



OAKVILLE

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: JANUARY 15, 2018

FROM: Legal Department & Planning Services

DATE: December 11, 2017

SUBJECT: **Bill 139 Update**

LOCATION: Town wide

WARD: Town wide

Page 1

RECOMMENDATION:

1. That the report from the Legal Department and Planning Services Department, dated December 11, 2017, be received.
2. That the Town Clerk forward a copy of Appendix E to the report to the Ministry of Municipal Affairs and the Ministry of the Attorney General as the Town's submission regarding the proposed regulations under Bill 139.
3. That the Town Clerk forward a copy of the report to the Ministry of Municipal Affairs, the Ministry of the Attorney General, the Ministry of Natural Resources and Forestry, Conservation Halton, Halton's MPPs, Halton Region, the City of Burlington, the Town of Halton Hills, and the Town of Milton for their information.

KEY FACTS:

The following are key points for consideration with respect to this report:

- Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*, received Royal Assent on December 12, 2017.
- Bill 139 will result in significant changes to the land use planning system in Ontario.
- The Bill also amends the *Conservation Authorities Act* respecting governance, funding and roles and responsibilities.
- In July 2017, Council endorsed a report from the Legal Department and Planning Services as the Town's submission to the Province on Bill 139. Additionally, Council authorized the Mayor to make submissions to the Standing Committee, which took place on October 17, 2017.

From: Legal Department & Planning Services
Date: December 11, 2017
Subject: Bill 139 Update

- On December 7, 2017, the Province released a summary of three proposed regulations together with a statement on transition from the OMB to the Local Planning Appeal Tribunal. Comments are due by January 21, 2018.
- Staff is reviewing its policies and procedures for the processing of planning matters to support the effective implementation of Bill 139.

BACKGROUND:

Bill 139, enacted as the “*Building Better Communities and Conserving Watersheds Act, 2017*,” received Royal Assent on December 12, 2017. The substantive changes contained in the schedules to the Bill will come into force upon proclamation, the timing of which is unknown at this time, but a recent Ministry press release anticipates that it will be in the “spring 2018.” While the date of proclamation remains a matter of some conjecture, some discussions within the industry suggest that proclamation could be April 1, 2018.

Bill 139 will significantly change the province's land use planning system. The Town participated in the Province's consultation process and provided a detailed submission on Bill 139 containing recommendations endorsed by Council in July 2017.

Bill 139 also amends the *Conservation Authorities Act*. The changes are intended to strengthen and clarify the framework of governance, funding, programs and services, and roles and responsibilities for Conservation Authorities and their provincial and municipal partners.

The Province has provided a summary of three proposed regulations under Bill 139:

1. 17-MMA021 - proposes transitional rules for planning matters in process at the time of proclamation of the Bill 139 changes to the *Planning Act*.
2. 17-MAG011 - proposes transitional rules for matters and proceedings that will come to the Tribunal under the *Planning Act*; timelines for proceedings; and time limits for submissions.
3. 17-MMA022 - proposes largely technical updates to existing regulations.

This report summarizes the legislation as enacted and comments on the proposed transition regulation and various initiatives staff is undertaking to support the effective implementation of Bill 139.

COMMENT/OPTIONS:

New Standard of Review

The Ontario Municipal Board (“OMB”) will be continued as the “Local Planning Appeal Tribunal,” but with significant changes to its standard of review. “De novo”

From: Legal Department & Planning Services
Date: December 11, 2017
Subject: Bill 139 Update

hearings, that is, a hearing where the tribunal proceeds afresh as if the matter had not been previously decided, for many planning appeals will be eliminated. Instead, the Tribunal will have a new standard of review restricted to conformity of a municipal planning decision with provincial policy statements, consistency with provincial plans, and conformity with applicable official plans. Council decisions (or failure to make a decision) regarding applications for official plan or zoning by-law amendments, can only be appealed on the basis that:

- (1) What is currently in the official plan or zoning by-law is inconsistent with a provincial policy statement (e.g. PPS), does not conform or conflicts with a provincial plan (e.g. Growth Plan), or does not conform with the Region of Halton's official plan; and
- (2) The proposed amendment is consistent with provincial policy statements (e.g. PPS), in conformity with and does not conflict with a provincial plan (e.g. Growth Plan), and conforms with the Region of Halton's official plan.¹

The new standard of review may assist in the implementation of an approved official plan or zoning by-law by allowing them to operate with greater stability by putting the onus on the appellant to show how the new standard of review is not currently met in the existing official plan and/or zoning by-law and how their proposed amendment will rectify this failure.

