



City of Hamilton

GENERAL ISSUES COMMITTEE ADDENDUM

Meeting #: 18-008
Date: April 4, 2018
Time: 9:30 a.m.
Location: Council Chambers, Hamilton City Hall
71 Main Street West

Stephanie Paparella, Legislative Coordinator (905) 546-2424 ext. 3993

Pages

7. STAFF PRESENTATIONS

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| *7.3 | Bill 139, Building Better Communities and Conserving Watersheds Act, 2017 and the new Local Planning Appeal Tribunal (LS16027(d)) (City Wide) | 2 |
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INFORMATION REPORT

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 3, 2018
SUBJECT/REPORT NO:	Bill 139, <i>Building Better Communities and Conserving Watersheds Act, 2017</i> and the new Local Planning Appeal Tribunal LS16027(d) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Joanna Wice, Solicitor x4638
SUBMITTED BY:	Nicole Auty, City Solicitor
SIGNATURE:	

Council Direction:

Not applicable.

Information:

Further to Report LS16027(b), on April 3, 2018, the Ontario Municipal Board reform and *Planning Act* changes made by Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017* were proclaimed to be in force. This Information Report provides a short summary update regarding the resulting changes that were made as well as procedural information that will affect the matters dealt with by Planning Committee.

The Ontario Municipal Board becomes the Local Planning Appeal Tribunal

Bill 139 repeals the *Ontario Municipal Board Act* and replaces it with the *Local Planning Appeal Tribunal Act*. While many of the provisions in this new Act are similar, there are a number of changes related to the powers of the Tribunal and the conduct of those proceedings. Any matters commenced before the Board will continue and be heard by the Tribunal, subject to transition provisions.

Matters no longer subject to appeal

Bill 139 resulted in the removal of a number of different appeal types. For example, where the Minister approves an Official Plan or Official Plan Amendment, that decision will no longer be subject to appeal and the decision of the Minister is final. Also, for Secondary Plan matters, there will be a restriction on applying to amend

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SUBJECT: Bill 139, Building Better Communities and Conserving Watersheds Act, 2017 and the new Local Planning Appeal Tribunal LS16027(d) (City Wide) Page 2 of 4

these Plans before their second anniversary. There are also new limitations on appealing the passage of Interim Control By-laws, although the ability to appeal the extension of time in those by-laws will still be available.

New test for Major Land Use Planning Appeals

Major Land Use Planning Appeals include decision or non-decision appeals of official plans/amendments, zoning by-laws/amendments, and non-decisions of subdivision applications. Appeals related to these matters will be subject to a new “threshold” test, intended to give more weight to Council decisions.

For municipally-initiated matters, the appellant will have to demonstrate that the decision of Council is inconsistent or non-conforming with a relevant provincial policy/plan or, in the case of zoning matters, that it fails to conform with one of our Official Plans.

For privately-initiated matters, the test is twofold: first, the appellant must demonstrate that the existing part of the Official Plan or zoning to be amended is inconsistent or non-conforming with a provincial policy/plan or applicable Official Plan, and secondly, that the requested amendment is consistent and conforming with those documents.

Second decision and second appeal

If the Tribunal finds that an appeal meets the new test, it must send the matter back to the City for a new decision to be made. In that case, Council will need to make a new decision within 90 days. This new decision, as well as a failure to make a new decision within 90 days, is appealable. The second appeal would be subject to the same new test, except where the appeal is filed for non-decision, in which case the new test does not apply.

Process changes

Under the new regime, there are significant changes to the way in which Major Land Use Planning Appeals will be heard. The proposed Rules for the Tribunal would require a significant portion of the City’s case to be filed shortly after the appeal itself is filed. These appeals will now require Case Management Conferences and there are limitations on the hearings themselves. For example, there is a restriction on the admission of evidence and witnesses cannot be called at a hearing or examined in advance. There are also time limits imposed on the

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SUBJECT: Bill 139, Building Better Communities and Conserving Watersheds Act, 2017 and the new Local Planning Appeal Tribunal LS16027(d) (City Wide) Page 3 of 4

submissions by the parties. The new short timeline requirements within which the Tribunal must make its decision will necessitate changes to when and how instructions are given to Legal Services to effectively respond to these appeals.

Matters not subject to the new test/process

This new test and some of these new procedures only apply to Major Land Use Planning Appeals, but other matters remain unchanged (such as minor variance and consent appeals, appeals of subdivision decisions, site plan appeals, etc.). However, all *Planning Act* appeals will be subject to the new time constraints for the issuance of decisions by the Tribunal, as well as the Tribunal's new ruleset.

Non-*Planning Act* appeals will continue to be heard by the Tribunal as they were by the Board, within the same jurisdictions and powers. These include *Expropriations Act* matters, development charge matters, certain *Ontario Heritage Act* appeals, and ward boundary appeals.

Greater consequences for failing to make a decision in time

To assist in allowing municipalities to make decisions in time, Bill 139 made changes to the *Planning Act* which result in an extension in the time periods for decisions to be made (now 210 days for Official Plan matters, 150 for a rezoning application appeal, and 210 days for a rezoning application appeal related to a concurrent Official Plan Amendment).

However, the changes made to the appeals system underscore the importance of Council decisions being made within the new extended time periods. At first instance, the new test applies whether Council has made a decision or not. However, due to the new Rules as well as the time and evidentiary limitations, the evidentiary record to rely on in an appeal will be significantly impacted. Where the City is asked to make a new decision and the City fails to make a decision, the new test intended to give more authority to Council's decision will not apply. The failure to make a decision on a planning matter at either stage will prejudice the City's position and the Council will forego the increased authority resulting from the Bill's changes.

