the merits shall make the decision on the request for costs. If that Member is, for any reason, unable to hear or deal with the request, the Chair will direct another Member to hear the motion.

102. Period Eligible for Costs Order The Board may make a costs award for conduct at any time during a proceeding.

103. Circumstances in Which Costs Order May be Made The Board may only order costs against a party if the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or if the party has acted in bad faith. Clearly unreasonable, frivolous, vexatious or bad faith conduct can include, but is not limited, to:

- (a) failing to attend a hearing event or failing to send a representative when properly given notice, without contacting the Board;
- (b) failing to give notice without adequate explanation, lack of co-operation with other parties during prehearing proceedings, changing a position without notice to the parties, or introducing an issue or evidence not previously mentioned or included in a procedural order;
- (c) failing to act in a timely manner or failing to comply with a procedural order or direction of the Board where the result is undue prejudice or delay;
- (d) a course of conduct necessitating unnecessary adjournments or delays or failing to prepare adequately for hearing events;
- (e) failing to present evidence, continuing to deal with issues, asking questions or taking steps that the Board has determined to be improper;
- (f) failing to make reasonable efforts to combine submissions with parties of similar interest;
- (g) acting disrespectfully or maligning the character of another party; and
- (h) knowingly presenting false or misleading evidence.

The Board is not bound to order costs when any of these examples occur as the Board will consider the seriousness of the misconduct. If a party requesting costs has also conducted itself in an unreasonable manner, the Board may decide to reduce the amount awarded. The Board will not consider factors arising out of a mediation or settlement conference in determining whether there should be an award of costs.

104. Powers of Board The Board may deny or grant the application for costs or award a different amount.

104.01 Interest on Award Awards of costs will bear interest in the same manner as those made under section 129 of the *Courts of Justice Act*.

BOARD DECISIONS AND ORDERS

105. Issuing a Board Decision or Order A Board Order may be contained in the decision and issue as a Decision and Order of the Board. Where the Order issues after the written decision, the Board Secretary will issue the appropriate Order as directed by the Board.

106. A Condition Imposed in a Board Decision shall be satisfied by the date set by the Board. If the date is not set by the Board, a condition shall be satisfied within a reasonable time. If the condition is not so satisfied, the Board may reopen the hearing event from which the decision issued.

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

CORRECTING MINOR ERRORS IN DECISIONS AND ORDERS

108. Correcting Minor Errors The Board may at any time and without prior notice to the parties correct a technical or typographical error, error in calculation or similar minor error made in a decision or order. There is no fee if a party requests this type of correction.

109. Processing Request as a Review Request If a party requests a correction or clarification that the Board finds is a request for a substantive change in the decision or order, the Board shall treat it as a request for review under section 43 of the *Ontario Municipal Board Act*.

REVIEW OF A BOARD DECISION OR ORDER

110. Board's Powers on Review When exercising its powers pursuant to Section 43 of the *Ontario Municipal Board Act* and Section 21.2 of the *Statutory Powers Procedure Act*, Rules 110-119 shall govern.

111. Request for Review of Board Decision The Chair shall consider a person's request for a review of a decision, approval, or order if the person files the information set out in Rule 112. A request for review does not automatically stay the effect of the original decision, approval or order unless the Chair so orders.

112. Contents of a Request A party making a request for review shall file notice of such request with the Chair within 30 days of the date of the Board's written decision. Such notice shall include:

- (a) the requestor's full name, address, telephone, fax number, and e-mail address (if any);
- (b) the full name, address, telephone and fax number and e-mail address (if any) of the requestor's representative (if any);
- (c) the requestor's or representative's signature;
- (d) the reasons for the request;
- (e) the desired result of the review (such as a change or alteration to the decision or a rehearing of the proceeding);
- (f) any documents that support the request, including copies of any new evidence that was unavailable at the hearing;
- (g) an affidavit stating the facts relied upon in support of the request;
- (h) a statement as to whether the requestor has or will submit an application for leave to appeal or judicial review to the court; and
- (i) the prescribed filing fee (cheque or money order payable to the Minister of Finance).

113. Initial Screening of the Request The Board will not consider a request for review:

- (a) the request does not include the information required by Rule 112;
- (b) the request is made by a non-party unless the Chair determines that there is a valid and well-founded reason why the requestor was not a party;
- (c) the request is filed 30 days after the date of the Board's written decision unless the Chair determines that there is a valid and well-founded reason to extend this time; or
- (d) it is a second request by the same party raising the same or similar issues.

114. Filing and Serving a Response to a Request for Review A party that files a request for review may be directed by the Board to serve the request and all supporting material on all other parties to the original hearing event. The Board may require any or all other parties to provide, by a specific date, a response to the request. The Board may identify the issues to address in the response. The response to a request for review shall include the reasons for the response, any supporting documents, and an affidavit stating the facts relied upon in the response. The response shall be served on the other parties and filed with the Chair.

