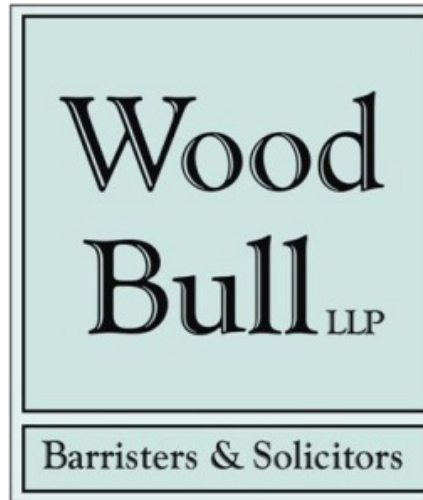


Presentation to FCT Commercial Lawyer Roundtable

13 September 2017

65 Queen Street West Suite 1400 Toronto Ontario M5H 2M5

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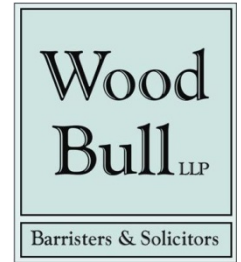


Land Use and Development After Bill 139 (and a Few Other Things)

13 September 2017

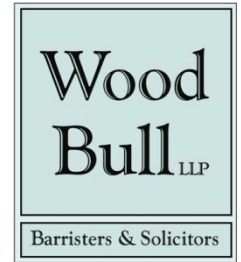
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ABOUT WOOD BULL LLP



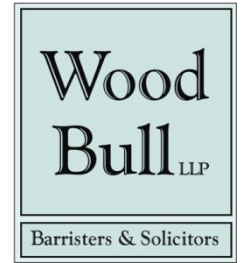
- Founded in 2003
- Dennis Wood and Mary Bull
 - partners at McCarthy Tétrault
 - 6 lawyers, 2 land use planners
- Specialty law firm
 - focuses exclusively on municipal, planning and development law

CLIENTS



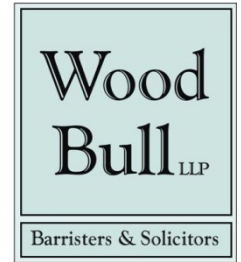
- Private sector (landowners, developers)
- Public sector (municipalities, school boards)
 - Canadian Apartment Properties REIT (CAPREIT)
 - Morguard Investments Ltd
 - Slate Asset Management
 - SmartREIT
 - Walmart Canada
 - Mondelez Canada (formerly Kraft)
 - Coco Group
 - First Capital
 - Talisker Corporation
 - Hudson's Bay Company
 - Ontario Stone, Sand & Gravel Association (OSSGA)
 - City of Mississauga
 - City of Windsor
 - Town of Whitby
 - Toronto District School Board

REPRESENTATIVE WORK



- **Retail:** development approvals for over 40 shopping centres across Ontario
- **Urban infill:** development approvals for high-density residential and mixed-use commercial projects, including minor variances
- **Greenfield development:** development approvals for plans of subdivisions
- **Manufacturing:** protecting existing industries from adjacent incompatible development
- **Aggregates:** approvals for pits and quarries and monitoring changes to municipal and provincial policy that affect the aggregate industry
- **Municipal Finance:** development charge studies and appeals

