

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: John M. Fleming, MCIP, RPP
Managing Director, Planning and City Planner
George Kotsifas, P.Eng.
Managing Director, Development and Compliance Services
and Chief Building Official

Subject: Local Planning Appeal Tribunal Process Update Report

Meeting on: April 29, 2019

Recommendation

That, on the recommendation of the Managing Director, Planning and City Planner, and the Managing Director, Development and Compliance Services and Chief Building Official, the following actions be taken:

- a) The report, entitled “Local Planning Appeal Tribunal Process Update Report” **BE RECEIVED:**
- b) The Civic Administration **BE DIRECTED** to implement the processes outlined in the report noted in a) above.

Executive Summary

This report provides an update regarding the recommended changes to municipal processes and procedures as a response to Bill 139, and the transition from the Ontario Municipal Board (OMB) to the Local Planning Appeal Tribunal (LPAT) system.

Background

1.0 Previous Reports Pertinent to this Matter

August 13, 2018: Planning and Environment Committee, “Local Planning Appeal Tribunal Process Update”

June 18, 2018: Planning and Environment Committee, “Local Planning Appeal Tribunal Transition Report”

January 8, 2018: Planning and Environment Committee, “Ontario Municipal Board (OMB) Reform”

November 28, 2016: Planning and Environment Committee, “Ontario Municipal Board (OMB) Review, 2016.”

August 22, 2016: Planning and Environment Committee, “Ontario Municipal Board Review.”

2.0 Planning Background

The Local Planning Appeal Tribunal (LPAT) replaced the former Ontario Municipal Board (OMB) on April 3, 2018 in an effort to improve operations within the broader land use planning appeals system. The LPAT is an adjudicative tribunal that hears appeals in relation to a range of municipal planning, financial and land use matters.

An internal staff LPAT “Transition & Implementation Working Group” was established to review and prepare the City of London for process updates and changes. This group is

comprised of staff members from the City Clerk’s Office, City Planning, Development and Compliance Services and Legal Services, which have all participated and provided input into this report. This report builds on the LPAT Transition and Process Reports received by the Planning and Environment Committee (PEC) in June and August of 2018.

3.0 What Has Occurred So Far?

Notices and Website

The replacement of the Ontario Municipal Board (OMB) with the Local Planning Appeals Tribunal (LPAT) required that references contained in all municipal notices for planning applications be updated. Notices of Application, Notices of Public Meeting and Notices of Decision now reflect the LPAT and associated requirements to ensure that applicants, organizations and the public are properly advised of their appeal and participation rights. The LPAT website is also included on the City’s notices as a resource for more information. A webpage has been created on the City of London website to provide information about the role of the LPAT and provide a link to the LPAT website.

Changes to Report Templates

The Transition Report from June 2018 outlined a number of changes and updates required to the staff reports. Reports now contain specific reference to the consistency or inconsistency with the Provincial Policy Statement, 2014, and conformity or non-conformity with the Official Plan policies, which addresses the dual compliance and validity screening tests required for appeals to the LPAT. Staff reports also now reference the qualifications of the author and those that provided input into the report as being qualified to provide expert opinions.

Initiation of the Two-Step Planning Report Process

A two-step planning process was initiated to address the new format for Part 2 non-decision appeals including Official Plan Amendments, Zoning By-law Amendments and Non-decision for Plans of Subdivision. These appeals are to be argued based on the record that existed at the time of appeal, and differ from the former OMB appeal process, where it was previously still possible to seek Municipal Council’s direction and the public’s input prior to the appeal hearing. The absence of the two-step process could result in the public not having the opportunity to provide input on a planning application, or Municipal Council not having its direction form part of the record.

The two-step process includes two planning reports being presented to the Planning and Environment Committee (PEC) and Municipal Council, and ensures that a Public Participation Meeting (PPM) is held to facilitate an opportunity for the public to provide input on an application within the statutory review period before staff bring forward a recommendation. This process is intended to continue for planning applications such as Official Plan Amendments, Zoning By-law Amendments, and Subdivisions that are at risk of non-decision appeals, because they are nearing the end of their review period, but require more information or time to resolve issues or address community concerns.

