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## Committee of the Whole Report

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**DATE:** Tuesday, June 05, 2018

**WARD(S):** ALL

**TITLE:** **Bill 139: *Building Better Communities and Conserving Watersheds Act, 2017***

**FROM:**

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Jason Schmidt-Shoukri, Deputy City Manager, Planning and Growth Management

Todd Coles, City Clerk

**ACTION:** FOR INFORMATION

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**Purpose**

To provide an overview of the legislative changes made to the land use planning approval system by Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*, S.O. 2017 C.23, the various *Planning Act* and *Local Planning Appeal Tribunal Act, 2017* regulations related thereto, and the Rules of Practice and Procedure for the newly established Local Planning Appeal Tribunal.

**Recommendations**

1. THAT this report entitled, "*Bill 139: Building Better Communities and Conserving Watersheds Act, 2017*" be RECEIVED;
2. THAT staff continue to assess the need for and adopt new internal procedures in relation to the legislative changes made to the land use planning approval system by Bill 139 to best represent the City; and
3. THAT staff provide a further update with additional recommendations, where necessary, to identify implementation measures related to the amendments

identified in Bill 139, the various regulations related thereto, and the Rules of Practice and Procedure for LPAT by the end of the second quarter of 2019.

### **Report Highlights**

- The Ontario Municipal Board was replaced by the Local Planning Appeal Tribunal on April 3, 2018.
- The changes to the land use planning approval system, effective April 3, 2018, do not necessitate amendments to the City's Procedural By-law and/or to City current processes requiring a formal decision of Council at this time.
- A further report will be submitted for Council consideration in the second quarter of 2019, which shall include, where appropriate, further recommendations with respect to the City's land use planning approval process once the implications of Bill 139 are better understood.

### **Background**

On May 30, 2017, the Province introduced legislation intended to overhaul the Province's land use planning approval system and better preserve the natural environment. That legislation, the *Building Better Communities and Conserving Watersheds Act, 2017* (referred to herein as "**Bill 139**") received Royal Assent on December 12, 2017. The majority of Bill 139 came into effect on April 3, 2018, being the date that the Lieutenant Governor proclaimed various schedules of the Bill into force.

Bill 139 builds on aspects of the recent amendments made to the *Planning Act* pursuant to the enactment of Bill 73 - *Smart Growth for Our Communities Act, 2015* ("**Bill 73**"). A summary of the amendments to the *Planning Act* and the land use planning approval system under Bill 139 are set out within this report.

The amendments significantly change the planning and development approval process for municipalities, the public and applicants. The balance of this report sets out some of the implications of the changes. It is anticipated that more certainty regarding additional implications of Bill 139 will be known in the near future as new cases are heard by the Local Planning Appeal Tribunal (the "**LPAT**" and/or the "**Tribunal**") and there is increased application and interpretation of the new system and regulations.

#### **Planning Act Regulations**

The Province released draft *Planning Act* Regulations on March 5, 2018 to complement Bill 139. The revised and new regulations (which came into effect on April 3, 2018) provide additional guidance and details with respect to the implementation of the amendments, and include the following:

1. Ontario Regulation 174/16 “Transition Matters Relating to the Smart Growth for Our Communities Act, 2015” as amended by Ontario Regulation 67/18 “Transitional Matters – General”;
2. Ontario Regulation 543/06 “Official Plans and Plan Amendments” as amended by Ontario Regulation 68/18;
3. Ontario Regulation 549/06 “Prescribed Time – Subsections 17(44.4), 34(24.4) and 51(52.4) of the Act” as amended by Ontario Regulation 69/18;
4. Ontario Regulation 551/06 “Local Appeal Bodies” as amended by Ontario Regulation 70/18;
5. Ontario Regulation 200/96 “Minor Variance Applications” as amended by Ontario Regulation 71/18;
6. Ontario Regulation 197/96 “Consent Applications” as amended by Ontario Regulation 72/18;
7. Ontario Regulation 545/06 “Zoning By-laws, Holding By-laws and Interim Control By-laws” as amended by Ontario Regulation 73/18;
8. Ontario Regulation 544/06 “Plans of Subdivision” as amended by Ontario Regulation 74/18; and
9. Ontario Regulation 173/16 “Community Planning Permits” as amended by Ontario Regulation 75/18.

#### Local Planning Appeal Tribunal Act, 2017 Regulations

The Province also released regulations pursuant to the *Local Planning Appeal Tribunal Act, 2017* (the “**LPAT Act**”) which came into effect on April 3, 2018. They include the following:

1. Ontario Regulation 101/18 – Transitional Matters; and
2. Ontario Regulation 102/18 – Planning Act Appeals.

#### Local Planning Appeal Tribunal – Rules of Practice and Procedure

The Rules of Practice and Procedure for the LPAT came into effect on April 3, 2018 and were made under section 32 of the *LPAT Act, 2017* and section 25.1 of the *Statutory Powers Procedure Act* (the “**LPAT Rules**”).

