



THE PLANNING JUSTIFICATION REPORT AND MUNICIPAL STAFF REPORT: WHAT WILL THEY LOOK LIKE UNDER BILL 139

THURSDAY APRIL 12, 2018
11:00 AM TO 1:00 PM

WeirFoulds LLP and OPPI would like to thank you for participating in this important discussion on drafting Planning Reports under the new Regime. We hope you enjoy the program.

PROGRAM OUTLINE

<p>Denise Baker Partner WeirFoulds LLP</p>	<p>Welcome & Introduction Overview of Bill 139 and New Regulations Understanding the changed requirements for Planning Reports under the new Regime</p>	<p>30 mins</p>
<p>Emma West, RPP, MCIP Partner Bousfields Inc.</p>	<p>Writing Planning Justification Reports for Applications New considerations and approaches when drafting Planning Reports from the Landowner/ Applicant perspective</p>	<p>20 mins</p>
<p>Mark Simeoni, RPP, MCIP Director Planning Services Town of Oakville</p>	<p>Writing Municipal Staff Reports on Applications The New Process from the Municipal Staff Perspective</p>	<p>20 mins</p>
<p>Panel Discussion Denise Baker Emma West Mark Simeoni</p>	<p>Panel Discussion Questions, Challenges, Issues & Uncertainties Bruce Engell & Barnet Kussner, Moderators WeirFoulds LLP</p>	<p>50 mins</p>

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APRIL 12, 2018

MEET OUR SPEAKERS



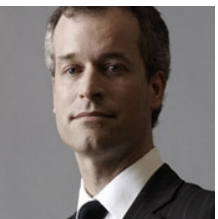
Denise Baker's practice is focused on municipal and land use planning law where she has acted on behalf of municipalities, private landowners and resident groups. She advises landowners and municipalities with respect to land use planning and development matters including municipal finance matters, Planning Act applications and appeals and Heritage Act matters. Her practice also includes municipal licensing, Building Code Act and Provincial Offences Act matters. Denise appears regularly before municipal councils, Committees of Adjustment, the Conservation Review Board, the Ontario Municipal Board as well as appearing before the Ontario Court of Justice and the Divisional Court. She is actively involved in using mediation and negotiation to effectively resolve disputes between parties. Denise can be reached at 416.947.5090 or dbaker@weirfoulds.com.



Emma West is a Partner at the planning and urban design firm Bousfields Inc. With twenty years of experience in land use and environmental planning, she has worked with the public and private sector to implement community and city-building projects. Emma's experience ranges from regional scale to site scale projects across Canada and in the Middle East including secondary plans, institutional redevelopment, sustainable community plans and development approvals. She has acted as an expert witness at the Ontario Municipal Board. Emma can be reached at 416-947-9744 x 266 or ewest@bousfields.ca.



Mark Simeoni has been in the field of Planning for over 31 years. Mark has an Undergraduate Degree in Urban and Regional Planning from Ryerson, a Certificate in Public Administration also from Ryerson and a Graduate Diploma in Public Administration from Laurentian University. He has worked for the Province at the Ontario Municipal Board, as well as several Toronto area Law firms as a Planner working on a variety of projects in and around the GTA. In 2013 he was appointed the Acting Director of Planning for the City of Greater Sudbury, while maintaining his Managers role. In the fall of 2015 Mark joined the Town of Oakville as the Director of Planning Services. Mark can be reached at 905-845-6601 ext. 6020 or mark.simeoni@oakville.ca.



Bruce Engell's practice focuses on issues respecting the development, use and ownership of land, including municipal, planning, and environmental matters, title and lease disputes, industrial contamination, waste management facilities, road allowances and building permits. He has appeared as counsel in many significant court and Ontario Municipal Board matters. Bruce is the past chair of the firm's Municipal and Planning group, the co-author of the book, Remedies and the Sale of Land 2nd ed., and the editor of the firm's Ontario Planning Practice, a two-volume annotated loose-leaf publication. Bruce can be reached at 416.947.5081 or bengell@weirfoulds.com.



