

Municipal & Planning Law Bulletin

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Top 10 Things You Need to Know About Bill 139

Bill 139 (*Building Better Communities and Conserving Watersheds Act, 2017*), which has received First Reading, proposes to continue the Ontario Municipal Board as the renamed Local Planning Appeal Tribunal, make fundamental changes to the *Planning Act* approval process, and revise the *Conservation Authorities Act*.

While the final content of Bill 139 has not yet been determined and the regulations are not available, below is a summary of the most salient changes proposed.

THE NEW LOCAL PLANNING APPEAL TRIBUNAL

- **New Hearing Rules.** No party would be permitted to call evidence or examine witnesses in most planning appeals (Official Plans and Amendment, Zoning By-law and Amendments, and Plan of Subdivision). Instead, evidence would be based primarily on the written record that was before council when it made its original decision. An oral hearing would involve only submissions by the parties to the appeal. Proposed time limits for parties' oral submissions are to be stipulated in a regulation which has not yet been published.
- **Mandatory Case Management.** The tribunal would require that a case management conference be held for any proceeding in the above matters for purposes such as identifying the issue(s) raised by the proceeding, discussing opportunities for settlement and determining administrative details of the conduct of hearings.
- **Local Planning Appeal Support Centre.** A new Local Planning Appeal Support Centre, staffed by a duty lawyer, would be established to provide free information and support, as well as representation for residents seeking to participate in the appeal process.

THE PLANNING ACT

- **The New Test.** On an appeal of a municipally-adopted/approved Official Plan or Amendment (OP/OPA), or a Zoning By-law or Amendment (ZBL/ZBLA), the appellant would have to explain how the part or section of the aforementioned instrument of concern to the appellant is inconsistent with a provincial policy statement, fails to conform with or conflicts with a provincial plan, or fails to conform with the applicable upper-tier official plan.
- **The Joint Test.** On an appeal from a refusal of a privately-initiated OPA or ZBLA, the applicant/appellant would have to explain (i) how the existing policies/regulations of the OP or ZBL sought to be amended

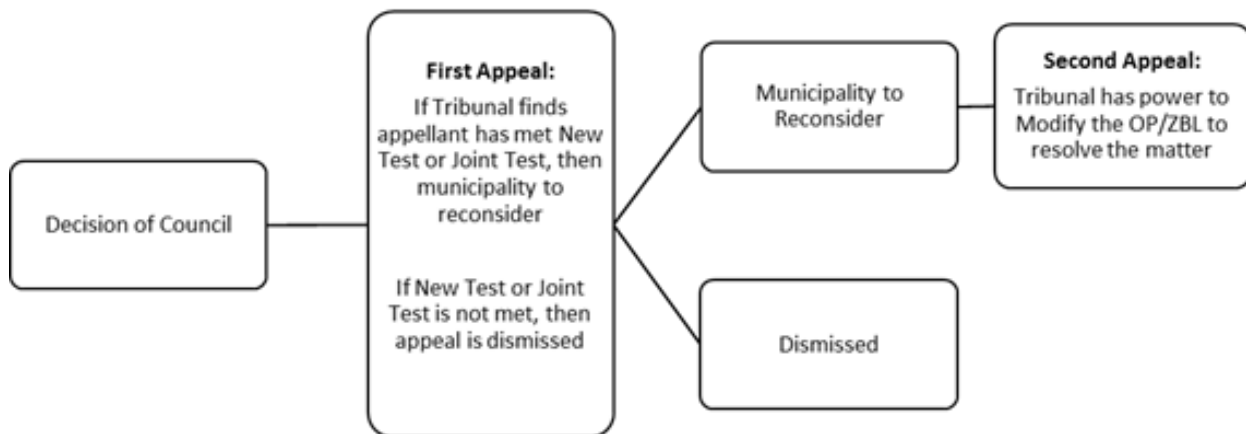
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do not satisfy the New Test and (ii) how the proposed OPA or ZBLA does satisfy the New Test.

• **The First and Second Appeal Process**

- If the tribunal determines that the appellant has not met the applicable test (i.e. the New Test or the Joint Test), the appeal would be dismissed.
- If the tribunal determines that an appellant has met the applicable test, the tribunal would have to issue a notice to the municipality that it is being given an opportunity to reconsider its decision on the matter.
- If the municipality does not render a decision on the reconsideration within 90 days, the non-decision could be appealed to the tribunal.
- If the municipality does render a decision on the reconsideration, the municipal decision could be appealed a second time. On a second appeal, if the tribunal finds that the appellant has again met the New Test or the Joint Test, only then would the tribunal be empowered to modify the appealed instrument to resolve the matter.



- **Major Transit Station Areas.** Upper and single-tier municipal Official Plans would be able to include policies that identify a protected major transit station area. These policies can prescribe the land uses, heights and minimum employment/residential densities to be achieved in the major transit station areas. Lower-tier municipalities would have to amend their OPs to give effect to the upper-tier’s policies. Exemption orders would not apply in the case of new Major Transit Station area policies, so all of these policies and maps would have to be approved by the relevant approval authority (i.e. an upper-tier municipality or the Minister). If approved by the relevant approval authority, new Major Transit Station Area policies and maps would not be appealable. These new policies and maps would not be able to be amended by a private application absent permission from the municipality.
- **Secondary Plan Two-Year Freeze.** Once approved, no one would be able to request an amendment to a new secondary plan before the second anniversary of the secondary plan coming into force, absent permission from the municipality.
- **Non-Decisions.** The appeal period on a private OPA is proposed to be extended from 180 days to 210 days. The appeal period on a private ZBLA is proposed to be extended from 120 days to 150 days, unless the private ZBLA is accompanied by a private OPA, in which case the appeal period for both would be 210 days. This is in addition to all of the Bill 73 amendments regarding approval authority extensions. On

reconsideration matters (i.e. second appeals), the non-decision period is proposed to be reduced to 90 days.

- **No Appeals of Minister’s Decisions.** Where the Minister of Municipal Affairs is the approval authority of an OP or OPA, there would be no ability to appeal the Minister’s decision to approve. This becomes important in the context of OP reviews and conformity exercises undertaken pursuant to section 26 of the *Planning Act*, where exemptions from Ministerial approval do not apply. Further, the definition of a Municipal Comprehensive Review has changed under the 2017 *Growth Plan for the Greater Golden Horseshoe* such that an MCR may only be undertaken by an upper or single-tier municipality pursuant to section 26. Because upper and single-tier decisions under section 26 are subject to Ministerial approval, none of these matters would be capable of being appealed.

ADDITIONAL CHANGES ALSO PROPOSED TO THE CONSERVATION AUTHORITIES ACT

Stop Work Orders. Officers appointed by the authority would have the power to issue stop work orders halting activities done without a permit or in contravention of a condition of a permit.

Appeals. Appeals in respect of applications for a permit in the area of an authority’s jurisdiction would be made to the Minister of Natural Resources.

Higher Fines. The maximum fine for contravention of the Act would be increased from \$10,000 to \$50,000 in the case of an individual and to \$1,000,000 in the case of a corporation. An additional fine of \$10,000 to \$50,000 a day for individuals and \$200,000 a day for corporations could be imposed if the offence continues after conviction.

Aird & Berlis LLP will continue to monitor the progress of Bill 139 and provide you with periodic updates.

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