

Citizens' Guide 6



Local Planning Appeal Tribunal

May 2018

Introduction

Land use planning affects almost every aspect of life in Ontario. It helps to shape our communities and decide things such as where homes and factories should be built, where parks and schools should be located and where roads, sewers and other essential services should be provided.

Land use planning means managing our land and resources. It helps each community to set goals about how it will develop and change and to work out ways of reaching those goals while keeping important social, economic and environmental concerns in mind. It balances the interests of individual property owners with the wider interests and objectives of the whole community.

Good planning leads to orderly change and the efficient provision of services. It touches all of us and helps us to have the kind of community we want.

A series of Citizens' Guides has been prepared to help you understand how the land use planning process works in Ontario. They are intended to give general information only and are not an interpretation of the Planning Act or any other act. You should refer to the legislation for specific requirements and procedures. The following guides are available:

1. [The Planning Act](#)
2. [Official Plans](#)
3. [Zoning Bylaws](#)
4. [Subdivisions](#)
5. [Land Severances](#)
6. [Local Planning Appeal Tribunal](#)
7. [Northern Ontario](#)
8. [Building Permits](#)
9. [The Plan Review and Approval Process](#)

Disclaimer

These guides have been prepared as a resource to help citizens understand how the land use planning system works in Ontario. They summarize complex matters and reflect legislation, policies and practices that are subject to change. The Citizens' Guides should not be relied upon as a substitute for specialized legal or professional advice in connection with activities and decisions pertaining to land use planning. The Citizens' Guides were last updated May, 2018.



What is the Local Planning Appeal Tribunal?

The Local Planning Appeal Tribunal (LPAT) is an independent administrative tribunal responsible for hearing appeals on a variety of contentious municipal matters.

LPAT members are appointed by the Lieutenant Governor in Council and typically include lawyers, architects, planners and public administrators. The LPAT operates under the [Local Planning Appeal Tribunal Act, 2017](#), as well as its own rules of practice and procedure. It reports administratively, through the [Environment and Land Tribunals Ontario](#), to the Ministry of the Attorney General.

This guide focuses on the LPAT's role in dealing with land use planning matters under the [Planning Act](#). Its main role in community planning is to resolve disputes related to:

- land use planning applications, such as subdivisions, land severances and minor variances, and
- planning documents, such as official plans and zoning bylaws.

Why is there a Local Planning Appeal Tribunal?

People don't always agree on how their communities should develop or change. Disputes often arise over land use planning issues, such as where industry should be located, where roads and transit should be built, or how to protect our forests and farmlands.

When people are unable to resolve their differences on community planning issues, or have disputes with their municipal council that can't be settled, the LPAT provides a forum to resolve those disputes.

Why should you participate in the land use planning process?

People can effectively express their individual or group interest in a planning matter by participating early in the process. This is important because it offers an opportunity for information exchange, especially if there are conflicting perspectives. Typically, municipal councils attempt to deal with concerns or disputes before making decisions on planning matters.

Alternative dispute resolution techniques can be used by a municipal council in resolving the matter locally and avoiding an appeal to the LPAT.

If you do not share your views, either by oral presentation at a public meeting or by written submission prior to council's decision on official plan or zoning bylaw amendments, or plans of subdivision, you do not qualify to appeal such matters to the LPAT.

While some planning matters, such as consent or minor variance applications, do not specifically require that you participate in the process in order to appeal, the LPAT has the power to dismiss an appeal without holding a hearing if the person or public body that



launches an appeal has not made oral and/or written submissions before municipal council makes a decision.

Consent, site plan and minor variance appeals may not always be dealt with by the LPAT. Instead, municipalities that meet certain minimum requirements may establish their own appeal board, called a “local appeal body”, to hear consent, minor variance, and/or site plan appeals. For example, the City of Toronto has established the Toronto Local Appeal Body. Contact your municipality to determine the appropriate appeal body for your area.

How do you appeal to the Local Planning Appeal Tribunal?

If you are considering appealing a planning matter to the LPAT, be aware of certain requirements and limitations, described below.

Protecting Your Appeal Rights

To protect your appeal rights – particularly with respect to official plans, zoning bylaws or plans of subdivision – ensure that you make your views known by making a written submission or an oral presentation at a public meeting.

