

# THE NEW WORLD OF LPAT

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# Presentation Outline

- ▶ Land use planning refresher
- ▶ Overview of Bill 139
- ▶ New structure
  - LPAT
  - Local Planning Appeal Support Centre
- ▶ Appeals
  - New test for appeals
  - New LPAT Process
- ▶ What is no longer appealable
- ▶ Other changes
- ▶ Transition

# Land Use Planning Refresher

- ▶ Planning one of Council's key roles
- ▶ Legislative framework in *Planning Act*
- ▶ Provides basis for:
  - Considering Provincial interests
  - Processes and tools for controlling development
  - Ensuring public participation in planning decisions
  - Allowing appeals of planning decisions

# Land Use Planning Refresher

- ▶ Provincial policy led system
- ▶ Policy set out in various documents:
  - Section 2 of *Planning Act*
    - Matters of provincial interest
  - Provincial Policy Statement (PPS)
  - Provincial plans
    - Growth Plan
    - Greenbelt Plan
    - Oak Ridges Moraine Plan
    - Niagara Escarpment Plan
- ▶ Decisions must be consistent with/conform to Provincial policy

# Land Use Planning Refresher

- ▶ *Planning Act* tools for controlling development:
  - Official plans
    - Broad statement of planning policy
    - Provides overall direction for planning in municipality
    - Public works and by-laws must conform to OP
  - Zoning by-laws
    - Detailed land use regulation
  - Site plan control
    - Detailed regulation of development on site
  - Plans of subdivision
    - Regulation of land division

# Land Use Planning Refresher

- ▶ **Public process**
  - Statutory public meeting/open house
    - Notice requirements set out in Regulations
  - Opportunity to comment orally and in writing
- ▶ **Role of upper-tier and lower-tier**
  - Upper tier often approval authority
  - Lower tier OP & ZB must conform to upper tier OP
- ▶ **Changes to planning documents**
  - OP, ZB may be amended by municipality
  - May also be amended by private application
  - Minor variances may be granted to ZB
  - Consents to sever land without plan of subdivision