Barney Kussner is a seasoned advocate with extensive experience acting for both public and private sector clients, primarily on municipal, land use planning and property development matters, including acting for municipalities on adoption and appeals of comprehensive Official Plans and Secondary Plans and for development interests on residential, commercial, industrial and mixed-use projects. His practice also includes municipal licensing and regulation, municipal capital facilities and public-private ventures, enforcement of and challenges to municipal by-laws, sign regulation and conflict of interest issues, among others. Barney can be reached at 416.947.5079 or bkussner@weirfoulds.com.

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PRESCRIBED QUESTIONS - FOR SPEAKER USE ONLY

(note: additional questions will be coming from the floor (in person attendees) and webinar guests)

- (a) What would change if you were considering a municipally initiated amendment?
 - (b) How many LPATs are there, who is on LPAT, and is the OMB still there to hear applications that are not subject to the new regime?
 - (c) Issues with Municipal Staff Report that supports an application that is turned down by Council:(i)
What is the impact of having a "fixed record"?
 - (ii) What pressures will result on municipally employed planners and what should be done about that?
 - (iii) Oakville's approach re soliciting particular feedback from Councillors
 - (d) Standard of Review – will it stop at violations of specific policies, or will there be a more generous reading of the "policies as a whole"?
 - (i) Impact of LPAT composition as the tone is set in the early decisions
 - (e) Diversion to minor variances where the old regime remains in place?
 - (f) Impact of Decision vs. Non-Decision on Standard of Review Analysis?
 - (g) Pre-application consultation process – any changes?
 - (h) Can applications be amended and supporting materials be changed after the initial application is submitted?
 - (i) Admissibility, weight or impact of RPP planning report compared to a non RPP planning report?
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The Planning Justification Report and Municipal Staff Report: What Will They Look Like Under Bill 139

April 12, 2018



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Meet Our Speakers



Denise Baker, Partner
WeirFoulds LLP
dbaker@weirfoulds.com



Emma West, MCIP, RPP,
Partner, Bousfields Inc.
ewest@bousfields.ca



Mark Simeoni, MCIP, RPP
Director, Planning Services
Town of Oakville
mark.simeoni@oakville.ca

Our Moderators



Barney Kussner, Partner
WeirFoulds LLP
bkussner@weirfoulds.com



Bruce Engell, Partner
WeirFoulds LLP
bengell@weirfoulds.com



Overview of Bill 139 & New Regulations

Understanding Bill 139 and the Rules under
the Local Planning Appeal Tribunal

Denise Baker, Partner
WeirFoulds LLP



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Standards of Review

For Municipally Initiated Official Plans/Amendments

The part of the decision to which the appeal relates is inconsistent with a policy statement issued under subsection 3(1), fails to conform with or conflicts with a provincial plan or, in the case of the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan.

Standards of Review

For Privately Initiated Official Plan Amendments

- a) the existing parts of the official plan that would be affected by the requested amendment are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or, in the case of the official plan of a lower-tier municipality, fail to conform with the upper-tier municipality's official plan; AND
- b) the requested amendment is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and, in the case of a requested amendment to the official plan of a lower-tier municipality, conforms with the upper-tier municipality's official plan.



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Standards of Review

For Privately Initiated Zoning By-law Amendments

- a) the existing parts of the by-law that would be affected by the amendment are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; AND
- b) the amendment is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.



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Local Planning Appeal Tribunal Act

("LPAT Act")- 2017, S.O. 2017, c. 23, Sched. 1

Key Provisions: Tribunal shall adopt any practices and procedures provided for in its rules or are otherwise available that in its opinion offer the best opportunity for a fair, just and expeditious resolution of the merits of the proceeding

At any stage of a proceeding, the Tribunal may,

- examine a party to the proceeding;
- examine a person other than a party who makes a submission to the Tribunal;
- require a party or a person who makes a submission to produce evidence for examination;
- require a party to the proceeding to produce a witness for examination.

Local Planning Appeal Tribunal Act ("LPAT Act")- 2017, S.O. 2017, c. 23, Sched. 1

Decisions of Tribunal are final, subject only to LPAT Review or Appeal to Divisional Court

- Upon review, the Tribunal may rescind or vary any decision or order made by it.
- An appeal lies from the Tribunal to the Divisional Court, with leave of the Divisional Court, on a question of law. The Tribunal is to receive notice of the motion for leave to appeal.

