

Ministry of the Attorney General

Building Better Communities and Conserving Watersheds Act, 2017

Overview of Changes to the Land Use Planning and Appeal System

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Ontario Municipal Board (OMB) Review

- In the Spring of 2016, the government launched a review of the scope and effectiveness of the OMB.
- A public consultation document was released in the Fall of 2016. It set out possible changes in key areas that the government was considering and invited feedback.
- Over 1,100 Ontarians sent in written comments, and over 700 Ontarians participated in 12 Regional Public Town Halls – Newmarket, Clarington, Hamilton, Windsor, London, Guelph, Oakville, Sudbury, Ottawa, Toronto, Mississauga and Thunder Bay.
- During the consultation, a broad range of views were expressed:
 - There was general support for undertaking a review of Board's scope and effectiveness;
 - Many Ontarians said that too many land use decisions are appealed, which has resulted in costly hearings and delays;
 - There was widespread belief that there needs to be more respect and deference to municipal decisions;
 - Community groups felt that it was difficult to participate in the appeal process and that they did not have the knowledge or resources to meaningfully participate; and
 - We also heard that hearings are too long and more should be done to reduce the adversarial nature of hearings, including increasing the use of mediation.

Building Better Communities and Conserving Watersheds Act, 2017 (Bill 139)

- On April 3, 2018, the Building Better Communities and Conserving Watersheds Act, 2017 (Bill 139) will replace the Ontario Municipal Board Act with the Local Planning Appeal Tribunal Act (the Act), amend the Planning Act and various other statutes, and establish the Local Planning Appeal Support Centre (LPASC or the Support Centre).

Intended Outcome:

Create a balanced decision-making process that is more predictable, faster and less costly, and can help ensure that cities and towns reflect the best interests of the people living in them today, as well as future generation by fostering community-inspired development.

- The reforms will transform the land use planning appeals system by:
 - Establishing the Local Planning Appeal Tribunal (LPAT or the Tribunal) as the province-wide appeal body for land use planning matters;
 - Improving the hearing process at the Tribunal;
 - Establishing the LPASC to provide legal and planning support to Ontarians who want to participate in proceedings before the Tribunal;
 - Limiting the Tribunal's ability to overturn municipal decisions that adhere to municipal official plans, provincial plans, and the Provincial Policy Statement;
 - Giving municipalities greater control over local planning, resulting in fewer decisions being appealed; and
 - Sheltering major planning decisions from appeal.

Key Areas of Change

- **Planning Act**
- **Local Planning Appeal Tribunal – Modernizing Processes and Reducing Adversarial Hearings**
 - Establishing the LPAT as the province-wide body for land use planning matters.
 - Introducing mandatory case management conference process.
 - Changing requirements for oral testimony and evidentiary record.
 - Promoting active adjudication.
- **Supporting Citizens**
 - Establishing the LPASC as a new independent agency under the *Local Planning Appeal Support Centre Act, 2017*.
 - Creating user-friendly websites for LPAT and LPASC.
 - Making LPAT decisions publicly-accessible.
- **Enacting Complementary Regulations**

Building Better Communities and Conserving Watersheds Act, 2017

PLANNING ACT CHANGES

Key Areas of Change

Strong Community Voice

- Consistency / Conformity Standard

More Municipal Control

- Two-Year “Time-Out” – New Secondary Plans
- No Appeal of Interim Control By-laws When First Passed
- More Authority for Local Appeal Bodies (LABs)
- Longer Decision Timelines
- Protected Major Transit Station Area (PMTSA)

Protecting Public Interests

- No Appeal of Major Provincial Decisions
- Climate Change
- Affordable Housing

Consistency / Conformity Standard

Restrict appeal grounds for official plans and zoning by-laws to only matters of consistency and conformity with provincial and/or municipal policies/plans.

Intended Outcomes

- Increase deference to municipal decisions.
- Create greater certainty for residents, communities, and developers by exempting a broader range of major land-use planning decisions from appeal.

Key Details

- Onus is on appellant to set out reasons why council decision is inconsistent / does not conform with provincial policy and / or applicable official plan.
- For appeals of a non-decision or a refusal, onus is on the applicant to demonstrate: (1) how their proposal would be consistent with provincial and local policies and (2) how existing official plan policies or zoning provisions fall short.
- LPAT has authority to approve a settlement to which all specified parties have agreed – LPAT is required to confirm that any such settlement aligns with provincial and local policies / plans.