### **Previous Reports/Authority**

1. Bill 139 - An Act to enact the *Local Planning Appeal Tribunal Act, 2017* and the *Local Planning Appeal Support Centre Act, 2017* and to amend the *Planning Act*, the *Conservation Authorities Act* and various other Acts, can be found at the following link:  
[http://www.ontla.on.ca/bills/bills-files/41\\_Parliament/Session2/b139ra\\_e.pdf](http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session2/b139ra_e.pdf)
2. *Planning Act*, R.S.O. 1990, c.P.13, revised as per Bill 139, can be found at the following link: <https://www.ontario.ca/laws/statute/90p13>

3. O. Reg. 174/16: TRANSITIONAL MATTERS - GENERAL made under *Planning Act, R.S.O. 1990, c. P.13*, can be found at the following link: <https://www.ontario.ca/laws/regulation/160174>
4. *Local Planning Appeal Tribunal Act, 2017, S.O. 2017, c. 23, Sched. 1*, can be found at the following link: <https://www.ontario.ca/laws/statute/17l23a>
5. O. Reg. 102/18: PLANNING ACT APPEALS made under *Local Planning Appeal Tribunal Act, 2017, S.O. 2017, c. 23, Sched. 1*, can be found at the following link: <https://www.ontario.ca/laws/regulation/180102>
6. O. Reg. 101/18: TRANSITIONAL MATTERS made under *Local Planning Appeal Tribunal Act, 2017, S.O. 2017, c. 23, Sched. 1*, can be found at the following link: <https://www.ontario.ca/laws/regulation/180101>

## **Analysis and Options**

This report represents a joint departmental effort, including the Office of the City Clerk, the Office of the City Solicitor, Development Planning, Policy Planning and Environmental Sustainability, and Financial Services to summarize the changes to the land use planning system and implementation considerations.

### **Local Planning Appeal Tribunal replaces the Ontario Municipal Board**

Bill 139 replaced the OMB with the LPAT on April 3, 2018.

The LPAT's purpose is to carry-out a "check and balance function" with respect to municipal planning decision making. The LPAT's mandate in this regard has changed for specific classes of appeals filed pursuant to the *Planning Act* (see below – mainly official plan and zoning), but is unchanged for appeals of other *Planning Act* appeals (i.e. site plan, consents, minor variances), and other legislation from which LPAT receives jurisdiction (i.e. the *Development Charges Act*, the *Expropriations Act*, and the *Ontario Heritage Act*).

The changes to the legislation with respect to hearings are extensive and require most planning appeals to go through a case management process in which opportunities for settlement must be discussed (a "**Case Management Conference**"), and eliminates, for specific classes of planning appeals, *de novo* hearings. A *de novo* hearing is one where the Tribunal will, in assessing the appeal, look at the merits of the planning application with fresh eyes and make a decision regarding the appealed applications based on the evidence before it, which may be different than the evidence Council had before it in making a decision. While there is an opportunity for participation in a Case Management Conference by persons other than the appellant(s) and the municipality, the legislation that governs the ability to participate has changed, making the ability to participate more

restrictive for specific classes of planning appeals (being appeals filed pursuant to ss. 17(24), 17(36), 17(40), 22(7), 34(11), 34(19) and 51(34) of the *Planning Act*).

At the municipal level, the changes have many implications, which include, but are not limited to, the following:

- A more paper-intensive appeals process affecting various departments from a resource and timing perspective;
  - There may be more consultation and negotiation with stakeholders before a technical staff report is finalized.
  - Office of the City Clerk to file “Enhanced Municipal Record” (see Rule 26.04 of LPAT Rules for definition) for Affected Appeals (see below for definition of Affected Appeals).
  - Office of the City Solicitor (in consultation with Development Planning Department and various other Departments) to file responding materials with respect to Affected Appeals within 20 days of receipt of an Appeal Record (a defined term in the LPAT Rules).
- Applications and supporting documentation to become more comprehensive;
  - These documents will form the basis of an Applicant/Appellant’s case on appeal.
- Staff reports to become even more comprehensive;
  - Staff’s technical report will form the basis of the municipality’s case on appeal.
  - Reports will become more detailed and will require more time to prepare.
  - Comments from external agencies and internal departments will be required in a timelier fashion.
- Longer Council Meetings;
  - As the Council meeting may result in a final decision on applications, questions have arisen as to the potential need to amend the Procedural By-law to enable applicants to respond to the staff report and address Council.
  - Consideration is being given to the need for potential amendments to the Procedural By-law.
- Special Council Meetings;
  - New deadlines for the filing of responding materials (within 20 days of receipt of an Appeal Record) may result in the need for additional Council meetings should instructions be required.
  - There may be a need to call Special Council Meetings to deal with an LPAT appeal.
  - Currently, only the Mayor can call a Special Council Meeting. Consideration should be given to authorizing the City Manager to call a Special Council Meeting if it is related to an LPAT matter.
- Non-Decision Appeals.

