



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- Bill 139 repealed the *Ontario Municipal Board Act* and replaced it with the *Local Planning Appeal Tribunal Act, 2017*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

Questions?

Thank you.

Joanna Wice

Solicitor, Legal Services

905-546-2424 ext. 4638