

January 19, 2018

Our File No.: 173198

Ministry of Municipal Affairs and Housing  
Local Government and Planning Policy Division  
777 Bay Street, Floor 13  
Toronto, ON  
M5G 2E5

**Attention: Ken Petersen, Manager**

Dear Sirs/Mesdames:

**Re: Environmental Registry Numbers 013-1788 and 013-1790  
Proposed New Regulations Under the *Planning Act*  
Regulatory Registry Proposal Number (17-MAG011)  
Proposed Regulations under the Proposed Local Planning Appeal Tribunal Act**

We are solicitors for the Building, Industry and Land Development Association (“BILD”) and the Ontario Home Builders’ Association (“OHBA”) regarding the consultation process for Bill 139. BILD represents over 1,450 members in the land development, home building and professional renovations industry in the Greater Toronto area. The OHBA represents over 4,000 member companies, organized through a network of 29 local associations (including BILD) across the Province.

We are writing to provide our clients’ comments regarding the proposed regulations under the *Planning Act* (the “Bill 139 Regulations”) to prescribe transitional provisions for the *Building Better Communities and Conserving Watersheds Act, 2017* (“Bill 139”). By copy to the Ministry of the Attorney General, we are also providing our clients’ comments regarding the proposed regulations under the proposed Local Planning Appeal Tribunal Act, 2017 (the “LPAT Regulations”).

We are providing a consolidated set of comments regarding the Bill 139 Regulations and the LPAT Regulations because it is impossible to segregate the matters when the potential content of the Bill 139 Regulations and the LPAT Regulations will impact each other.

**Discussion**

1. *Difficulty in Providing Comments*

**Recommendation: Release the full text of the Bill 139 Regulations and the LPAT Regulations for review and comment.**

While we appreciate the opportunity to review the summary of the Bill 139 Regulations and the LPAT Regulations, it is difficult to provide meaningful comments when the full text of both documents has not been released for review and comment. We recommend that the full text of the Bill 139 Regulations and the LPAT Regulations be released for review, with an extend period of time to provide comments.

The full text of both documents is necessary not just to provide meaningful comments but also to understand what is being proposed. For example, one of the summaries of the Bill 139 Regulations suggests that it will revise the “information and material to be included in a complete application, e.g. to include how an application conforms with the relevant official plan(s)”. This may actually represent a substantive change and should be released immediately for comment.

Other matters discussed below may also be clarified through an opportunity to review the full text of the Bill 139 Regulations and the LPAT regulations.

2. *Transition Must Include Related Applications and Matters*

**Recommendation: Clarification is required to confirm that the “first” appeal will establish the applicable legislative regime for subsequent and related appeals.**

While this may be the intent of the Bill 139 Regulations and the LPAT Regulations, it is difficult to confirm from the summaries. Fairness requires that subsequent and related appeals should be consolidated with the “first” appeal. Examples would include related official plan amendment/rezoning/site plan appeals or private rezoning appeals that implement municipally-initiated official plan amendments under appeal.

This clarification is also consistent with the approach taken to transition under previous amendments to the *Planning Act*.

3. *Clarification is Required Regarding Transition for Municipal Decisions*

**Recommendation: Clarification is required to confirm that transition will be based on the date of a municipal decision and not the date for expiry of the applicable appeal period.**

This appears to be the proposed approach for appeals of decisions on those matters in respect of which notice is given after Bill 139 comes into force because the example notes appeals made during appeal periods that begin after Bill 139 comes into force. This suggests that the reverse is also true, namely the restrictions on grounds of appeal of a decision would not apply to appeals made during appeal periods that begin before Bill 139 comes into force. However, this is difficult to confirm without reviewing the actual text of both Regulations.

Further, and while this may be the intent, no guidance is provided in the summary regarding the timing for appeals of decisions made before proclamation in respect of complete application made before Royal Assent. Again, as above, we are assuming that transition would be based on the decision date (and therefore the commencement of the appeal period) to avoid the potential for an appeal period to straddle the date Bill 139 comes into force.