Consistency / Conformity Standard: Opportunity to Reconsider (Remedial Authority)

Requirement to return matter to municipality for new decision if LPAT determines that municipal decision / settlement on a major land use planning matter does not meet the consistency / conformity test.

Intended Outcomes

- Give communities a stronger voice in development by affording greater weight to the decisions of local communities and governments, while ensuring that development and growth occurs in a way that is good for Ontario and its future.
- Provide municipalities an opportunity to reassess their original decision and address any shortcomings.

Key Details

- Municipality has opportunity to address local matters in making a new decision.
- If a matter is returned, municipality has up to 90 days to issue a new decision.

Two-Year “Timeout” – New Secondary Plans

- Cannot apply to amend new secondary plans for two years, unless amendment is municipally-supported.

No appeal of Interim Control By-Laws (ICBLS) When First Passed

- No appeal of municipal interim control by-laws when first passed (except by Province).

More Authority for LABs

- Authority of local appeal bodies (LABs) expanded to include adjudicating appeals related to site plans.

Longer Decision Timelines

Decision timelines extended for official plans, official plan amendments and zoning by-law amendments.

Key Details

- Timelines extended by 30 days:
 - official plans and official plan amendments - 210 days; and
 - zoning by-law amendments and holding by-laws - 150 days.
- Decision timeline is 210 days where there are concurrent official plan amendment and zoning by-law amendment applications to a local municipality for the same proposal (joint applications).

Protected Major Transit Station Areas (PMTSAs)

New municipal tool to support transit infrastructure - restricts appeals of official plans and zoning by-laws / community planning permit by-laws in municipally-defined PMTSAs.

Key Details

- Discretionary tool for municipalities that have “higher order transit” as defined in Planning Act.
- To use tool, municipalities need to establish the required official plan policies, subject to approval, and where appropriate, corresponding zoning by-law / Community Planning Permit System by-law provisions.
- Municipalities can use planning tools like zoning by-laws or a community planning permit system to determine where the density should go and what form it should take.

Establishing the Zoning By-Law or Community Planning Permit By-Law Framework

Key Details

- Municipality needs to align zoning by-laws with their PMTSA official plan policies by identifying minimum densities; may also wish to identify minimum heights.
- Municipalities also have the option to identify maximum densities and heights.

No Appeal of Major Provincial Decisions

No appeal of provincial decisions on official plans and major official plan updates (s. 26).

Key Details

- Reduce number of appeals, including conformity exercises to provincial plans.
- Increase certainty regarding implementation of provincial policies and interests.
- Protect important provincial interests, such as public health and safety.

Climate Change

Requirement for all municipal official plans to include climate change policies.

Key Details

- Support Ontario's Climate Change Action Plan 2016-2020.
- Support proactive planning for climate change.

Affordable Housing

Requirement for all municipal official plans to include policies dealing with the adequate provision of affordable housing.

Key Details

- Support implementation of provincial policies and plans that require an adequate supply of housing, including affordable housing.

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LOCAL PLANNING APPEAL TRIBUNAL (LPAT)

Local Planning Appeal Tribunal

The Ontario Municipal Board Act is repealed and the LPAT is established as the province-wide appeal body for land use planning matters.

Intended Outcomes

- Making the hearing process faster and fairer.
- Ensuring faster, fairer and more affordable hearings by establishing clear timelines for pre-hearing and hearing processes so that people can get a better sense of when the tribunal would hear their case, and how long the process is going to take.
- Active adjudication by Tribunal members.

Key Details

- Modernizing hearing procedures and practices, including timely processes and decisions.
- Alternative dispute resolution is promoted to help reduce the number of hearings.

Mandatory Case Management Conference Process

Implement mandatory case management conference process for major planning matters to narrow issues and promote settlement.

Intended Outcomes

- Allow for hearings to be held in a fair, cost-effective and expeditious manner by providing opportunities for parties and other interested persons to come together to:
 - identify if additional parties should be added;
 - confirm and narrow the issues in dispute;
 - explore opportunities for mediation and settlement; and
 - deal with any other matter.
- Empower the Tribunal to actively guide the proceedings to level the playing field and make it less adversarial for parties and participants.