Rules that Apply to First Appeals under subsections 17 (24) and (36), 22 (7) and 34 (11) and (19) of the *Planning Act*:

Mandatory Case Management Conference held for the following purposes:

- To identify additional parties to the proceeding.
- To identify, define or narrow the issues raised by the proceeding.
- To identify facts or evidence that may be agreed upon by the parties.
- To provide directions for disclosure of information.

Rules that Apply to First Appeals under subsections 17 (24) and (36), 22 (7) and 34 (11) and (19) of the *Planning Act*:

- To discuss opportunities for settlement, including the possible use of mediation or other dispute resolution processes.
- To establish dates by which any steps in the proceeding are to be taken or begun.
- To determine the length, schedule and location of a hearing, if any.
- To determine the order of presentation of submissions.
- To deal with any other matter that may assist in the fair, just and expeditious resolution of the issues.

Rules that Apply to First Appeals under subsections 17 (24) and (36), 22 (7) and 34 (11) and (19) of the *Planning Act*:

Participation by Others in the Appeal

- If a person other than the appellant or the municipality or approval authority wishes to participate in an appeal the person must make a written submission to the Tribunal at least 30 days before the date of the CMC identifying whether the decision or failure to make a decision:
 - was inconsistent with a policy statement issued under subsection 3 (1) of the Planning Act;
 - fails to conform with or conflicts with a provincial plan; or
 - fails to conform with an applicable official plan.



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Rules that Apply to First Appeals under subsections 17 (24) and (36), 22 (7) and 34 (11) and (19) of the *Planning Act*:

Oral hearings

- If the Tribunal holds an oral hearing the only persons who may participate in the oral hearing are the parties.

At an oral hearing of an appeal:

- each party or person may make a maximum 75 minute oral submission; and that does not exceed the time provided under the regulations; and
- no party or person may adduce evidence or call or examine witnesses.

Rules that Apply to First Appeals under subsections 17(40) and 51(34) of the *Planning Act*

Mandatory Case Management as identified above

Participation by Others in the Appeal

- If a person other than the appellant or approval authority wishes to participate in an appeal the person must make a written submission to the Tribunal as provided for in the Tribunal's rules.

Oral hearings

- If the Tribunal holds an oral hearing of an appeal, the only persons who may participate in the oral hearing are the parties and those identified by the Tribunal as persons who may participate in the oral hearing. Same rules as above in terms of submissions and evidence.

TRANSITION

LPAT Act- O. Reg. 101/18

A matter that was commenced before the effective date shall be continued under the OMB Act unless:

Official Plan Exempt from Approval- Appeal under 17(24):

- the appeal is with respect to an OPA adopted in response to a request under section 22 received after December 12, 2017;
- the appeal is in respect of an OPA adopted after December 12, 2017, not in response to a request under section 22 of the Act or
- the appeal is in respect of an Official Plan adopted or repealed after December 12, 2017.

TRANSITION

LPAT Act- O. Reg. 101/18

Official Plan- Decision by Approval Authority- Appeal under 17(36):

- the appeal is with respect to a decision in respect to an OPA adopted in response to a request under section 22 received after December 12, 2017;
- the appeal is in respect of a decision in respect of an OPA adopted after December 12, 2017, not in response to a request under section 22 of the Act or
- the appeal is in respect of a decision in respect to an Official Plan adopted or repealed after December 12, 2017

TRANSITION

LPAT Act- O. Reg. 101/18

OPA Refusal or Failure to Make a Decision- appeal under 22(7):

- the appeal is in respect of a request for an OPA under section 22 received after December 12, 2017

ZBL Refusal or Failure to Make a Decision -appeal under 34(11):

- the appeal is with respect to an application received after December 12, 2017

TRANSITION

LPAT Act- O. Reg. 101/18

Passing of ZBA- appeal under 34(19)

- the appeal is with respect to the passing of a ZBLA passed in response to a request received after December 12, 2017; or
- the appeal is with respect to a ZBL passed after December 12, 2017 not in response to an application under section 34.

