

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee
From: John M. Fleming
Managing Director, Planning and City Planner
Subject: Local Planning Appeal Tribunal Transition Report
Meeting on: June 18, 2018

Recommendation

That, on the recommendation of the Managing Director, Planning and City Planner, the following report **BE RECEIVED** for information.

Executive Summary

This report provides information regarding the transition from the Ontario Municipal Board (OMB) to the Local Planning Appeal Tribunal (LPAT), and the imminent changes to municipal processes required to accommodate the new system. This report focuses on the transition regulations and non-decision appeals in the interim, and precedes a subsequent report that will outline the comprehensive municipal response at a future date.

Background

1.0 Previous Reports Pertinent to this Matter

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 Background

The Ontario Ministry of Municipal Affairs and the Ministry of the Attorney General initiated a review of the scope and effectiveness of the Ontario Municipal Board (OMB) in 2016 to improve how the OMB operates within the broader land use planning system. As a result, on May 30, 2017, Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017* was introduced. Bill 139 received Royal Assent on December 12, 2017, thereby bringing the Act into force. The schedules, rules and regulations applicable to the new Local Planning Appeal Tribunal came into force through proclamation on April 3, 2018.

The biggest change to the Provincial planning framework is the repeal of the Ontario Municipal Board (OMB) and replacement with the new Local Planning Appeal Tribunal (LPAT). The new legislation is intended to:

- Protect long-term public interests;
- Maintain and improve access to dispute resolution;
- Create greater transparency in the hearing and decision making processes;
- Give more deference to professional planners with a strong focus on written submissions;
- Give more autonomy to municipal decision makers;
- Create a new, independent agency to administer a cost-effective system for providing support services to the public for matters governed by the *Planning Act* that are under the jurisdiction of the LPAT;

- Create a new mandate for the LPAT as it relates to specific types of applications;
- Establish a new standard of review for appeals of specific applications;
- Limit the grounds for appeals on major matters to their failure to conform to or be consistent with provincial and local policies; and
- Exempt certain municipal land use decisions from appeal.

This report focuses only on the changes from the Ontario Municipal Board and the municipal approach for transition regulations and non-decision appeals. An LPAT “Transition & Implementation Working Group” comprised of members from the City Clerks Office, Planning Services, Development & Compliance Services and Legal & Corporate Services are considering the implications of Bill 139. A subsequent report will outline a comprehensive municipal response to Bill 139 of the various changes required, which is anticipated in August of 2018. The next report will address the broader aspects affected including:

- Education and Communication strategy for the public and industry professionals
- Format and timing for additional public participation meetings
- Changes to notice requirements
- Supporting policy requirements including amendments to the London Plan
- Planning report and complete application requirements
- Changes to decisions and appeals

The City of London has implemented a number of updates in preparation of, or in response to, the changes of the LPAT ahead of the comprehensive update. Municipal notices and websites have been updated to reference the LPAT and LPAT provisions. Planning reports now reflect LPAT requirements regarding the tests of consistency with the PPS, conformity with the Official Plan and opinion qualifications. An additional item to ensure Council can consider applications during the statutory timeframe to provide protection from non-decision appeals is detailed further through this report.

Transition Regulations

Transition regulations set out which *Planning Act* matters will be considered under the new procedures. Generally, if an appeal was filed prior to April 3, 2018, it will proceed under the old regime: the *Act* as it read on or before April 2, 2018. Appeals submitted on or after April 3, 2018 will proceed to the LPAT in accordance with the new legislation and Rules.

Changes to Process

The mandate of the LPAT has changed for Official Plan appeals (ss. 17(24), 17(36), 17(40), and 22(7)), Zoning By-law appeals (ss. 34(11) and 34(19)) and Subdivision appeals for non-decision only (s. 51(34)), with new rules and procedures that apply only to this class of appeals. For the purpose of this report, this class of appeals will be referred to as “Part 2” appeals. All other appeals will be referred to as “Part 1”.

A “new decision” procedure has been added to Part 2 appeals. The OMB conducted *de novo* hearings from decisions of a municipal approval authority, where matters were dealt with as if not previously heard or decided. Under the previous system, the OMB had to have regard to the decisions of a Municipal Council but was able to make its own independent decision with a limited degree of deference to the initial municipal decision.

Bill 139 considerably reduces the authority of the LPAT to overturn the municipal decision. Following a hearing, if the LPAT does not believe the decision of the municipality meets the applicable tests, the LPAT will not substitute its own decision; rather, it will provide notice to the municipality that it is returning the matter to the municipality for reconsideration with written reasons explaining the rationale for overturning Council’s decision. Council would then have 90 days to reconsider the application, with the benefit of the LPAT’s decision.