Key Details

- Require submissions to the Tribunal to be made 30 days before the case management conference for any additional parties who wish to participate in an appeal.
- At the case management conference, the Tribunal is required to explore opportunities for mediation and settlement with parties.

Oral Testimony and Evidentiary Record

Statutory rules regarding the conduct of proceedings which limit oral testimony and the evidentiary record.

Intended Outcomes

- Create of a faster, more efficient and cost-effective proceedings.
- Less adversarial hearings.

Key Details

- Reduce adversarial hearings by eliminating oral testimony in major land use planning appeals at the Tribunal.
- On matters that fall under the consistency / conformity test, only parties to the appeal may provide oral submissions.
- On matters that do not fall under the consistency / conformity test but are complex (i.e., approval authority non-decisions on official plans and plans of subdivision), parties and other persons, as determined by the Tribunal, may provide an oral submission.
- No persons or parties may introduce new evidence or call or examine witnesses at oral hearings.

Active Adjudication

The *Local Planning Appeal Tribunal Act, 2017* clarifies the Tribunal's power to ask questions, examine a party and require a party to produce evidence.

Intended Outcomes

- An approach to hearings in which adjudicators play a more active role to simplify and expedite the hearing process, and in some case to address inequalities between parties.

Key Details

- Active adjudication can lead to less adversarial hearings, which can benefit all parties.
- Adjudicators play a more active role in proceedings by, for example, explaining rules and procedures, scoping issues and evidence and questioning witnesses.

Making LPAT Decisions Publicly-Accessible

Public posting of Tribunal decisions, including use of plain language.

Intended Outcomes

- Make the LPAT process easier to navigate by making decisions easier to understand.
- Help citizens access Tribunal decisions.
- Increase transparency in process.

Key Details

- Adopt use of plain language to make the LPAT process more accessible.

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PROPOSED REGULATIONS & TRANSITION

Proposed LPAT Regulations

Under the *Local Planning Appeal Tribunal Act, 2017*, the following new regulatory provisions are proposed:

- Establishing timelines for appeals to the Tribunal under the Planning Act;
- Establishing time limits for submissions at oral hearings for major land use planning appeals before the Tribunal;
- Scoping the practices and procedures of the Tribunal in respect of major land use planning appeals; and
- Establishing transition rules for appeals to the Tribunal under the Planning Act;

Notices for the proposed regulations were posted on the Ontario Regulatory Registry for a 45-day public consultation period from December 7, 2017 to January 21, 2018.

Proposed LPAT Regulations – Timelines

The following shows timelines under the LPAT Act for proceedings before the Tribunal in relation to appeals under the Planning Act. The time for a proceeding begins from the date the proceeding is received and validated by the LPAT.

Type of Appeal	Timeline for Completion of Proceeding / Hearing
<ul style="list-style-type: none">A municipality or approval authority's decision or a municipality's failure to make a decision in respect of an official plan or zoning by-law described in subsection 38 (1) of the LPAT Act.	10 months
<ul style="list-style-type: none">A new decision of a municipality or an approval authority on an official plan or zoning by-law described in subsection 38 (1) of the LPAT Act.A municipality or approval authority's failure to make a new decision on an official plan or zoning by-law described in subsection 38 (1) of the LPAT Act.	6 months
An approval authority's failure to make a decision on an official plan or plan of subdivision described in subsection 38 (2) of the LPAT Act.	12 months
Any other proceeding before the LPAT under the Planning Act (e.g., minor variances, site plans, consents).	6 months

Proposed LPAT Regulations – “Stop the Clock”

- For the purposes of calculating the time for a proceeding, any of the following periods of time would be excluded from the calculation:
 - Any period of time occurring during an adjournment of the proceeding if,
 - the adjournment is granted by the LPAT on the consent of two or more parties for the purposes of mediation; or
 - the adjournment is necessary, in the opinion of the LPAT, to secure a fair and just determination of the appeal.
 - Any period of time during a stay of the appeal before the LPAT granted by the Divisional Court.