Appeal of Non Decision of Approval Authority 17(40)

- If the notice of appeal was filed before April 3, 2018 or the appeal is in relation to an OP/OPA or repeal which was the subject of another appeal under 17(40), filed before April 3, 2018, the appeal will continue under the OMB Act.



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TIMEPERIODS

LPAT Act- O. Reg. 102/18

The period starting on the day on which an appeal to the Tribunal is validated by the Tribunal and ending on the day the appeal is disposed of by the Tribunal shall not exceed:

10 months in the case of:

- a decision made or failure to make a decision by municipality in respect to an OP or Zoning By-law

6 months in the case of:

- an appeal of a new decision made or failure to make a new decision by municipality

TIMEPERIODS

LPAT Act- O. Reg 102/18

12 months in the case of:

- an appeal of the failure of an approval authority to make a decision with respect to an OP or a plan of subdivision

6 months in the case of:

- any other appeal

In calculating time, any period of time occurring during an adjournment is excluded if the adjournment is for mediation or is necessary in the Tribunal's opinion to secure a fair and just determination of the appeal.

LPAT Rules of Practice and Procedure

Summary

- Part I applies to all proceedings before the Tribunal unless stated otherwise
- Part II is specific to appeals under 17(24)(36)(40); 22(7); 34(11)(19); 51(34),
- Part III is specific to proceedings commenced under the Expropriations Act



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LPAT Rules of Practice and Procedure

PART I

Content of the Municipal Record (Rule 5.04)

- Paper copy of all written submissions either received or considered; documents and reports prepared or filed in relation to the decision, refusal or non-decision that has been appealed; a summary of the oral submissions as certified by the Clerk which were received by the public at a statutory public meeting; video/audio recording of each public session at which oral submissions are made; list of names of all persons who made submissions; summary of each submission and the time on the recording where the submission begins.

Dispute over Validity of Appeal (Rule 5.05)

- Regardless of whether there is a dispute over the validity of an appeal, the municipal record must be forwarded to the Board for determination of whether the appeal is valid or not.



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LPAT Rules of Practice and Procedure

PART II

ONLY for appeals under 17(24), (36), (40); 22(7); 34(11), (19); 51(34)

- The following Rules in Part I don't apply to appeals under 17(24)(36)(40); 22(7); 34(11)(19); 51(34) of the Planning Act
- Timeframes for Notice of Hearing (Rule 6.04)
- Pre-filing of Witness Statements (Rules 7.04)
- Ability to Examine and Cross Examine (Rule 8.01)
- Orders for Discovery (Rule 9)
- Summons of Witnesses (Rule 13.01)
- Pre-Hearing Conferences



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LPAT Rules of Practice and Procedure

Enhanced Municipal Record (Rule 26.04)

- In addition to material required under 5.04, the municipality must organize the record of documents and materials in chronological order with a Contents page with a title of description of each entry. A copy has to be provided to the Tribunal and the appellant(s)

Preliminary Screening of Appeal (Rule 26.05)

- Within 10 days of the Registrar's acknowledgement of receipt of notice of appeal, a preliminary screening to determine validity of an appeal will occur.
- A party may request a date for a motion if they dispute the finding of the preliminary screening.



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LPAT Rules of Practice and Procedure

Appeal Record (Rule 26.11)

- When the appellant is notified that an appeal is valid, the appellant shall have 20 days to file three copies of an appeal record and case synopsis with the registrar and serve one copy on the municipality

Contents of Appeal Record (Rule 26.12)

- Refer to documents in Municipal Record that they intend to rely
- Table of Contents describing each document in the appeal record
- Copy of Notice of Appeal



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LPAT Rules of Practice and Procedure

- Copy of Council Resolution or declaration that there has been a failure to make a decision in timeframe.
- Affidavit of a person's opinion with respect to the matters in issue.
- List of relevant and applicable statutory and policy provisions which related to the application and the matters in issue along with extracts of those provisions.
- Chronology of the relevant policy documents that are applicable to the proposal and the dates such documents were adopted, enacted or otherwise took effect.



