



VIA Email < planningconsultation@ontario.ca >

May 31, 2019

Planning Act Review
Provincial Planning Policy Branch
777 Bay Street, 13th Floor
Toronto, ON M5G 2E5

RE: Report No. DS-025-19 – Bill 108 – Proposed Changes to the Land Use Planning Appeals System and Resolution from Mayor Lovatt, re: Bill 108, More Homes, More Choice Act

Please be advised that the above-noted matter was placed before Council at its meeting held on May 21, 2019, and the following resolutions were passed:

Report No. DS-025-19 – Bill 108 – Proposed Changes to the Land Use Planning Appeals System

- 1) That Council express concerns to the Province regarding the proposed changes in Bill 108 relating to the Local Planning Appeal Tribunal process and procedures and statutory review timelines; and
- 2) That a copy of Report DS-025-19 be submitted to the Provincial Planning Policy Branch and the Region of York for information; and
- 3) That Council direct Town staff to continue to monitor the proposed changes to the Planning Act and report back to Council as required.

Carried

Resolution from Mayor Lovatt, re: Bill 108, More Homes, More Choice Act

Whereas the Government of Ontario has recently introduced Bill 108, More Homes, More Choice Act, which affects a number of provincial legislations including the Local Planning Appeal Tribunal Act and the Planning Act; and

Whereas Council on July 18, 2017, supported Bill 139 to restructure the Ontario Municipal Board appeals process and procedures and replace it with the Local Planning Appeal Tribunal (LPAT); and

Whereas the existing LPAT's process and procedures provide municipalities with greater decision-making authority on how our communities will grow and evolve; and



Whereas Bill 108 proposes to reinstate the rules of the Ontario Municipal Board and awards LPAT the ability to override municipal decisions regardless of the Council's position on the planning application; and

Whereas Bill 108 further proposes to reduce the time for Council to make a decision on official plan amendment, zoning by-law amendment and draft plan of subdivision matters; and

Whereas when Council is unable to make a decision within the reduced review time, an applicant may bypass Council by launching an appeal to the LPAT for a decision.

Therefore, be it resolved that the Town of Whitchurch-Stouffville join other York Region municipalities in support of the Province's effort to streamline the planning process; and

That the Town of Whitchurch-Stouffville join other York Region municipalities to express concerns to the Province regarding the proposed changes to the LPAT that will significantly weaken the ability of municipal councils in planning decision-making; and

That the Province be requested to consider retaining the test in the Planning Act that appeals to LPAT must be on the basis that the municipal decision is not consistent with the Provincial Policy Statement, fails to conform with a provincial plan, or the regional Official Plan; and

That the Province be requested to undertake a fulsome consultation with municipalities before introducing major changes to the land use planning appeal system.

Carried

Yours truly,

Samantha Blakeley, Council Coordinator
(905) 640-1910 x 2222

Encl: Report No. DS-025-19

cc: Regional Clerk, York Region



Subject: Bill 108 – Proposed Changes to the Land Use Planning Appeals System (D08)

Staff Report No. DS-025-19

Department: Development Services

Date: May 21, 2019

Recommendation:

- 1) That Council express concerns to the Province regarding the proposed changes in Bill 108 relating to the Local Planning Appeal Tribunal process and procedures and statutory review timelines; and
- 2) That a copy of Report DS-025-19 be submitted to the Provincial Planning Policy Branch and the Region of York for information; and
- 3) That Council direct Town staff to continue to monitor the proposed changes to the *Planning Act* and report back to Council as required.

1. Purpose:

The purpose of this report is to provide Council with an update on the proposed changes being considered to the *Planning Act*, through the *More Homes, More Choice Act, 2019* (Bill 108), specifically as they relate to the Local Planning Appeal Tribunal (LPAT) appeals process and statutory timelines for planning approval authorities to make a decision on planning applications. Furthermore, Town staff recommends that this report be forwarded to the Province and the Region of York expressing the Town's concerns with the proposed legislation.

2. Background:

The *More Homes, More Choice Act, 2019* (Bill 108), was introduced to the legislature and received First Reading on May 2, 2019. The Province is accepting comments on Bill 108, which has been posted to the Environmental Registry, with a commenting deadline of June 1, 2019. Bill 108 proposes extensive amendments to Ontario's planning regime and various legislation, including the: *Planning Act*, *Conservation Authorities Act*, *Development Charges Act*, *Endangered Species Act*, *Environmental Assessment Act*, *Local Planning Appeal Tribunal Act*, and *Ontario Heritage Act*, among others.

