Cassels

Ontario Municipal Board Reform Update: Royal Assent Imminent, Proposed Regulations Summary Posted

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On December 7, 2017, the province of Ontario (the Province) posted a summary of two proposed regulations to accompany Bill 139, the bill introduced earlier this year to reform the Ontario Municipal Board. It also released a background paper providing information and guidance respecting the new regulations. Comments may be made to the Ministry of Municipal Affairs and Housing by January 21, 2018. The dates of Royal Assent and proclamation of Bill 139 remain unknown.

While much is still unclear, it appears that existing proceedings before the Ontario Municipal Board will not be impacted by Bill 139. Furthermore, complete applications made before Royal Assent will continue under the existing Ontario Municipal Board and *Planning Act* regime, if appealed prior to proclamation.

Update on Regulations

Ontario's Regulatory Registry (ORR) has posted information about the proposed regulations, indicating that amongst other things there will be regulations on each of the following:

- Transition rules;
- Timelines for proceedings;
- Time limits for submissions at oral hearings for major land use planning appeals; and
- The practices and procedures in respect of major land use planning appeals.

Timelines

Overall timelines for proceedings are also provided as follows, not including adjournments:

- 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 – 10 months
- Appeals of a new decision of a municipality or an approval authority or failure to make a new decision after an initial appeal was approved by the Local Planning Appeal Tribunal (LPAT) and the municipality or approval authority was given an opportunity to make a new decision – 6 months
- Appeals of an approval authority's failure to make a decision in respect of an official plan or plan of subdivision – 12 months
- Any other proceeding – 6 months

It is unclear whether these constitute assurances from the Province that the LPAT will have the resources to process appeals fully from the date of appeal through resolution in accordance with these timelines.

Submission Time Limits

The submissions of parties at oral hearings related to official plans or zoning by-laws will be limited to 75 minutes each. Note that participants are not contemplated.

At an oral hearing of an appeal related to an approval authority's failure to make a decision in respect of an official plan or a plan of subdivision, parties' oral submissions are capped at 75 minutes each and participants will each have 25 minutes.

However, the tribunal will have the authority to increase time limits where it determines "it is necessary for a fair and just determination of the appeal."

Practices and Procedures

Of significant concern, "the examination of a party or any other person, other than by the Tribunal, would be prohibited" for all appeals related to:

- All appeals related to appeals of an approval authority's failure to make a decision in respect of an official plan or a plan of subdivision; and
- All appeals of official plans, official plan amendments, zoning by-laws, and zoning by-law amendments where a decision was made by a municipality or approval authority, or where a municipality failed to make a decision, except

o Where the municipality or approval authority was given a second opportunity to make a decision, or

o Where the LPAT has received notice from the Minister responsible for the *Planning Act* that a matter of provincial interest is, or is likely to be, adversely affected by the plan or by-law, or parts thereof which are under appeal.

The Environmental Registry elaborates upon two of the proposed regulations. The transition regulation proposes:*Transition Regulations*

- Removing appeals of provincial approvals of official plans and official plan updates, including for conformity exercises to provincial plans – these provisions would apply to provincial decisions in respect of which notice is given after the Bill comes into force;
- Restricting the grounds of appeal of a decision on an official plan/amendment or zoning by-law/amendment to consistency and/or conformity with provincial and/or local plans would apply to:

o Appeals of decisions on those matters in respect of which notice is given after the Bill comes into force (i.e., appeals made during appeal periods that begin after the Bill comes into force); and

o Appeals of decisions made before proclamation in respect of:

Complete applications made after Royal Assent;

Municipally-initiated official plan amendments that are adopted after Royal Assent; and

Municipally-initiated zoning by-law amendments that are passed after Royal Assent;

- Restricting the grounds of a non-decision appeal on an application for an official plan amendment or zoning by-law amendment to consistency and/or, conformity with provincial and/or local plans would apply to:

o Appeals of non-decisions made after the Bill comes into force; and

o Appeals of non-decisions made before proclamation in respect of complete applications made after Royal Assent; The removal of mandatory referrals of Minister's zoning orders would apply to requests to refer made after the Bill comes into force;

- 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;
- The restriction on the ability to amend secondary plans for 2 years following their approval, unless allowed by council, would apply to applications for amendments to secondary plans that come into effect after the Bill comes into force;
- The extension for decision timelines on applications for official plan amendments and zoning by-law amendments would apply to complete applications submitted after Royal Assent and the extension for decision timelines for approval authorities on adopted official plans/amendments would apply to official plans/amendments adopted after Royal Assent.

Odds and Ends

The Environmental Registry indicates that another regulation will be largely technical in nature and will:

- Revise what information is to be included in the giving of notice (e.g. some decisions would be final and not subject to appeal);
- Revise what information and material is to be included in a complete application (e.g. to include how an application conforms with the relevant official plan(s));
- Revise what is required to be forwarded to the Local Planning Appeal Tribunal on an appeal (e.g. the municipal statement would need to indicate whether the decision conforms with the relevant official plan(s));
- Replace references to Ontario Municipal Board with Local Planning Appeal Tribunal; and/or
- Update relevant legislative cross-references.

Bill 139 Timing Update

Bill 139 is currently before the Legislature for Third Reading and Royal Assent is anticipated imminently.

Please contact Signe Leisk, Christie E. Gibson or any other member of the Cassels Municipal, Planning &

Environmental Group for further information and guidance on how the proposed regulations may apply in your circumstance.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.