

WHAT TO DO ABOUT OMB & PLANNING ACT REFORM

February 2018

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 **MHBC** PLANNING
URBAN DESIGN
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WHY CHANGE THE SYSTEM?

Problems with OMB - “Old System”

- Too many municipal decisions overturned
- Process too expensive and too long
- Individuals at disadvantage
- Too many hearings

Key Takeaways

- Game changing, not fine tuning
- Does Bill 139 achieve solutions?

Proposed Solutions - “New System”

- Limit appeals of municipal decisions
- Reduce length and cost of hearings
- More planning power to municipalities
- Make hearings more accessible to individuals
- Encourage early settlement
- No appeals of Provincial decisions

BILL 139 - IN A NUTSHELL

- *Building Better Communities and Conserving Watersheds Act, 2017*
- Local Planning Appeal Tribunal
 - continuation of OMB
 - new regulations, rules, timelines
 - hearings - more written hearings, fewer oral hearings
- *Planning Act* changes
 - significant limitation on appeals
 - 2-step hearing process
 - processing timeframes increased
- Local Planning Appeal Support Centre established
- *Conservation Authorities Act* amendments
- *Aggregate Resources Act* amendments to reflect changes

BILL 139 - CURRENT STATUS

- Passed (Royal Assent) - December 12th, 2017
- In force - on proclamation (April 2nd, 2018 ??)
- Regulations - key details in regulations, no regulations yet

Key Takeaways

- Spring 2018 implementation
- Details still to come

TRANSITION

- Transition Regulation - only notice, no regulation yet
- Municipal OP/OPA, ZBL/ZBLA
 - notice of decision before December 12th 2017 - **OLD System**
 - notice of decision after December 12th 2017 - **NEW System**
- Complete *Planning Act* application before December 12th 2017
 - appeal before proclamation - **OLD System**
 - appeal after proclamation - **NEW System**
- Complete *Planning Act* application after December 12th 2017 - **NEW System**

Key Takeaways

- Date when application complete important
- Proclamation date to be confirmed
- 2-stream process (Old System / New System)
- Numerous appeals will keep Old System alive for years

NO APPEALS

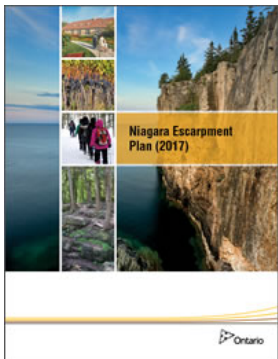
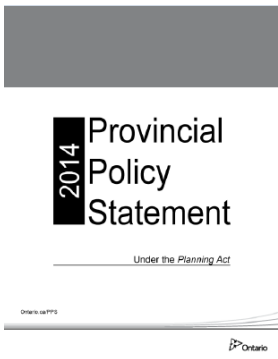
- Provincial Decisions re OP/OPAs (where Minister is approval authority)
 - conformity with Provincial Plans (i.e. Growth Plan, Greenbelt Plan, NEP)
 - consistency with PPS
 - municipal comprehensive review
- Interim Control By-laws (1st year)
- Major Transit Station Areas

Key Takeaways

- Significant increase in Provincial power over local land use planning
- Lower tier municipality inability to challenge upper tier municipality decisions on OPs and upper tier municipality policies
- Cuts both ways

NEW APPEAL TEST

OP/OPA, ZBL/ZBLA PASSED BY MUNICIPALITY



- Appeals significantly limited
- New Appeal Test - OP/OPA, ZBL/ZBLA (municipal-initiated and applications)
 - inconsistent with PPS
 - not conform Provincial Plans
 - not conform upper tier (Region/ County) OP or local OP (for ZBL/ZBLA)
- Traditional grounds of appeal (good planning, impact, compatibility) not relevant unless relate to policies in PPS, Provincial Plans, OPs