## **Planning Act Appeals Most Affected by Bill 139**

As set out above, LPAT's mandate has changed for specific classes of *Planning Act* appeals (the "**Affected Appeals**"). The Affected Appeals are as follows:

1. ss. 17(24) – Appeals of a Council decision to adopt an amendment to an official plan;
2. ss. 17(36) – Appeals of a decision by an approval authority to approve a decision adopting or amending an official plan;
3. ss. 17(40) – Appeals of a non-decision by an approval authority regarding an official plan/official plan amendment;
4. ss. 22(7) – Appeals of a Council decision to refuse a private amendment to an official plan or non-decision of a private official plan amendment application;
5. ss. 34(11) – Appeals of a Council decision to refuse a private amendment to a municipal zoning by-law or non-decision of a private zoning by-law amendment application;
6. ss. 34(19) – Appeals of a decision by Council to adopt a zoning by-law or zoning by-law amendment application; and
7. ss. 51(34) – Appeals of a non-decision regarding a draft plan of subdivision application.

## **Local Planning Appeal Support Centre**

Bill 139 also created the Local Planning Appeal Support Centre (the "**Support Centre**").

The purpose of the Support Centre is to provide free information about the land use planning appeal process, legal and planning advice and in some cases, legal representation, subject to certain criteria. The Support Centre will determine the eligibility criteria, subject to any rules or regulations made under the LPAT Act. As of the time of writing this report, the eligibility criteria for these services have not been made available.

Information about the Support Centre can be found by accessing its website at <https://www.lpasc.ca/>. The Support Centre currently advises, in its frequently asked questions section, that "there is no cost to apply for advice and representation from the centre" and that it does not pay Tribunal application fees. In addition, the Support Centre advises that it will not provide support for appeals filed before April 3, 2018.

## **Changes to the *Planning Act***

The changes to the *Planning Act* are intended to give communities a stronger voice in land use planning matters and to improve access to faster, fairer and more affordable hearings.

### **New limits on appeals of Council decisions to adopt and/or approve an OP/OPA and ZBL/ZBLA's (i.e. ss. 17(24), 17(36) and 34(19) Appeals)**

Appeals to Council decisions regarding adopted or approved official plans ("**OP**"), official plan amendments ("**OPA**"), zoning by-laws ("**ZBL**") and zoning by-law amendments

("ZBLA") are not permitted where those decisions meet a minimum standard of consistency or conformity with applicable policy (including Provincial Policy). Specifically, where a minimum standard has been met, the LPAT does not have the jurisdiction to amend or replace a Council decision. The grounds upon which adopted or approved OPs, OPAs, ZBLs and ZBLAs can be appealed to the LPAT are limited to the following:

- An OP or OPA can only be appealed on the basis that the plan or amendment is inconsistent with the Provincial Policy Statement, fails to conform or conflicts with a Provincial Plan, or, in the case of an OP of a lower-tier municipality like Vaughan, fails to conform to the upper-tier municipality's OP.
- A ZBL or ZBLA can only be appealed on the basis that it is inconsistent with the Provincial Policy Statement, fails to conform or conflicts with a Provincial Plan, or fails to conform to the municipality's OP.

This new standard of review is commonly referred to as the "**Consistency/Conformity Test**"). As referenced above, the LPAT is under a statutory obligation to dismiss any appeal that fails to satisfy this new standard of review.

Where it is determined that the OP/OPA and/or ZBL/ZBLA is inconsistent or lacks conformity with provincial policies or official plans (i.e. fails the Consistency/Conformity Test), the LPAT is required to send the matter back to Council, allowing Council the opportunity to make a new decision within 90 days. That second decision (or failure to make a decision within the 90 days) may be appealed to the LPAT, but only on the basis of inconsistency or non-conformity as set out above (the "Second Appeal"). Where the LPAT determines through the Second Appeal that the second decision (or non-decision) fails the Consistency/Conformity Test, it can then modify the decision of Council and/or make any decision that Council could have made.

New limits on appeals from a refusal of or a failure to adopt a privately initiated OPA or ZBLA (i.e. ss. 22(7) and 34(11) appeals) and Council's ability to have a second chance at making a decision.

