

## The new regime

On April 3, 2018, the Local Planning Appeal Tribunal (LPAT), successor to the Ontario Municipal Board (OMB), issued new Rules of Practice and Procedure ([http://elto.gov.on.ca/wp-content/uploads/2018/03/2018\\_04\\_03-Local-Planning-Appeal-Tribunal-Rules-of-Practice-and-Procedure.pdf](http://elto.gov.on.ca/wp-content/uploads/2018/03/2018_04_03-Local-Planning-Appeal-Tribunal-Rules-of-Practice-and-Procedure.pdf)). Part I of these Rules is only slightly amended from the previous OMB Rules. Part II applies to the processes introduced by Bill 139. (This scope is spelled out in s. 38(1)&(2) of the *LPAT Act*.)

Simplified for what applies to a 1-tier municipality like Ottawa, the notes below describe

- a) what types of appeals fall under Part II of the Rules (the new regime);
- b) what can no longer be appealed (with a reminder of restrictions that have come into effect earlier)
- c) two other small but important aspects of the new regime

Please visit <http://greenspace-alliance.ca/index.php/current-issues-province-of-ontario/reform-of-the-ontario-municipal-board/> for more information on all other aspects of the new regime, including a link to a March 10, 2018 32-page Ministry deck, "[Overview of Changes to the Land Use Planning and Appeal System.](#)"

### a) what types of appeals fall under Part II of the Rules (the new regime)

Bill 139's "OMB reform" pertains to the following, and only the following types of appeals:

- s. 17(24) : appeal of adoption of an Official Plan Amendment (OPA) not subject to Ministerial approval
- s. 17(36) : appeal of adoption of an OP or OPA subject to Ministerial approval (↓)
- s. 17(40) : appeal of a failure to give notice of a decision regarding an OP or OPA
  
- s. 22(7) : appeal of a refusal or failure to adopt an OPA requested by a third party (\*)
  
- s. 34(11) : appeal of a refusal or failure to adopt a Zoning By-law Amendment (ZBA) (\*)
- s. 34(19) : appeal of adoption of a ZBA
  
- s. 51(34) : appeal of a failure to adopt a Plan of Subdivision (\*)

For greater clarity, appeals of a Committee of Adjustment decision (s. 44ff) continue to fall under the old rules (including *de novo* hearings, etc.), as do appeals of draft approval of a Plan of Subdivision (s. 51(39)). Ditto for appeals formerly heard by the OMB, now by the LPAT, under all the other statutes for which it has a mandate, including appeals under:

- the *Development Charges Act*
- the *Aggregate Resources Act*
- the *Expropriations Act*
- the *Consolidated Hearings Act* (then the *Environmental Assessment Act* also applies)
- the *Ontario Heritage Act* (which also mandates the Conservation Review Board)

(↓) I.e., a new Official Plan or a Comprehensive Official Plan Amendment

(\*) Members of the public do not have appeal rights.

## b) what can no longer be appealed

+ Henceforth, a Comprehensive Official Plan Amendment (such as the most recent iterations: OPA 76 and OPA 150/180) or a new Official Plan, once approved by the Minister, can no longer be appealed. The Minister has 120 days to decide after Council passage.

+ Specifically, OP policies that identify a "protected major transit station area" and related policies on minimum number of residents and jobs per hectare, authorized uses, maximum densities or minimum or maximum heights cannot be appealed (unless the policies are claimed to be internally inconsistent).

+ Similarly, a zoning by-law regarding "protected major transit station areas" cannot be appealed in so far as it sets out permitted uses, densities, or minimum or maximum heights (unless the claim is that the by-law is internally inconsistent).

+ Henceforth, only the Minister can appeal an interim control by-law, but anyone who was given notice can still appeal an extension of the by-law.

Other important restrictions not only preclude an appeal but even forbid requesting an amendment. They are:

- an amendment to OP policies regarding areas around transit stations;
- an amendment to a new Secondary Plan until two years after the SP has come into effect;
- (- recall that since 2016 -- Bill 73 --
  - + a new OP can likewise not be appealed until two years after it has come into effect
  - + a minor variance cannot be requested until after two years of adoption of a zoning by-law.)

However, by resolution Council can override any of these restrictions.

Other limitations on appeals as a result of Bill 73 are:

- one cannot appeal the whole official plan (no "global appeals")
- OP policies related to "vulnerable areas" as defined in the *Clean Waters Act, 2006* cannot be appealed;
- if a zoning by-law replaces all previous by-laws, then it cannot be appealed until after 2 years.

Going back further still, since 2011 secondary unit policies and inclusionary zoning policies cannot be appealed.

## c) two additional notes

1. Bill 139 has eliminated the ambiguity around the words "dealt with" in ss. 17(50.1) (51) of the *Planning Act*. The rewording makes it clear that the Tribunal cannot modify any part of an OP that is in effect and not "added, amended or revoked" by the OP or OPA under appeal.

2. Ever since 2006 the *Act* has made it possible for a municipality to create a "local appeal body" that could hear appeals of Committee of Adjustment decisions and consents. Bill 139 has added the ability to hear motions for directions and an owner's appeal of Site Plan Control decisions. To date, only the City of Toronto has created such a body; it became operational in May 2017.