Non-decision Appeals

Under Bill 139 municipalities are given a longer period of time to make a decision on a planning application before an appeal can be filed. Municipalities now have 150 days to consider zoning amendments, 180 days to consider subdivision applications, and 210 days to consider official plan amendment applications (or combined official plan amendment and rezoning applications).

Where a municipality fails to make a decision within the new prescribed timelines, an applicant can appeal the non-decision of Council to the Tribunal. In this case, where there is no decision of Council, there may be a very limited evidentiary record to forward to the Tribunal for consideration.

Previous Municipal Response

The previous approach to addressing planning applications that were not ready to reach Council in the prescribed timeframe was to have the applicant acknowledge and agree that the application would continue to be processed beyond the timeframe without being appealed for non-decision. An application would be 'on-hold' for a variety of reasons including: design revisions to better mitigate impacts, implement advice of advisory panels, or address public concerns; where more information was required, such as refinements to submitted studies; to undertake additional studies either for the City, conservation authority or commenting agency; or similar situations where an issue surfaced after the complete application had been received (during the application review), that required attention and resolution prior to consideration by the Planning and Environment Committee and Council.

This acknowledgement was not a formal process of the *Planning Act*, and on certain occasions, files were appealed for non-decision after the 'on-hold' request was made. The City of London has approximately 18 such planning applications, that are currently on-hold by request of the applicant, past the prescribed timeframe without a Council decision, and subject to the Part 2 appeal procedures.

Proposed Municipal Response

In order to ensure that there is an adequate evidentiary record to submit to the Local Planning Appeal Tribunal in the event of a non-decision, the proposed interim approach is to ensure that applications are still heard by Council within the prescribed timeframe. This approach applies to applications that are still under review and require more time to process. For these applications, a report and public participation meeting will occur during the statutory timeframe to ensure Council has the opportunity to review the application, understand the issues, and hear from the public.

Planning Services/Development Services staff will then continue to review the application and allow for issue resolution. Once the reasons for the delay have been addressed, an additional public participation meeting may be scheduled, and an additional staff report, including a staff recommendation, will be provided.

Format

Under the interim proposed response, there will be two staff reports and two public meetings. The first report will provide:

- Detailed description of the proposed amendment
- The policy framework that will apply
- A summary of the public comments and feedback received
- Details of the issue(s) that need to be addressed
- The report will be provided for information purposes, and will contain no recommendation or proposed by-law

Comments received from the public participation meeting will be considered by Planning Services/Development Services staff and the applicant during the application review

period. In addition to achieving the objectives of supplementing “the record” for the purposes of a potential LPAT appeal, this approach will formalize public participation in the early stages of application review and offer an additional opportunity for the public to provide input.

Once the outstanding issue(s) have been resolved or addressed and staff are able to complete their review, a subsequent planning report and public participation meeting may occur. The second planning report will contain a complete analysis of the policy, the site context and other relevant matters, and a recommendation and implementing by-law (if required).

LPAT Requirements for Non-decision Appeals

Appeals for non-decision previously did not require the appellant to provide any reasons for the appeal. Under Bill 139, the appellant must provide an explanation of the basis for the appeal. Specifically, the appellant must explain how the existing part or parts of the official plan or zoning by-law amendment would be affected by the requested amendment, are consistent or do not conform to Provincial Policies or the Official Plan, and further how the proposed amendment to the Official Plan or zoning amendment would be consistent with or conform to the provincial policies and official plans.

Conclusion

This report provides information and an update regarding the transition from the Ontario Municipal Board (OMB) to the Local Planning Appeal Tribunal (LPAT), and the initial changes to municipal processes required to accommodate the new system. The LPAT Transition & Implementation Working Group will report back in August with additional process and administrative changes that are required to comprehensively address the Bill 139 implications.

Prepared and Submitted by:	Sonia Wise, MCIP RPP Planner II, Current Planning
Reviewed by:	Lou Pompili, MCIP RPP Manager, Development Planning
Concurred by:	Aynsley Anderson Solicitor II, Legal and Corporate Services
Concurred by:	Paul Yeoman, RPP PLE Director, Development Services
Recommended by:	John M. Fleming, MCIP RPP Managing Director, Planning and City Planner
<p>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 Planning Services, Development and Compliance Services, and Legal and Corporate Services</p>	

June 8, 2018

/sw

\\FILE2\users-z\pdp\Shared\policy\OMB Review 2016\New folder\LPAT Transition Files report june 2018.docx