



## Planning Report

**To:** Municipal Council and Planning Advisory Committee

**From:** Kara Van Myall  
Director of Planning and Development

**Date:** June, 2018

**Re:** Local Planning Appeal Tribunal Update

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### Summary:

Through Bill 139, the “Building Better Communities and Conserving Watersheds Act, 2017”, the Ontario Municipal Board (OMB) was replaced by Local Planning Appeal Tribunal (LPAT), effective April 3, 2018. The LPAT transforms the approach to Ontario’s land use planning appeals system. The new system pays deference to the local planning decisions and the information used to inform those decisions. Going forward, appeal grounds related to Official Plan Amendments and Zoning By-law Amendments are restricted to a new consistency / conformity test. Greater emphasis is also placed on mediation at the onset of an appeal in addition to increased appeal support through the Local Planning Appeal Support Centre.

### New Approach to Land Use Planning Appeals

The Province has made transformative changes to the land use planning appeals system through Bill 139, the “Building Better Communities and Conserving Watersheds Act.” The Act received Royal Assent on December 12, 2017, and came into effect on the proclamation date of April 3, 2018. The aim of the Act is to provide municipalities with greater control of the planning process, provide for a strong community voice on planning matters, protect public interests and establish a more effective dispute mechanism.

Among the most significant changes associated with Bill 139 are those related to the planning approvals and appeals process, including the establishment of the Local Planning Appeal Tribunal (LPAT) to replace the Ontario Municipal Board (OMB). The Province has also established the Local Planning Appeal Support Centre, an independent agency to provide information and support for citizens who want to participate in an appeal before the LPAT.

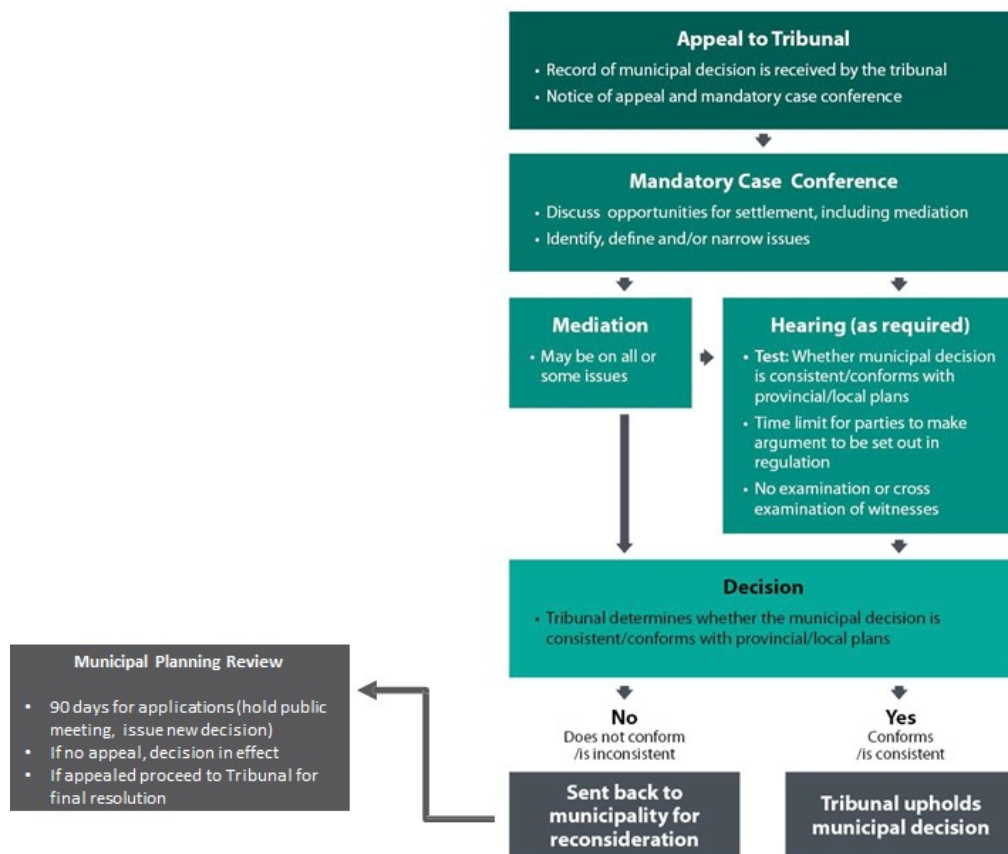
The Act contains substantive limits on the grounds for appeal related to municipal decisions on Official Plan Amendments (OPA) and Zoning By-laws Amendments (ZBA). Previously, the grounds for appeal on OPA’s and ZBA’s was fairly broad. The mandate of the OMB was to determine if a proposal represented good planning and met other policy tests. OMB appeal hearings were held ‘*de novo*’ (i.e. starting anew), with no requirement for the OMB to consider the decision of the local municipal council.