Appeals regarding Council's refusal of an application to amend an OP or ZBL, or the failure of Council to make a decision regarding such applications, are similarly limited via the amendments to the *Planning Act*.

The grounds upon which a refusal of an application to amend an OP or ZBL, or the failure to decide within the required timeframes (commonly referred to as "**Non-Decision Appeals**"), can be appealed is limited to the following situations:

- The existing part of the OP or ZBL to be amended is inconsistent with the Provincial Policy Statement, fails to conform or conflicts with a Provincial Plan, or fails to conform with applicable OPs; and
- The proposed amendment is consistent with the Provincial Policy Statement, conforms or does not conflict with all Provincial Plans, and conforms with all applicable OPs.

In recognition that the foregoing standard has a two-part aspect to it, it is commonly referred to as the “**Dual Appeal Test**”. When filing such an appeal, it is incumbent on the Appellant to first explain how the existing policies or provisions of an OP or ZBL fail the new standard of review, and secondly to explain how the requested amendment satisfies the new standard of review. As is the case in the examples referenced above, the LPAT is under a statutory obligation to dismiss any appeal that fails to satisfy the Dual Appeal Test.

If an Appellant satisfies the Dual Appeal Test, the LPAT will remit the appealed matter back to Council for further consideration. That decision of Council is required to be made within 90 days, and said decision (or non-decision of Council) may be appealed to the LPAT, but only because of inconsistency or non-conformity. This Second Appeal constitutes a new appeal, and where the LPAT determines that the second decision (or non-decision) is inconsistent or not in conformity, it may modify the decision of Council or make its own decision.

Appeals from an Approval Authority’s failure to give notice of a decision on an adopted OPA or a refusal to approve a Draft Plan of Subdivision application (i.e. section 17(40) and 51(34) appeals)

Appeals from an Approval Authority’s failure to give notice of a decision on an adopted OPA (ss. 17(40) appeal) and a refusal to approve a Draft Plan of Subdivision (ss. 51(34) appeal) are not limited in the same way as the other Affected Appeals. Specifically, the LPAT is not required to apply the “Consistency/Conformity Test” or the “Dual Appeal Test” in its review of these non-decision appeals. In considering these appeals, the LPAT may approve, modify, or deny the applications in the same way that the municipality could have. There is no opportunity for a “Second Appeal” of the LPAT’s decision in this regard.

Extension of time to make municipal decisions

Bill 139 also extends the timelines for a municipal Council to decide on an application before an appeal can be filed by 30 days, to 210 days for an OPA and 150 days for a ZBLA. This portion of Bill 139 came into effect as of the date of Royal Assent, being December 12, 2017.

Related OPA and ZBLA applications concurrently filed are subject to appeal after 210 days.

These Bill 139 amendments build on recent amendments made to the *Planning Act* through Bill 73 for approval timelines for OPs and OPAs. The time period for deciding may now be extended in the following circumstances:

- In the case of a site specific OPA requested under section 22 of the *Planning Act*, the person or public body that made the request may extend the period for up to 90 days by written notice to the Approval Authority.
- In all other cases, the municipality may extend the period for up to 90 days by written notice to the Approval Authority.



In both cases, the notice must be given before the expiry of the existing statutory timeframe, and only one extension is permitted. If both sides give notice extending the period, the notice that is given first governs.

#### New Protections for Major Transit Station Areas

Bill 139 introduces protections for “Major Transit Station Areas” in the *Planning Act*, allowing upper-tier municipalities to delineate these areas in their OPs around existing or planned higher order transit stations and stops. Where a municipality identifies such areas, it is required to adopt OP policies that establish: minimum densities measured in persons and jobs per hectare; minimum densities for buildings and structures; and authorized uses.

There is no right to appeal these plans and policies, and applications to amend an OP respecting the policies are only permitted with Council approval. The Council of a lower-tier municipality is required to amend its OP within one year of the upper-tier municipality’s approval to protect for the Major Transit Station Areas in a way that conforms to the upper-tier municipality’s plan, and where it does not do so, the upper-tier municipality shall unilaterally impose policies on the lower-tier.

In addition, no appeals will be permitted of a zoning by-law respecting a protected Major Transit Station Area including specifications setting density and building heights within such areas.

#### Secondary Plans - Two-Year Moratorium

Bill 139 has introduced a two-year moratorium with respect to applications to amend a new Secondary Plan, unless Council adopts a resolution otherwise. This Bill 139 amendment builds on recent amendments made to the *Planning Act* via Bill 73 which introduced similar two-year moratoriums with respect to applications to amend a new OP, a new comprehensive ZBL, or applications to vary a site-specific ZBLA.

