



# The New OMB: Local Planning Appeals Tribunal

## Why public participation matters more than ever

A major change to the planning landscape is the new Ontario Municipal Board (OMB) - the Local Planning Appeal Tribunal, or LPAT. The LPAT is a true appeals body, reviewing land use planning decisions of Council rather than starting from scratch to reach what it thinks is the best decision.

The LPAT gives more authority to municipalities to make planning decisions by changing three things:

- The types of planning decisions that can be appealed.
- The types of arguments that can be used in an appeal.
- The nature of the appeal process.

These changes put municipalities in control of planning decisions, and remove appeal rights of citizens and developers on many matters.

### **Matters that can't be appealed:**

Residents and developers (or anyone else) will no longer be allowed to appeal provincially approved upper (regional) and single-tier Official Plans, including the [Municipal Comprehensive Review](#) (MCR) policies they contain.

At the lower-tier (municipal) level, policies that relate to intensification of areas around transit stations in general are no longer appealable. This means that once the new upper-tier and single-tier Official Plans (OPs) are in place, they will have staying power. Lower tier Official Plans will deal with detailed height and density standards and the upper tier plan will set overall targets and minimum densities for the entirety of the transit station area.

### **Types of arguments that can be used in an appeal:**

The LPAT rules allow only three grounds for appealing a Council decision:

- Inconsistency with the Provincial Policy Statement.
- Non-conformity with provincial plans, like the Growth Plan and the Greenbelt Plan.
- Conflict with an Official Plan.

If the council decision meets those tests, it cannot be overturned. If the decision does not meet these tests, the LPAT is required to send the matter back to Council for another decision – which is also subject to appeal. Only where the second decision does not meet the tests would the LPAT be able to substitute its decision for that of the municipality or committee.

## **The appeal process:**

The new rules are 'designed' to make the LPAT more democratic and citizen-friendly by giving municipalities more control over decision-making.

Further, the tribunal will explain the process to people involved in an appeal to level the playing field between developers, municipalities and residents. And, the new [LPAT Support Centre](#) is to provide advice for citizens who want to participate in an appeal process. These changes should make hearings less adversarial, cheaper, and bring a better power balance between developers, municipalities, and residents.

Click [here](#) for information on how to file the appeal.

## **Implications for citizens**

The upshot of the changes to the land use planning appeals process is that we are going to have a more policy-driven planning process that gives more authority and weight to Official Plans and municipal decisions on development applications. This means more opportunities for meaningful public input, but only if citizens understand the system and how to use it to get their issues heard. For example, debates about whether a development is appropriate or not, will really come down to whether it's consistent with or conforms to provincial policies/plans and is in keeping with a municipality's Official Plan, and how consistency and conformity is interpreted by the Tribunal.

The changes will have a big impact on citizens who want to launch an appeal or be party to an appeal of municipal planning and development decisions.

First, it means citizens really need to be involved in any Official Plan or secondary plan policies that set out specifics for development of an area in regard to height or density – particularly in transit station areas.

Second, in considering appeals of any site specific applications, citizens need to determine which elements of a project are potentially open to appeal – i.e. elements which an Official Plan does not address or for which there are only high level, general policies - the planning merits.

Third, citizens need to make best efforts to review any supporting materials, reports or studies submitted by a development proponent to see how they view meeting the three tests.

And as a reminder, citizens **must** make either written or verbal submissions (the planning record) at the municipal public hearing in relation to municipally proposed changes to an official plan or to individual development applications to ensure they have a right of appeal and because only those submissions can be used at the LPAT to influence the tribunal's decision on an appeal.

To influence development in your community you should not wait until the signs go up for a site specific application. Citizen groups need to attend council meetings, talk to their Councillors, get on an interested parties list and participate in the regional MCR and Official Planning review process. Only through participation can you shape development and Official Plan policies. Official Plan policies will play an increasingly important role in setting the stage for how future site specific applications will be considered.

And for those in two-tiered municipalities, this means getting involved at both tiers, and especially the upper-tier level to get involved in growth management issues. This includes looking at and providing input into major background studies on agriculture, natural heritage systems, and sewer, water and transportation. Citizens can also ask their Councillors to encourage open public meetings and design charettes when a municipality is engaged in this work and when developers hold pre-consultation meetings with the community. The best way to influence development proposals is to get involved early before the developer has spent \$ thousands in design and engineering studies.

**To learn more about the LPAT, check out these resources:**

Environment Land Tribunals Ontario (ELTO) [has primers on the new LPAT.](#)

The Canadian Environmental Law Association also produced a [webinar](#) to share information on the new Local Planning Appeals Tribunal which was effective April 3, 2018.

For more visit:

- LPAT Function: <http://elto.gov.on.ca/wp-content/uploads/2018/02/LPAT-Webinar-LPATs-Function-in-the-Ontario-Planning-Process.pptx>
- LPAT Rule Changes: <http://elto.gov.on.ca/wp-content/uploads/2018/02/LPAT-Webinar-Proposed-Rule-Changes.pptx>
- Filing an LPAT appeal: <http://elto.gov.on.ca/wp-content/uploads/2018/02/LPAT-Webinar-Filing-an-LPAT-Appeal.pptx>

In order to shape our communities, citizens need to get involved early in the planning process. This guide should not be taken as legal advice but we hope it provides you with some helpful information. Please share it widely.