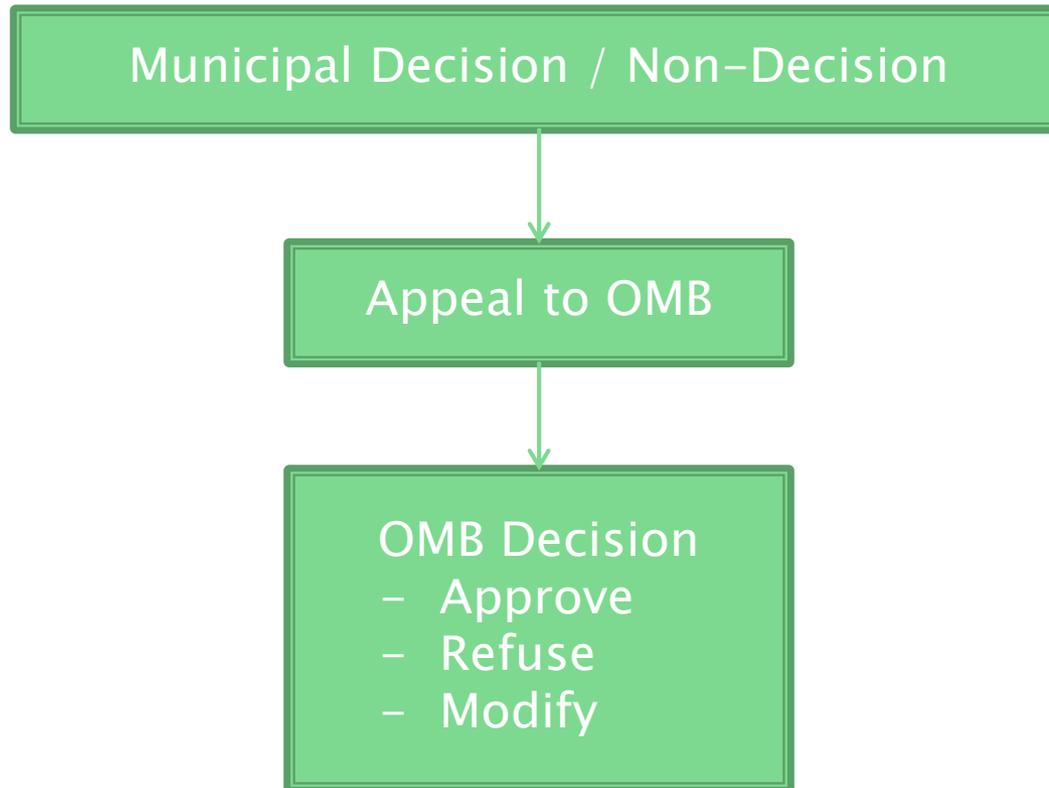
# Land Use Planning Refresher

- ▶ When making planning decisions, Council performs a legislative function
  - Not judicial or quasi-judicial
- ▶ But required to act fairly and provide fair opportunity for input
  - Planning Act s. 61
- ▶ Notice of decision must also explain effect submissions had on decision
  - E.g. Planning Act s. 17(23.1)

# Appeal Process – before Bill 139

- ▶ Appeals to OMB from decisions of Council, approval authority, Committee of Adjustment
- ▶ Also appeals of failure to make decision
- ▶ Hearing “de novo”
- ▶ Record not limited
- ▶ Oral evidence from witnesses
- ▶ Cross-examination
- ▶ OMB stood in shoes of decision maker
  - Could do anything decision maker could do
- ▶ OMB decision final

# OMB Process



# Bill 139 Overview

- ▶ *Building Better Communities and Protecting Watersheds Act*
- ▶ In force as of 3 April 2018
- ▶ Replaces OMB with Local Planning Appeal Tribunal (LPAT)
- ▶ Eliminates de novo hearings relating to OPs, zoning by-laws and non-decisions on plans of subdivision
- ▶ New test for appeals
- ▶ Limitations on oral hearings

## Building Better Communities and Conserving Watersheds

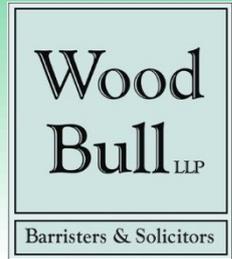


### Local Planning Appeal Tribunal

# LPAT

- ▶ LPAT replaces OMB
  - OMB “continued” as LPAT
- ▶ Same members and appointment process
  - Appointed by Lieutenant Governor in Council
- ▶ No statutory term limit
  - But 10-year cap in policy
- ▶ No prescribed qualifications

# Local Planning Appeal Support Centre



- ▶ Independent agency at 700 Bay St. 12<sup>th</sup> floor, Toronto
- ▶ Mandate to help public understand and navigate process
  - Understanding proposal and policy framework
  - Understanding how to participate
  - Assistance with appeal documents
  - Preparation for CMC, mediations, hearings, motions
- ▶ Involved in mediations already
- ▶ Brochures and posters available for municipalities
- ▶ Include information about LPASC in notice of decision

# Local Planning Appeal Support Centre

Wood  
Bull<sub>LLP</sub>

Barristers & Solicitors

## Do you need help with a planning matter?



Ontario's new **Local Planning Appeal Support Centre** helps people navigate the planning approval and appeal process for projects underway in their local community.

### We can help you:

- Understand the land use planning and appeals process in Ontario
- Participate in early engagement and resolution
- Express your concerns in land use planning terms
- Prepare to present at a public meeting, mediation or hearing
- Complete appeal forms and other documentation required by the Local Planning Appeal Tribunal
- By providing planning and legal assistance at a hearing

### Contact Us:

Monday to Friday, 8:30 am to 5 pm

☎ 647-499-1646  
✉ info@lpasc.ca  
🌐 www.lpasc.ca

Toll-free: 1-800-993-8410  
TTY: 647-499-1648  
TTY Toll-free: 1-800-993-8411



lpasc.ca



Local Planning Appeal Support Centre  
700 Bay Street, 12<sup>th</sup> Floor, Toronto, Ontario M5G 1Z6

## Thinking about an appeal?



You have just received a **Notice of Decision** from your local municipality concerning a planning matter in your community. If you are thinking about appealing this decision, we can help.

We are Ontario's new **Local Planning Appeal Support Centre**. Our role is to help people navigate the land use planning approval and appeal process.

