Presentation to
FCT Commercial Lawyer Roundtable

13 September 2017
Land Use and Development After Bill 139 (and a Few Other Things)

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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

PROVINCIAL STATUTES

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

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.
- 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.
- Zoning By-law (s.34) P.A.
  - Conditions (Bill 51)
- 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
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*
(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 Bill139)

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
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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