

New tribunal to replace OMB a step in the right direction

By Mark Pavilons

The provincial government's passing of new legislation that will revamp the Ontario Municipal Board (OMB), and give municipalities a stronger voice in planning, is a step in the right direction.

The Building Better Communities and Conserving Watersheds Act, 2017 will replace the Ontario Municipal Board with the Local Planning Appeal Tribunal, and help ensure that proceedings before the tribunal are faster, fairer and more affordable. The new legislation will also create the free Local Planning Appeal Support Centre, which will provide people across the province with information about the land use planning appeal process, legal and planning advice, and, in certain cases, may provide legal representation in proceedings before the tribunal.

The act will also modernize the Conservation Authorities Act, guiding the conservation of Ontario's watersheds. The legislation clarifies the roles and responsibilities of conservation authorities and strengthens oversight and accountability. It also encourages increased public engagement by setting requirements for more public disclosure and for meetings to be open to the public. These changes will enable conservation authorities to have the flexibility to address growing environmental pressures such as climate change.

King Councillor Avia Eek noted the Lake Simcoe Region Conservation Authority (LSRCA), supports the updates to the Conservation Authorities Act. It represents two years of review and collaboration.

"The new Conservation Authorities Act signals to us that the Province wants to work more closely with conservation authorities, and we're very pleased with that," she said

The Act will help strengthen oversight and accountability; improve collaboration and engagement, and modernize funding mechanisms.

"It is important moving forward that we continue to work with the Province to ensure that our mission to work with our community to protect and restore the Lake Simcoe watershed by leading research, policy and action is achieved," Eek added.

Ontario has 36 conservation authorities, which are local organizations that manage and protect water and other natural resources.

Ninety per cent of Ontarians live in a watershed managed by a conservation authority.

In 2015-2016 (the most recent year for which data is available), the Ontario Municipal Board received 1,460 cases from across the province.

Councillor Cleve Mortelliti noted the legislation is a positive move, but the transition regulations will still allow for the long line of existing appeals.

"The likelihood is that many of the existing appeals currently in the queue, right up until royal ascent, will remain active and will play out under the existing OMB rules until a decision has been made or if active files are abandoned. In other words, the OMB will continue to live on for years as the new Planning Tribunal begins to phase in."

Mortelliti predicts that initially, local councils will have a feeling of more control. However, their decisions will have to be more based on professional planning advice. Under the old system it can be politically expedient to heed the cries of the public to deny certain applications, even against the advice of staff, and push the tough decision off to the OMB.

"But now, municipal councils will be forced to make decisions based on the Official Plans they have approved. If they vote against staff recommendations, and are found by the Planning Tribunal to have made a decision that is inconsistent with their own official plans, it will land right back on councils plate to deal with it again.

"So I'm not so sure that councils will gain more controls from this because planning regulations are made by the province. And if the province mandates things like intensification, then local municipalities will be compelled to approve applications that are consistent with provincial legislation and local official plans."

Councillor Debbie Schaefer also expressed concern about pending OMB appeals.

"Many of the existing appeals currently in the queue, right up until royal ascent, will remain active and will play out under the existing OMB rules until they are 'disposed of,' meaning until a decision has been made or if active files are abandoned. In other words, the OMB will continue to live on for years as the new Planning Tribunal begins to phase in," she said.

The government, however, contends that the new legislation will indeed give residents more say.

"These changes will help ensure that communities evolve and grow in ways that better reflect local concerns and priorities," said Bill Mauro, Minister of Municipal Affairs.

"This legislation will help create a faster and more accessible process for appealing land-use planning decisions. Giving people a stronger voice in the planning of their own communities will help ensure cities and towns reflect the best interests of the people living in them today, as well as future generations," added Yasir Naqvi, Attorney General of Ontario.

Concerned Citizens of King Township (CCKT), like many other community and environmental groups throughout Ontario, welcomes the proposal to phase out the Ontario Municipal Board (OMB) and replace it with a Local Planning Appeal Tribunal (LPAT).

"For many years the OMB was viewed as an undemocratic and authoritarian body that constantly overruled the positions of municipalities and citizens," said CCKT's Greg Locke.

"By conducting de novo hearings it put undue financial and administrative pressure on municipalities and citizen groups opposed to inappropriate development within communities. This inevitably gave an unfair advantage to development companies with the resources to submit expensive quasi-legal presentations by professional lawyers."

The passing of Bill 139 will eliminate de novo hearings and place significant authority in the hands of elected municipal councils and local planning officers. The Tribunal will be limited to overturning a municipal decision only where that decision does not conform to or is inconsistent with provincial policies or municipal plans.

An important facet of this change is that even if the municipal decision does not meet provincial policies or local plans, the Tribunal cannot substitute its own decision. It must return the matter to the municipality in writing, explaining its rationale for overturning the decision. The municipality will then have 90 days to reconsider the application with the benefit of the Tribunal's decision. If a subsequent municipal decision still fails to meet provincial policies or municipal plans, the Tribunal has the authority to then substitute its own order.

"With these changes comes more municipal responsibility. This will call for greater citizen participation in electing officials that are prepared to adhere to provincial policies and community official plans.

"At this time there are still some ambiguities concerning the new legislation and CCKT has concerns surrounding them. One in particular is the proposal to 'grandfather' present cases, permitting them to be dealt with by the current OMB.

"Clarification is required as soon as possible concerning these cases. CCKT sees no reason why all outstanding cases not currently being dealt with by an OMB officer cannot be dealt with by the LPAT. To do otherwise will just prolong the inequities of the system. We suspect, even through our own observations, that developers are appealing issues to the OMB prematurely so as to avoid having disputes with municipalities resolved by LPATs.

"Finally, CCKT believes that this initiative is well overdue and suggests that every effort is made to have Bill 139 made law as soon as possible."

Environmental Defence lauds the elimination of the "undemocratic OMB" and the new tribunal.

"The OMB was known for expensive, adversarial and lengthy appeal hearings that shut out citizens," said Tim Gray of Environmental Defence. "In contrast, the new Local Planning Appeal Tribunal (LPAT) effectively takes city building away from corporations, and puts planning back in the hands of municipalities."

Municipalities may be happy with the changes, but now they have to make decisions that conform to official plans and provincial policy directions. This may be problematic for municipalities that are used to bending the rules.

"Putting municipalities fully in charge of planning outcomes may actually encourage people to attend city council meetings and vote," continued Gray. "It's up to all of us to elect people who support the kind of communities we want."