



SUBJECT: Update on Bill 139

TO: Committee of the Whole

FROM: Legal Department

Report Number: L-19-17

Wards Affected: All

File Numbers: 110-03

Date to Committee: June 26, 2017

Date to Council: July 10, 2017

Recommendation:

Receive and file legal department report L-19-17 providing an update on Bill 139.

Purpose:

The purpose of this report is to provide Committee and Council with an update on the recent introduction of Bill 139, the “Building Better Communities and Watersheds Act”, by the Province on May 30, 2017. Bill 139 proposes amendments to the *Planning Act* and *Conservation Authorities Act*. It also creates a new Local Planning Appeal Tribunal to replace the Ontario Municipal Board and creates a Local Planning Support Centre to provide free information and support for citizens that want to participate in the land use planning appeal process.

This report is to also advise that the amendments to the Planning Act proposed within Bill 139 have been posted on the Province’s Environmental Registry for public review and comment between May 31st and August 14, 2017. Amendments to the Conservation Authorities Act proposed within Bill 139 are also posted on the Environmental Registry for public comment between May 31st and June 30, 2017. In both instances, City Planning staff are working with their colleagues in the Region through the Halton Area Planning Partnership (HAPP) group to prepare comments for consideration by the Province.

A City that Grows

- Promoting Economic Growth
- Intensification

- Focused Population Growth

A City that Moves

- Increased Transportation Flows and Connectivity

An Engaging City

- Good Governance

Background and Discussion:

In 2016, the Province of Ontario conducted extensive public consultation on a review of the Ontario Municipal Board. The consultation focused on: the OMB's jurisdiction and powers; citizen participation and local perspective; clear and predictable decision making; modern procedures and faster decisions; and alternative dispute resolution and fewer hearings. In December 2016, Council considered Planning Report PB-97-16, and endorsed the Halton Area Planning Directors' Submission on the review of the OMB, as well as additional comments beyond those included in the Directors' submission.

The Province has concluded its review of the OMB and has given first reading to Bill 139 on May 30, 2017. Bill 139 proposes significant changes to the land use planning appeal process that is currently in place in Ontario. No second reading of the Bill or standing committee consideration of the Bill will likely take place until the fall of 2017, as the Legislature has taken its summer break. The Province has posted several components of Bill 139 to the Environmental Registry for public review and comment. Comments on the proposed amendments to the *Conservation Authorities Act* are required to be submitted by June 30, 2017, which comments on the amendments to the *Planning Act* are required to be submitted by August 14, 2017.

Overview of Proposed Changes to Appeal Process

The following is a brief general overview of some of the major changes to the appeal process that are currently proposed through Bill 139. The proposed amendments are subject to potential revision, addition or deletion as the Bill moves through second and third readings by the Province. More details will emerge and become clear as staff from all agencies and private sector interests digest the contents of the proposed amendments, and when regulations, including those dealing with transition, are prepared.

1. *Local Planning Appeal Tribunal Act, 2017*

Bill 139 proposes to repeal the Ontario Municipal Board Act and replace it with the *Local Planning Appeal Tribunal Act, 2017* (“LPAT Act”). This is a significant change that has the effect of replacing the Ontario Municipal Board with a new tribunal called the Local Planning Appeal Tribunal (“LPAT”). The new LPAT would be governed by the LPAT Act, similar to how the OMB was governed by the Ontario Municipal Board Act. The LPAT Act establishes the LPAT’s jurisdiction, powers, practices and procedures. While the LPAT would still be an independent tribunal from government like the OMB, its jurisdiction to hear appeals would be significantly different than that of the OMB. Those jurisdictional changes are reflected in the amendments to the Planning Act noted below.

2. *Local Planning Appeal Support Centre Act, 2017*

Bill 139 proposes to enact the *Local Planning Appeal Support Centre Act, 2017*, which would establish a new provincial agency that would provide independent advice and representation at no cost to qualified people involved in land use planning appeals. The agency would establish qualification criteria to determine who could use the services provided by the agency.