#### Appeals to interim control by-laws are not permitted in the first year

Bill 139 prohibits the appeal of an interim control by-law, but does permit appeals by the Minister and appeals regarding extensions of an interim control by-law beyond the first-year.

#### Climate change policies are to be included in municipal Official Plans

Bill 139 requires all OPs to contain policies “that identify goals, objectives and actions to mitigate greenhouse gas emissions and to provide for adaptation to a changing climate, including through resiliency.”

#### Affordable housing policies are to be included in Official Plans

The Bill requires all OPs to contain “such policies and measures as are practicable to ensure the adequate provision of affordable housing.”

### Expansion of Local Appeal Body jurisdiction

Site plan appeals, and motions for directions related to site plan control areas are added to the list of matters that may be determined by a local appeal body, as would motions for directions related to consents. A local appeal body has not been established for the City and therefore site plan appeals remain within the jurisdiction of the LPAT.

### There are no appeals of Official Plans approved by the Minister and of Minister's Zoning Orders

The amendments to the *Planning Act* remove the right to appeal OPs or OPAs where the Minister is the Approval Authority. In addition, there is no appeal of a Minister's Zoning Order.

The Bill 139 amendments build on recent amendments made to the *Planning Act* through Bill 73 (which became effective July 1, 2016) which bar appeals of any OP or OPA that is implementing a specific provincial approval. Specifically, subsections 17(24.4), (24.5) and (36.4) of the *Planning Act* state that there is no appeal in respect of a part of an OP that is identifying lands as being within the boundary of areas such as the Greenbelt Plan area or the Oak Ridges Moraine Plan area. Also exempt from appeal are portions of an OP that identify boundaries of an area of settlement or identify forecasted population and employment growth as set out in the Growth Plan.

### Limits on evidence to be permitted in LPAT hearings

Bill 139 prohibits oral evidence at first instance hearings before the LPAT on OP and zoning matters where a decision of Council was rendered. While parties will be allowed to make submissions at the first hearing, they will not be allowed to adduce any evidence or call any witnesses (unless the LPAT panel wishes to receive such evidence). This general prohibition also applies to appeals from an approval authority's failure to decide on an OP, ZBL or Draft Plan of Subdivision.

Further details with respect to the limits on evidence to be permitted in a hearing, and at first instance hearings specifically, are contained in Ontario Regulation 102/18 made under the *LPAT Act* and the LPAT Rules, which are summarized further in this report. Parties are permitted to introduce evidence and call witnesses in the context of a Second Appeal, which as referenced above, would only occur after Council has been given a further opportunity to make a decision.

### Limits on who may participate in LPAT hearings

Bill 139 also places limits on who may participate in a hearing before the LPAT on OP and zoning matters. In instances where Council has rendered a decision regarding an OP, OPA, ZBL and ZBLA, and in instances where there is a non-decision regarding an OPA and ZBLA, a person wishing to participate in a hearing (other than a municipality/Approval Authority, or Appellant) must make a written submission to LPAT 30 days prior to the mandatory Case Management Conference (similar to a Prehearing Conference), indicating whether the Council decision or Non-Decision Appeal satisfies

the new standard of review. The Tribunal may determine from the written submissions whether the person may participate in the said appeal as an additional party, or otherwise participate “on such terms” as the Tribunal may determine.

With respect to Non-Decision Appeals regarding OPs and Draft Plans of Subdivision, a person wishing to participate must make a written submission to the Tribunal 30 days prior to the mandatory Case Management Conference. If the Tribunal holds an oral hearing with respect to the appeal, only the parties, and such persons identified by the Tribunal may participate.

As set out later in this report, a Party’s oral submission is restricted to 75 minutes. Persons, other than parties, who make oral submissions are restricted to 25 minutes.

## **Changes to the Regulations made under the *Planning Act***

### **Transition**

The new and amended Regulations made under the *Planning Act* provide additional guidance and details with respect to the implementation of the Bill 139 amendments. Ontario Regulation 174/16, as amended, (the “**PA Transition Regulation**”) governs which appeals are transitioned from the application of the Bill 139 amendments to the *Planning Act*. Generally, appeals filed before April 3, 2018 are not subject to the Bill 139 amendments. There are exceptions. For example, an OPA or ZBLA application received after December 12, 2017 but appealed before April 3, 2018 is subject to the new rules, as are municipally initiated OPAs that were adopted after December 12, 2017.

For ease of reference, appended to this report is a chart identifying the rules for transition as per the PA Transition Regulation (Attachment 1).

The extended timelines for municipal decisions on applications applies to complete applications made after December 12, 2017.

## **Regulations made under the *Local Planning Appeal Tribunal Act, 2017***

There are two regulations made under the *LPAT Act*. The first addresses transition, and the second addresses timelines for *Planning Act* appeals and various matters related to the new hearing structure for identified classes of *Planning Act* appeals.

