Province Releases Bill 139 Regulations for Transition From the OMB to the New Local Planning Appeal Tribunal

December 11, 2017

BLG has been closely following the legislative progress of the *Building Better Communities and Conserving Watersheds Act, 2017* ("Bill 139"), which we first addressed in our Bulletin of June 1, 2017 just after it was announced. Bill 139 proposes to replace the Ontario Municipal Board ("OMB") with the Local Planning Appeal Tribunal ("LPAT") and would result in fundamental changes to the planning appeal system in Ontario.

On December 7, 2017, the Ministry of Municipal Affairs ("Ministry") released a first look at the proposed content for regulations which will govern the transition to the new planning regime.

The Ministry has indicated in a public statement that they are working to have the new system fully implemented in the spring of 2018. However, certain aspects of the Bill 139 regulations will likely affect the appeal process as soon as the Bill receives Royal Assent, which could be imminent. It is therefore important for municipalities, public agencies and developers alike to understand the impact of these regulations, particularly for parties who may be submitting a planning application in the near future or for municipalities considering passing a zoning by-law amendment ("ZBA") or adopting an official plan amendment ("OPA").

Current Status of Bill 139 and Next Steps

The Bill is in the final debates in Third Reading. Although there were some changes following consideration by Standing Committee, Bill 139 remains largely intact. The overall structure of Bill 139 remains the same as that discussed in our first Bulletin on the subject.

Some of the more substantive changes made during the Standing Committee process include:

1. Introducing new provisions which require the LPAT 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, 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);
2. Introducing a new section to 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*;
3. Introducing new provisions which give the Minister broader authority to enact transitional regulations to govern the transition to the new LPAT regime (discussed in more detail in the next section); and
4. Introducing a new section to clarify that nothing done or not done in accordance with the *Planning Act* constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law, and other sections limiting remedies and proceedings.

Since there have already been over six hours of debate on the Third Reading for Bill 139, we anticipate that a vote on passing the Bill is imminent, perhaps as early as this week. If Bill 139 passes, we anticipate that Royal Assent will take place within days of passage of the Bill, and likely before the new year.

Proposed Transitional Regulation

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 with the industry, we anticipate that the proclamation date will be April 1, 2018.

Notwithstanding the anticipated proclamation date, the proposed transition regulation released by the Ministry on December 7, 2017 ("Transitional Regulation") contemplates changes to the planning regime that may come into effect immediately upon Royal Assent. Assuming no substantive changes to the Transitional Regulation, we summarize below those parts of the Bill that would apply after Royal Assent and those parts that would apply only after the Bill comes into force based on the Transitional Regulation below:

1. Parts of Bill 139 that would apply as soon as Royal Assent is received:

1. The new standard of review would apply to:
    1. appeals of OPAs (generally) and ZBAs filed if complete applications were not submitted prior to Royal Assent;
    2. appeals of municipally-initiated zoning by-laws and ZBAs passed after Royal Assent;
    3. appeals of municipally-initiated official plans and OPAs adopted after Royal Assent;
2. 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 application requires an OPA and applications are filed on the same day) would apply to complete applications submitted after Royal Assent; and

3. The extended timelines for approval authorities to make a decision on adopted official plans/OPAs (extended to 210 days) would apply to official plans/OPAs adopted after Royal Assent.

2. Parts of Bill 139 that would apply only after the Bill comes into force:

1. The removal of the right to appeal from provincial approvals of new official plans and from OPAs adopted pursuant to s. 26 of the *Planning Act* (*e.g.* 5 or 10 year Official Plan updates) for decisions where notice of the approval is given after the Bill comes into force;
2. The removal of mandatory referrals of Minister's zoning orders would apply to requests to refer made after the Bill comes into force;
3. The removal of appeals (other than by the Province) of interim control by-laws when first passed (for a period of up to 1 year) would apply to decisions made after the Bill comes into force; and
4. The two-year moratorium of amendments to approved secondary plans (unless allowed by council) following their approval would apply to secondary plans that come into effect after the Bill comes into force.

The complete description of the transition regulation is available online on the Environmental Registry and is open for public comment until January 21, 2018.