4. *Clarification Required Regarding Timelines*

**Recommendation: Clarification is required to confirm what is required to occur within the proposed timelines.**

The LPAT Regulations would establish overall timelines for proceedings. While it is clear that the time for a proceeding would begin from “the date the proceeding is received and validated by the Tribunal”, it is unclear as to the expected outcome before the end of these timelines. Put another way, do these timelines require the commencement of a hearing, the completion of a hearing and/or the issuance of a decision?

No rationale has been provided for the different timelines. It is unclear why a different timeline is appropriate or necessary for a municipality’s decision as opposed to a municipality’s failure to make a decision. Further, given that hearings may involve related appeals, no guidance is provided as to the proposed timelines for such hearings (i.e., consolidated official plan amendment and rezoning appeals) or where related appeals are filed and received by the Tribunal at different times.

Again, these matters could be clarified through review of the LPAT Regulations and not just a summary.



5. *Consistency of Language*

**Recommendation: Clarification is required regarding any difference between “proclamation” and “when the Bill comes into force”.**

Different terminology is used in the Bill 139 Regulations and the LPAT Regulations. We assume that “proclamation” and “when the Bill comes into force” are the same, but this should be clarified and could be confirmed through release of the actual text of the Regulations.

6. *Procedural Fairness – Time Limits and Examination*

**Recommendation: The proposed time limits for submissions at oral hearings should be established by the Tribunal on a case-by-case basis.**

Our formal comments regarding Bill 139 voiced significant concerns regarding the limitations being placed on the right to procedural fairness. In part, this is because true appellate bodies have a more limited scope of review because an initial trial body has heard, canvassed and thoroughly considered oral evidence, tested in cross-examination, and oral submissions, thereby creating an appeal record that can be the subject of an appeal. This is not the case with most decisions made pursuant to the *Planning Act*.

The LPAT Regulations reinforce these concerns. While the Tribunal would have discretion to increase the proposed time limits (generally 75 minutes), the proposed approach fails to recognize the nature of planning appeals. As examples:

- The proposed time limits do not recognize the wide diversity of planning matters. The proposed time limits may provide an adequate opportunity for submissions regarding relatively simple planning matters, it is unreasonable to conclude that 75 minutes is sufficient for a complex planning matter, especially given the significant number of documents that would be associated with such a planning matter.
- The proposed time limits do not recognize that planning appeals often involve multiple parties, sometimes aligned in opposition to one party. It is unreasonable and unfair for that one party to have only 75 minutes while every other party would still receive 75 minutes. This concern would apply equally to an appellant of a controversial development or to the defence of a decision by a municipality against multiple appellants.
- The proposed time limits do not provide for reply. It is unclear whether this is because no reply will be permitted or because it is intended that the first party must allocate a portion of its allotted time for potential reply.

Given these concerns, we recommend that the proposed time limits for submissions at oral hearings should be established by the Tribunal on a case-by-case basis.

The proposed prohibition of any examination of a witness is also problematic. Leaving aside our previously stated concern that restrictions on evidence (in particular, cross-examination) is a breach of procedural fairness, there are at least three problems with the outright prohibition proposed in the LPAT Regulations.

- First, there is no need for the LPAT Regulations to contain an outright prohibition. As noted above, this approach does not recognize the wide diversity of planning matters before the Tribunal. Certain complex planning matters may benefit from examination of a witness, subject to time limits. The Tribunal should be given discretion to allow examination to occur where the Tribunal determines it to be appropriate, subject to submission from the parties.
- Second, the LPAT Regulations contemplate examination by the Tribunal. Should this occur, procedural fairness should allow the opportunity for parties at least to ask questions arising from any examination by the Tribunal, again subject to time limits determined by the Tribunal.
- Third, the implications of this prohibition are uncertain without the opportunity to review the new procedural rules being developed for the Tribunal. As two examples, we do not yet know the potential requirements for submission of written evidence for an appeal or for the exchange of evidence in advance of a hearing.

### **Conclusion**

On behalf of our clients, BILD and OHBA, we appreciate the opportunity to provide comments regarding the Proposed Regulation. As suggested previously, we would welcome the opportunity to meet with staff to discuss the concerns raised in this submission.

Yours truly,

**Goodmans LLP**



David Bronskill  
DJB/

cc. Ministry of the Attorney General  
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