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LPAT Rules of Practice and Procedure

- Any document that was available to the municipality and its council during council's consideration of the matter but was not included in the municipal record.
- Any document that should have been before Council by reason of it being in the possession of the municipality.
- In the event of a non-decision, any documents or reports which update the application that is the subject of the appeal.



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LPAT Rules of Practice and Procedure

Tribunal Determination and Remission of a Decision to the Municipality (Rule 27)

- LPAT will issue a decision to the municipality if there is a lack of consistency, conformity or a conflict and will set out the specific findings in that regard. The decision may set out options to remedy the inconsistency, lack of conformity or the conflict.

Appeal of New Decision or Non-Decision (Rule 27.03)

- In the event of an appeal of the New Decision or a Non Decision following the matter being remitted to the municipality the Rules in Part I shall apply.



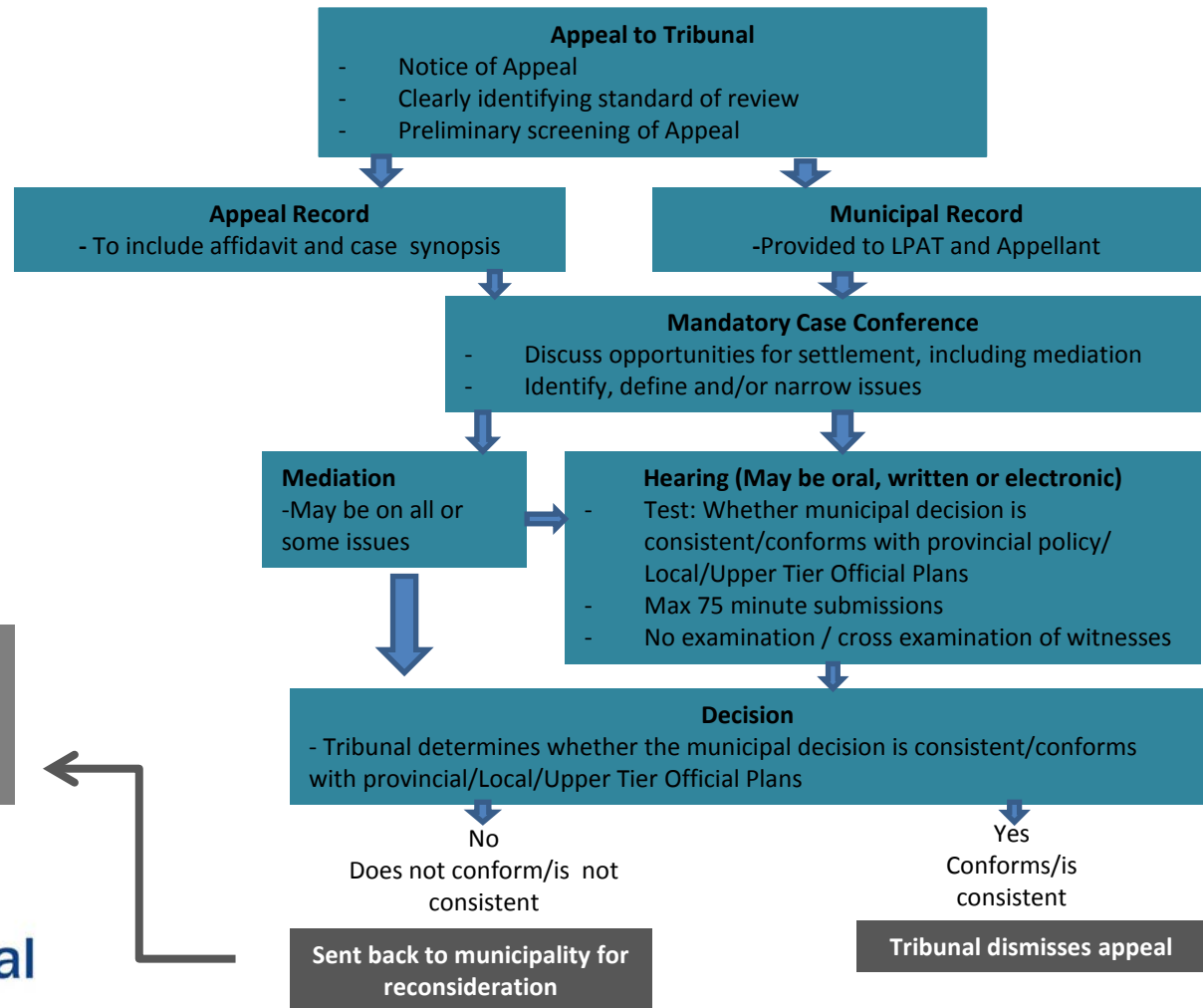
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Appeals Process