Limits on Appeals

Under the Planning Act, there are specific matters that cannot be appealed to the Local Planning Appeal Tribunal. Generally, there are no appeals for matters related to:

1. provincial decisions on official plans and major official plan updates where the Minister is the approval authority under section 26 of the Planning Act
2. refusals or failure of a municipality to make a decision within 210 days (commonly known as a “non-decision”) on proposed amendments to alter the boundary of an "area of settlement" or establish a new "area of settlement"
3. refusals or non-decisions of a municipality on proposed amendments that would remove land from an "area of employment" if appropriate official plan policies are in place
4. official plan policies and zoning bylaw provisions authorizing residential second units (e.g., basement apartments, accessory units)
5. official plan policies and zoning bylaw provisions that relate to inclusionary zoning
6. official plans/amendments that implement certain matters with previous provincial approval, such as source water protection boundaries, [Growth Plan for the Greater Golden Horseshoe](#) employment and population projections, and [Greenbelt Plan](#) boundaries
7. non-decisions on adopted lower-tier official plans and updates if the appropriate upper-tier municipality states it does not conform with the upper-tier official plan
8. initial passing of a municipal interim control bylaw



9. official plan policies and zoning bylaw provisions that designate and zone lands identified as a Protected Major Transit Station Area to accommodate transit-supportive densities.

In the case of a new official plan, there is no ability for a person or public body to appeal the entire plan, although generally, any part of the plan can be appealed, with the above noted exceptions.

Timelines for Appeals

Appeals must be made within the timeframe allowed. In most cases, appeals must be made no later than 20 days after the day the council/planning board or approval authority gives its notice of decision on the planning proposal.

Your appeal to the LPAT should be made to the council/planning board or approval authority which gives the notice of decision. In most cases, they are required to send your appeal to the LPAT within 15 days after the appeal period expires.

Basis for an Appeal

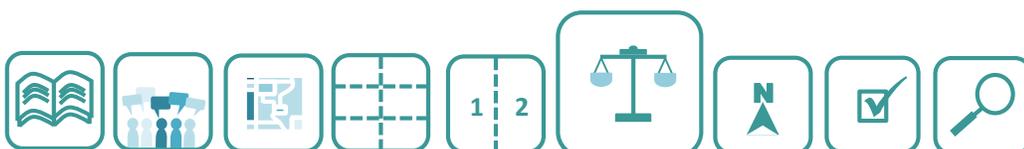
In making an appeal, cite the portion of the decision you are appealing. For example, in an appeal of a zoning bylaw or official plan matter, specify which part of the official plan you are appealing, whether you are appealing part of or all of the zoning bylaw. In an appeal of a draft plan of subdivision, specify whether you are appealing the decision, a particular condition or all of the draft approval conditions and/or the lapsing provision.

Generally, you must also provide written reasons for your appeal.

For certain major planning matters, your reasons for appeal must relate to how a municipal or approval authority decision is inconsistent with the [Provincial Policy Statement](#), does not conform/conflicts with provincial plans or does not conform with an applicable official plan. The LPAT must apply this “consistency/conformity” standard to:

- appeals of municipal and/or approval authority decisions on official plans, official plan amendments, zoning bylaws, zoning bylaw amendments and community planning permit bylaws, and
- appeals of a municipality’s non-decision for applicant-initiated official plan or zoning bylaw amendment applications.

To find out more about the specific appeal process for each type of planning application, see the guides to [Official Plans](#), [Zoning bylaws](#), [Subdivisions](#), and [Land Severances](#). You can also discuss your plan to appeal with the municipal clerk or local planning office.



Appeal Fee

You must provide the appeal fee required by the LPAT under the Local Planning Appeal Tribunal Act, 2017. For more information on the LPAT fee schedule, contact your municipal clerk, the approval authority or the LPAT.

How will you be informed about a Local Planning Appeal Tribunal hearing?

Written notice of a public hearing must be given in advance. It is usually provided directly by mail to those affected. For some hearings, where there is significant public interest, notice may be published in a general newspaper. Depending on the type of application, the LPAT will provide notice itself or will require that the person initiating the appeal or the municipality provide notice, subject to the LPAT's directions.

For most planning applications, notice is sent out at least 30 days in advance of the hearing. However, in cases involving appeals against a municipal council's refusal of an official plan amendment or rezoning application, a 60-day notice is usually required. While the scope and method of notice has been standardized by the LPAT, it may direct more or less notice of a particular proceeding if it feels this is appropriate.

How does the Local Planning Appeal Tribunal dispose of an appeal?

Once an appeal is received by the LPAT, it is assessed to determine its validity. For appeals of major planning matters such as official plans and zoning bylaws, this assessment will include whether the notice of appeal provides an explanation that satisfies the consistency/conformity test.

If an appeal is determined to be valid, the associated documents, data and other relevant information contained in the appeal record are made available for review.