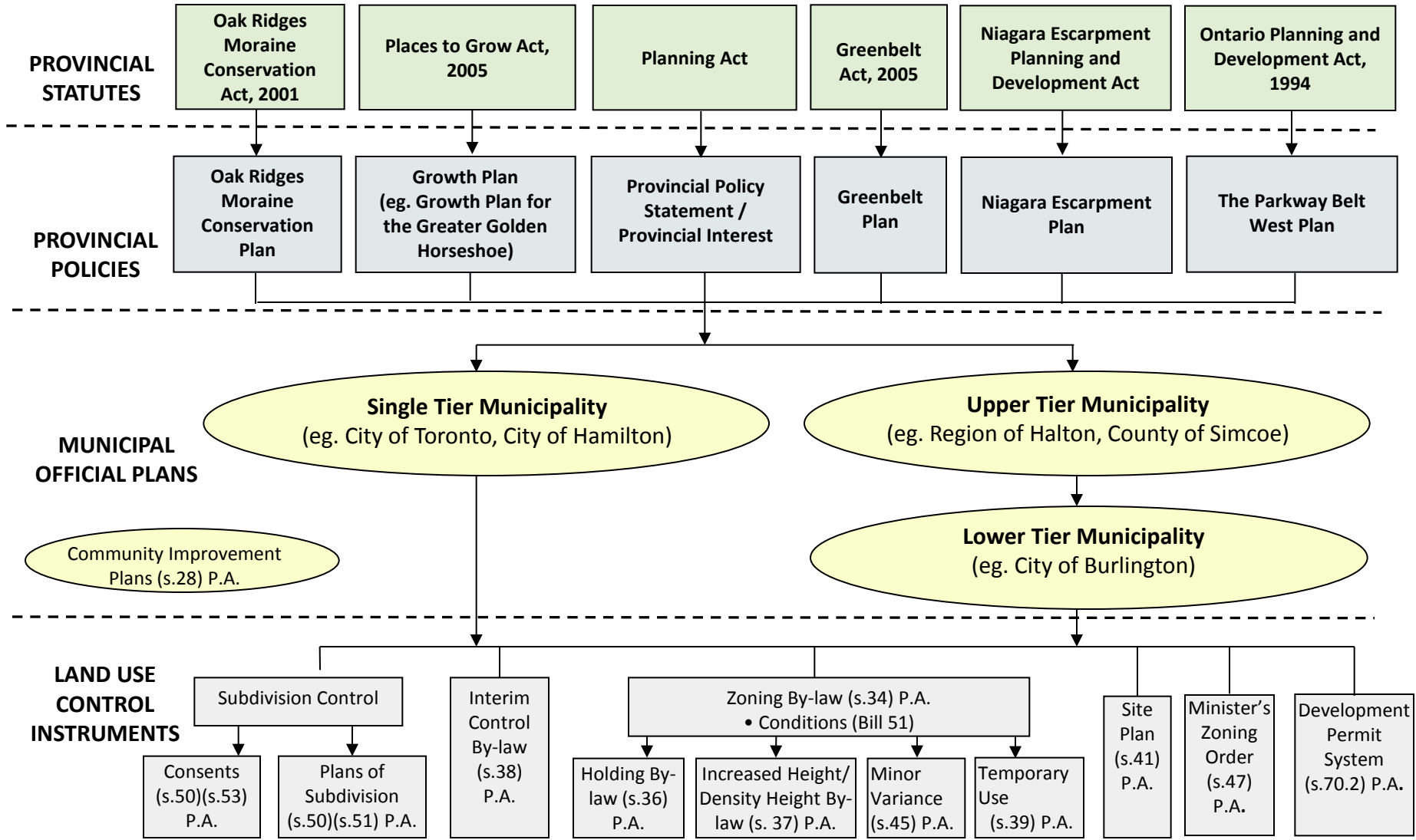
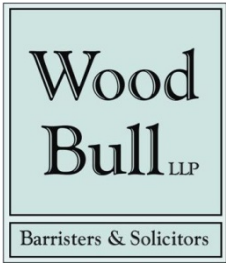
SCOPE OF PRACTICE



Assisting clients with all aspects of the planning & development approvals process, including:

- Official Plans & Zoning By-laws
- Minor Variances
- Severances/Consents
- Plans of Subdivision
- Development Agreements, Landowner Cost-Sharing Agreements, Section 37 Agreements
- Development Charges
- Heritage Approvals
- Aggregate Approvals
- *Endangered Species Act* permits
- Site alteration agreements/permits

ONTARIO'S POLICY-LED PLANNING AND DEVELOPMENT SYSTEM



PROVINCIAL STATUTES

- Oak Ridges Moraine Conservation Act, 2001
- Places to Grow Act, 2005
- Planning Act
- Greenbelt Act, 2005
- Niagara Escarpment Planning and Development Act
- Ontario Planning and Development Act, 1994