3. Amendments to the *Planning Act*

Bill 139 proposes a number of significant amendments to the *Planning Act*. These amendments include:

- i) Eliminate “de novo” appeal hearings for most planning appeals. Under the current Planning Act, the OMB may overturn a municipal decision if it prefers the evidence put before it at a contested hearing. The proposed amendments would provide that LPAT would only be able to overturn a municipal decision if it did not conform to upper tier Official Plan or provincial plan policies. If LPAT did overturn a decision, the subject application would be sent back to the municipality, at which time the municipality would have 90 days to make a new decision on the application;
- ii) Where the Minister advises that a matter of provincial interest is, or is likely to be, adversely affected by an official plan or zoning by-law appealed to LPAT, the tribunal’s powers would not apply;
- iii) In major transit areas where municipalities have policies related to areas surrounding existing or planned stations, there would be no appeal with respect to the policies, with limited exceptions, including where the

maximum height for a building would not satisfy the minimum density set out for a property;

- iv) Unless permitted by Council, applications to amend a new secondary plan would be restricted for two years;
- v) Local appeal bodies (which can currently be established to deal with Committee of Adjustment appeals of minor variances and consents) would be permitted to deal with site plan control;
- vi) Official Plans would have to contain policies relating to climate change;
- vii) Timelines for making decisions on Official Plan amendments and zoning by-laws would be extended by 30 days;
- viii) Interim control by-laws would only be appealable by the Minister in the by-law's first year of operation.

As noted earlier in this report, Council endorsed the Halton Area Planning Directors' Submission to the Province on the review of the OMB, as well as provided additional comments beyond those included in the Directors' submission, through Planning Report PB-97-16 in December 2016. The submission and additional comments focused on the following areas of amendment to the Planning Act and OMB procedures:

- a) Scoping appeals- restrict the scope of appeals that could be appealed to the OMB, including those that are broad and without basis
- b) Mediation- utilize alternative dispute resolution as a first solution to resolve land use disputes rather than hearings
- c) De Novo Hearings- limit the opportunities for de novo hearings at the OMB and give validity to Council's decisions on land use matters
- d) Review timeframes- extend time frame for review of OPA's and zoning by-law amendments to give more time for review to avoid appeals based on non-decision
- e) Funding for alternative dispute resolution- fund and resource alternative dispute resolution processes and do not download to municipalities
- f) Interim Control By-law appeals- extend study period to automatic two year period
- g) Provide further clarity to restriction of appeals of planning applications for development supporting transit infrastructure

The proposed changes to the *Planning Act*, along with the introduction of the *Local Planning Appeal Tribunal Act, 2017* and *Local Planning Appeal Support Centre Act, 2017*, are generally consistent with the submissions and additional comments that Council endorsed in 2016.

Strategy/process

City Legal and Planning staff have worked together in determining how the City's support for Bill 139 can be conveyed to the Province in the required timeframe, and in the bringing forward of this information report. As noted previously, components of Bill 139 have been posted on the Province's Environmental Registry for public review and comment period, commencing on May 31, 2017. The commenting periods expire on June 30, 2017 and August 14, 2017 for the amendments to the Conservation Authorities Act and Planning Act, respectively. Given these short timeframes and that Committee and Council have no meeting scheduled in July or August, Planning staff will work with and provide Burlington input to HAPP as part of a joint submission to the Province. Staff will provide members of Council with a copy of the HAPP submissions to the Province for their information.

Options considered

Not applicable

Financial Matters:

Not applicable

Total Financial Impact

Not applicable

Source of Funding

Not applicable

Other Resource Impacts

Not applicable

Public Engagement Matters:

Not applicable

Conclusion:

Bill 139 proposes significant changes to the land use planning appeals process in Ontario. The proposed amendments to the *Planning Act* and other acts, along with the introduction of new legislation creating a Local Planning Appeal Tribunal and a Local Planning Appeal Support Centre are consistent with the submissions Burlington made to the Province.

Respectfully submitted,

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Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.