Key Takeaway

- Provincial and municipal policies are key

NEW 2-PART APPEAL TEST

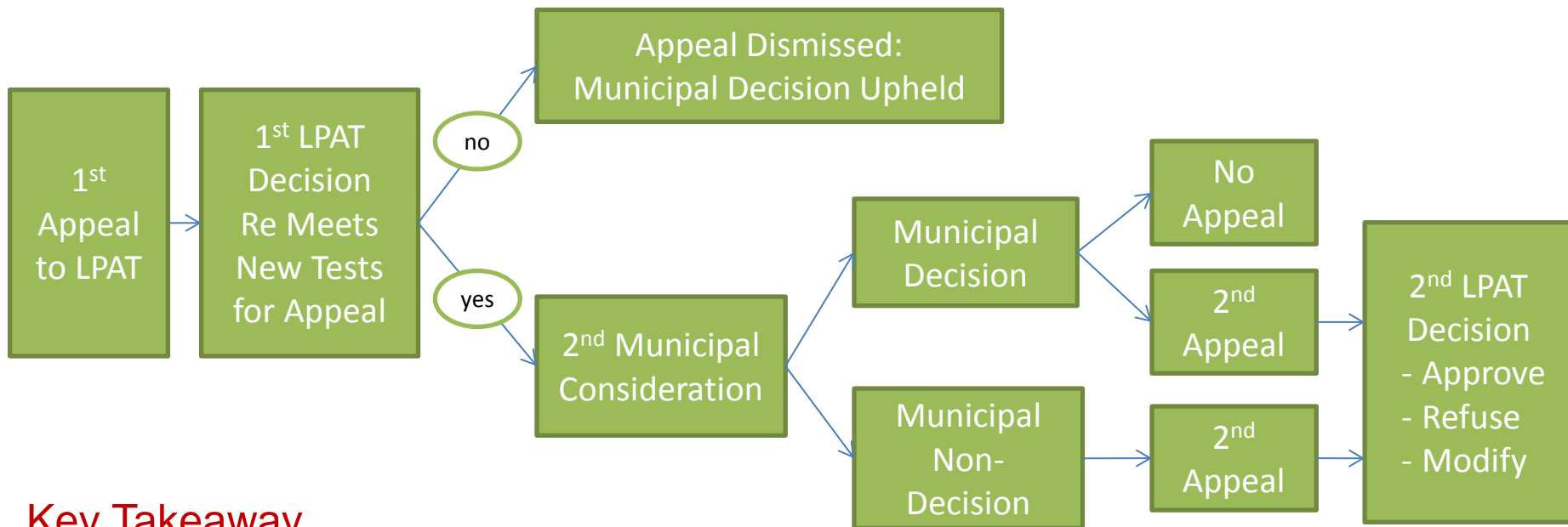
REFUSAL OR NON-DECISION BY MUNICIPALITY

- Appeals significantly limited by 2-part appeal test
- Test #1 - OP/ZBL that is being amended
 - inconsistent with PPS
 - not conform with Provincial Plans
 - not conform with upper tier (Region/ County) OP or local OP (for ZBLA)
- Test #2 - Proposed OPA/ZBLA
 - consistent with PPS
 - conform with Provincial Plans
 - conform with upper tier (Region/ County) OP and local OP (for ZBLA)

Key Takeaways

- Municipalities have more power
- Increased importance of “winning” at municipal level
- Need to rethink how aggregates are made available given policy protection for agriculture and natural heritage

2-STEP HEARING PROCESS



Key Takeaway

- Potentially longer process
- More municipal power

LPAT PROCESS - NEW PROCEDURE

- More written hearings and fewer oral hearings
- Case Management Conference - mandatory for some appeals (OPA/ZBLA/Subdivision)
- Added Powers of Investigation
 - examine/question a party
 - examine/question any person who makes a submission
 - compel party to provide evidence (documents)
 - compel party to produce witness
 - examine/question witness
- Time for Decisions - established by regulation

Key Takeaways

- Greater importance of sound and comprehensive submissions to municipality
- Written hearings difficult for non-expert parties
- Less emphasis on witness skills, the pen is the mightier sword

ORAL HEARINGS

- If oral hearings for major *Planning Act* applications (OPA/ ZBLA/subdivision)
 - NO new evidence - only public record
 - NO witnesses or cross-examination
 - NO testing witness credibility
 - Only submissions - time limit (75 minutes proposed) & every party has same time
 - Only LPAT can compel evidence & question witnesses
- Oral hearings for other matters have no statutory limitation on calling evidence
 - ARA Licence referral, site plan, severance, variance

Key Takeaways

- Public record at municipality very important
- Without testing credibility, the truth becomes more illusive
- Opposition must hire experts early on so that their reports can be part of the record

ARA APPLICATION REFERRALS

- No limitation on evidence if oral hearing
- If *ARA* and *Planning Act* appeals consolidated
 - Contradictory process. Which process followed?
- PPS, section 2.5, key to any grounds of appeal

Key Takeaways

- Uncertainty
- Watch for test cases
- Watch for regulations?
- Is this on MNRF radar?

LOCAL PLANNING APPEAL SUPPORT CENTRE

- Services
 - information on land use planning, LPAT Process
 - representation at LPAT
- Not known yet
 - Who is eligible for services?
 - Support Centre staff - planners, lawyers, other experts?
 - When will Support Centre staff participate in LPAT process/hearing?

Key Takeaways

- Possible benefit of more informed participants

KEY TAKEAWAYS

- More power for municipalities
- Municipal staff recommendation key, get them onside
- Local politics, not planning principles, may prevail
- OP policies (upper & lower tier) more important since site specific applications difficult
- Aggregates need more protection in New System (OP & PPS)
- Application record of key importance
 - All policies and issues should be comprehensively addressed in information given to municipalities
 - Compelling written submissions

KEY TAKEAWAYS

- Appeal letters more important, take nothing for granted
- Settlement - Reduced incentive for municipalities to mediate/settle given power imbalance between parties
- Procedural fairness
 - Procedural fairness limited in New System (no testing of evidence at LPAT or Council)
 - Anticipate this issue will be litigated
- Does the New System meet the Province's objectives?

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