PROVINCIAL POLICIES

- Oak Ridges Moraine Conservation Plan
- Growth Plan (eg. Growth Plan for the Greater Golden Horseshoe)
- Provincial Policy Statement / Provincial Interest
- Greenbelt Plan
- Niagara Escarpment Plan
- The Parkway Belt West Plan

MUNICIPAL OFFICIAL PLANS

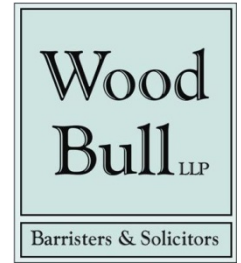
- Single Tier Municipality (eg. City of Toronto, City of Hamilton)
- Upper Tier Municipality (eg. Region of Halton, County of Simcoe)
- Lower Tier Municipality (eg. City of Burlington)
- Community Improvement Plans (s.28) P.A.

LAND USE CONTROL INSTRUMENTS

- Subdivision Control
 - Consents (s.50)(s.53) P.A.
 - Plans of Subdivision (s.50)(s.51) P.A.
- Interim Control By-law (s.38) P.A.
- Zoning By-law (s.34) P.A. • Conditions (Bill 51)
 - Holding By-law (s.36) P.A.
 - Increased Height/Density Height By-law (s. 37) P.A.
 - Minor Variance (s.45) P.A.
 - Temporary Use (s.39) P.A.
- Site Plan (s.41) P.A.
- Minister's Zoning Order (s.47) P.A.
- Development Permit System (s.70.2) P.A.

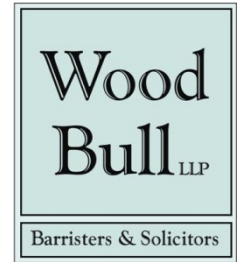
BILL 139 (2nd Reading):

OMB REPLACED



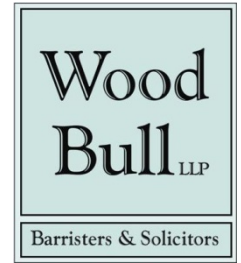
- Say “goodbye” to the Ontario Municipal Board
- Say “hello” to the Local Planning Appeal Tribunal
- Say “hello” to the Local Planning Appeal Support Centre
- Say “hello” to significantly greater municipal council power over development decisions
- Say “hello” to severe limitations on appeals (by developers and ratepayers)

IMPLICATIONS OF BILL 139



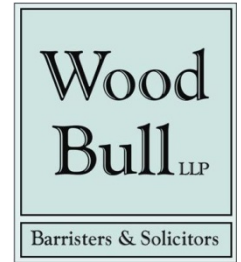
- Significant Change in the Development Business Model
- Future development approval process will be much more political
- Enhanced importance of public sector planners in the process
- Significant reduction in reliance on appeals to the Ontario Municipal Board (to achieve development approvals)
- Uncertainty of/increase length of approvals, with limited ability to appeal refusals/non-decisions

CURRENT SCENARIOS WHERE NO RIGHT TO APPEAL (public amendments)



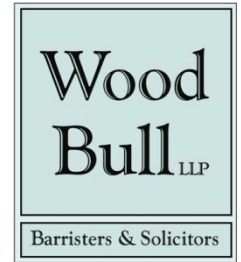
- Entire OPs (i.e. no **global appeals**)
- OP policies and zoning by-laws that authorize and implement **second units** and affordable housing **inclusionary zoning policies**
- Parts of OP that:
 - Identify **areas set out in other legislation** e.g. Lake Simcoe watershed, Greenbelt Area, Oak Ridges Moraine Conservation Plan Area
 - Identify **Growth Plan forecasts** of population and employment growth
 - Identify **boundary of settlement area** to reflect settlement areas in approved upper tier municipalities

CURRENT SCENARIOS WHERE NO RIGHT TO APPEAL (private amendments)



