

May 27, 2021

Status of Development Appeals...Where Do I Appeal and What's New?

As with many things in this world, a lot has changed since the pandemic began. No doubt development has seen a significant boon, including here in Niagara. This is based in part on the demand for more housing. With that in mind, we wanted to highlight a few changes on how your development appeal will be treated moving forward.

The New Ontario Land Tribunal

Through recent legislative amendments, gone are the likes of the Ontario Municipal Board (OMB) and now the relatively short-lived Local Planning Appeal Tribunal (LPAT). In a recent effort to combine a number of tribunals with “like” subject matter, the LPAT, the Board of Negotiation (e.g. expropriation matters), Conservation Review Board (e.g. heritage matters), the Environmental Review Tribunal (e.g. NEC and environment related appeals) and the Mining and Lands Commission (e.g. Conservation Authority appeals) are all absorbed into the new Ontario Land Tribunal (“OLT”).

The amendments won't change the statutory tests that must be established for an appeal to be filed or for an appeal to be determined by the OLT. For the basic planning applications (e.g. plan of subdivision/condominium, Official Plan/zoning amendments and consent/minor variance appeals) not much will change other than the name of the tribunal.

Virtual Hearings Before the Ontario Land Tribunal

With the pandemic essentially eliminating “in person” hearings, and with the relative success of the roll out of virtual hearings, these types of hearings are likely here to stay for the foreseeable future. From our experience, virtual hearings are not perfect, and not ideal on more complicated matters. However, there are efficiencies that can be made in moving matters to electronic format, which can translate into some costs savings for our developer clients. It has also been our experience that we are getting decisions back from of the tribunal sooner. According to the OLT, 85% of recent decisions were issued within 60 days of the hearing.

While longer and more complicated matters may go back to “in person” or a hybrid approach, virtual hearings will likely be the norm for case management conferences, motion hearings and settlement hearings.

Changes to Conservation Authorities

Developers and landowners with lands within the jurisdiction of a Conservation Authority (“CA”) make wish to take note of recent changes. In 2020, the Ontario Provincial government passed legislation that impact the way CA’s operate and how development proposals within the jurisdiction of the CA are dealt with, including the following:

- The CA can no longer, as a public body, appeal a decision to or become a party to a hearing before the OLT;
- There are new appeal rights to the OLT, including the right to appeal a non-decision by the CA. While proceeding to the OLT may be seen as adding an extra layer of “red tape”, an appeal of a CA development permit application could be consolidated with an appeal of any of planning applications that might also have been required;
- The Minister of Natural Resources and Forestry could issue an order to take over and evaluate an application for a development permit under the Act in place of the CA (i.e. before the CA has made a decision on the application). Previously the Minister could only review a CA decision. This has caused concern that powers are being taken away from CAs;
- Regarding the composition of CA boards, when appointing members, the council of a participating municipality shall ensure that at least 70% of its appointees are selected from among the members of the municipal council. In recent years, there was a movement in Niagara to appoint private citizens to the NPCA’s Board. The NPCA’s Board composition will have to change consistent with the 70% requirement, unless approval is sought from the Provincial government.

These changes noted above will impact the landscape on how development proposals are dealt with. The Municipal and Land Use Planning Group at Sullivan Mahoney LLP would be happy to assist you navigate any development proposal through these changes or assist with any development approval questions you might have.

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