115. Power of the Chair to Dispose of the Request Subject to Rule 115.01, the Chair may exercise his/her discretion to grant a request for review, in whole or in part, and may order a rehearing of the proceeding or order a motion be heard to review a decision. In the event the

request for review is granted, the Board will set a hearing date or a motion date (as applicable) and will notify all of the parties and provide direction for notice. The Chair may assign a different Member or panel to conduct the rehearing or motion to review. The Chair may also dismiss the request, in which case the decision, approval or order remains in force and effect.

115.01 The Exercise of the Chair's Discretion The Chair may exercise his/her discretion and grant a request and order either a rehearing of the proceeding or a motion to review the decision only if the Chair is satisfied that the request for review raises a convincing and compelling case that the Board:

- (a) acted outside its jurisdiction;
- (b) violated the rules of natural justice or procedural fairness, including those against bias;
- (c) made an error of law or fact such that the Board would likely have reached a different decision;
- (d) heard false or misleading evidence from a party or witness, which was discovered only after the hearing and would have affected the result; or
- (e) should consider evidence which was not available at the time of the hearing, but that is credible and could have affected the result.

116. The Motion to Review. A Board Member or panel assigned by the Chair to conduct a motion to review may, after receiving submissions from the parties, order a rehearing of all or part of the proceeding only if satisfied that the request raises a convincing and compelling case in respect of one or more of the issues set out in clauses a) to e), inclusive, of Rule 115.01. Should the Board Member or panel that conducts the motion determine that the requestor has not satisfied this requirement, then the request shall be dismissed and the decision, approval or order that is the subject of the request shall remain in force and effect.

117. Procedure on Motion The Board's Rules on Motions generally apply to a motion to review unless the Board directs otherwise.

118. The Review Hearing The Board Member or panel that conducts the review hearing shall rehear the application, in whole or in part, as either directed by the Chair or the decision arising from the motion to review, and may review, rescind, change, alter or vary any decision, approval or order made by the Board.

119. The Chair May Initiate a Request The Chair may initiate a Request for Review and exercise his/her discretion under Rule 115.01 upon notice with reasons to all parties to a proceeding and within a reasonable time after the Board decision, approval or order is made.

PART II - EXPROPRIATIONS

120. Application of Part This Part applies to proceedings under the *Expropriations Act*.

121. Definitions Definition of terms in this Part on Expropriations:

"Act" means the *Expropriations Act*;

"claimant" means an owner as defined in the Act;

"respondent" means a statutory authority as defined in the Act.

122. Notice of Arbitration and Statement of Claim by Claimant A claimant seeking compensation shall serve a combined Notice of Arbitration and Statement of Claim on the respondent, and shall file with the Board proof of service of the Notice within 10 days of the date of service. The Notice and Statement must set out,

- (a) the amount claimed;
- (b) the basis upon which the amount is calculated; and
- (c) the facts in support of each element of compensation claimed.

123. Reply to Notice of Arbitration The respondent shall serve a Reply on the claimant within 20 days after service of the Notice of Arbitration, and shall file with the Board a copy of the Reply and proof of service on the claimant.

124. Notice of Arbitration by Respondent Where a claimant has not served a Notice of Arbitration under Rule 124, the respondent may serve on the claimant a Notice of Arbitration, and shall file with the Board proof of service of the Notice within 10 days of the date of service.

125. Service of Statement of Claim for Compensation Where a Notice of Arbitration has been served by the respondent, the Board will not make an appointment for the hearing of the arbitration until the claimant has filed with the Board and served on the respondent a Statement of Claim for Compensation within the time required by the Board unless the Board decides otherwise upon request.

126. Service of Reply to Statement of Claim for Compensation Where a claimant has served a Statement of Claim for Compensation under Rule 122, the respondent shall serve a Reply within 20 days after being served with the Statement, and shall file with the Board a copy of the reply and proof of service on the claimant.

127. Denial to be Raised in Reply Where a respondent denies that a claimant is entitled to any compensation on the grounds,

- (a) that the claimant has no interest in the land expropriated or injuriously affected;
- (b) that no compensation is payable with respect to the interest of the claimant in such land; or
- (c) that the claim is barred by a provision in the Act or any statute;
- (d) it must raise such denial in its reply, setting out the relevant facts and statutory provisions relied on. If this is not done, the respondent may not make such denial at the hearing of the arbitration, unless the Board permits it.

128. Forms An offer of compensation and acceptance of an offer of compensation made under section 25 of the Act may be in the Forms in R.R.O. 1990, Regulation 363. An acceptance may be served upon the person named in the offer of compensation to receive it.

129. General Rule for Service of Documents Service of documents may be made, in addition to the methods set out in subsection 1(2) of the Act,

- (a) in the case of Her Majesty the Queen in right of the Province of Ontario, in the manner set out in section 10 of the *Proceedings Against the Crown Act*; and
- (b) in the case of a municipal or other corporation, partnership or individual, on the persons prescribed by the *Rules of Civil Procedure*.

130. Required Pleadings The only pleadings required in an arbitration to determine compensation are a Statement of Claim and a Reply, or in the case of a matter under Rule 126, a Notice of Arbitration, a Statement of Claim for Compensation and a Reply, unless the Board orders otherwise.

