Bill 108: Summary of Key Amendments to Planning Act and Local Planning Appeal Tribunal Act
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By Meaghan Barrett

On May 2, 2019, Bill 108, the More Homes, More Choices Act, 2019 received First Reading. Bill 108 proposes a number of amendments to the land use planning regime in Ontario.

Bill 108 proposes to repeal many - but not all - of the amendments introduced through Bill 139 (the Building Better Communities and Conserving Watersheds Act, 2017) in 2017. Bill 139 renamed and reconstituted the Ontario Municipal Board as the Local Planning Appeal Tribunal (the “LPAT”), and made significant changes to the Planning Act and land use planning approval process. Bill 108 retains the LPAT name, but proposes to repeal the contentious “two-stage” appeal process, returning to a single hearing.

WHAT’S OLD IS NEW AGAIN

Bill 108 proposes to repeal many key amendments introduced through Bill 139, including:

- **Grounds for appeal:** Bill 108 proposes to repeal the requirement that appeals be exclusively on the basis that approval of the instrument is inconsistent with the Provincial Policy Statement, fails to conform or conflicts with a provincial plan or fails to conform with an Official Plan. Appellants can still raise these grounds of appeal (and provide supporting reasons), but would no longer be limited to just those grounds.

- **No two-step appeal process:** Bill 108 proposes to return to a single hearing where the LPAT would have the power to make a final determination approving, refusing to approve or modifying all or part of the instrument under appeal. While Bill 108 also proposes to amend restrictions in the current LPAT Act on parties’ ability to introduce evidence and examine or cross-examine witnesses at hearings, as discussed further below, the Tribunal has the authority to limit evidence at a hearing.

WHAT’S NEW

Bill 108 introduces several entirely new proposed amendments, including:

- **Community benefits charge:** Bill 108 proposes to replace the existing Section 37 density bonusing provisions with a new community benefits charge. Where a municipality has passed a community benefits charge by-law, the community benefits charge may replace the parkland dedication provisions in some cases. The proposed community benefits charge would apply to an approval of the following instruments:

  - zoning by-law or zoning by-law amendment,
  - plan of subdivision,
  - minor variance,
  - plan of condominium, and
  - building permit.

However, the Province will have the authority to exempt certain types of development from the charge. Before passing a community benefits charge by-law, municipalities will be required to prepare a
community benefits charge strategy, identifying the facilities, services and matters to be funded with community benefits charges. Bill 108 proposes to cap the amount of community benefits as a percentage of land values, to be prescribed by regulation. Bill 108 also sets out a process for owners to object to the value of the community benefits charge, and a process governing municipalities' collection and use of the funds, including a requirement that the municipality spend or allocate at least 60% of the funds in a year.

- **Shorter timelines for appeals of a municipality’s or approval authority’s failure to make a decision:**
  The time-frames for municipal processing of development applications (before a right to appeal arose), which had been extended in Bill 139, are now proposed to be even shorter than the pre-Bill 139 Planning Act.

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<tr>
<th>Instrument</th>
<th>Pre-Bill 139</th>
<th>Bill 139</th>
<th>Bill 108</th>
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<tbody>
<tr>
<td>Official Plan/ Official Plan Amendment</td>
<td>180 days</td>
<td>210 days</td>
<td>120 days</td>
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<tr>
<td>Zoning By-law Amendment</td>
<td>120 days</td>
<td>150 days</td>
<td>90 days</td>
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<tr>
<td>Draft Plan of Subdivision</td>
<td>180 days</td>
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<td>120 days</td>
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- **Power to limit any examination or cross-examination of a witness:** Through related changes to the LPAT Act, the LPAT is proposed to have the power to limit any examination or cross-examination of a witness if the Tribunal is satisfied that all matters relevant to the issues in the proceeding have been fully or fairly disclosed, or in any other circumstances the Tribunal considers fair and appropriate.

- **Restriction on third party appeals of plans of subdivision:** Only the applicant, municipality, Minister, public body or prescribed list of persons are proposed to have the right to appeal an approval authority’s decision on a draft plan or subdivision, lapsing provision or any condition of draft plan approval.

**WHAT’S THE SAME**

Bill 108 proposes to retain a number of Bill 139 and earlier amendments, including:
• **Mandatory case management conferences:** The LPAT requires that a case management conference be held prior to any hearing for purposes such as identifying the issue(s) raised by the proceeding, discussing opportunities for settlement and determining administrative details of the conduct of hearings. The LPAT is proposed to have a new power mandating mediation or other dispute resolution process to resolve one or more issues in the proceeding.

• **Major Transit Station Areas:** Municipalities may still include policies delineating Major Transit Station Areas (“MTSAs”), identifying minimum residents and jobs per hectare, authorized uses of lands and minimum densities in their official plans. The prohibition on appeals of MTSA policies is also proposed to remain.

• **Two-year freeze on secondary plan amendments, zoning by-law amendments and minor variances:** The two-year prohibition on requests for amendments to secondary plans is proposed to remain, together with the two-year prohibition on zoning amendments/minor variance applications following the approval of a comprehensive zoning by-law or site specific zoning by-law amendment.

• **Minister’s appeal of an interim control by-law:** The Minister continues to have the only right of appeal of a municipality’s first passing of an interim control by-law (any person or public body may appeal an extension of an interim control by-law, but only the Minister may appeal an interim control by-law when first passed).

• **No appeals of Minister’s decisions:** There continues to be no right to appeal the Minister’s decision if the Minister is the approval authority of an official plan or official plan amendment, including in the case of municipal comprehensive reviews (an “MCR”) and official plan review. This is particularly relevant since *A Place to Grow*, which updates the *Growth Plan for the Greater Golden Horseshoe, 2017*, permits some employment land conversion and settlement area expansions without an MCR.

The final content of Bill 108 has not yet been determined and proposed regulations are not yet available. Matters such as transition along with other matters that were addressed in regulations to the *LPAT Act* are expected to be dealt with in the regulations. Revisions to the LPAT’s Rules of Practice and Procedure are also anticipated.

Further Municipal & Planning Law Bulletins will be published this week to review how Bill 108 and other current provincial initiatives propose to affect land use planning and development in Ontario. Aird & Berlis will continue to monitor Bill 108 and will provide you with periodic updates, including a webinar to be scheduled in the coming weeks.

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