



MEMO / NOTE DE SERVICE

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TO: Chair and Members of Planning Committee

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FILE NUMBER: ACS2017-PIE-PS-0130

SUBJECT: **BILL 139 – ONTARIO MUNICIPAL BOARD REFORM**

OBJET : **PROJET DE LOI 139 – RÉFORME DE LA COMMISSION DES AFFAIRES
MUNICIPALES DE L'ONTARIO**

This memo is to update Planning Committee with respect to Ontario Municipal Board reform.

Bill 139, The Building Better Communities and Conserving Watersheds Act, 2017 was introduced into the Ontario Legislature on May 30, 2017. The bill proposes to enact three substantive pieces of legislation:

- Local Planning Appeal Tribunal Act, 2017
- Local Planning Appeal Support Centre Act, 2017
- Amendments to the *Conservation Authorities Act*

as well as consequential amendments to other legislation such as the *Planning Act*. At the time of the writing of this memo, the Bill has been referred to the Standing Committee on Social Policy.

Summary of Proposed Legislative Changes

Local Planning Appeal Tribunal Act

The Local Planning Appeal Tribunal Act (the “proposed legislation”) will replace the *Ontario Municipal Board Act* (the “current Act”). Many of the provisions of the current Act are continued in the proposed legislation. However, whereas a case management conference (currently referred to as a pre-hearing conference) is optional at present, under the proposed legislation it would be mandatory for almost all appeals regarding official plans or zoning by-laws and certain appeals with respect to subdivisions.

Local Planning Appeal Support Centre Act, 2017

Schedule 2 to Bill 139 would set up the Local Planning Appeal Support Centre, an independent agency of the Government of Ontario. The goals of the Centre are to provide:

1. Information on land use planning.
2. Guidance on Tribunal procedures.
3. Advice or representation.
4. Any other services prescribed by the regulation

The Centre is to ensure that its services are available throughout the Province. Subject to any rules prescribed by regulation, the Centre is to develop criteria governing eligibility for its services.

Amendments to the *Planning Act*

The most significant amendments to the *Planning Act* limit the basis for appealing official plans, official plan amendments and zoning by-law amendments, and, where such amendments are appealed, together with new provisions in the proposed Local Planning Appeal Tribunal Act, introduce a revised one or two step process for dealing with such appeals.

In respect of comprehensive official plans or official plan amendments, in which case the approval authority is the Minister of Municipal Affairs, there is no right of appeal. This would apply equally to third parties seeking to appeal a decision with respect to the City's Official Plan as it would apply to the City itself where Council was in disagreement with a modification proposed by the Minister.

A second major change is with respect to the process and tests for official plan and zoning appeals. In respect of official plan appeals, such will be limited to whether or not the amendment is consistent with the provincial policy statement. For zoning appeals, the test is two-fold, consistency with the provincial policy statement and conformity with the official plan.

Where an appeal is filed, after the case management conference the Tribunal will hold a hearing, where no witnesses are called or evidence adduced, to determine whether the tests have been met. If the official plan or zoning amendment is consistent with the provincial policy statement and, in the case of a zoning amendment, it conforms to the official plan, the appeal will be dismissed. If the amendment is found not to meet these tests, the matter is remitted to the Council of the municipality to permit the Council to make a new decision within 90 days. Where Council does not enact a new amendment within the 90 days, or where the appellant is of the view that any amendment is not consistent with the Provincial Policy Statement, or where applicable, does not conform to the Official Plan, a second right of appeal exists. It is staff's understanding that at the second hearing, witnesses and evidence can be introduced.

Conservation Authorities Act

A number of amendments are proposed to be made to the *Conservation Authorities Act*. Significant changes include:

1. The process by which a municipality can request all or a portion of its land to be added to the jurisdiction of a conservation authority is revised to simplify the voting requirements.
2. The process for amalgamating two or more conservation authorities is revised. Ministerial approval is now required.
3. Capital costs are to be apportioned by the conservation authority, subject to the right of appeal by the participating municipalities.
4. The annual operating costs of the conservation authority is to be determined in accordance with the regulations, subject to the right of appeal.
5. The current Act provides that actions with respect to watercourses, wetlands and hazard lands can be regulated by the conservation authorities. The proposed

revisions provide that any actions with respect to such watercourses or lands are prohibited unless permitted by the regulations or a permit is issued by the conservation authority. A right of appeal to the Minister exists where an applicant is refused a permit or the applicant objects to conditions attached to the permit.

Accessibility-Regional Offices

As noted above, the proposed Local Planning Appeal Support Centre Act, 2017 provides that the services of the Centre are to be available throughout the Province. Staff support this mandate to provide that the services of the Centre can be readily accessed by residents of Ottawa as well as other areas of the Province. Staff intended to also encourage the Province to consider the creation of Regional Offices of the Local Planning Appeal Tribunal. A Regional Office with regionally based Members would ensure such Members were able to acquire a familiarity with the Official Plans and zoning by-laws of the municipalities within the regional. It would also ensure that they had availability to Tribunal staff in the Region in which they are presiding.

Future Amendments

The Building Better Communities and Conserving Watersheds Act, 2017, Bill 139, in respect of its proposed amendments to the *Planning Act* does not contain changes to what zoning by-laws may address. When Council enacted the Zoning By-law to implement Infill 1 in 2012, an appeal was received challenging the jurisdiction of Council with respect to several of the matters addressed in the by-law. While a settlement was ultimately reached with respect to Infill 1, it is the view of Planning staff the additional authority should be granted to municipalities with respect to the ability of a municipality to zone with respect to built form beyond the standard provisions of setback, stepback, floor space index, gross floor area and height.

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