Proposed LPAT Regulations – Time Limits for Submissions at Oral Hearings

- At an oral hearing of an appeal of a municipality or approval authority's decision or a municipality's failure to make a decision on an official plan or zoning by-law described in subsection 38 (1) of the LPAT Act:
 - *each party would have a maximum of 75 minutes to make a submission (i.e., presentation) to the LPAT.*
- At an oral hearing of an appeal of an approval authority's failure to make a decision on an official plan or plan of subdivision described in subsection 38 (2) of the LPAT Act:
 - *each party would have a maximum of 75 minutes to make a submission to the LPAT and other persons identified by the LPAT as participants would each have 25 minutes to make a submission to the LPAT.*
- LPAT would have discretion to increase the time limits where, in its opinion, it is necessary for a fair and just determination of the appeal.

Proposed LPAT Regulations – Practices and Procedures

- For appeals described in subsections 38 (1) and (2) of the LPAT Act, the examination of a party or any other person, other than by the LPAT, would be prohibited.

Proposed LPAT Regulations – Transition

The following approach is proposed to deal with matters in process when the new system comes into force:

- Appeals that are already before the Ontario Municipal Board as of Royal Assent (December 12, 2017) will be subject to the existing rules and process;
- Appeals made after the new rules come into force would be subject to the new rules and process, under the new *Local Planning Appeal Tribunal Act 2017* (except appeals that are related to another ss. 17(40) appeal filed before the Act comes into force);
- Appeals of matters between the date of Royal Assent and the date that the new rules are proclaimed into force would be subject to:
 - The existing rules and process if the planning matter began (i.e. the complete application was received) before the date of Royal Assent; and
 - The new rules and process under the *Local Planning Appeal Tribunal Act, 2017* if the planning matter began after the date of Royal Assent.

Transition Examples

Appeal Type	Complete Application Filed	Appeal Date	Old Process	New Process
Appeal under subsections 17(24), 17(36), 22(7), 34(11) or 34(19) of the Planning Act of: <ul style="list-style-type: none">• a municipality or approval authority's decision in respect of an official plan or zoning by-law; or• a municipality's failure to make a decision in respect of an official plan or zoning by-law (See LPAT Act s. 38(1))	Dec 11 (i.e., before Royal Assent)	Before LPAT Act comes into force	✓	
	Dec 11 (i.e., before Royal Assent)	After LPAT Act comes into force		✓
	Dec 13 (i.e., after Royal Assent)	Before LPAT Act comes into force		✓
	Dec 13 (i.e., after Royal Assent)	After LPAT Act comes into force		✓
	After LPAT Act comes into force			✓
Appeal under subsections 17(40) & 51(34) of the Planning Act of: <ul style="list-style-type: none">• an approval authority's failure to make a decision in respect of an official plan or plan of subdivision (See LPAT Act s. 38(2))	Before LPAT Act comes into force		✓	
	After LPAT Act comes into force	After LPAT Act comes into force		✓
	After LPAT Act comes into force	After LPAT comes into force, but related to another ss. 17(40) appeal filed before LPAT Act comes into force	✓	

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LOCAL PLANNING APPEAL SUPPORT CENTRE

Local Planning Appeal Support Centre

The Support Centre will provide information and support for citizens who want to participate in the land use planning appeal process before the LPAT.

Intended Outcomes

- Help level the playing field for citizens.
- Provide information on land use planning, guidance on board procedures, and advice and representation to citizens in certain matters.

Key Details

- LPASC is established as a separate agency.
- LPASC will establish and administer a cost-effective and efficient system for providing support services to eligible persons regarding matters governed by the Planning Act that are under the jurisdiction of the Tribunal.
- Implementation for doors open on April 3, 2018 is well underway including:
 - appointment of Chair (Anna Pace);
 - recruitment process for the Executive Director and agency staff; and
 - a facility for the agency.
- The public will have access to the support centre by walk in, website and toll free number.

User-friendly Websites

New, user-friendly websites for the Tribunal and the Support Centre.

Intended Outcomes

- New, user-friendly websites for Tribunal and the Support Centre to help citizens engage in the process.
- Provide clear information on the LPAT practices and procedures and on Support Centre services.
- Improve access to information and resources to better support citizen participation.

Key Details

- The LPAT website will continue to be updated to provide clear information on Tribunal practices and procedures and to include:
 - easy-to-understand educational videos on the hearing process; and
 - easy access to past decisions.

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QUESTIONS & DISCUSSION