No changes are proposed that directly impact minor variance appeals with the exception of potential timelines (6 months) on the Tribunal for processing such applications. No changes are proposed regarding site plan approvals, consents, holding by-laws, part lot, and extensions of interim control by-laws. However, a local appeal body has expanded authority to deal with appeals and motions for directions related to site plan control and motions for directions related to consents.

In addition to the planning matters that are directly and expressly impacted by the changes in Bill 139, there are a number of other planning matters covered by the *Planning Act* that may or could be indirectly impacted by the changes in Bill 139. Staff will review these other planning matters to see what if any impacts there are and report further as to what if any changes might be advisable in the way these matters are dealt with at present.

¹ Bill 139 states that a notice of appeal shall: (a) explain how the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and (b) explain how the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.

From: Legal Department & Planning Services
Date: December 11, 2017
Subject: Bill 139 Update

Procedural Changes

Regulations under the *Planning Act* currently include minimum requirements with respect to the information that must be submitted with each land use planning application and what information must be included in the record of materials sent to the OMB on an appeal. As set out in the summary in Appendix C, the Province has proposed that the regulation be updated. Without the draft regulation, it is not possible to comment.

The new process under Bill 139 will continue to focus on complete applications from developers, public input, professional planning advice, and analysis of relevant provincial interests. Timelines for Council to make a decision on an application (official plans and zoning by-laws) that is deemed complete would be extended by 30 days, providing additional time for analysis.

There are a number of procedural changes to hearings before the Tribunal that could significantly reduce the length of hearings and change the manner in which evidence is introduced during a planning appeal. These changes apply to appeals to the Tribunal of a decision or the failure to make a decision by a municipality or approval authority in respect of an official plan or zoning by-law,² and of the failure of an approval authority to make a decision in respect of an official plan or plan of subdivision.³ A case management conference will be mandatory for these appeals in order to identify the issues raised by the proceeding and discuss opportunities for settlement or the use of mediation. If a person other than the appellant or the municipality wishes to participate in the appeal, they would have to make a written submission 30 days prior to the case management conference. There will be a two-round appeal process, such that the Tribunal cannot change a municipal decision on appeal in the first instance.

The first hearing could be written or oral. Parties would not be permitted to examine or cross examine witnesses at an oral hearing, which could assist in decreasing the length of hearings. This is appropriate given the Tribunal's new standard of review. However, at any stage of a proceeding, the Tribunal may require a party to the proceeding to produce a witness for examination by the Tribunal. The summary of the proposed regulation (Appendix B) provides that each party will have a maximum of 75 minutes to make a submission (i.e. presentation) to the Tribunal at an oral hearing. Participants would each have 25 minutes to make a submission to the Tribunal. A time limit of 75 minutes may not be appropriate for multi-party appeals of the adoption of new official plans. Further it is not clear if the time limit includes an opportunity for a reply submission. However, the Tribunal would have discretion to

² Pursuant to subsections 17(24) and (36), 22(7) and 34(11) and (19) of the *Planning Act*

³ Pursuant to subsections 17(40) and 51(34) of the *Planning Act*

From: Legal Department & Planning Services
Date: December 11, 2017
Subject: Bill 139 Update

increase the time limits where, in the opinion of the Tribunal, it is necessary for a fair and just determination of the appeal.

Where an appeal is allowed by the Tribunal on the basis of the new standard of review, the Tribunal would be required to return the matter to Council with written reasons. Council would then have 90 days to make a new decision. Council's second decision can be appealed, but again only on the basis of the new standard of review. If the Tribunal determines that the second decision is still inconsistent or does not conform with a provincial policy or plan, or an official plan, only then can it intervene and modify Council's decision. If Council does not make a new decision within 90 days, the Tribunal is not restricted to the consistency/conformity test.

Natural Justice and Procedural Fairness

Bill 139 ensures that the rules of natural justice and procedural fairness are respected, as the Tribunal is required to adopt any practices and procedures that "offer the best opportunity for a fair, just and expeditious resolution of the merits of the proceeding."

No changes are proposed to Section 61 of the *Planning Act*, which confirms that the role of council is a legislative one and not a judicial function:

Fair hearing

61 Where, in passing a by-law under this Act, a council is required by this Act, by the provisions of an official plan or otherwise by law, to afford any person an opportunity to make representation in respect of the subject-matter of the by-law, the council shall afford such person a fair opportunity to make representation but throughout the course of passing the by-law the council shall be deemed to be performing a legislative and not a judicial function.