### **Transition**

Ontario Regulation 101/18 (the “**LPAT Transition Regulation**”) provides for the transition of OMB matters that commenced before April 3, 2018 to continue to be processed by the Tribunal in accordance with the old regime. Specifically, Section 1 of the LPAT Transition Regulation stipulates that, generally, a matter that commenced before April 3, 2018 shall be continued and disposed of by the Tribunal in accordance with the prior legislation (the *Ontario Municipal Board Act*) as it read on April 2, 2018. There are several exceptions to

this general rule for appeals filed under the following subsections of the *Planning Act*: 17(24), 17(36), 22(7), 34(11), and 34(19) (being appeals of official plan and zoning matters).

### Timelines for Disposition of Appeals

Ontario Regulation 102/18 (the “**Planning Act Appeals Regulation**”) provides timelines for which *Planning Act* appeals must be “disposed of” by the Tribunal. Pursuant to the *Planning Act Appeals Regulation*, the LPAT is required to decide every appealed matter under the *Planning Act* within statutorily mandated timelines, being 12, 10 and 6 months. The LPAT Rules include provisions to facilitate the commencement, postponement, and resumption of the “timelines”. As an example, the timeline for which an appeal must be decided does not begin until the LPAT has confirmed the validity of an appeal, and part of that examination includes, for the Affected Appeals, whether the appeal includes, an explanation regarding the new standard of review, where required.

The following is a break-down of the statutorily-mandated timelines for which the LPAT is required to issue a decision on an appealed matter:

1. 12 months – Non-decision Appeals regarding an OP or Draft Plan of Subdivision (ss. 17(40) and 51(34) appeals);
2. 10 months – First Appeals regarding OPs, OPAs, ZBLs and ZBLAs (ss. 17(24), 17(36) and 34(19) appeals); and
3. 6 months – Second Appeals (being matters that were sent back to the municipality for a new decision after consideration of a First Appeal) and all other *Planning Act* appeals.

There is an ability to “pause” these timelines in the case of an adjournment of the proceedings for the purposes of mediation (provided there is consent), or where it is necessary, in the Tribunal’s opinion, “to secure a fair and just determination of the appeal.”

### Limits on Oral Submissions

The *Planning Act Appeals Regulation* also imposes a time limit on oral submissions to the Tribunal. The time limits on oral submissions apply to the First Appeals of the Affected Appeals, including OP, OPA, ZBL, ZBLA and the Draft Plan of Subdivision non-decisions. The time limits on oral submissions do not apply to Second Appeals, nor do they apply to any other appeal (ex. minor variance, site plan, etc.). Specifically, oral submissions made by a party are restricted to 75 minutes, and oral submissions of a non-party are restricted to 25 minutes. It may be that the time limits on oral submissions are further restricted by the Tribunal so that like parties and/or non-parties are required to share the limit. This is

something that will likely be addressed by the Tribunal members on a case by case basis through the Case Management Conferences.

### Limits on Evidence

Bill 139 introduced a restriction on the ability of a party or person to adduce evidence or call or examine a witness at a First Appeal of the Affected Appeal. The *Planning Act* Appeals Regulation adds to this restriction and prohibits a party or person from calling or examining a witness prior to the hearing of such appeals, building upon the rule that provides that only LPAT may call a witness and receive evidence through a witness as part of a First Appeal.

### **Rules of Practice and Procedure for the LPAT**

The new LPAT Rules are divided into three parts. The Part I rules apply to all proceedings before the Tribunal. The Part II rules provide extra direction with respect to the Affected Appeals and govern the new First Appeal process under the *Planning Act*. The Part III rules provide extra direction on appeals under the *Expropriations Act*, and will not be reviewed as part of this report.

#### Part 1 Rules

While in some ways the new LPAT Rules are similar to the OMB's Rules of Practice and Procedure, many of the rules are entirely new. For example, the following concepts are new: Notice of Commencement, Notice of Postponement and Notice of Resumption. These concepts all relate to the timelines for which *Planning Act* appeals must be disposed of by the Tribunal.

The new LPAT Rules also include requirements with respect to the content of the Municipal Record. In addition to forwarding to the LPAT "all prescribed information and material" provided for in the regulation applicable to the appeal, Rule 5.04 provides that the municipality or approval authority also forward the following:

1. Paper copy of all written submissions either received or considered, or documents and reports prepared or filed, in relation to the decision, refusal or non-decision that has been appealed.
2. An affidavit from an employee with a summary of the oral submissions which were received from the public at the statutory public meeting, if applicable, relating to the planning matter that is subject of the appeal, and any other document referenced in the submission form set out in Rule 5.02.
3. Include, where available, a device upon which is stored the video and audio record for each public session at which oral submissions were made to the

Council/Approval Authority regarding the application, together with a list of the names of the persons who made the submissions, a summary of the nature of each submission and the time on the recording where the submission begins.

