

From: [Erwin Dreessen](#)
To: [The Hon. Yasir Naqvi \(ydaqvi.mpp.co@liberal.ola.org\)](mailto:The.Hon.Yasir.Naqvi@liberal.ola.org)
Cc: ["sheila.perry014@gmail.com"](mailto:sheila.perry014@gmail.com); "PAUL JOHANIS"
Subject: implementing Bill 139
Date: March 13, 2018 6:02:00 PM

Dear Yasir,

Below are a number of concerns about how the land use planning aspects of Bill 139 will be implemented. Only the first question was put to you at last Saturday's town hall meeting. I repeat it so you may provide an answer on the record. Answers to this and the further questions will likely end up on the Greenspace Alliance's web site at <http://greenspace-alliance.ca/index.php/current-issues-province-of-ontario/reform-of-the-ontario-municipal-board/bill-139-final-stages-and-implementation/>, updates of which are regularly shared with FCA members.

1.

An essential element of natural justice is that evidence be open to challenge. Your staff already noted (though I'd like to see this confirmed in rules of procedure) that any evidence submitted to the Tribunal will be shared with other Parties to the appeal. Will that sharing be timely and in a suitable form (electronic AND on paper)? Will enough time be allowed to respond, recognizing that community groups typically work on a slower pace than resource-rich developers or the municipality? Will the Tribunal have the power to compel Parties to respond to comments or questions? Will the Tribunal have the power to compel an appellant or a Ministry official to produce certain evidence? Will the ability of a Party to subpoena a government official (now to produce a written witness statement) remain intact?

In short, what will be the policies and procedures for establishing the evidentiary record of an appeal?

2.

As you may know from our previous submissions, one of our major concerns with Bill 139 was that a Comprehensive OPA or a new Official Plan of a 1-tier municipality, once approved by the Minister, cannot be appealed. (I note that "approved by the Minister" is a euphemism. The approval of OPA 180, for example, was signed by the Regional Director, Municipal Services Office - Eastern.) We felt that, between no appeal and the recent fiascos of Ottawa's [OPA 76](#) and [OPA 150](#) (& [OPA150+](#)) a middle ground was preferable. The question now is what the process will be during the 120 days from Council to Ministerial approval: Will it be transparent? (E.g., who makes what submissions, staff analysis.) Will the Minister be able to seek information from stakeholders? Will the Minister's actions on the file be on the public record and will he/she be required to provide a rationale for any modifications?

3.

What form will the now obligatory case management meetings take? Symbolically speaking, will all Parties sit around a table and discuss issues and solutions, or will, as now, a Member rule from a dais? A related question is whether the Member(s) handling the case management meeting(s) will also be the Member(s) conducting the appeal, should it go forward.

4.

The presentation on Saturday assured us that, on April 3, the doors will open to the Support Centre; moreover, you clarified that there would be regional offices. But so far there is no sign of any proposed regulations or *modus operandi* for this new structure. Given the audience it is expected to serve, it seems to me imperative that there be solid consultation on this. Can you assure us of that? (In your email of 12 Dec 2017 I had missed your reference to <[Regulatory Registries](#) > and so missed reviewing the regulations proposed under the *LPAT Act* which are now published (email from MMA's Luke Fraser, 12 March 2018)).

5.

Specifically, will the government propose a regulation instituting positive cost awards as [CELA](#) (pp. 17-19) has proposed?

6.

Will there be a regulation that more closely defines "higher order transit"? In the case of Ottawa the intent appears to be that this refers to areas around LRT/O-Train stations, but there is considerable concern, especially in centretown, that any bus stop along a major route would do.

7.

It remains unclear whether panels composed of LPAT and Environmental Review Tribunal Members will be possible. Section 3(5) of the *LPAT Act* appears to preclude it.

Finally, Yasir, with all the justified optimism that with Bill 130 the land use planning and appeal system has taken a turn for the better, one should have no illusion about significant remaining issues, among them:

- + the conundrum of high volume of Committee of Adjustment appeals and the reluctance of municipalities (except Toronto just recently) to constitute local appeal boards. Imo, the Province should exercise leadership (analysis of the issues, facilitate solutions) in this matter;

- + while the municipalities are rightly challenged to take responsibility for their decisions, without community consensus on plans and policies conflicts will remain. How such community consensus is achieved is critical -- on the principles & criteria that make for good planning; and on specific development proposals. Again, the experience in Ottawa is not encouraging, with happy results more the exception than the rule, in matters large and small. (One such exception is indeed Old Ottawa East/Oblate lands -- a case that deserves to become a case study.)

- + stronger guidance by the Province would be desirable, such as introducing a hierarchy of values in the Provincial Policy Statement. The current *dictum*, "the PPS must be read as a whole" in effect serves as a cop-out -- anything can be justified.

Looking forward to your responses!

Erwin

Cc: Sheila Perry, FCA President | Paul Johanis, GA Chair