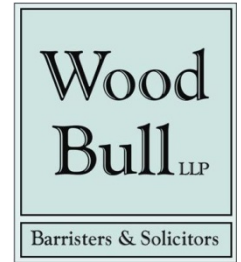
- Non-decisions and refusals of private OP amendments and zoning by-law amendments re:
 - New/altering **settlement area boundaries**
 - Removal of lands from **employment areas**
 - Amending **inclusionary zoning**

BILL 139: ADDITIONAL SCENARIOS WHERE NO RIGHT TO APPEAL



- OP policies and zoning by-laws identifying **major transit station areas** and establishing permitted uses or min/max densities and heights in these areas
- OP policies that result from a PPS consistency/Provincial Plan conformity amendment exercise
- Any new comprehensive municipal OP that the Minister has approved

BILL 139: APPEAL OF APPROVAL AUTHORITY DECISIONS

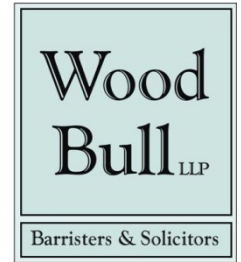


Appeal can only be made if the decision:

- *is inconsistent with a policy statement,*
- *fails to conform with or conflicts with a provincial plan,*
- *fails to conform with the upper-tier municipality's official plan [for lower-tier OPs and OPAs], or*
- *fails to conform with an applicable official plan [for ZBAs]*

[Planning Act subsections 17 (24.0.1), 17 (36.0.1), 34 (19.0.1)]

BILL 139: PRIVATE APPEAL OF REFUSAL OR NON-DECISION

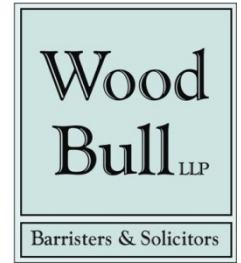


Appeal can only be made if

- (a) the **existing** part or parts of the official plan or by-law affected by the subject amendment:
- *are inconsistent with a policy statement*
 - *fail to conform with or conflict with a provincial plan*
 - *fail to conform with the upper-tier municipality's official plan [for lower-tier OPAs] or*
 - *fail to conform with an applicable official plan [for ZBAs] ;*

and

BILL 139: PRIVATE APPEAL OF COUNCIL REFUSAL OR NON-DECISION

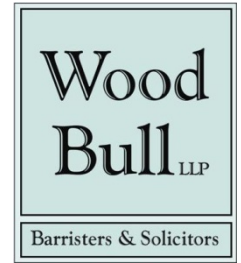


(b) the requested amendment:

- *is consistent with policy statements*
- *conforms with or does not conflict with provincial plans*
- *conforms with the upper-tier municipality's official plan [for lower-tier OPAs] and*
- *conforms with applicable official plans [for ZBAs]*

[*Planning Act* subsections 22 (7.0.0.1), 34 (11.0.0.0.2)]

REAL ESTATE PRACTICE (taking into consideration Bill 139)

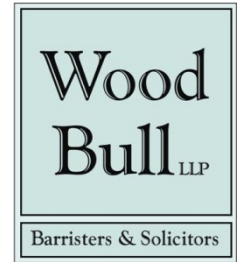


1. Due Diligence

- a) Know what you're buying
- b) Know the potential of what you're buying

2. Protect the asset

DUE DILIGENCE



a) Know what you're buying

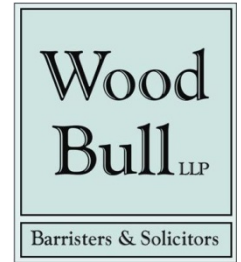
- Existing policy and zoning (as of right permissions)
- Emerging policy and zoning

DUE DILIGENCE

b) Know the (development) potential of what you're buying

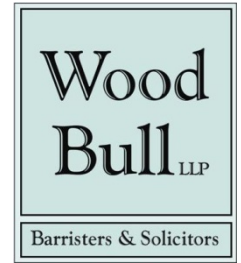
- Identify necessary approvals
- Potential to change policy and zoning
- Potential to obtain other approvals (e.g. permit to remove trees)
- Timing of approvals process

