

# Land Use Planning Reforms Under Bill 139

## A Public Interest Perspective

### Canadian Environmental Law Association

Jacqueline Wilson, Counsel  
Monica Poremba, Counsel  
Jessica Karban, Student-at-law

March 26, 2018



Canadian  
Environmental Law  
Association  
EQUITY. JUSTICE. HEALTH.

# Disclaimer

- This presentation contains legal information about land use planning law and policy
- The contents do not constitute legal advice or other professional advice and must not be relied on as such
- If legal advice related to specific circumstances is required, please seek competent legal counsel

# About CELA

- Non-profit, public interest organization established in 1970
- Core funding from Legal Aid Ontario; specialty legal aid clinic
- Services: litigation, law reform, public legal education



# About CELA

- Land use planning
  - Conserving water resources; protecting ecosystem functions; preserving prime agricultural lands; safeguarding public health and safety; ensuring good land use planning across Ontario
  - Aggregate Resources Act and Joint Board cases
  - Broader provincial planning initiatives



# Outline of Webinar

- Overview of Bill 139
- Key terms/legislation
- Major changes & why they're important
- Local Planning Appeal Support Centre
- Q&A



# What is Bill 139?

- Bill 139 – *Building Better Communities and Conserving Watersheds Act, 2017*
- Passed on December 12, 2017
- In force on April 3, 2018
- Includes 5 schedules



# Why are we holding this webinar?

- Bill 139 has made dramatic changes to the land use planning system in Ontario
- LPAT will not hold full hearings on most *Planning Act* matters
- Grounds of appeal are more narrow



# Key Terms

- Local Planning Appeal Tribunal
- Provincial Policy Statement
- Official Plans
- Zoning By-laws
- Approval Authority





# Key Legislation and Rules

- *Local Planning Appeal Tribunal Act*
- *Local Planning Appeal Support Centre Act*
- Local Planning Appeal Tribunal Rules of Practice and Procedure (draft)
- *Planning Act*
- *Aggregate Resources Act*



# New Grounds of Appeal

- *Planning Act* appeals limited to 3 grounds of appeal:
    - Inconsistency with a policy statement
    - Non-conformity or conflict with a provincial plan
    - Non-conformity with an Official Plan
  - No other grounds of appeal can be raised
  - Some decisions cannot be appealed at all, including provincially approved Official Plans
-

# Steps in an Appeal

1. File Notice of Appeal
  2. Validity Screening
  3. Enhanced Municipal Record
  4. Appellant's Appeal Record & Case Synopsis
  5. Respondent's Appeal Record & Case Synopsis
  6. Other parties/participants apply for status
  7. Mandatory Case Management Conference
  8. Oral, written or electronic hearing
- 



# Screening for Validity

- File Notice of Appeal
- Rules 26.05 – 26.09:
  - Screening for validity
  - Validity can be challenged by any party
  - If invalid, Tribunal dismisses appeal



# Enhanced Municipal Record

- Municipality must prepare an enhanced municipal record
- Contains documents and materials used at council level
- Must be made available to the public



# Appeal Record and Case Synopsis

- Appeal Record and Case Synopsis due 20 days after Notice of Appeal found valid
- Can include affidavits or statements by persons with knowledge of material facts, including expert witnesses
- Case Synopsis lays out facts and law



# Case Management Conference

- Mandatory case management conference
  - For most *Planning Act* appeals
  - For all other appeals, the Tribunal may direct the parties to participate in a case management conference
- Tribunal to decide on additional parties/participants
- Common interest class



# Non-appellant Parties

- Cannot raise new issues; must shelter under issues already raised
- May participate only to the extent that issue remains in dispute
- No independent status to continue an appeal if withdrawn or settled



# Evidence

- Evidence
  - Parties cannot call witnesses
  - Tribunal may call witnesses
- New evidence only in very limited circumstances



# Implications of New Evidence Rules

- Get involved early!
- Familiarize yourself with municipal procedure by-laws



# Nature of Hearing

- Written, oral or electronic hearings are possible at the LPAT
- Written hearings are favoured
  - Rule 21.02 – factors to be considered for written hearings
  - Rule 20.05 – factors to be considered for electronic hearings



# Time Limits for Oral Submissions

- Oral hearings
  - Parties: 75 minutes
  - Non-parties: 25 minutes
  - Tribunal has discretion to add time



# New Decisions and Second Appeal

- Where appeal is allowed by the LPAT, the LPAT is obliged to send the matter back to the municipality or approval authority
- If the second decision is appealed, the LPAT may make a final determination
- The second hearing will be a full hearing
- Only for *Planning Act* appeals



# Time Limits for Decision

- Time limits
  - 12 months
    - Failure of an approval authority to make a decision on official plans or plans of subdivision
  - 10 months
    - Decisions by municipality or approval authority on official plan or zoning by-law
    - Failure of a municipality to make a decision on official plans or zoning by-laws
  - 6 months
    - Appeal of new decision
    - Any other *Planning Act* appeal



# Costs

- Administrative fees are \$300 for each appeal
- Prepare for increased costs throughout the appeal process
- Parties are subject to costs rules, participants are not



# Consolidated Hearings

- Two or more proceedings can be consolidated, heard at the same time, or heard one after the other
- Matters referred to LPAT and related *Planning Act* appeals can be heard together
- Joint Board hearings
- OMB/LPAT appeals



# Transitional Regulations

- Does your matter fall under OMB or LPAT?



- Check O. Reg 67/18 and O. Reg 101/18 to find out



# *Aggregate Resources Act*

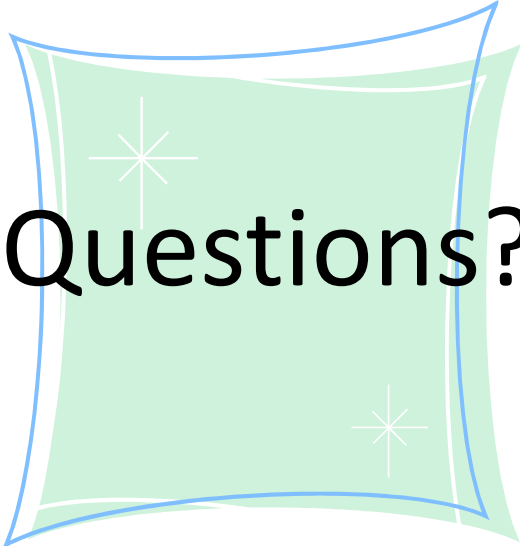
- Minister can refuse to impose LPAT-ordered conditions if he or she is of the opinion that the condition is not consistent with the purposes of the *Aggregate Resources Act*



# Local Planning Appeal Support Centre

- *Local Planning Appeal Support Centre Act*
- Types of services
  - Information on land use planning
  - Guidance on Tribunal procedures
  - Advice or representation
  - Any other services prescribed by the regulations
- Eligibility test





Questions?



Canadian  
Environmental Law  
Association  
EQUITY. JUSTICE. HEALTH.



Thank you!

monica@cela.ca

jacqueline@cela.ca



Canadian  
Environmental Law  
Association  
EQUITY. JUSTICE. HEALTH.