This new rule obligates the municipality to provide a more fulsome record to the Tribunal in respect of an appeal. As a result of this new rule, the Office of the City Clerk will be maintaining video and audio recordings of public sessions where oral submissions are made with respect to planning applications.

Rule 8.03 also has implications with respect to hearings of planning matters before the Tribunal. Specifically, the rule provides that a party who is granted party status by the Tribunal but is not an appellant in a proceeding, may not raise or introduce new issues in the proceeding. A Non-Appellant party may only participate in the proceeding by sheltering under an issue raised in an appeal by an appellant party and may participate fully in the proceeding to the extent that issue remains in dispute.

## Part II Rules

The Part II Rules only apply to the Affected Appeals, being those appeals initiated under any of subsections 17(24), (36) and (40), 22(7), 34(11) and (19) and 51(34) of the *Planning Act*. Generally, the Part I Rules also apply to the Affected Appeals, but there are several exceptions.

There are many definitions contained within the Part II Rules which are applicable to proceedings under Part II only. One such definition is for a “New Decision” which “means the disposition of the municipality or the approval authority in respect of an appeal authorized under subsection 17(24), 17(36), 22(7), 34(11) and 34(19) of the *Planning Act* for which the municipality or approval authority was provided an opportunity to reconsider its decision or non-decision following a hearing by the Tribunal and Order to remit the matter to the municipality.”

Building upon Rule 5.04, Rule 26.04 dictates that Affected Appeals are subject to an “Enhanced Municipal Record” requirement.

## The Filing of an Appeal Record

As part of the new hearing process for the Affected Appeals, the Tribunal requires that following the Tribunal’s determination that an appeal is valid, that the Appellant shall, within 20 days of receipt of notice from the Tribunal, file an appeal record and case synopsis. There are specific minimum requirements for what the appeal record should include, and specific requirements for what shall be included in the case synopsis. One

of the specific requirements is that the appeal record contain an affidavit which sets out the material facts associated with the application. An appeal record may also contain, in the event on an appeal of a non-decision of Council, any documents or reports which update the application that is the subject of the appeal.

### Responding Appeal Records

If a municipality or approval authority intends to serve and file responding material, it is required to advise the Tribunal in writing, within 10 days of its receipt of the appeal record. Where a municipality or an approval authority, or both elect to file responding materials, each is required to serve/file it within 20 days of receipt of the appeal record. This presents an issue from both a timing perspective and a resource perspective. Standing instructions are required to authorize confirmation of intention to file responding materials.

Responding appeal records should be filed when the municipality or approval authority is of the opinion that the Appellant's appeal record is incomplete, and shall include an affidavit of a person or persons setting out the material facts associated with the appeal, and where the person can be qualified to offer opinion evidence on a matter, that person's opinion with respect to the issues raised by the Appellant, in relation to the appeal of the decision or non-decision.

Responding case synopsis are required to be prepared irrespective of whether a responding appeal record is filed, and the contents of such materials are as set out in the rules.

### Case Management Conferences

The notice period for Case Management Conferences shall be 75 days. Participation in a Case Management Conference by a person other than the Appellant, municipality or approval authority with respect to Affected Appeals is limited. As set out earlier in this report, there is a requirement to file a written submission with the Registrar, at least 30 days before the date of the Case Management Conference, and that submission shall include an explanation of the nature of interest in the matter and how participation will assist the Tribunal in determining the issues in the proceeding. In addition, a person wishing to participate shall also explain whether the decision or non-decision of the municipality was inconsistent with a policy statement under subsection 3(1) of the *Planning Act*, fails to conform with or conflicts with a Provincial Plan, or fails to conform with an applicable OP.

The Tribunal may direct the Appellant, municipality or approval authority to participate in a Case Management Conference with respect to an Affected Appeal. Case Management

Conferences may include settlement conferences, motions or preliminary hearing matters. There are several things that can be achieved at a Case Management Conference.

#### Attendance of a Witness at LPAT Hearings

The Tribunal may require the attendance of a witness at a hearing if person's affidavit or declaration formed part of the appeal record or the responding appeal record, or whose report or submission formed part of any record filed, and the Tribunal may examine any such person. The Tribunal may also require that any party provide documentation that the Tribunal may find relevant, and to appear before the Tribunal to answer any questions related to that documentation.

