

## REPORT

### PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: MARCH 19, 2018

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**FROM:** Legal Department

**DATE:** March 7, 2018

**SUBJECT:** Local Planning Appeal Tribunal (LPAT) Draft Rules of Practice and Procedure

**LOCATION:** Town wide

**WARD:** Town wide

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#### RECOMMENDATION:

1. That the report from the Legal Department dated March 7, 2018, be received.
2. That the Town Clerk forward a copy of the report to the Environment and Land Tribunals Ontario as the Town's submission regarding the proposed Rules of Practice and Procedures for the Local Planning Appeals Tribunal.
3. That the Town Clerk forward a copy of the report to the Ministry of Municipal Affairs, the Ministry of the Attorney General, 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, the *Building Better Communities and Conserving Watersheds Act, 2017* was introduced with the intent to make changes to the land-use planning appeal system in Ontario, including the transition of the Ontario Municipal Board to the Local Planning Appeal Tribunal (LPAT).
- As part of the transition to the LPAT, the Environment and Land Tribunals Ontario (ELTO) is seeking comments on proposed Rules of Practice and Procedures for the LPAT.
- Comments on the LPAT Rules must be sent to ELTO by March 23, 2018.
- The proposed LPAT Rules will require significant resources of municipal clerks if they are approved in their current form. The Rules also contain discrepancies in the record filing requirements that need to be clarified.

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**BACKGROUND:**

Bill 139, the *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. These changes will come into effect on April 3, 2018, as specified by proclamation. ELTO is seeking comments by March 23, 2018 on the proposed Rules of Practice and Procedures (Rules) for the LPAT.

**COMMENT/OPTIONS:**

In accordance with section 1 of the *Local Planning Appeal Tribunal Act, 2017* (LPATA), the LPAT is required to dispose of proceedings before it in accordance with practices and procedures that may be established by the LPAT. LPATA provides that in the event of a conflict, the LPATA and its regulations, along with the LPAT's rules, prevail over the provisions of the *Statutory Powers and Procedures Act* (SPPA). For example, section 10.1 of the SPPA provides for the examination of witnesses by a party to a proceeding at an oral or electronic hearing and permits cross-examination of witnesses at the hearing. However, the LPATA only permits examination of witnesses by the LPAT.

On February 23, 2018, ELTO released draft Rules for the LPAT (Appendix A). Comments are due by March 23, 2018. The Rules are made under section 32 of the LPATA and section 25.1 of the SPPA. The proposed LPAT Rules are divided into three parts. Part I sets out the general powers of the executive chair, initiating proceedings, motions, mediation, conduct of proceedings, costs, and review of a LPAT decision or order. Part II applies to a decision made by a municipality or approval authority or the failure of a municipality or approval authority to make a decision under subsections 17(24), (36) and (40), 22(7), 34(11) and (19) and 51(34) of the *Planning Act*. Part III addresses expropriation proceedings. Comments on the proposed Rules are set out and summarized below.

**Rule 5.04** – the requirement for the clerk to create not only a summary of all oral submissions made at a statutory public meeting but to also note the time on a recording of any oral submission made at a public “session” is extremely onerous. Such a requirement is unnecessary where the municipality keeps an audio or video recording of the proceedings that are publicly available and can be provided to the Tribunal and parties.

**Rule 7.03 and Rule 7.04** – the requirement to provide documents intended to be introduced as evidence to all parties at the beginning of the proceeding could result in unfairness by not providing any time to review and fully respond. To remedy this, the Tribunal could establish a default timeline, such as at least 10 days prior to the commencement of a hearing to exchange material.

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**Rule 7.10** – the requirement that a document be served either by personal service or electronic service should be clarified to add courier and registered mail as methods of service.

**Rule 26.04** – the requirement that the municipality provide a copy of the municipal record for Part II procedure appeals to each person who has filed an appeal may result in a significant cost to municipalities. A digital copy of the record should be sufficient for appellants and could be made available for copying subject to a fee.

**Rule 26.11** – the requirement to file an appeal record and case synopsis within 20 days of the determination on the validity of the appeal may not be reasonable given the content required and taking into account municipal closures. A more achievable time period would be 30 days.

**Rule 26.12(e)** – the requirement to file an affidavit that may contain opinion evidence in the Appellant's Record but not in the Respondent's Record is unreasonable. To be consistent with the legislative intent to have submissions be made to the Tribunal based on the municipal record, this requirement to file an affidavit that could effectively adduce fresh evidence with no opportunity for a response should be deleted, particularly as there is no opportunity for cross-examination by a party. However, it is unclear whether the requirement to file an affidavit was intended to also be included in the Respondent's Record as it is contemplated by Rule 26.24, which references an affidavit contained in the responding appeal record.

**Rule 26.12 – additional (c)** – it is unclear and should be clarified as to what is contemplated by documents or reports which “update the application” that is the subject of the appeal of a non-decision.

**Rule 26.13(e)** – references “opinions that address the issues raised” in the Appellant's Case Synopsis but there is no corresponding reference contained in the Respondent's Case Synopsis in Rule 26.15(d).

**Rule 26.14** – there is no corresponding requirement for the inclusion of an affidavit that may include opinion evidence in the Respondent's Record. If the requirement for an affidavit is not deleted from Rule 26.12(e) then the same requirement should be added to the Respondent's Record.

**Rule 26.16** – the requirement for a municipality to respond within 20 days of receipt of the appeal record by the Tribunal should be clarified that the time for filing a response starts upon receipt by the municipality/approval authority (presumably, this would also be the same day the Appeal Record is received by the Tribunal). The 20

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day timeline is also not a reasonable period to prepare the material required by the Rules and should be extended to 30 days.

**Rule 26.20** – in order to have a meaningful case management conference, which includes to identify, define, or narrow issues on appeal, obtain admissions, etc, the Records and Synopsis for the Appellant and Respondent should be prepared and filed after the case management conference. Further, the Rules do not set out any requirements for when/how any submissions can/should be made by additional parties or participants that are identified. Also, additional parties are to be identified from the written submissions at the case management conference as set out in 26.20(b), but this could be done prior. It should also be clarified what additional “exchange of documents or submissions” is contemplated by 26.20(j).

**Rule 26.23** – the requirement in 26.23(a) to deliver evidence of a witness by “affidavit” to address the issues in dispute after the case management conference is unclear if submissions are to be made to the Tribunal based on the municipal record. However, it is recognized some flexibility may be required in situations where there is a non-decision by a municipal council. Further, the requirement to file a case synopsis prior to the case management conference and then also prepare a summary of submissions required by 26.23(d) may be inefficient.

After a reasonable period of time in which the Rules operate, a further review and consultation should be undertaken to address any issues that may arise.

## **CONSIDERATIONS:**

### **(A) PUBLIC**

The Rules require clarification to address when/how any submissions can/should be made by additional parties or participants that are identified at the case management conference.

### **(B) FINANCIAL**

Increased requirements for the municipal record will require an increase in municipal resources.

### **(C) IMPACT ON OTHER DEPARTMENTS & USERS**

Implementation of the LPAT practices and procedures will impact Legal Services, Clerks and Planning Services.

### **(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS**

This report addresses the corporate strategic goal to:

- be accountable in everything we do

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**(E) COMMUNITY SUSTAINABILITY**

LPAT proceedings may impact all 4 pillars of sustainability – social (including accessibility), economic, environment or cultural aspects of the community.

**APPENDICES:**

Appendix A – Proposed LPAT Rules

Recommended by:  
Nadia Chandra  
Assistant Town Solicitor

Submitted by  
Douglas Carr  
Town Solicitor