



## Memorandum

TO: Committee of the Whole  
FROM: Valerie Shuttleworth, Chief Planner  
DATE: 18 January 2018  
RE: Changes to the Land Use Planning Appeal System (OMB reform) through Bill 139 – *Building Better Communities and Conserving Watersheds Act*

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This memo provides a summary of recent developments relating to changes to the Ontario Municipal Board (OMB) and the land use planning appeal system. Specifically, the memo presents items posted for comment on the Province's Environmental Registry (EBR posting Nos. 013-1788 & 013-1790) and the Ontario Regulatory Registry (posting No. 17-MAG011) related to Planning Act and OMB reforms.

### **Regional recommendations to the province on OMB reform included removing the right to appeal approved Official plans and simplifying hearings**

In 2016, the province undertook a review of the OMB's role in land use planning. The Region participated in public open houses on the topic and responded to the province's public consultation document in [December 2016](#). The Region had a number of recommendations, centred around: respect for decisions of council and public input in the planning process; removing the right to appeal approved Official Plans (OPs); and eliminating or reducing the number of *de novo* or "as new" hearings at the OMB.

### **Bill 139 addressed the majority of the Region's substantive comment on OMB Reform**

Bill 139 was released for comment on May 31, 2017. Regional staff comments of August 31, 2017 were endorsed by Council on [September 2017](#). Among other things, the Bill proposed to rename the OMB to the Local Planning Appeal Tribunal (the Tribunal), provide a new mandate and revised powers, remove the right to appeal provincially approved Official Plans (OPs) and Official Plan Amendments (OPAs), and significantly reduce *de novo* appeals. Appeals and Tribunal decisions were proposed to be limited to whether or not a council decision is consistent with provincial policies and plans and municipal plans.

## **Regional comments on Bill 139 are partially addressed through proposed regulations**

In response to Bill 139, the Region recommended that local, privately initiated, Official Plan Amendment (OPA) applications should not be permitted for the entire period of the OP prior to the provincially mandated review. The Region also commented that the 90 day limit proposed for a council to reconsider a decision, where the Tribunal has found an appealed decision to be inconsistent or not in conformity with provincial or local policies and plans, may not be sufficient to accommodate council schedules.

The Bill remains largely unchanged between first reading and Royal Assent received on December 12, 2017, however, a number of the Region's comments on Tribunal procedure and timelines are addressed through the proposed regulations. The three registry postings address the following:

- The transition of Ontario Municipal Board (OMB) proceedings commenced before and after the Act comes into force
- Updating existing legislation to reflect the new Act
- Setting out practices and procedures for the new Local Planning Appeal Tribunal to replace the OMB.

## **Proposed transition provisions between the OMB and the Local Planning Appeal Tribunal direct most appeals, filed after the new rules come into force, to the Tribunal**

In general, appeals filed before December 12, 2017 (the day Bill 139 received Royal Assent) will be heard by the OMB, and appeals filed after the new rules come into force (likely sometime spring 2018) will be heard by the Local Planning Appeal Tribunal (the Tribunal). Appeals filed between Royal Assent and the date the new rules come into force will go to the OMB if a complete application was filed prior to Royal Assent. If the application was not complete prior to the Royal Assent, the appeals will go to the Tribunal.

Provincial approvals of municipally-initiated (upper- or single-tier) official plans (OPs) and OP updates under section 26 of the Planning Act will not be subject to appeal if notice is given after the new rules come into force. The OP update related to the Region's Municipal Comprehensive Review (MCR) will not be subject to appeal, as adoption is anticipated after the new rules come into force.

## **Proposed regulations partially address the recommendation to limit appeals of lower tier OPs**

Regional decisions on local OPs and OPAs will only be subject to appeal on grounds of consistency and/or conformity with provincial and upper-tier plans; this applies now (following Royal Assent) for Municipally initiated OPs and OPAs and will apply to privately initiated OPs and OPAs once the Bill comes into force. For example:

- Block 27 and Block 41 secondary plans in Vaughan (municipally initiated) can only be appealed for conformity
- The three secondary plans for the Markham Future Urban Area (privately initiated) may be subject to appeal to the OMB if a decision is made prior to the Bill coming into force; an appeal of a decision made after the Bill comes into force would be heard by the Local Planning Appeal Tribunal, and subject only to the test of conformity.

Appeals where a complete application was made prior to Royal Assent will be heard by the OMB. Those completed after Royal Assent will be on grounds of conformity with provincial and upper-tier plans. The restriction on the ability to amend secondary plans for two years following their approval, unless permitted by council resolution, will apply to secondary plans that come into effect after the new rules come into force. Increased Regional decision timelines (up to 210 days) for local municipal official plans or amendments is applicable for all decisions going forward.

### **Proposed regulations for the New Tribunal limit oral hearings and establish standards to hearing and decision timelines**

Most hearings will take place through written submissions and oral hearings will be limited. It is proposed that no party or person, other than the Tribunal, would be permitted to examine a witness (party or participant) at a hearing on Official Plans, Zoning By-laws and non-decisions on Subdivisions.

The following timelines for proceedings before the tribunal and restrictions on oral submissions (where applicable) are proposed:

<b>Nature of Appeal</b>	<b>Timeline to Resolve*</b>	<b>Oral submission time limitations**</b>
Official Plan or zoning by-law (decision or non-decision)	10 months	75 minutes/party
New decision on an Official Plan or zoning by-law, where the Tribunal determined the original decision was inconsistent or not in conformity with provincial policy or Official Plan(s)	6 months	Not specified
Failure to make a decision in respect of an official plan amendment or plan of subdivision	12 months	75 mins/party 25 mins/participant
Any other Planning Act related proceeding before the Tribunal	6 months	Not specified

\* Proposed to begin from the date the appeal is received and validated by the Tribunal (with exceptions where an adjournment is requested for mediation or another purpose) to issuance of decision

\*\* The Tribunal would have discretion to increase the time limits as necessary for a fair and just determination of the appeal

## **Modifications will update the Planning Act and regulations to reflect the new Local Planning Appeal Tribunal**

The proposed regulation:

- Replaces references to the OMB, in the Planning Act, with the Local Planning Appeal Tribunal and updates legislative cross-references
- Revises the information required in certain notices to reflect the fact that decisions on some types of applications will be final and not subject to appeal
- Revises the information to be included in a complete application to include an explanation of conformity with the relevant provincial and upper-tier plans
- Revises materials to be forwarded to the Tribunal by a municipality on appeal to include a municipal statement explaining whether the decision conforms with the relevant OP(s)

### **Conclusion**

Staff is of the view that the regulations and procedures proposed in the current provincial notices are in keeping with the Bill, as originally released in May, 2017, and a number of Regional recommendations. The current proposals do not require further comments to the Province.

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