The first planning report known as the “Public Meeting Report” occurs before the end of the statutory review period and provides:

- A detailed description of the proposed amendment;
- The policy framework that applies;
- A summary of the public comments and feedback received up until the time the report is prepared; and
- A summary of any issues that have been identified and/or need to be addressed.

The report is provided for information purposes, and contains limited analysis, no planning opinion/recommendation, nor a proposed by-law. Comments received at the

PPM will be considered by City Planning/Development Services staff and the applicant. Additionally, the meeting will establish public comments and Council consideration in “the record” for the purposes of a potential LPAT appeal for non-decision.

Once the application review is complete, a subsequent planning report will be prepared known as the “Recommendation Report”, which may or may not include an additional Public Participation Meeting (depending on the application), and will provide:

- A complete analysis, evaluation and opinion of the relevant policies;
- A response to how the public comments have been addressed or incorporated
- How Standing Committee or Municipal Council direction from the first meeting has been addressed or incorporated; and,
- A recommendation and implementing by-law.

Summary of Two-Step Planning Process for Non-Decisions

The two-step process will be implemented for applications that are reaching the end of the statutory review period, but are still under review and require further information or analysis prior to making a recommendation or decision.

4.0 What is Proposed to Change?

Standard Process

For most applications, the review and processing of the file will result in a Public Participation Meeting and recommendation report before the end of the statutory planning review timeframe. For these applications, it is proposed that an informal Community Information Meeting be held in the relevant local community (where required), in place of having an early Public Participation Meeting (PPM) at the Planning and Environment Committee without a staff recommendation. This will have numerous benefits for the public, including:

- Ability to receive public comments earlier in the application review process than previous approaches;
- Meeting location providing convenient and easy access for local residents/interested members of the public in proximity to the proposal, and within their neighbourhood;
- Set times with a predictable beginning and ending for meeting consultation;
- Focused and scoped discussion on the specific application and details;
- More in depth, detailed and longer discussion possible to ensure thorough and complete understanding of the project;
- Interactive and two-way dialogue with planner and proponent, including periods of question and answer as well as better opportunities for description, elaboration and clarification of proposal and/or issues;
- Ability to tailor the needs of the meeting though special invitation to relevant experts (transportation, heritage, urban design etc.) as well as any unique community characteristics, ie- translator for areas with a high proportion of non-English first language speakers;
- Ability to offer multiple forms of engagement to provide for a wide variety of options for those wishing to participate, including: presentation(s), comment cards, large group discussions, one on one discussions, mapping exercises, drop-in sessions, red-lining plans etc.;
- More informal setting as an alternative to Council Chambers which could enhance residents’ comfort to participate and attend; and,
- Opportunity to provide detailed information about the planning process, including the LPAT process and public’s appeal rights.

The above described Community Information Meetings will replace the former “public meeting report” step that was introduced in 2018. A two report approach will only be employed for limited circumstances where applications are approaching the end of the statutory review period and further review is required.

Community Information Meeting Procedures

A formalized set of guidelines for holding Community Information Meetings is proposed to ensure a reliable and consistent meeting structure that will result in meaningful public input. Upon Council approval, staff will prepare guidelines to create general standards for venues, timing, notification, duration and protocols for Community Information Meetings, and will serve as a resource for the development industry, neighbourhood groups and the public for holding and attending these meetings.

5.0 What is Happening Next?

Education and Communication

The LPAT changes initiated updates to municipal processes, as well as changes for how the overall planning and development industry operates, and how the public are consulted and provide input. City Planning and Development Services are committed to ensuring all who are involved or participate in a planning process have a solid understanding of the various requirements.