### We can help you:

- Understand the land use planning and appeals process in Ontario
- Participate in early engagement and resolution
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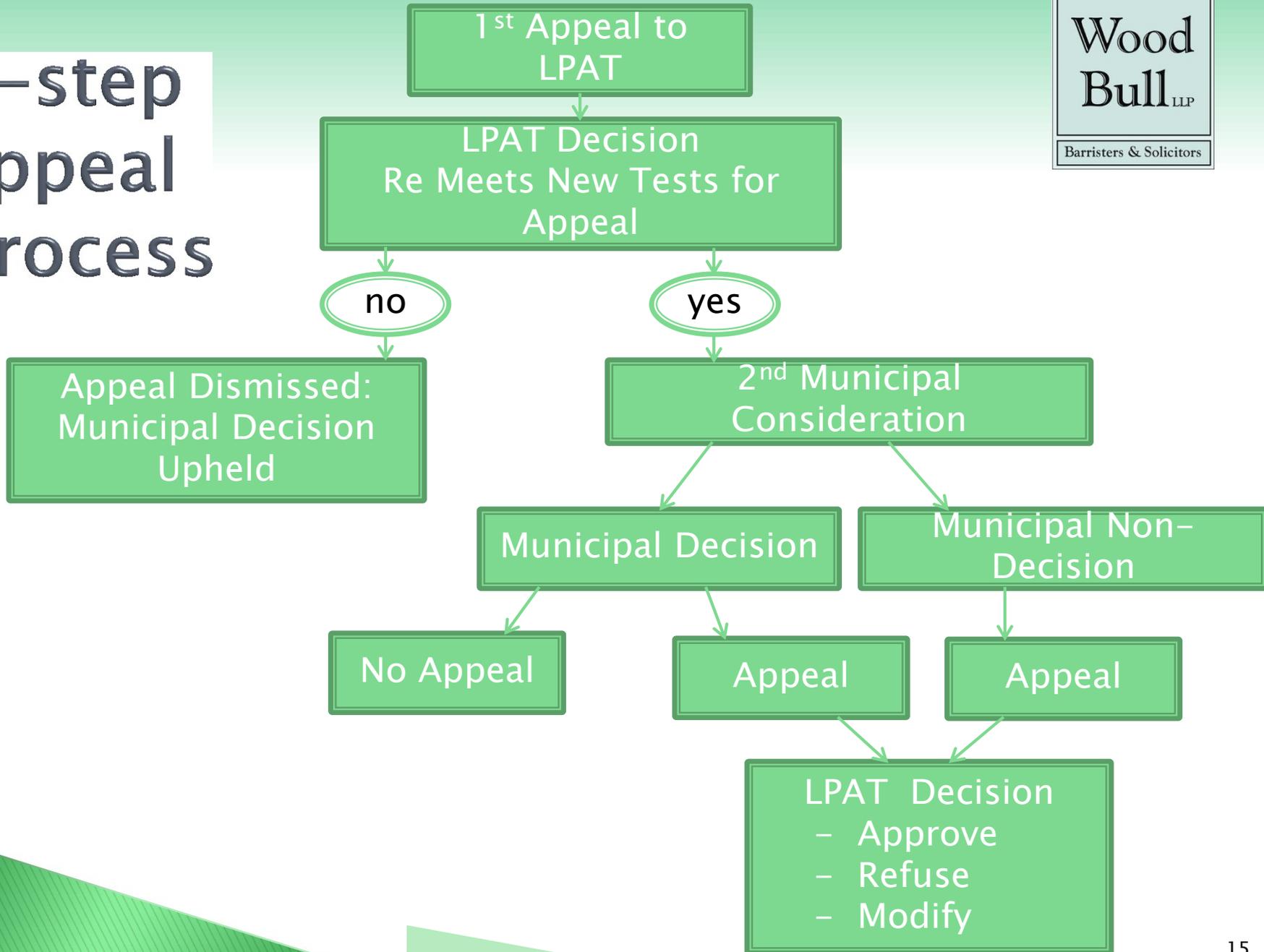


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# Appeals

- ▶ Two-step appeal process for OPs and ZBs
- ▶ Mandatory case management early in process
- ▶ New appeal standard of review applies
  - Consistency with PPS, conformity with provincial plans and official plans
  - Two-part test for OPAs and ZBAs:
    - must demonstrate existing instrument isn't consistent/doesn't conform and
    - proposed amendment is consistent/conforms

# 2-step appeal process



# Appeals

- ▶ Preliminary screening
  - On receiving appeal LPAT must determine validity of appeal
  - Must dismiss if notice of appeal doesn't explain how test is met
- ▶ Case management
  - Mandatory case management conference
  - Appellant must file appeal record and case synopsis
- ▶ First appeal
  - Hearing may be written or oral, but no examination of witnesses
  - Parties limited to 75 minutes of submissions
  - Record limited to what was before municipality
  - If appeal successful, matter is returned to municipality/approval authority to make decision within 90 days