Hearing Process

Appeal of municipal decision on official plan, official plan amendments and zoning by-laws, 17 (24), (36), (40), 22 (7), 34 (11), (19)



Municipal Planning Review

- 90 days to issue new decision
- If no appeal, decision in effect
- If appealed proceed to Tribunal for final resolution

Writing Planning Justification Reports for Applications

New considerations and approaches when drafting Planning Reports

Emma West, RPP, MCIP
Partner
Bousfields Inc.



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How will the changes affect planners?

- Longer timelines for municipal processing
- Greater deference to municipal decision making process
- Limitations on appeals of Official Plan Amendments and Interim Control By-laws
- Major Transit Station Area policies (min. # residents + jobs)
- Changes to the appeal tests
- Limits on involvement as expert witness and no *de novo* hearings for certain types of appeals

What does this mean for consultant planners?

- Continuing to work through the process with municipal staff and officials, including pre-submission
- More community and stakeholder engagement, including pre-submission
- Planning and urban design rationale reports focussed on new tests
- Importance of written submission materials

Current approach to planning reports

- Planning reports tend to vary depending on:
 - type of application,
 - complexity,
 - location, and
 - the author(s)
- Each report includes a different level of detail
- The length of the reports varies (20 to 30 pages)

Current approach to planning reports

- Reports typically include:
 - Introduction
 - Site context and surroundings
 - Proposal
 - Policy overview
 - Supporting Studies
 - Planning Analysis
 - Conclusion

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Current approach to planning reports

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How will this change planning reports?

- Similar structure and sections
- Might become more lengthy
- Might provide more detailed analysis (keep in mind it might be used as evidence)
- May require more time up-front to complete the report



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Importance of written submissions

Planning rationale reports or letters for applications will need to address the new tests:

- Identify how the existing policies and regulations:
 - Are not consistent with provincial policy
 - Do not conform with provincial plan(s)
 - If a lower-tier municipality, how the OP does not conform with the upper-tier OP
 - How the zoning by-law does not conform with OP

Importance of written submissions

- Identify how the application is:
 - Is consistent with provincial policy
 - Does conform with provincial plan(s)
 - If a lower-tier municipality, how the application does conform with the upper-tier OP
 - How the zoning by-law does conform with OP

Importance of written submissions

- Identify how the application is:
 - Is consistent with provincial policy
 - Does conform with provincial plan(s)
 - If a lower-tier municipality, how the application does conform with the upper-tier OP
 - How the zoning by-law does conform with OP

How will this change planning reports?

- Ensure all supporting technical studies are complete and well integrated with planning report
- Could include more detailed information on the community + stakeholder engagement process that was or will be conducted
- Applicants might be involved in more engagement/consultation and planners might play a role
- Could include more detail in resubmissions regarding response to municipal comments



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Other Considerations

- How will the supporting technical studies be addressed in terms of the new tests?
- How will additional consultation and engagement be integrated into the approvals process? Including meetings prior to the submission?
- Because the new tests are based on broader/high-level policies and plans, how will more detailed matters (e.g. setbacks) be evaluated?
- For planner consultants working on projects for municipalities, they will need to keep the new tests in mind as well.



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Writing Municipal Staff Reports on Applications

The New Process from the Municipal Staff Perspective

Mark Simeoni, RPP, MCIP

Director Planning Services
Town of Oakville



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Preamble

- Have Things Really Changed?
- What's wrong with what you have now?
- Time is of the Essence
- Internal and external partners need to be engaged
- Has this really changed?
- Is it complete?
- It's all about the written record
- The Report.



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Have Things Really Changed?