The Parliamentary Assistant confirmed at the Standing Committee on Social Policy in October 2017 the following:

Since 1983, the Planning Act has expressly provided that municipal decisions to adopt official plans and pass zoning bylaws are a legislative decision. While Bill 139 will impact the tribunal's consideration of appeals of these decisions, there is nothing in the bill that detracts in any way from the existing provision confirming that council is making a legislative decision.

At this time, no changes in the town's procedures are necessary. Staff will continue to review and monitor to determine whether any amendments are required to the town's procedures at meetings.

From: Legal Department & Planning Services
Date: December 11, 2017
Subject: Bill 139 Update

It is further noted that municipal council planning decisions are informed by a comprehensive public process that begins with a complete application. Applicants often have several opportunities to make submissions to Council, such as at the public information meeting and the recommendation meeting. Representations can be made in writing or orally. Further, municipal council planning decisions are guided by recommendations of their professional planning staff and Council is required to provide reasons for its decision. If an applicant has a concern regarding the credibility of a professional planning opinion, that can be identified in their representations to Council, as well as raised before the Tribunal in their submissions if a matter is appealed.

Timelines for Appeals

As set out in Appendix B, the Ministry of the Attorney General is proposing to make regulations with respect to timelines for proceedings before the Tribunal under the *Planning Act*. The following overall timelines for proceedings before the Tribunal in relation to appeals under the *Planning Act* are proposed:

- Ten (10) months for appeals of a municipality or approval authority's decision or a municipality's failure to make a decision in respect of an official plan or zoning by-law.
- Six (6) months for appeals of:
 - a new decision of a municipality or an approval authority in respect of an official plan or zoning by-law, where the Tribunal determined that the original decision failed the conformity/consistency test.
 - a municipality or approval authority's failure to make a new decision in respect of an official plan or zoning by-law, where the Tribunal determined that the municipality or approval authority's original decision failed the conformity/consistency test.
- Twelve (12) months for appeals of an approval authority's failure to make a decision in respect of an official plan or plan of subdivision.
- Six (6) months for any other proceeding before the Tribunal under the *Planning Act* (e.g. minor variances).

It is proposed that the time for a proceeding begin from the date the proceeding is received and validated by the Tribunal. It is also proposed that, for the purposes of calculating the time for a proceeding, some periods of time would be excluded from the calculation, such as adjournments on consent for the purposes of mediation.

From: Legal Department & Planning Services
Date: December 11, 2017
Subject: Bill 139 Update

However, it is unclear as to the exact period of time which is captured in the proposed regulation. For instance, it is unknown whether these time periods are reflective of when a decision is to be rendered by the Tribunal.

Transition

The amendments to the *Planning Act* and related legislation in Bill 139 generally come into force on a date (or dates) to be proclaimed by the Lieutenant Governor (the “proclamation date”), although there are exceptions. Based on the latest press release from the Ministry and discussions within the industry, proclamation could be April 1, 2018.

As set out in Appendix A, the Ministry of the Attorney General has proposed the following transition:

- appeals that are already before the OMB as of the date of Royal Assent (December 12, 2017) would be subject to the existing rules and would be heard by the OMB;
- appeals made after the new rules come into force⁴ (proclamation could be April 1, 2018) would be subject to the new rules and heard by the Tribunal;
- appeals of matters between December 12, 2017 and proclamation:
 - would be heard by the OMB if the planning matter began (e.g. the complete application was received) before December 12, 2017; and
 - would be heard by the Tribunal if the planning matter began after December 12, 2017
- appeals made before proclamation would be heard by the Tribunal in respect of:
 - municipally-initiated official plan amendments that are adopted after December 12, 2017; and
 - municipally-initiated zoning by-law amendments that are passed after December 12, 2017.

The extended timelines for municipalities to make a decision on an application for an OPA (extended to 210 days) and a ZBA (extended to 150 days, or 210 days if the application requires an OPA and applications are filed on the same day) would apply to complete applications submitted after December 12, 2017.

The City of Toronto adopted a motion last year requesting that the Province ensure that the legislation contains provisions limiting the transition period so that any

⁴ The summary of the proposed transition appears to use “proclamation” and “comes into force” interchangeably.

