Ford Government Launches Sweeping Planning Law Changes
May 03, 2019
By Hon. Peter Van Loan

Four Statutes and Growth Plan Play Key Roles in PC Housing Supply Action Plan

The Ford government launched a sweeping package of changes to the land use planning system with the stated objective of stimulating the supply of housing. As described by the Minister of Municipal Affairs and Housing, increasing housing supply is critical to increasing affordability and helping Ontario residents achieve their dreams of home ownership.

The following statutes are receiving overhauls:

1. Planning Act
2. Local Planning Appeal Tribunal Act, 2017 (formerly the Ontario Municipal Board Act)
3. Development Charges Act, 1997
4. Ontario Heritage Act

In addition, the Growth Plan for the Greater Golden Horseshoe, 2017 (“Growth Plan”) is being revised and re-christened “A Place to Grow.” Changes to the Growth Plan are aimed at making it easier to deliver housing to the marketplace. The government points to escalation in housing prices – a symptom of the fact that housing starts have been falling short of the rate of population growth, creating a marketplace shortage of housing - especially in the grade-related form preferred by 89% of the Greater Toronto Area’s prospective home purchasers.

Planning Act Changes Seek Balance in the System

Many of the changes to the Planning Act (which work closely in concert with changes to the Local Planning Appeal Tribunal Act (“LPAT Act”)) are reversals of changes introduced by the Wynne Liberal government in recent years.

Key changes include:

- The appeal period for municipal non-decisions is reduced. For Official Plan Amendment applications, it will be 120 days as opposed to 210 days. For zoning applications, it will be 90 days as opposed to 180 days;
- The test for official plan amendments on appeal will now be what constitutes good planning on the merits, not just conformity with an upper-tier Official Plan or consistency with provincial policy;
- Section 37, which permits the securing of public benefits, has been replaced in conjunction with development charges reform and parkland charges reform, and will now be captured as part of a “Community Benefit Charge.” The municipality will need to adopt a “strategy” and a by-law to govern and implement this new change;
- The government may, by regulation, exempt certain types of development from the “Community Benefit Charge,” and cap the charge as a percentage of land values;
The failure of a municipality to make a decision on a subdivision application can be appealed 120 days after application (instead of 180 days);

On appeals, new evidence (that was not before council) may be introduced, but the municipality must be given an opportunity to consider that evidence and make a recommendation to the Tribunal. This requirement existed prior to the last round of changes and is being reinstated;

The ability of the province to use the Community Planning Permit System in Major Transit Station Areas and Provincially Significant Employment Zones - with approvals potentially as fast as 45 days;

The deadline for the province to declare a provincial interest (and thus reserve the final decision to Cabinet) will be 30 days before a tribunal hearing begins.

**Development Charges Changes**

The Development Charges Act is being amended to purportedly provide increased predictability and stability for builders attempting to deliver housing in Ontario.

Coupled with this is the replacement of Section 37 of the Planning Act, which previously was utilized to secure public benefits. In addition, parkland charges may also be rolled into the same new mechanism. Together, these are being replaced with a stable and predictable concept called a "Community Benefit Charge."

This will, in the view of the government, be utilized to prevent unpredictable “deal-making” planning and allow all parties, municipalities and applicants to understand what will clearly be expected and permitted of them in terms of the delivery of public benefits.

The details of how this will work remain to be developed in a regulation. However, the fundamental principle remains that which lies behind the Development Charges Act - that new growth should pay for the new costs it imposes on communities.

The government will exempt second units in homes from development charges to encourage the creation of supply.

The government is also moving to crystalize the amount of a development charge at the later of the zoning by-law or site plan approval stage, intending to provide predictability and certainty. Charges would still be payable at building permit issuance.

**Local Planning Appeal Tribunal Act Changes**

The previous government changed the name of the Ontario Municipal Board to the Local Planning Appeal Tribunal by virtue of the LPAT Act. While this was described as abolishing the Ontario Municipal Board, in fact, what it constituted was a name change paired with a revamp of the system that removed many of the normal rights to call evidence and to be a party that existed under the previous system. Some of the changes are intertwined with the Planning Act. Changes include:

- The right of parties to call evidence at hearings;
- Hearings being conducted on a Trial de Novo basis so that the best available evidence can be presented to make sound decisions;
- The replacement of the new two hearing process with a single more efficient hearing that will provide a final outcome.

The government is providing $1.4 million in resources to the Local Planning Appeal Tribunal to clear up backlogs. This step is seen as a significant investment (at a time of austerity) to get planning decisions made – worthwhile for the economic activity and housing it will generate.

Once the revisions to the LPAT Act are implemented, it is expected that the Local Planning Appeal Tribunal will revise and reissue its Rules of Practice and Procedure to remove many of the Bill 139-related procedures that had bogged down the functions of the Tribunal.
**Ontario Heritage Act Changes**

The previous government had eliminated traditional rights of appeal when municipalities sought to impose heritage designations on properties. The new government is restoring such appeal rights to the Local Planning Appeal Tribunal.

**Growth Plan for the Greater Golden Horseshoe Becomes “A Place to Grow”**

Building on the new licence plate slogan, the Growth Plan changes aim to help free up the delivery of more housing:

- Most major changes proposed by the government in its January 2019 proposals have been maintained;
- An adjustment of the intensification requirement to 50% within the delineated built-up area for the major regions;
- The greenfield density in the major regional municipalities is 50 jobs or population per hectare and on the outer periphery of the Greater Golden Horseshoe it is 40 jobs or population per hectare;
- The delineated built-up area will be updated in the months ahead;
- Population targets in the Growth Plan are anticipated to be updated in the months ahead.

The Greenbelt and Oak Ridges Moraine protected lands remain unaffected by these changes.

A major issue for many property owners was their identification of their lands as Provincially Significant Employment Zones - potentially restricting the ability to convert them to residential uses. The province has addressed these concerns by providing that residential uses (“mixed uses”) are permitted provided that the area “contain a significant number of jobs.” The Housing Supply Action Plan also explicitly suggests that a Provincial Planning Permit System could be utilized to accelerate approvals in Provincially Significant Employment Zones.

**Author**

Hon. Peter Van Loan  
Partner  
T 416.865.3418  
pvanloan@airdberlis.com

This communication offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.