For appeals of major land use planning matters, the LPAT is required to hold a case management conference. At the case management conference, parties (e.g. appellant, municipality, and/or approval authority) and other interested persons are brought together to identify if additional parties should be added to the proceeding, confirm and narrow the issues in dispute, explore opportunities for mediation and settlement and deal with any other matter so that the hearing is held in a fair, cost-effective, and expeditious manner. A person who seeks party status (that means that they wish to fully participate in the appeal) or participant status (that means that they wish to make their perspectives known to the LPAT on some or all of the issues) is required to file a written submission to the LPAT 30 days prior to the case management conference to address the consistency/conformity test. The legislation does not allow LPAT to extend that 30 day time period. LPAT will determine the terms upon which a person may participate in the proceeding.

For appeals of other matters, a prehearing conference may be scheduled to deal with issues similar to the ones identified above.



If a hearing is required, the date is scheduled for a location such as the LPAT’s office, a municipal office or a community centre.

The rules and procedures of the hearing, including the standard of review, how evidence is tested and the overall timelines will depend on the specific matter appealed.

A regulation under the Local Planning Appeal Tribunal Act, 2017 sets out timelines for proceedings before the LPAT for land use planning appeals. The timeline to complete a proceeding is:

- 10 months for a municipality or approval authority’s decision or a municipality’s failure to make a decision regarding an official plan or zoning bylaw
- 6 months for a second decision of a municipality or an approval authority regarding an official plan or zoning bylaw, or a municipality or approval authority’s failure to make a second decision regarding an official plan or zoning bylaw
- 12 months for an approval authority’s failure to make a decision regarding an official plan or plan of subdivision
- 6 months for any other proceeding before the LPAT under the Planning Act (e.g. minor variances).

These time periods may be postponed to allow mediation (on consent of the parties) or if it is necessary to fairly decide on the matter.

For appeals of major land use planning matters, no party to the proceeding may put forward or call evidence at the hearing. A party does not have any right to call a witness or cross examine a witness at a hearing.

What are alternative ways that the Local Planning Appeal Tribunal may deal with appeals?

Case Management Conference

A case management conference may be held before the LPAT schedules a hearing to bring parties and other interested persons together to define and narrow issues in dispute and discuss opportunities for mediation or settlement.

The LPAT is required to hold a case management conference for appeals of major land use planning matters, such as official plans and zoning bylaws.



Mediation

Mediation is used to bring together parties in dispute to see if they can settle the matter with the guidance of a mediator.

Mediation is a valuable process because:

- an impartial person (mediator) helps disputing parties try to reach a voluntary, mutually acceptable resolution on some or all of the issues of their dispute
- it can take place at any time, before or after a case management conference, pre-hearing or hearing
- at the mediation meeting, the LPAT member(s) will advise parties how the mediation will proceed and will set out the ground rules. The member guiding the mediation can help make discussion of the issues easier and may offer innovative solutions. All documents and anything said in the mediation are confidential. Unlike a hearing, a mediation meeting may not include the public
- LPAT members are bound by a code of conduct to guide their conduct and promote confidence in mediation as a process for resolving disputes.

What role do community groups play?

The LPAT carefully considers comments made by community groups.

A community group needs to be incorporated if it wants to file an appeal in the name of the group. If your group has not been incorporated, a notice of appeal may be made in the name of an individual who is a member of the association or the group on its behalf. It is important for community groups to be involved early in the municipal planning process to preserve their appeal rights and to be made aware of LPAT filing requirements.

What costs are involved in a Local Planning Appeal Tribunal hearing?

The LPAT charges a filing fee for certain kinds of appeals. Contact your municipal clerk, the approval authority or the LPAT for the fee schedule. In addition, the LPAT has the power to award costs in certain circumstances. Unlike the courts, costs are not routinely awarded to the successful party at the appeal.

What are the powers of the Local Planning Appeal Tribunal?

When a matter is appealed to the LPAT, the LPAT may hold a hearing where the parties to the proceeding will have an opportunity to express their views. The LPAT can decide whether to conduct a written, electronic or oral hearing.



Appeals Based Solely on Consistency/Conformity

For certain major planning matters, the LPAT must dismiss an appeal of a municipal decision unless the municipality's decision is inconsistent with the PPS, does not conform/conflicts with provincial plans or does not conform with an applicable official plan.

This type of appeal generally applies to:

- appeals of municipal decisions on official plans, official plan amendments, zoning bylaws, zoning bylaw amendments and community planning permit bylaws, and
- appeals of municipal non-decisions for applicant-initiated official plan or zoning bylaw amendment applications.

Example: Someone files an appeal of a municipal council's decision to adopt an official plan amendment.

If the LPAT finds that the municipal decision aligns with provincial and local policies, the appeal will be dismissed and the municipal decision will be final.