# Appeals

- ▶ Second appeal
  - If municipality or approval authority fails to make a new decision or new decision fails to meet standard of review
  - Can be a full hearing with witnesses
  - LPAT decision binding
- ▶ Limits on parties
  - On OP, OPA, ZB, ZBA and subdivision non-decision appeals only appellant and municipality are automatically parties
  - Others must make submission to LPAT 30 days before case management conference

# LPAT Process

- ▶ LPAT required to decide every appeal within specified time limits: 12, 10 or 6 months
- ▶ Only LPAT can call evidence from witnesses
- ▶ Paper-intensive
  - Enhanced municipal record
  - Appeal record & case synopsis (argument)
  - Responding record & case synopsis

# No longer appealable

- ▶ Provincial whole-plan approvals of OP
- ▶ Conformity exercises to Provincial plans (incl. OPAs)
- ▶ Minister's amendments to Minister's zoning orders
  - Referral at discretion of Minister
- ▶ Interim control by-laws within first year
- ▶ OP policies/ZB provisions supporting development around "protected major transit station areas"
  - Areas surrounding and including a planned "higher order transit station/stop"
  - Transit that operates in dedicated right-of-way

# Other Changes

- ▶ Provincial plans and policy statements
  - Provincial plans include policies under *Lake Simcoe Protection Act*, *Great Lakes Protection Act* and designated Great Lakes policy or significant threat policy under *Clean Water Act*
  - Statements under s. 31.1 of *Metrolinx Act* and section 11 of *Resource Recovery and Circular Economy Act* are deemed to be policy statements

# Other Changes

- ▶ Local appeal bodies
  - Can be empowered to deal with site plan appeals
- ▶ Official plans
  - Must include policies relating to climate change
  - May identify higher-order transit stations and areas
  - Non-decision of approval authority appealable after 210 days
- ▶ Official plan amendments
  - No request to amend secondary plan within 2 years of adoption unless council approves
  - No amendment to major transit station area policies unless council approves
  - Non-decision appealable after 210 days

# Other Changes

- ▶ Zoning by-laws
  - Non-decisions appealable after 150 days (210 days if combined with OP)
  - No appeal re permitted uses or heights/densities within major transit station areas
- ▶ Holding by-laws
  - Non-decision appealable after 150 days

# No Change

- ▶ Appeals of draft plan approvals
- ▶ Appeals of non-decision by approval authority on adopted OPA
- ▶ Refusal/non-decision on subdivision
- ▶ Minor variances
- ▶ Consents
- ▶ Site plan
- ▶ Heritage
- ▶ Expropriation
- ▶ Development charges

Old appeal process applies

# Transition

## ▶ Appeals

- If appeal filed before 3 April 2018 and application before 12 December 2017 old appeal process applies
- If appeal filed before 3 April 2018 but appeal relates to OPA/ZBA application made after 12 December 2017 new appeal process applies
- If appeal filed before 3 April 2018 but appeal relates to OP adopted after 12 December 2017 new appeal process applies

# Transition

- ▶ Application of *Planning Act* changes
  - 2-year moratorium on request to amend secondary plan does not apply to request received before 3 April 2020 unless any part of secondary plan in effect on or after 3 April 2018
  - Restriction on appeals of ICB does not apply to ICB passed before 3 April 2018
  - Restriction on appealing Minister's OP approval does not apply if notice of approval complete before 3 April 2018
  - Restriction on referral of request to amend Minister's zoning order does not apply if request made before 3 April 2018
  - Old timeline to appeal approval authority decision applies if OP adopted before 3 April 2018
  - Old timelines to appeal non-decisions of OPA, ZBA, holding by-law removal if application before 12 December 2017

# Process Impacts

- ▶ Front loaded applications
- ▶ Planning and technical reports will be evidence
  - Need for peer review?
- ▶ Recommendation report must address tests as well as good planning
- ▶ Implications of fixed record
  - What if Council disagrees with recommendation?
- ▶ Increase in submissions?
- ▶ Change in deputation process?

# QUESTIONS?

- ▶ Kim Mullin: [kmullin@woodbull.ca](mailto:kmullin@woodbull.ca)  
416-203-5633