No changes necessary to Statutory Public Meeting procedures

SUBJECT: Bill 139, Building Better Communities and Conserving Watersheds Act, 2017 and the new Local Planning Appeal Tribunal LS16027(d) (City Wide) Page 4 of 4

No changes are recommended to the Planning Committee's procedures for holding statutory public meetings at this time. Although concerns were raised during the legislative process about procedural fairness at municipal council meetings, the government confirmed that the decisions made by municipalities are of a legislative nature and not a judicial one and that there is nothing in the Bill that detracts from that function.

Transition of appeals to the new Tribunal process and powers

The Province has created two transition regulations that govern the change to the new planning appeals regime. While detailed and technical in nature, the transition of appeals will generally mean that the appeals filed prior to April 3, 2018 will be heard under the Board-era process, subject to certain exceptions. One exception that applies to appeals of City-initiated matters, another are appeals where the application was made after December 12, 2017. Generally, appeals filed on or after April 3rd will be heard under the new appeals process and be subject to the new test where applicable. If there are any questions regarding which process to which any specific appeal will be subject, please contact Legal Services for further advice.

Next Steps

Further to this Information Report, Legal Services will be bringing a Report to Planning Committee to update existing practices and procedures for all Planning-related appeals and to obtain updated instructions for these matters.

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BILL 139 AND THE COMING PLANNING APPEAL REFORMS

April 4, 2018

Planning appeal system reforms

- Ontario Municipal Board becomes the Local Planning Appeal Tribunal
- Matters no longer subject to appeal
- New test for certain planning appeals
- New decisions and second appeals
- Process changes in hearings
- Matters not subject to new test or process
- Importance of making decisions in time
- Planning Committee meeting procedures
- Transition of appeals to the Tribunal test/process

Short history of Bill 139

- October 2016 had public consultation
- May 2017 – Bill 139 introduced
- December 12, 2017 – received Royal Assent
- Proclaimed April 3, 2018
- Amends *Planning Act*, creates Support Centre, repeals/replaces *OMB Act*

Faster, fairer and more affordable planning appeals



Local Planning Appeal Tribunal

OMB becomes the LPAT

- Bill 139 repealed the *Ontario Municipal Board Act* and replaced it with the *Local Planning Appeal Tribunal Act, 2017*
- Some authority & powers change, others stay the same
- Any matters commenced before Board continue before Tribunal



Local Planning Appeal Tribunal

Matters no longer subject to appeal

- Cannot apply to amend secondary plan before 2nd anniversary
- No appeal of OP or OPA approved by the approval authority/Minister
- No appeal of interim control by-law passage
 - can still appeal amendment of ICBL for extension
- Other changes were made

The new Tribunal appeal test for certain matters

For Major Land Use Planning decisions:

ONE PART TEST

(for municipally-initiated matters)

Whether decision is inconsistent with a policy statement, fails to conform with or conflicts with a provincial plan or, in the case of the official plan of a lower-tier municipality, fails to conform with applicable official plan.

TWO PART TEST

(for privately-initiated matters)

(a) Whether existing part or parts of the OP/ZBL that would be affected by the amendment are inconsistent with a policy statement, fail to conform with or conflict with a provincial plan or with an applicable official plan, AND

(b) Whether the requested amendment is consistent with a policy statement, conforms with or does not conflict with a provincial plan or, in the case of the official plan of a lower-tier municipality, conforms with an applicable official plan.

The new Tribunal appeal process for major land use planning decisions

- Decision made by Council may be appealed
- Mandatory validation procedure by Tribunal
- All case material due shortly after appeal validated
- Mandatory Case Management Conference
- Hearing – no witnesses, new test applies
- Test met? Council asked for new decision
- 90-day period for Council to make new decision
- A second appeal is possible – test only applies if a decision is made in time

Process changes for hearings

Major land use planning appeals (new Part II process)

- All material for use at the hearing is filed at the outset
- No calling or examining witnesses before a hearing
- No calling or examining witnesses at an oral hearing
- Evidence in Enhanced Municipal Record, Appeal Record and/or Responding Record
- Mandatory Case Management Conferences
- Hearing will be submissions – limited to 75 minutes for parties, 25 minutes for non-parties
- Decisions must be issued within certain timeframes

Matters not subject to process changes for hearings

Other types of planning appeals (similar to old processes)

- Same/similar to current system
- Witnesses still called to give evidence
- Subject to new decision time periods

Non-*Planning Act* appeals remain essentially unchanged, such as:

- *Expropriations Act* matters
- Development charge matters
- Certain *Ontario Heritage Act* appeals
- Ward boundary disputes

Making decisions “in time”

- Very important to make decision in time
 - Significant Council authority lost if appeal for non-decision
 - On appeal, evidence at hearing essentially limited to record
 - In a second appeal scenario, new test would not apply
- Time periods have been extended by Bill 139 (subject to transition):
 - OPA: 180 days becomes 210 days
 - ZBA: 120 days becomes 150 days (no OPA) or 210 days (with OPA)

Statutory public meeting procedures

- At this time, no changes to process/procedures recommended for Planning Committee meetings
- Decision made by Planning Committee & Council is a legislative and not judicial function; this remains unchanged

Transitioning to the new system

Starting April 3, appeals made to LPAT

- OMB no longer exists

OMB “process” may apply to matters appealed before April 3

- Process: appealability/test/rules/powers of decision maker, etc.
- Matter already at the OMB? Will likely continue under that process
- There are exceptions
- There are exceptions of exceptions

Thank you.

Joanna Wice

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