- As Planners we have always had to be consistent with respect to the Growth Plans & PPS.
- Conformity with Upper Tier Plans not really new.
- Importance of “Pre-Cons” and “Complete ” applications.
- Getting Council’s view on the record.
- A thorough review of the application is not new.
- Are your Plans up to date?
- Do your Plans define what success looks like?
- More deference to local decision making.



What's Wrong With What You Have Now?

- New Tests
- Are the existing planning permissions consistent?
- Is the application consistent?
- Plus we still have to consider “good planning”
- Are your Plans up to date?



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Time is of Essence

210 & 180 days is not really a long time.

- Planning Report is the end of a long process
- Administratively a file needs to be set up
- Application needs to be circulated
- Comments need to be received & reviewed
- Internal technical meeting is held
- Statutory Public meeting needs to be scheduled



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Time is of Essence

- Preliminary report needs to be written approx.. 4weeks before meeting
- Comments from meeting need to be reviewed
- Potential revisions need to be made
- Recommendation meeting has to be scheduled in agenda cycle that falls within the time frame



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Internal and External Partners Need to be Engaged

- Municipality and applicants need to dialogue with commenting agencies.
- More important to have “front end dialogue”.



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Is it Complete?

- Is there enough information for Council to make an informed decision?
- What can be a condition of a complete application?
- What if there is an appeal of the “completeness” of the application?



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It's All About The Written Record

- If it is not on the record does it count?
- Changes to the Planning Justification Report.
- Are the comments clear?
- Do the comments have a relationship to the PPS and the 2017 Growth Plan?
- Did you capture everything?

The Report-Leave No Stone Unturned

- This should be easy
- The report should demonstrate compliance with the tests
- The report should still deal with “traditional “ planning matters
- There should be a “robust” analysis around the Tests.
- In the beginning consider a “checklist”



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PANEL DISCUSSION AND Q&A



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THE PLANNING JUSTIFICATION REPORT AND MUNICIPAL STAFF REPORT: WHAT WILL THEY LOOK LIKE UNDER BILL 139

APRIL 12, 2018

SUMMARY OF PRESENTATION BY EMMA WEST, RPP, MCIP PARTNER, BOUSFIELDS INC.

Changes affecting planners include:

- Longer timelines for municipal processing
- Greater deference to municipal decision-making process
- Limitations on appeals of Official Plan Amendments and Interim Control By-laws
- Major Transit Station Area policies (min. # residents + jobs)
- Changes to the appeal tests
- Limits on involvement as expert witness and no de novo hearings for certain types of appeal

Impact on consultant planners' work:

- Continuing to work through the process with municipal staff and officials, including pre-submission
- More community and stakeholder engagement, including pre-submission
- Planning and urban design rationale reports focussed on new tests
- Importance of written submission materials

Anticipated changes to planning justification for applications:

- Pre-Bill 139, each planning justification report provides different levels of detail and length
- The structure and sections of the reports will be similar but might become more detailed and lengthier.
- Planning rationale reports or letters for applications will need to address the new tests:
 - Identify how the existing policies and regulations:
 - Are not consistent with provincial policy
 - Do not conform with provincial plan(s)
 - If a lower-tier municipality, how the OP does not conform with the upper-tier OP
 - How the zoning by-law does not conform with OP
 - Identify how the application is:
 - Is consistent with provincial policy
 - Does conform with provincial plan(s)
 - If a lower-tier municipality, how the application does conform with the upper-tier OP
 - How the zoning by-law does conform with OP
- Ensure all supporting technical studies are complete and well-integrated with planning report
- Could include more detailed information on the community + stakeholder engagement process that was or will be conducted
- Applicants might be involved in more engagement/consultation and planners might play a role
- Could include more detail in resubmissions regarding response to municipal comments

Other matters to consider with Bill 139:

- How will the supporting technical studies be addressed in terms of the new tests?
- How will additional consultation and engagement be integrated into the approvals process? Including meetings prior to the submission?
- Because the new tests are based on broader/high-level policies and plans, how will more detailed matters (e.g. setbacks) be evaluated?
- For planner consultants working on projects for municipalities, they will need to keep the new tests in mind as well.