Education and Communication Program

A Community Engagement Program is proposed to engage the Internal Service Areas, External Agency Partners and the Public on the following topic areas:

- 1. Provide an overview of the LPAT.
- 2. Describe the transition to the LPAT.
- 3. Describe the public process for 1 or 2-step *Planning Act* applications.
- 4. Provide information for Community Information Meetings
- 5. Describe and explain the process for appeals.

Objectives of Engagement:

- Ensure that there are a variety of opportunities for Internal Service Areas, External Agency Partners and the Public to become engaged in the LPAT transition process;
- Educate the community about the importance of planning, the impact on city building, and the best ways and times to provide input;
- Engage those stakeholders who are active in planning processes and make tools (literature) available for those who do not regularly submit or participate in planning applications;
- Ensure industry professionals are aware of changes to complete application and report requirements; and,
- Ensure Municipal Council and Standing Committees are briefed on the upcoming changes and their implications.

Implementation tools for Communication Education Program

Website – a communication resource for consistent messaging, which will include the following key components:

- Information resources provided in an efficient, visually compelling way;
- News posts, events, and documents;
- Links to interactive maps and online engagement elements; and,
- Links to provincial LPAT resources such as the rules and legislation and status of individual cases.

Information Presentations – LPAT “roadshow” (initially internal to the City and ultimately to external audience, as requested)

- Service Areas – Section/staff Meetings and/or workshops

- Appearances at team or Division meetings.
- Explain LPAT basics and transition.
- Describe 1 and 2 step processes.
- Describe the role of Community Information Meetings
- Work through scenarios.
- External groups (London Development Industry, London Homebuilders Association, Community Associations, Business Improvement Associations etc).
 - Presentation of LPAT and City of London process, workshop, Q&A.
 - Tailor presentation topic areas to the group interests.
 - Work through scenarios.
- **Workbooks**
 - Executive Summary Booklet of LPAT or user guide

Planning and Design Reports

As part of any complete application, the Civic Administration typically require a Planning and Design Report (formerly known as Planning Justification Reports) to be submitted with the application. The Planning and Design Report contains the policy, background, rationale and justification for the requested land use change. The LPAT process places greater emphasis than the previous OMB process on more detailed material being provided up front and available for Municipal Council's and the community's review. The proponent is required to provide the appropriate information and analysis as part of a complete application, which could constitute the proponent's justification and position should the application be appealed. It is therefore in the proponent's best interest to ensure that appropriate information and sufficient detail is provided with every planning application.

In order to ensure that applicants provide the necessary evaluation as required by The London Plan policy and the LPAT, staff are developing a Planning and Design report template in order to assist all applicants in providing the necessary information. Templates will be provided on the City website to assist proponents in their submissions for various aspects of the planning process.

Changes to the Record of Consultation provided to the Applicant

Under the LPAT rules, there is a chance that appellants may not be able to provide further documentation (e.g. witness statement) to the Tribunal beyond what was provided to the Municipality (including both as part of the complete application, and as part of the public meeting submission). As such, there is a possibility that the materials provided in support of the application may be the only opportunity for the applicant to form the basis for a Planning argument if the application was appealed to the LPAT. To ensure that the proponents are made aware of this, a disclaimer is recommended to be added to the Record of Pre-application Consultation and to the minutes of an Initial Proposal Report. This will ensure that applicants are made aware of the possibility that their submission may form the basis of the planning position at the LPAT in-lieu of the previous OMB approach of having witness statements. Wording will be developed in consultation with the City's Legal Department.

Conclusion

This report provides information and an update regarding the municipal transition from the Ontario Municipal Board (OMB) to the Local Planning Appeal Tribunal (LPAT). Initial changes to municipal processes required to accommodate the new system were identified through the LPAT Transition and Implementation Reports in June and August of 2018. This accompanying LPAT Process Update Report includes the latest administrative and procedural changes that are required to comprehensively address the LPAT transition.

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Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from City Planning, Development and Compliance Services, and Legal and Corporate Services	