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Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*

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By

On May 30, 2017, Bill 139 passed first reading. Bill 139 would, among other things, continue the Ontario Municipal Board ("OMB") under the new name "Local Planning Appeal Tribunal" ("LPAT" or "Tribunal"), and amend the *Planning Act* to revise the jurisdiction and authority which the OMB had previously exercised.

Summary of Key Changes

New Standard of Review

- Bill 139 would modify the *Planning Act* to limit the grounds upon which an official plan, official plan amendment, zoning by-law or zoning by-law amendment could be appealed to issues of: consistency with provincial plans, conformity with provincial policy statements, and conformity with applicable official plans (what the Bill 139 Explanatory Note calls the "new Standard of Review").
- This new Standard of Review would not apply to other appeals under the *Planning Act*, including approvals of plans of subdivision, site plans, minor variances or consents/severances.
- This new Standard of Review would also not apply to appeals under the *Planning Act* where the Minister has identified that a matter of provincial interest is, or is likely to be adversely affected by the official plan, official plan amendment, zoning by-law or zoning by-law amendment under appeal.

New Appeals Process

- Bill 139 would create a two-step appeals process that applies to all appeals of official plans and zoning by-laws (decisions, refusals and non-decisions), and to appeals of non-decisions with respect to plans of subdivision.

<u>First Appeal</u>

- The Tribunal must (on its own initiative or on motion) dismiss any appeal without holding a hearing if it is of the opinion that the Notice of Appeal does not explain how the new Standard of Review is met.
- It will now be mandatory for the appellant and the municipality or approval authority to participate in a case management conference. The case management conference must include discussion of opportunities for settlement.
- If a person other than the appellant or the municipality or approval authority wishes to participate in the appeal, the person must make a written submission 30 days prior to the case management conference. For non-decisions of official plans and plans of subdivision, written submissions must be made within the time provided for by the Tribunal's rules. The Tribunal will determine whether a party who provided a written submission may participate in the appeal as a party or may otherwise participate on other terms.

- At a first appeal, the parties would no longer be entitled to a full quasi-judicial hearing, with the opportunity to present evidence, call and cross-examine witnesses.
- The first appeal stage can be a written or oral hearing, with the Tribunal making a decision on the basis of the record that was before the municipality or approval authority.
- The details of when a hearing would be written and when it would be oral are not established in Bill 139, but are likely to be made in future regulations or the Tribunal's rules. The parties to an oral hearing would, however, have the opportunity to make an oral submission within time limits to be established in the future regulations.
- Where an appeal is successful, the matter is returned to the municipality or approval authority, and they are given 90 days to make a decision in light of the Tribunal's ruling.
- If the municipality or approval authority fails to make a new decision, or if this second decision still fails to meet the new Standard of Review, there is a second right of appeal.

Second Appeal

- While Bill 139 does not speak to it, it would appear that as part of this second appeal hearing the Tribunal would continue to have the authority to conduct a full hearing with the opportunity for parties to present new evidence, including the calling of expert witnesses and cross-examination. What is clear is that upon a second appeal, the Tribunal would have the authority to make a final binding decision.

Transitional Matters

- Bill 139 provides that the Minister may make regulations for transitional matters and proceedings that were commenced before or after the effective date of the legislation. There is no indication of how matters and proceedings that were commenced before or after the effective date will be dealt with.

Some Key Additional Proposed Changes:

- A council failure to make a decision on a zoning by-law amendment would be appealable 150 days after the application, rather than the current 120 days.
- A council or planning board's non-decision with respect to an official plan amendment would be appealable 210 days after the application, rather than the current 180 days.
- An approval authority's failure to give notice of decision with respect to an official plan would be appealable 210 days after the plan is received, rather than the current 180 days (the rules for extension of time for appeal in section 40.1 continue to apply).
- If a zoning by-law amendment application requires an official plan amendment, and the two applications are brought together, a failure to make a decision on the zoning by-law amendment would only be appealable 210 days after the application.
- There is no appeal of an official plan approved by the Minister or an official plan amendment adopted as part of a 5- or 10-year review, if the approval authority is the Minister.
- Bill 139 would also allow municipalities to designate lands in their official plans as "protected major transit station areas", and where they have done so, the designation and supporting policies are not appealable, except by the Minister. Requests to amend these policies could only be made with council approval, and a council's decision not to approve a request is not appealable.
- Where municipalities have designated lands in their official plans as "protected major transit station areas", zoning by-laws that establish densities or heights for such an area are not appealable, except by the Minister.
- For two years following the adoption of a new secondary plan, a request to amend a secondary plan can only be made with council approval, and council's decision not to approve a request is not appealable.
- An interim control by-law would no longer be appealable by anyone except the Minister, although an extension of an interim

control by-law would be appealable by anyone who is given notice of the extension.

- A site plan would still be appealable for failure to approve or if the landowner disagrees with a municipally imposed requirement, but an appeal would be initiated by filing a notice of appeal with the clerk of local municipality, who in turn is required to forward the appeal record to the Tribunal.
- The definition of "provincial plan" would be amended to include certain policies referred to in the *Lake Simcoe Protection Act, 2008, the Great Lakes Protection Act, 2015* and the *Clean Water Act, 2006*.
- Section 3 would be amended to authorize provincial policy statements to require approvals or determinations by one or more ministers for any of the matters provided for in the policy statement. The section would also be amended to deem policy statements issued under the *Metrolinx Act, 2006*, the *Resource Recovery and Circular Economy Act, 2016* and other prescribed policies as policy statements issued under section 3 of the *Planning Act*.
- The issues that local appeal bodies, established under Section 8.1, can address would be expanded to include appeals and motions for directions related to site plan control and motions for directions related to consents.

The above summary does not address every change proposed in Bill 139. To review the full bill, please **click here**.

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