If the LPAT determines that the municipal decision does not align with provincial and local policies, the matter will be returned to the municipality to make a new decision.

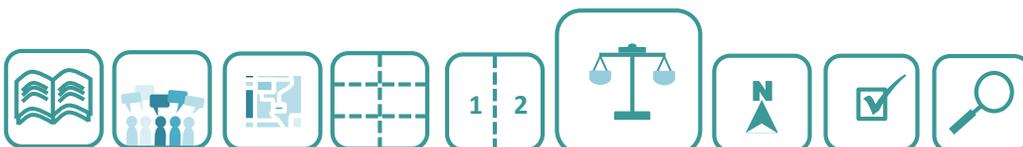
Opportunity to Reconsider

If the LPAT returns the matter back to a municipality because the decision was not aligned with local or provincial policies and plans, the municipality will be able to address any shortcomings, while continuing to have the opportunity to address local matters when making a new decision. When reconsidering a matter returned by the LPAT, a municipality will need to reassess the matter, hold a public meeting and issue a second decision. If a municipality fails to make a second decision on an application within 90 days, the matter can be appealed.

Second Decision

If a municipality makes a new decision after a matter has been returned to them by the LPAT, that second municipal decision will be final unless it is appealed.

If the second decision is appealed, the LPAT will hear the matter and make a determination on whether the municipality's new decision aligns with provincial or local policies. If it does align, the municipal decision will be final. If the decision by the municipality is again inconsistent or does not conform with local or provincial policies, the LPAT will make a final decision on the matter.



Other Types of Appeals

Appeals of other planning matters, such as subdivisions, consents and minor variances, will not be subject solely to the consistency/conformity standard. These types of appeals are typically based on an assessment of specific criteria and cannot be properly addressed through by only applying a consistency/conformity standard.

Appeals of an approval authority's failure to make a decision within the required timeframe are also not subject solely to the consistency/conformity standard.

For the types of appeals listed above, the LPAT has the authority to make a final determination on the matter. In making its determination, the LPAT is required to have regard to the municipality or approval authority's decision on the matter and any information and material that the municipality or approval authority considered when making its decision.

Powers to Dismiss an Appeal

The LPAT has expanded powers to dismiss an appeal without a hearing based on a number of grounds which, depending on the matter appealed, can include:

- appeal is not based on any apparent land use planning grounds
- appeal is not made in good faith or is frivolous or vexatious, or is made only for the purpose of delay
- appeal constitutes an abuse of process, such as repeating the submission of an application that has recently been dealt with
- appeal is substantially different from that which was before council at the time of its decision
- appellant did not make oral submissions at a public meeting or provide written submissions to the municipal council/approval authority before a decision was made
- appellant has not provided written reasons for the appeal
- appellant has not paid the fee required by the LPAT
- appellant did not respond to the LPAT's request for further information within the time specified by the LPAT.

Where the consistency/conformity standard of review applies, the LPAT must dismiss an appeal if the appeal letter does not explain how the appealed decision is inconsistent with the PPS, fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan.

Do you need a lawyer?

If you intend to launch an appeal, be well prepared for your hearing and ready to present detailed information in support of your views. Depending on the complexity of the issue, you may wish to hire a lawyer to represent you.



In certain cases, and depending on the type of appeal, lawyers and representatives may question the witnesses and make statements and arguments based on the evidence presented. You do not have to be represented by a lawyer or representative but most municipalities and people making appeals are.

If you don't hire a lawyer or representative, you will have to:

- obtain the documents you need to present your case
- make copies for all parties (except of public documents like official plans)
- present relevant facts (evidence) clearly and logically to prove your case to the LPAT.

Can you contact the Local Planning Appeal Tribunal directly?

Yes, the [Citizen Liaison Office](#) is available to assist with explaining the LPAT's rules, practices and procedures as well as questions about the status of a hearing event.

The Citizen Liaison Office is available by phone at (416) 326-6792 and toll free at (866) 448-2248. You can also email the Citizen Liaison Office at ELTO.CLO@Ontario.ca.

Where else can you find help?

The Local Planning Appeal Support Centre helps people understand and navigate Ontario's land use planning and appeal process. The support centre provides people across Ontario with information on land use planning and offers legal and planning advice at different stages of the appeal process. If you would like to speak to a staff member at the centre, please [submit an inquiry online](#) or call 1-800-993-8410.

You can visit the centre online at www.lpasc.ca

How can you find out more?

For more information about land use planning in your community, contact your [municipality](#).

For more information about land use planning in Ontario, contact your nearest [Municipal Services Office](#).

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