## Two Phase Appeal Process

Going forward, appeals to the LPAT regarding municipal decisions on OPA's and ZBA's will be subject to a new consistency / conformity test. Appeals will need to demonstrate that the decision on the OPA / ZBA is inconsistent with the Provincial Policy Statement, or fails to conform to a provincial plan, or applicable Official Plan.

Appeals of OPA's and ZBA's will be subject to a new two phase appeal process as outlined below in Figure 1. Appeals are also subject to mandatory case management conferences to identify opportunities for settlement, including the possibility of mediation. In the first stage of the appeal process, the LPAT must determine if the municipal decision satisfied the new consistency / conformity test. If the LPAT determines that this test has not been satisfied, the decision is sent back to the municipality for reconsideration. Conversely, if the LPAT determines the consistency / conformity test has been satisfied in the decision, then the appeal is deemed invalid and Council's decision stands.

*Figure 1: Two Phase LPAT Appeal Process (Source: Ministry of Municipal Affairs)*



Council is provided 90 days to reconsider the application if it is returned to the municipality should the LPAT determine that the consistency / conformity test has not been satisfied. Council can confirm their original decision or modify their decision, taking into account the findings of the LPAT. A party or individual can again appeal the new decision or the failure to

make a decision. On applications that have been appealed due to a lack of municipal decision, the appellant has the opportunity to provide the LPAT with any documents or reports that update the application, beyond what was originally included in the original appeal. The LPAT has the authority to approve (or modify) the OPA or ZBA to resolve the matter should the second decision be appealed to the LPAT.

The appeal grounds for site plan applications, plans of subdivision, consents and minor variances remains largely unchanged, however, such appeals will be subject to LPAT rules and procedures.

### **New Rules and Procedures for LPAT Hearings**

The Province has also recently released regulations as well as rules and procedures for the LPAT, which includes prescribed timelines for proceedings before the LPAT. The timeframe for the completion of a LPAT hearing is 6 months to 12 months depending on the application being appealed and the nature of the appeal. The Province has indicated that they will be assessing the effectiveness of the LPAT rules and procedures within 1 year of the establishment of the LPAT.

Evidence considered by the LPAT will generally be based solely on the municipal record before Council, including reports, studies and other documents submitted in support of an application. There are restrictions on the introduction of new evidence to augment an appeal once it is before the LPAT. In this regard, it will be crucial for Council / Committee reports to be robust and defensible in a LPAT hearing since the opportunity to provide the LPAT with comprehensive planning evidence is not permitted once an application has been appealed. The LPAT also requires video and audio recordings of public sessions at which oral submissions were made.

### **Implications for our Clients**

The new land use planning appeals system puts more emphasis on the local decision process regarding a development application. The record before a municipal Council will form the bulk of the evidence at a hearing. As such, it is critical for Council reports, as well as studies in support of a development proposal, to contain fulsome and defensible analysis. Over the coming months, Bruce County planning staff will be investigating potential improvements to planning report formats to ensure they are consistent with the requirements of the LPAT. In the event that a planning decision is appealed, Councils will now be in a position of having to re-visit a previous decision should the LPAT determine that the original decision does not meet the consistency / conformity test.