Proposed LPAT Regulation

A second proposed set of regulations has been released to address the LPAT, including timelines for appeals and practices and procedures of the Tribunal. As with the Transitional Regulation, the proposed regulation for the LPAT ("LPAT Regulation") has also been posted on the Regulatory Registry and is open for comment until January 21, 2018.

The LPAT Regulation confirms that the new practices and procedures set out in the *Local Planning Appeal Tribunal Act, 2017*("LPAT Act") would apply to certain appeals filed after Royal Assent but before the LPAT Act comes into force, mirroring the Transitional Regulation.

The LPAT Regulation proposes the following timelines for appeals, although it is unclear as to the exact period of time which is captured in the regulations (*e.g.*are the time periods reflective of when a decision is to be rendered by the LPAT?):

- 10 months for appeals of a decision or non-decision for Official Plan/OPAs (generally — except for s. 17(40) appeals) and zoning by-law/ZBAs;
- 6 months for appeals of a new decision made by the municipality or approval authority for Official Plan/OPAs and zoning by-law/ZBAs (*i.e.* the second appeal to LPAT);
- 12 months for appeal of a failure to make a decision on a draft plan of subdivision, and s. 17(40) *Planning Act* appeals; and
- 6 months for any other proceeding before the Tribunal under the *Planning Act* (*e.g.* minor variances).

The LPAT Regulation also proposes the following time limits on oral submissions to the LPAT:

- Maximum of 75 minutes per party, subject to the discretion of the LPAT to increase the time limits "where necessary to secure a fair and just determination of the appeal."
- Maximum of 25 minutes for participants involved in failure to make decision on a draft plan of subdivision and s. 17(40)*Planning Act* appeals.

Finally, the LPAT Regulation confirms that examinations of a party or any other person are prohibited, except by the Tribunal, for appeals of official plans/OPAs, zoning by-laws/ZBAs and failure to make a decision on a draft plan of subdivision.

Proposed Regulation to Amend Existing *Planning Act* Regulations Related to Bill 139

A third proposal addressing amendments to matters included in existing regulations under the *Planning Act* relating to Bill 139 has also been released by the Ministry.

The stated purpose of these updates to existing regulations is to facilitate implementation of the proposed changes identified in Bill 139. While specifics of the proposed changes are not provided in the proposal, it appears that the amendments will include changes to what information must be in notices of decision (*e.g.*some decisions would be final and not subject to appeal), what information must be included in a complete application and what must be forwarded to the LPAT on appeal (*e.g.*a statement from the municipality as to whether the decision conforms with the relevant official plan(s)).

The complete proposal for these regulations is also available online on the Environmental Registry and is open for public comment until January 21, 2018.

Impact of New Bill 139 Regulations

Consideration of the proposed Bill 139 regulations will be important for parties who may be considering filing a planning application or an appeal, or adopting official plans/OPAs or passing zoning by-laws/ZBAs.

- Non-municipal parties who wish to submit development applications that include an OPA or ZBA and wish to proceed under the former OMB process should complete their applications prior to Royal Assent, which may be imminent. Appeals of such applications should be filed well before Bill 139 comes into force. Such parties should also be aware that if they wait until after Royal Assent to apply, the municipal decision on their application will be subject to extended timelines as well as the procedural steps (including mandatory case management conferences) set out in the LPAT Act.
- Municipal parties can consider under which regime they would like any appeals to proceed before passing/adopting a municipally-initiated ZBA/OPA, and choose whether or not to delay adoption/passage until after Royal Assent is received. Likewise, municipalities should also be aware that if they wait until after Royal

Assent, the timeline for any approval by the applicable approval authority will be subject to extended timelines as well as the procedural steps under the LPAT Act.

In addition, the LPAT Regulations provide practitioners, the public and future LPAT members with some idea of what new timelines, practices and procedures can be expected for appeals that will be determined under the new Tribunal.

Parties should seek legal advice specific to their particular planning matter before making any strategic decisions. This is particularly important given the Bill 139 regulations which add an additional layer of complexity to future planning matters.

BLG will continue to monitor the progress of this legislation in order to advise its clients as to these historic changes to Ontario's planning regime.

By

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