



Comments on “Proposed Regulations under the *Local Planning Appeal Tribunal Act (2017)*”

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Policy Division

Submitted by: Ontario Bar Association



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Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide feedback on the *Proposed Regulations under the Local Planning Appeal Tribunal Act, 2017, related to Schedule 9 of Bill 108 – the More Homes, More Choice, Act, 2019* (the “**Proposal**”).

Land use planning is a unique field of practice. In addition to applying statutory and regulatory authorities, our members are challenged to integrate provincial, regional, and local policies that are further translated into regulatory instruments and implementation requirements. There are often multiple layers of approvals necessary in any given matter, leading to a complex intersection of planning, engineering, environmental stewardship, and local politics. Our members strive to ensure that the process of navigating and ultimately resolving these matters is completed in a fair, transparent, and supportable manner.

The OBA

Established in 1907, the OBA is the largest voluntary legal organization in Ontario, representing lawyers, judges, law professors and students from across the province, on the frontlines of our justice system and in no fewer than 40 different sectors. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year– both in the interest of the profession and in the interest of the public.

This submission was prepared by members of the OBA Municipal Law Section (the “**Section**”), which has approximately 300 lawyers who are leading experts in municipal and land use planning law matters representing proponents, municipalities, residents, developers, and other stakeholders. Though we represent a broad spectrum of clients with diverse and sometimes competing interests, our goal is to provide decision-makers with commentary that represents a balance of the various interests of our members and their clients.

Members of the Section often advocate before municipal councils and committees, all levels of court in the Province of Ontario, the various tribunals that comprise Tribunals Ontario, including the Local Planning Appeal Tribunal (the “**Tribunal**”). and the Toronto Local Appeal Body.



Overview

The Proposal responds to recent amendments to the *Planning Act* and the *Local Planning Appeal Tribunal Act* (“**LPAT Act**”) by Bill 108 – *the More Homes, More Choice, Act* (2019). The Proposal would establish transition rules for major land use planning appeals before the Tribunal. Given the diverse nature of the OBA's membership, it is beyond the scope of our mandate to provide substantive feedback on the nature of these proposals and policy decisions on which they are based. Our comments instead focus on ways in which to implement these reforms that would support substantive, timely, just, and cost-efficient decisions.

The following feedback outlines a number of issues we have identified in regard to implementation of the Proposal. Additionally, we have set out certain responses to the specific requests for feedback included in the Proposal materials. Our feedback may be summarized as follows:

- Lack of clarity or uncertainty in the interpretation of the transition rules may give rise to disagreement, and even costly litigation, thereby undermining the very goals of the Proposal. We therefore recommend that further attention be given to clarify the central tenets and procedures, as further discussed below.
- All stakeholders would benefit from the release of draft regulations prior to enactment, to allow for consideration of their impacts and the provision of feedback. We therefore request that the draft text of amendments to regulations be provided for public comment.

Taken together, our comments are intended to assist with ensuring that these changes can be implemented in a manner that minimizes uncertainty and that the stated goals of Bill 108 can be met.

Comments and Suggested Revisions

Our comments are as follow:

Additional attention should be provided to the proposed regulations, particularly in areas where transitional issues may lack clarity.

- The Proposal seeks to determine which act, the ‘Amended Act’ or ‘Existing Act’, applies in certain situations. The Proposal uses the timing of when a “hearing on the merits of an appeal”



has been scheduled as an indicator, stating that if scheduled before the amendments to the LPAT Act come into force, then the 'Existing Act' would govern. It is unclear whether only the act of scheduling must take place before proclamation or whether the hearing date itself must be before proclamation. There is also no indication as to which act would apply to a hearing that is scheduled before the coming-into-force of the amendments but then re-scheduled after the fact. This could lead to uncertainty regarding which set of laws applies to the parties and cause unnecessary disputes and/or delays, creating the opposite effect of the Proposal's intention. We therefore recommend providing further clarity on how the Proposal is intended to operate.

- The Proposal would also revoke O. Reg. 102/18 - Planning Act Appeals. Currently, this regulation sets out timelines for disposition of *Planning Act* proceedings before the Tribunal as well as other procedural issues. The Proposal suggests that this regulation is no longer necessary given the recent amendments established under Bill 108. It is unclear under the Proposal whether this regulation will be considered part of the 'Existing Act' with respect to the transition regulations. It is our assumption that, given its content, this regulation would be a necessary component of the 'Existing Act' and therefore would need to be in place with respect to hearings that are "scheduled before the amendments come into force". Further clarity on this point is needed to better understand the transition rules.

As a general comment, it is impossible to fully understand the legal implications of the Proposal without the draft text of the regulations themselves. Although the proposal provides an overview of how the transition rules would work, without further specifics, the changes being contemplated may not be properly understood and/or scrutinized.

Conclusion

Our membership understands the challenges involved in seeking to address policies regarding municipal planning and the need to provide an increased supply of housing in Ontario. While it is difficult to critically examine the practical operation of the Proposal in the absence of the draft text of the regulations, we hope that the above feedback, based on the high-level information currently



available, is helpful moving forward. We thank you for considering our input and look forward to responding to any questions you may have regarding our submission.