131. Examination of Representative by Opposing Party A person appointed under section 37 of the Act to represent an owner of land may be examined by an opposing party in the place of the owner.

132. Discovery and Admissions - Applicability of Rules of Civil Procedure No Board order is required for examinations for discovery or documents. The *Rules of Civil Procedure* apply to proceedings under this Part unless the Board on motion orders otherwise. (Note, however, that appraisal reports to be relied on must be served at least 15 days before the hearing.)

EXPROPRIATION PREHEARING PROCEDURES

133. Prehearing Conference A party may request and the Board may direct the parties to attend a prehearing conference, and the Rules governing such conferences apply.

134. Time for Hearing The Board may appoint a time for a hearing of the arbitration upon receipt of the notice of readiness for hearing, signed by or on behalf of all parties; or by an order following an oral or telephone motion (notice of the motion cannot be served until 30 days after service of the Notice of Arbitration) or a prehearing conference.

135. Motions Heard in Other Locations If the owner of land located outside of the City of Toronto consents, oral motions may be heard at the Board's offices in Toronto, or in any municipality reasonably close to where the lands are located.

136. Notice of Hearing The Board Secretary will mail a notice of the time and place for the arbitration to the respondent.

137. The expropriating authority shall arrange, at the expense of the expropriating authority, for the attendance of a qualified verbatim reporter to take down, in writing, all oral evidence submitted before the Board.

138. Service of Notice of Hearing Upon receipt of the Notice of Hearing, the respondent shall, at least 20 days before the hearing, serve a copy of the notice of hearing upon all registered owners, and also upon any person known to the respondent to be an owner as defined in the Act, or who is claiming to be entitled to any part of the compensation which may be awarded at an arbitration under the Act.

139. Notice for Expert Reports If the *Rules of Civil Procedure* specify a greater notice period for appraisal or other expert reports than under section 28(1) of the Act, the greater notice period applies.

140. Filing of Documents At the commencement of a hearing to determine compensation, the respondent shall file a copy of the certificate of approval of expropriation under the Act, the plan of the expropriated land and proof of its registration in accordance with section 9 of the Act, where applicable; and an affidavit proving service of the notice of hearing under Rule 139 and that the persons served are all the persons required to be served.

141. Settlement Offer If an offer to settle is made and it is not dealt with in the Act, the *Rules of Civil Procedure* apply.

142. Form of Expropriation Order An order issued under this part shall be in the form of order in R.R.O. 1990, Regulation 363.

ATTACHMENTS TO THE RULES

1. SAMPLE PROCEDURAL ORDER

This is a sample of the Procedural Order that the Board issues for most matters (except expropriation) after holding a prehearing conference. For further explanations and meanings of the terms used, see the attachment to this sample order. Note that the Board expects that the terms of the procedural order when issued will be met. If a party has not complied with a requirement of a procedural order, the Board will decide whether or not any part of or step in the proceeding, or any written or visual evidence or order is not valid as a result.

ONTARIO MUNICIPAL BOARD

PROCEDURAL ORDER

This is an appeal (referral)...

OMB Case and File Number:

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on.....,..... (year) at ...a.m./p.m. atin the municipality of[Optional:..An evening session will be held on]

3. The length of the hearing will be aboutdays.

4. The parties and participants identified at the prehearing conference (*see the Attachment for the meaning of these terms*) are: [Optional:...listed in Attachment 1 to this Order.]

5. The Issues are: [Optional:... set out in the Issues List attached as Attachment 2.] There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible (*preferably before the prehearing conference.*) Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

[7]. [Optional] Expert witnesses in the same field shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the municipal Clerk.

[8]. [Optional] A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at leastcalendar days before the hearing.

9. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [12]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.

[10.] [Optional] A [witness] [participant] must provide to the Board and the parties a [witness] [participant] statement at least calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.

11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [12].

12. On or before[a minimum of 30 calendar days before the hearing date], the parties shall provide copies of their [witness and] expert witness statements to the other parties and to the Clerk of

13. [Optional] On or before, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

14. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 7 days after the evidence is received.

15. A person wishing to change written evidence, including witness statements, must make a written motion to the Board.
(see Rules 34 to 38, inclusive, of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.)

16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.

17. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

This Member is [not] seized.

So orders the Board.

ATTACHMENT TO SAMPLE PROCEDURAL ORDER

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800, or from the Board website at www.omb.gov.on.ca.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness'

opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

direct examination by the party presenting the witness;

direct examination by any party of similar interest, in the manner determined by the Board;

cross-examination by parties of opposite interest;

re-examination by the party presenting the witness; or

another order of examination mutually agreed among the parties or directed by the Board.

ATTACHEMENT TO THE RULES

2. ACKNOWLEDGMENT OF EXPERT'S DUTY

Case Number	Municipality

1. My name is.....(*name*)
I live at the(*municipality*)
in the.....(*county or region*)
in the(*province*)
2. I have been engaged by or on behalf of.....(*name of party/parties*) to provide evidence in relation to the above-noted Board proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - c. to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

Signature