



TO: MAYOR J. LEHMAN AND MEMBERS OF COUNCIL

FROM: ANDREA BOURRIE, RPP
DIRECTOR OF PLANNING AND BUILDING SERVICES

NOTED: R. FORWARD, MBA, M.Sc., P. ENG.
GENERAL MANAGER OF INFRASTRUCTURE & GROWTH MANAGEMENT

C. LADD, CHIEF ADMINISTRATIVE OFFICER

RE: PROPOSED BUILDING BETTER COMMUNITIES AND CONSERVING
WATERSHEDS ACT.

DATE: JUNE 26, 2017

OMB REFORM

On Wednesday May 31 2017 the Province introduced the *Proposed Building Better Communities and Conserving Watersheds Act*. This Act, if passed, will create the Local Planning Appeal Tribunal (LPAT), replacing the Ontario Municipal Board (OMB). LPAT is intended to give greater weight to the decisions of local communities, while ensuring that development and growth occurs in a way that is good for Ontario and its future.

Key changes proposed under this new legislation include:

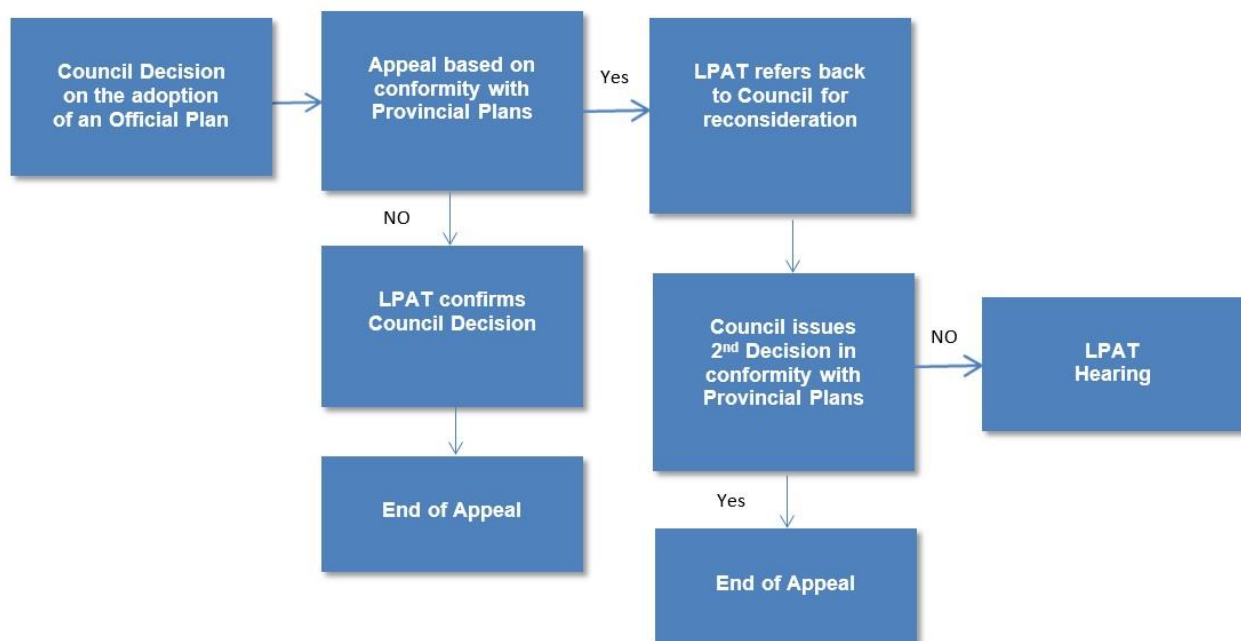
- Eliminating lengthy and costly "de novo" hearings for the majority of planning appeals. The term "de novo" means "starting from the beginning; anew". The Ontario Municipal Board has traditionally dealt with appeals of municipal land use planning decisions, by considering the same issue that was before the municipality as though no previous decision had been made. This process would not continue; the municipal decision would be considered.
- Creation of a Local Planning Appeal Support Centre, a new agency that would provide free information and support, which may include representation at the tribunal for citizens who want to participate in the appeal process.
- Exempting a broader range of major land use planning decisions from appeal, including new Official Plans, major Official Plan updates and detailed plans to support growth in major transit areas.
- Establishing a mandatory case conference for complex hearings to encourage early settlements, which would help reduce the time and cost of appeals and create a less adversarial system.

With respect to the range of planning decisions that can be appealed, new provisions of the *Planning Act* provide that an appeal concerning the adoption or approval of an official plan or OPA is restricted to issues of consistency or conformity with provincial plans and policy statements and, as applicable, conformity with official plan policies of upper-tier municipalities.

Essentially the Tribunal's authority in connection with such appeals are limited but where an appeal is allowed, the municipality has a second opportunity to make a decision. If that second decision is also appealed and the Tribunal again determines that the decision did not meet the new standard of review (limited to issues of consistency or conformity), the Tribunal would make the final decision. It is worth noting that LPAT will only review written evidence; no verbal evidence or cross-examination is provided for.

Similar amendments are made to appeals of refusals and non-decisions on requests to amend official plans and appeals related to zoning by-laws.

The flow chart below summarizes the new appeal process:



The Province has not outlined transition provisions for existing OMB hearings at this time. The Minister may establish regulations providing for transitional matters at a later date.

Response to City Input

Staff sent a letter to the Province regarding the OMB Reform on December 13, 2016 which included a number of recommendations which are represented in the final Bill. These comments include the following and we are pleased to see that many have been addressed:

- The Province's decisions on new official plans or proposed official plan amendments, where municipalities are required to implement Provincial Plans, would be final and not subject to appeal.
- Restrict appeals of municipal official plans, amendments to these plans, and zoning by-laws/amendments, for development that supports provincially funded transit infrastructure such as subways and bus stations. This would help ensure that there are sufficient densities to support transit investments.

- No appeal of a municipality's refusal to amend a new secondary plan for two years. This recognizes the extensive work and involvement of a community in developing a plan, and would provide certainty and stability for neighbourhoods.
- Increase the number of OMB adjudicators and ensure they possess the necessary skills for the cases assigned. Also ensure that the member assigned to a particular case has expertise in the subject matter of the case.
- Appropriate timelines should be set for rendering and issuing decisions. Issue more oral decisions at the end of a hearing even if it requires an adjournment to a draft decision.

If Members of Council have any questions or comments please contact Edward Terry, Planner, at extension 5135 or Merwan Kalyaniwalla, Manager of Sustainable Development, at extension 4314.