The purpose of this report is to highlight the key changes being considered to the *Planning Act*, through Bill 108, as they relate specifically to the Local Planning Appeal Tribunal (LPAT) appeals process and statutory timelines for planning approval authorities to make a decision on planning applications, and the potential implications on the Town.

At this time, it remains uncertain as to when, and in what form the Act will receive Royal Assent and take effect. The final content of Bill 108 has not yet been determined and proposed regulations are not yet available, which are anticipated to include transitional matters and *Local Planning Appeal Tribunal Act* regulations, including revisions to the LPAT's Rules of Practice and Procedure.

Bill 108 proposes to repeal many of the amendments enacted through the *Building Better Communities and Conserving Watersheds Act, 2017* (Bill 139). Bill 139 renamed and reconstituted the Ontario Municipal Board (OMB) as the LPAT, and made significant changes to the *Planning Act* and land use planning approval process.

Council was generally supportive of the changes proposed by Bill 139 when considering staff report DS-026-17.

Reduced Decision Timelines for Planning Applications

The statutory timelines for planning approval authorities to make a decision with respect to official plan, official plan amendment, zoning by-law amendment and plan of subdivision applications are significantly reduced, which would allow appeals based on a non-decision of the planning approval authority to occur sooner.

The changes being considered to the statutory timelines for planning approval authorities to make a decision are:

- i. official plan and official plan amendment decisions are changed from 210 to 120 days;
- ii. zoning by-law amendment decisions are changed from 150 to 90 days; and
- iii. plan of subdivision decisions are changed from 180 to 120 days.

Furthermore, Bill 108 restricts third party appeals related to non-decisions on official plan amendments. The proposed changes would provide that only the municipality that adopted the plan, the Minister (if the Minister is not the approval authority), and in the

case of an official plan amendment, the person or public body that requested the amendment.

The proposed statutory timelines are even shorter than they existed prior to Bill 139, as outlined in the following table.

Planning Application Appeal Timelines

Planning Application	Pre-Bill 139	Bill 139	Proposed in Bill 108
Official Plan/ Official Plan Amendment	180 days	210 days	120 days
Zoning By-law Amendment	120 days	150 days	90 days
Draft Plan of Subdivision	180 days	180 days	120 days

The proposed changes through Bill 108, also remove the extension of time for appeal provisions, which provided for a 90 day extension to official plan amendments at the request of the person or public body that made the request, or by written notice from the municipality to the approval authority, which allowed for further mediation prior to filing the appeal.

Local Planning Appeal Tribunal and Appeal Process

Certain amendments made to the *Planning Act* by the *Building Better Communities and Conserving Watersheds Act, 2017* (Bill 139) are to be repealed, with the general intent to revert back to the appeal procedures that were previously in place under the OMB. The intended outcome is that the appeal process will occur faster, and reduce the backlog of existing cases. Furthermore, it is intended to establish a consistent appeals process, subject to the new rules, as opposed to different procedures and requirements that apply to cases appealed under the former OMB versus the LPAT.

The changes to the LPAT appeals procedures that were previously introduced by Bill 139 were intended to give municipal council greater decision making authority on matters that directly affected their municipality, and limit the decision making authority of the LPAT to matters of consistency or conformity with Provincial policies, plans, and the upper-tier official plan.

The LPAT’s two hearing process would be replaced by a single hearing with the intent to make the process more efficient. The proposed changes would also broaden the LPAT’s jurisdiction over major land use planning matters (i.e., official plans and zoning by-laws) and give the Tribunal the authority to make a final determination on appeals. The provisions under the current *Planning Act*, restrict the grounds for appealing an

official plan, official plan amendment, and zoning by-law amendment to only matters of inconsistency with a policy statement, non-conformity with or conflict with a provincial plan or, in the case of the official plan of a lower-tier municipality, non-conformity with the upper-tier municipality's official plan. If these tests were not met, the LPAT is required to uphold Council's decision and dismiss the appeal. If these tests were met, the LPAT would refer the decision back to the municipal council for further consideration. The municipality would then have 90 days to reconsider the matter, and prepare a revised plan or by-law to address the deficiencies identified by the LPAT. If the municipality fails to make a decision within 90 days, or if its revised decision does not address the deficiencies, then the LPAT would hold a full hearing upon receipt of a second appeal. The LPAT was then authorized to approve, modify, or refuse all or part of the plan or by-law.

