ACTO TDCP Advocacy Centre for Tenants Ontario | Tenant Duty Counsel Program

January 18, 2019

Michael Helfinger
Intergovernmental Policy Coordination Unit
Ministry of Economic Development, Job Creation and Trade
900 Bay St., 7th floor, Hearst Block
Toronto, Ontario M6H 4L1

Dear Mr. Helfinger,

Re: Proposal, Environmental Registry of Ontario, No. 013-4293 on Bill 66, *Restoring Ontario's Competitiveness Act, 2018*, Schedule 10

I am writing on behalf of the Advocacy Centre for Tenants Ontario (ACTO) with comments on the proposed amendments to the *Planning Act* and related legislation contained in Schedule 10 of Bill 66. ACTO is a community legal clinic, funded by Legal Aid Ontario, with a province-wide mandate to provide legal services to low-income tenants across Ontario on systemic issues. As such we are concerned with the orderly development of safe and healthy communities and the adequate provision of a full range of housing, including affordable housing, expressed in the *Planning Act* as matters of provincial interest.

The proposals in Schedule 10 of Bill 66 that would allow municipalities to pass "open-for-business planning by-laws", undermine the province's ability to further these interests. These proposals should be withdrawn and this Schedule deleted from the Bill for the reasons set out below.

Exemption of development from planning controls is contrary to the public interest

Municipal zoning by-laws are part of a framework set out in the *Planning Act* that provides opportunities for people to participate in the development of their communities. This participation leads to policies and rules set out in policy statements and plans at the provincial level, Official Plans at the municipal level and site plans at the community level. These instruments recognize that even the best development proposals will create adverse impacts on certain people. They provide a means by which these negative impacts can be identified and mitigated. They reflect the experience that the provincial government and our municipalities have developed over the history of Ontario that has enabled us to grow into one of the most desirable places in the world to live. Permitting municipalities to bypass these policies and rules to satisfy the demands of development proponents allows local politicians to ignore the needs of everyone else in their communities and opens the way to arbitrary and inappropriate decisions that may have consequences for years, or even decades, into the future.

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Protection of the public interest, as expressed in these provincial and municipal plans could be severely prejudiced if they are ignored. We have reviewed the submissions of the Canadian Environmental Law Association on this posting and we wholeheartedly endorse their thoughtful and thorough analysis. We ask that you pay particular attention to their views on the exemption of these by-laws from the source water protection policies set out on the *Clean Water Act 2006*. This is a tragic and instructive example of what happens when the province fails to provide for proper oversight of local decision-making.

A similar example in the housing field with an even more catastrophic outcome occurred in the United Kingdom when the safety and security of people in North Kensington were shattered by the tragedy of the Grenfell Tower high-rise fire. An independent review of the building and fire regulations that failed to prevent the fire concluded that the system was not "fit for purpose", leaving room for those who wish to take short-cuts to do so. Their government has now embarked on a far-reaching overhaul of the regulatory framework, based on a tougher regime of oversight. The Government of Ontario should learn from these examples that protecting the people of the province is not accomplished by ignoring the hazards that being "open for business" may create.

We would briefly note that restrictions on the scope of these exemptions to significant job-creating development projects are contained only in proposals for regulations. None of the requirements that would impose these limits are in the Bill and the proposed regulations may never be adopted or, if adopted, could be eliminated by Order-in-Council with no public discussion beyond a Registry posting.

The process by which "open-for-business planning by-laws" would be adopted is likely to lead to bad decisions and is profoundly undemocratic

Municipal by-laws that authorize developments that conflict with the province's policies, their own Official Plans and numerous statutory provisions that protect the public interest, would almost certainly have negative consequences for at least some of the people that live or work in the impacted area. The usual processes by which these people are able to raise concerns about these consequences and propose improvements to development proposals include:

- making information available to the public prior to decision-making;
- holding public meetings at which concerns are discussed;
- providing public notice about decisions after they are made; and
- having the right to request a review of local planning decisions by the Local Planning Appeal Tribunal.

But Schedule 10 of Bill 66 also proposes to eliminate these safeguards when an "open-for-business planning by-law" is proposed and enacted. Participation in the process by the people of a community would be replaced with notification and approval by the Minister of Municipal Affairs and Housing. This is extremely unfair to those people who would be affected by these developments as it may be that the first they know about the development is when construction begins. This is an undemocratic approach to community building and should not be authorized by provincial law. The Minister already

has significant powers under s. 47 of the *Planning Act* to accomplish the stated goals of this blunt instrument. There is no reason to believe that these powers and the requirements of the Provincial Policy Statement to "promote economic development and competitiveness" are not adequate to meet these goals.

People who live and work in a community have a right to know what changes are being proposed for their community before these changes are written into by-laws. They have a right to participate in meaningful discussion of the impact of changes on them and their families. And they have the right to have the integrity of municipal decision-making overseen by a public process in which they can participate. None of these rights are respected by the *Planning Act* amendments proposed in Schedule 10 to Bill 66, either in the proposed local process or in the Minister's approval process.

Conclusion and Recommendation

Thus it is our strong recommendation that Schedule 10 be deleted from Bill 66. Any changes to the land use planning process in Ontario must respect the democratic right of the people to participate in that process and the principle of open and transparent decision-making that is one of the foundations of our form of government. This proposal does not meet that test.

Thank you for your attention to our submissions.

Yours very truly,
Advocacy Centre for Tenants Ontario
per:

Kenneth Hale,
Director of Advocacy and Legal Services