DUE DILIGENCE – Red Flags



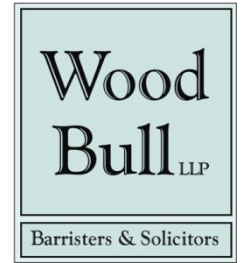
- Employment Lands
 - Conversion to permit residential, major retail uses
- Cultural Heritage (onsite and adjacent)
- Natural Heritage (onsite and adjacent)
 - Wildlife habitat
 - Natural heritage systems
- Rural Considerations
 - Settlement area boundaries/expansions
 - Agricultural lands
- More after Bill 139 e.g. major transit station areas

DUE DILIGENCE – Cultural Heritage



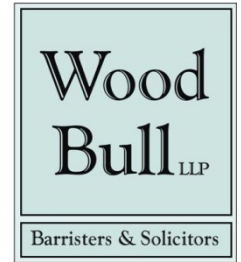
- Subject property **designated** under Part IV of the Ontario Heritage Act (OHA)
- Subject property within **Heritage Conservation Districts (HCD)** designated under Part V of the OHA
- Subject property **listed** in municipal heritage register, but not designated under Part IV of the OHA
- **Archaeological** resources/archaeological potential:
 - Identified in provincial database (known sites)
 - Identified in municipal Archaeological Management Plans

DUE DILIGENCE – Cultural Heritage



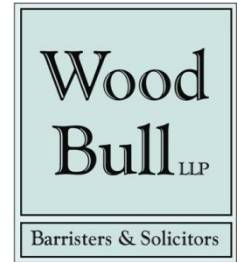
- What are the implications of heritage resources on the subject property?
- What are the implications of the subject property being adjacent to properties with heritage resources?

PROTECT THE ASSET



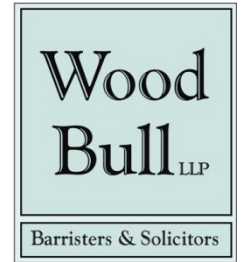
- Monitor emerging provincial policies and plans
- Monitor emerging municipal official plan policies (and related zoning by-laws)
 - Currently: right to appeal to OMB
 - Bill 139: no right to appeal unless decision does not conform with provincial policies or is inconsistent with provincial/municipal official plans (significantly limits appeals)

PROTECT THE ASSET



- Monitor development proposals (private applications) in the neighbourhood
 - Currently: right to appeal to OMB/TLAB
 - Bill 139: no right to appeal unless decision does not conform with provincial policies or is inconsistent with provincial/municipal official plans (significantly limits appeals)

PROTECT THE ASSET

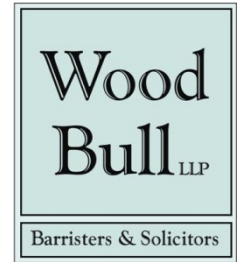


Example: New City of Toronto City-wide Zoning By-law

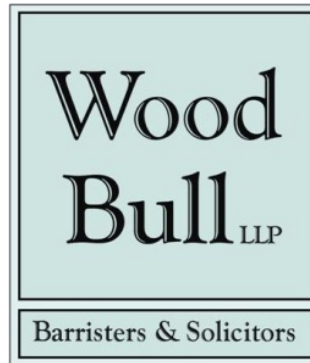
For an industrial area previously zoned “M2” in the former North York zoning by-law, the new “E” zone no longer permits the following uses:

- Adult education school
- Banquet hall
- College
- Commercial school
- Car rental agency
- Golf course
- Hotel
- Motor vehicle dealership
- Museum
- Place of worship
- Public library
- University uses
- Veterinary clinic
- Restaurants greater than 300 sq.m. or 10% of building floor area

CONSENTS/VARIANCES – TORONTO LOCAL APPEAL BODY (TLAB) REPLACES OMB



- All Toronto Committee of Adjustment appeals (filed after May 3, 2017) go to the TLAB
- Exception: related matter going to the OMB under another provision of the *Planning Act*
- All Toronto site plan appeals go to the TLAB (after Bill 139)
- TLAB more formalistic than OMB (and potentially more expensive)



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