Bill 108, if enacted, would require an appellant who intends to appeal on the grounds noted above, to explain in the notice of appeal how the decision is inconsistent with, fails to conform with or conflicts with the other document, but would no longer be limited to just those grounds. The tests for official plan amendments will be what constitutes "good planning" on the merits of the application, not just conformity with an upper-tier official plan, Provincial Plan, or consistency with the Provincial Policy Statement. The LPAT would then be authorized to make a final decision.

Furthermore, Bill 108 provides that where new evidence is presented at a hearing, and was not provided to the municipality before council made the decision, the Tribunal may, consider whether the information could have materially affected the council decision. If the Tribunal determines, that it could have done so, it shall not be submitted into evidence until council is given an opportunity to reconsider its decision in light of the new information. Council is then given the opportunity to make a written recommendation to the Tribunal. At such time, the Tribunal "shall have regard" to council's recommendation if received within the specified time period.

Once the revisions to the *Local Planning Appeal Tribunal Act* are implemented, it is expected that the LPAT will revise and reissue its Rules of Practice and Procedure to remove many of the previous Bill 139 related procedures.

3. Analysis

Reduced Decision Timelines for Planning Applications

Bill 108 proposes significant reductions to the statutory timelines for planning approval authorities to make a decision on official plans, official plan amendments, zoning by-law amendments and plans of subdivision, which would allow appeals to the LPAT based on a non-decision to occur much sooner.

The proposed reduced timelines would place significant constraints on Town staff resources to appropriately review, circulate applications to commenting agencies, and

to consult with the community, in order to provide Council with informed recommendations. Many applications are very complex and require a thorough technical review of supporting information and studies, including receiving comments from relevant agencies and peer reviews. The ability to respond to the applications in a timely manner will be further exacerbated by pressure on agencies to respond to circulations in a timely manner. More complex applications require numerous resubmissions and recirculation to address staff and agency comments, prior to making a recommendation on the application. Furthermore, the timing of the applicant to revise and resubmit additional information and revised studies is beyond the control of the Town. Town staff is concerned that the proposed changes would result in more applications being appealed to the LPAT, further burdening the appeals system and restricting local decision-making authority on planning matters.

Local Planning Appeal Tribunal and Appeal Process

The changes to the LPAT appeals procedures that were introduced by Bill 139 were intended to give municipal Council's greater decision making authority on matters that directly affected their municipality, and limit the decision making authority of the LPAT to matters of consistency or conformity with Provincial policies, plans, and the upper-tier official plan.

Bill 108 essentially proposes to revert back to many of the OMB appeals procedures that were in place prior to Bill 139. In staff's view the changes will significantly reduce the ability of Council to make an informed planning decision on matters that directly impact the Town, thus greatly reducing local planning decision making authority. This is further exacerbated by the reductions in the statutory review timelines. The proposed changes would give the LPAT the final decision making authority, and the LPAT would only "have regard" to Council recommendations, based on comments provided by Council in instances where new evidence is introduced at a hearing.

4. Next Steps

It is recommended that Council express concerns to the Province regarding the proposed changes in Bill 108, indicating that the Town does not support the proposed changes, as they relate to:

- reduced statutory timelines for planning authorities to make a decision on planning applications; and the
- changes to the LPAT appeals process which generally revert back to the OMB appeals process and limits local municipal council decision making authority.

It is also recommended that Council request that the Province undertake a fulsome consultation with municipalities on the proposed changes in Bill 108.

Furthermore, it is recommended that a copy of this report be submitted to the Provincial Planning Policy Branch as the Town of Whitchurch-Stouffville's comments on proposed Bill 108, as they relate to the proposed changes to the *Planning Act*.

Town staff will continue to monitor the proposed changes to the *Planning Act* and report back to Council as required.

5. Financial Implications:

None

6. Attachments:

None

7. Related Reports:

DS-026-17: Provincial Bill 139: Proposed Changes to the Ontario Municipal Board and Conservation Authorities Act (L11)

Authors: Randall Roth, Senior Policy Planner
Meaghan Craven, Manager Policy Planning

Department Head: Haiqing Xu, Director of Development Services

For further information on this report, please contact: Randall Roth, Senior Policy Planner, Development Services at 905-640-1910 ext. 2260 or via email at randall.roth@townofws.ca