From: Legal Department & Planning Services
Date: December 11, 2017
Subject: Bill 139 Update

application made after First Reading be subject to the new legislation. Town Council similarly advocated for a limited transition period as a result of concern regarding an increase in appeals being filed to the OMB by parties prior to the enactment of Bill 139. With the introduction of the proposed transition, the Province has stated that its intent is to provide a balance between applying the new rules as soon as possible and ensuring fairness for matters already in the current system (Appendix D). The Province is seeking comments in order to finalize the proposed transition regulation. Although staff consider the proposed transition is unlikely to change, to ensure a smooth transition and to avoid unnecessary appeals causing a backlog in the OMB's already stressed caseload, staff continue to recommend that Council request that the Province adopt a transition provision that would only permit appeals to be heard by the OMB if the appeals were filed prior to First Reading (May 30, 2017) of Bill 139.

Major Transit Station Areas

An upper-tier municipality may include official plan policies that identify the area surrounding and including an existing or planned higher order⁵ transit station or stop as a protected major transit station area and that delineate the area's boundaries.

If the Halton Region official plan includes such major transit station area policies it must also contain policies that,

- (a) identify the minimum number of residents and jobs, collectively, per hectare that are planned to be accommodated within the area; and
- (b) require official plans of the lower-tier municipalities to include policies that,
 - (i) identify the authorized uses of land in the area and of buildings or structures on lands in the area; and
 - (ii) identify the minimum densities that are authorized with respect to buildings and structures on lands in the area.

Decisions on these policies cannot be appealed except by the Minister and requests to amend the policies can only be made with council approval.⁶ When these policies are in place, zoning by-laws that establish permitted uses, minimum and maximum densities and, except in certain circumstances, minimum and maximum heights, cannot be appealed except by the Minister.⁷

⁵ "Higher order transit" means transit that operates in whole or in part in a dedicated right of way, including heavy rail, light rail and buses

⁶ See subsections 17 (36.1.4) to (36.1.7) and 22 (2.1.3)

⁷ See subsections 34 (19.5) to (19.8)

From: Legal Department & Planning Services
Date: December 11, 2017
Subject: **Bill 139 Update**

Other Changes

Bill 139 was primarily enacted without substantive changes from First Reading. However, some changes made during the Standing Committee process include:

- new provisions that require the Tribunal to approve a revised by-law or plan on an appeal of a ZBA or an OPA presented on consent of all parties on either the first or second appeal.⁸
- clarify that an appeal of a ZBA shall not be dismissed on the basis that the by-law is deemed to conform with the official plan under subsection 24(4) of the *Planning Act*.

Local Planning Appeal Support Centre

A Local Planning Appeal Support Centre will be established to provide the public (eligible persons) with free advice and possibly representation in the land use appeals process. It is not yet known what criteria the Centre will use to determine eligibility or what resources it will have.

Conservation Authorities Act Reform

Bill 139 also amends the *Conservation Authorities Act*. Town staff participated in a joint submission through the Halton Area Planning Partnership on September 9, 2016. Highlights of the amendments to the *Conservation Authorities Act* include:

- Strengthening oversight and accountability in Conservation Authority decision-making
- Increasing clarity and consistency in programs and services as well as regulatory requirements
- Improving collaboration and engagement
- Modernizing funding mechanisms to support Conservation Authority operations.

Next Steps

Comments on the summary of the proposed regulations may be submitted through the Environmental Registry before January 21, 2018.

Staff is reviewing its procedures for the processing of planning matters to align with the proposed new timelines. Additionally, report writing is being reviewed to ensure that there is sufficient information in the event that matters proceed solely in writing or at an oral hearing without any examination of witnesses.

⁸ Unless the revised by-law or plan does not meet the new standard of review, i.e. consistency with provincial policy statements, conformity to or not in conflict with the applicable provincial plans and conformity to relevant official plans.

CONSIDERATIONS:

(A) PUBLIC

Bill 139 would establish the Local Planning Appeal Support Centre to provide free and independent advice and representation to eligible Ontarians when pursuing land use planning appeals.

(B) FINANCIAL

Bill 139 could result in cost savings for municipalities if Tribunal proceedings are streamlined.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Legal and Planning Services will continue to monitor the status of the proposed regulations under Bill 139.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be accountable in everything we do

(E) COMMUNITY SUSTAINABILITY

Bill 139 impacts the Town's sustainability objectives of the Livable Oakville Plan.

- Appendix A – Proposed regulation to prescribe transitional provisions for Bill 139
- Appendix B – Proposed regulation under the Local Planning Appeal Tribunal Act
- Appendix C – Proposed amendments to matters included in existing regulations
- Appendix D – Province's statement on transition
- Appendix E – Town of Oakville's Submission Regarding the Proposed Regulations under Bill 139

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