#### First Appeal Decisions Issued by the LPAT

Rule 27 applies specifically to the Tribunals' determination and remission of decision to municipal Council/Approval Authority regarding appeals filed under subsection 17(24), 17(36), 22(7), 34(11) and 34(19) of the *Planning Act*. The Tribunal will, in issuing a decision with respect to the First Appeal, include specific findings regarding the Consistency/Conformity Test, and may identify one or more options to remedy the inconsistency, conflict or lack of conformity.

#### **Financial Impact**

The Bill 139 amendments will likely result in several financial implications for the City. Some may be minor in nature, while others may be more significant. It is difficult to estimate the implications at this time, and accordingly, staff have not quantified the impacts. Should additional resources be required, they may be identified through the next budget process. Specific needs may be better identified once the City has more experience with the new system.

#### **Broader Regional Impacts/Considerations**

The changes to the land use approval system have an impact on the Region of York. In some instances, the Region is the approval authority for land use approvals initiated by the City, and/or by private landowners. In other instances, the Region is a commenting agency which has an interest in a land use planning application, and its comments are required to establish a City position with respect to the application. Staff will continue to work with its Regional partner to respond to the legislative changes introduced by Bill 139 to best position the City and the Region in any future appeals.



## **Conclusion**

Bill 139 has introduced significant changes to the land use approval system in the Province that impacts all stakeholders. Staff will continue to monitor the impacts of such changes and adopt new internal procedures to best position the City to address appeals.

A further report will be forwarded to Council for the second quarter of 2019, which shall include, where appropriate, further recommendations with respect to land use planning within the City once the implications of the Bill 139 changes to the land use planning approval system are better understood.

For more information, please contact: Effie Lidakis, Legal Counsel, extension 8385

## **Attachments**

1. Chart – Summary of the Transition Rules under the *Planning Act*

## **Prepared by**

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**Summary of the Transition Rules under the *Planning Act***

Amendments to Ontario Regulation 174/16 set out rules for transition related to the Bill 139 changes as identified in the table below.

<b>Planning Act Change</b>	<b>Transition Rule (O. Reg. 174/16)</b>
<p><b>No appeal of major provincial decisions</b></p> <p>Remove ability to appeal provincial decisions on official plans and official plan updates, including conformity exercises</p>	<p>Applies to provincial decisions on official plans and official plan updates where notice of decision is given after April 3, 2018</p>
<p><b>Minister's Zoning Orders</b></p> <p>Remove mandatory referrals of Minister's Zoning Orders to the Tribunal</p>	<p>Applies to requests for referral made after April 3, 2018</p>
<p><b>Consistency / conformity standard</b></p> <p>Restrict grounds of appeal (on official plans, official plan amendments, zoning by-laws and zoning by-law amendments) to matters of consistency and/or conformity with provincial and/or local plans and policies</p>	<p>Consistency/conformity standard of review applies to:</p> <p><b>Appeals of decisions</b></p> <ul style="list-style-type: none"> <li>• appeals of decisions for which notice is given after April 3, 2018 (i.e., appeals made during appeal periods that begin after proclamation); and</li> <li>• appeals of decisions made before April 3, 2018 in respect of: <ul style="list-style-type: none"> <li>○ complete applications made after December 12, 2017</li> <li>○ municipally-initiated official plan amendments that are adopted after December 12, 2017</li> <li>○ municipally-initiated zoning by-law amendments that are passed after December 12, 2017</li> </ul> </li> </ul> <p><b>Non-decision appeals</b></p> <ul style="list-style-type: none"> <li>• appeals of non-decisions made after April 3, 2018; and</li> <li>• appeals of non-decisions made before April 3, 2018 in respect of complete applications made after December 12, 2017</li> </ul>

<p><b>Longer decision timelines for municipal decisions on applications</b></p> <p>Extend decision-making timelines for official plans, official plan amendments and zoning by-law amendments by:</p> <ul style="list-style-type: none"> <li>• Official plan and amendments from 180 to 210 days</li> <li>• Zoning by-law amendments from 120 to 150 days</li> </ul> <p>Concurrent official plan amendment and zoning by-law amendment application for the same proposal (joint applications) – 210 days</p>	<p>Applies to complete applications made after December 12, 2017</p>
<p><b>Longer decision timelines for approval authorities</b></p> <p>Extend decision-making timelines from 180 to 210 days for approval authorities on adopted official plans/amendments</p>	<p>Applies to official plans/amendments adopted after December 12, 2017</p>
<p><b>2-year timeout – new secondary plans</b></p> <p>No applications to amend new secondary plans for two years, unless permitted by municipal council</p>	<p>Applies to applications for amendments to secondary plans that come into effect after April 3, 2018</p>
<p><b>Interim control by-laws</b></p> <p>No appeal of municipal interim control by-laws when first passed</p>	<p>Applies to decisions made after April 3, 2018</p>