

ARGO TFP BRAMPTON LIMITED

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1 Herons Hill Way, Toronto, Ontario, M2J 0G2 • T 416.756.1972 • F 416.756.1973

November 17, 2022

Ministry of Municipal Affairs and Housing
777 Bay St, 17th Floor
Toronto, ON
M7A 2J3

Attention: Minister Clark and Deputy Minister Evans

**Re: BILL 23: More Homes Built Faster Act, 2022
Concerns Regarding New Limitations on Planning Act Appeals
Argo TFP Brampton Limited
10124 and 10244 Mississauga Road, Brampton, Ontario**

Argo TFP Brampton Limited (an Argo, Tacc, Fieldgate and Paradise Developments Joint Venture) are the owners of over 200 acres of undeveloped land within the Heritage Heights (Areas 52 and 53) Secondary Plan, located in northwest Brampton, Ontario. We are also landowners/stakeholders with holdings spread across the Greater Toronto Area (and beyond) in the Province of Ontario.

Within Heritage Heights, our Joint Venture group, as well as several other stakeholders (known as the Landowners Group) are the owners of approximately 1,215 acres of land and are one of the appellants of the City of Brampton's Secondary Plan. The Secondary Plan has an area of roughly 3,500 acres and is bound by Mississauga Road to the east, the Credit River Valley to the south, Winston Churchill Boulevard to the west and Mayfield Road West to the north. It represents the final large development area left in the City, and is also home to the future Highway 413.

We commend the Ontario Government for its efforts and rapid actions taken to address the housing supply crisis in Ontario, which remains a long-standing problem and has been a major contributor to the affordability crisis we are experiencing across the Province. Bill 23, More Homes Built Faster Act, 2022, part of the Government's Housing Supply Action Plan, proposes broad changes to the existing legislation in attempts to stimulate the development and construction of more homes in a compressed timeframe. We agree that these measures could not have come soon enough.

One of the primary motives of the Bill is to streamline the land use planning approvals process. While we agree with the spirit and the direction of the Bill, there are changes to the Act being proposed that will undoubtedly have unintended consequences on appeal rights of stakeholders, that if left uncorrected, will have precisely the opposite (undesired effect) of the Bill's intent.

We asked our representative, Scott Snider of Turkstra Mazza to author the attached memorandum, which outlines our concerns around the implementation of the elimination of "Third Party Appeals" under the Planning Act. We ask that you please review his memorandum and take it into consideration in your decision making as you look to finalize and make amendments to the Act.

Sincerely,



Mitchell L Taleski, Senior Project Manager,
ATFP Brampton Limited

EMAIL MEMORANDUM

To: Heritage Heights Landowner Group

Date: November 2, 2022

File No.: 19995

Re: **BILL 23: More Homes Built Faster Act, 2022**
Limitations on Planning Act Appeals: Unintended Consequences

The Ontario Government should be commended for its efforts to address the housing supply crisis in Ontario. Bill 23 is part of the Government's Housing Supply Action Plan and proposes sweeping changes to a broad array of legislation to facilitate building more homes faster. There can be no doubt that these measures are important and timely.

One of the objectives of the Bill is to streamline the land use planning approvals process. While a laudable objective, buried in the implementation proposed in Bill 23 are proposed changes to appeal rights that will undoubtedly have unintended consequences. If left uncorrected, these proposed changes would have precisely the opposite effect of the intent of Bill 23; namely, the changes would almost certainly deliver less housing, slower. We believe this could not have been the intent of the Government.

The Problem: Elimination of "Third Party Appeals" under the *Planning Act* has Unintended Consequences Affecting Appeal Rights

With some very limited exceptions (ie. utility providers, public bodies and the province), all "third-party" appeals would be eliminated for official plan/amendments ("OPAs"), zoning by-law/amendments (ZBAs), consents and minor variances. We believe the intent was simple: if an applicant has successfully navigated the complex planning approvals process, and achieved municipal approval of a housing project, this project should not be delayed by appeals of others. In that sense, most of us would

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consider a “third party appeal” to be an appeal by someone other than the landowner directly affected by the planning approval.

Unfortunately, that is not how the proposed amendments to the *Planning Act* have been drafted.

Instead, the proposed amendments would eliminate all appeal rights except for applicants (and limited public bodies, etc.) for OPA’s, ZBA’s, consents and minor variances. This would include eliminating all appeal rights of municipally-initiated OPA’s and ZBA’s. There would be no checks and balances, and the healthy tension in the system created by an appeal right would be lost. This would be the most dramatic loss of appeal rights in the history of planning in Ontario.

Case Scenarios

Examples of the potential impacts are as follows:

- A municipality proposes a secondary plan with densities below market expectations, unreasonable buffers and setbacks or unworkable implementation requirements. There is no appeal even for landowners directly affected by the secondary plan;
- A municipality passes a zoning by-law that limits height, has unreasonable setbacks or step-backs for tall buildings or imposes unreasonable parking demands. There is no appeal, even for directly affected landowners.

Inconsistent Appeal Rights

It simply makes no sense to have appeal rights where the OPA and the ZBA are the products of a private application, but no appeal rights where the OPA and ZBA are municipally- initiated. Whether these instruments are initiated by the municipality or a private proponent, the implications on the housing supply will be the same.

A Better Approach to True “Third Party” Appeals

Even for true “third party appeals” (that is, appeals filed by persons other than the directly affected landowner), streamlining the approvals process by simply eliminating third party appeals is ill advised. This is true for two reasons:

- i. Often, “third party” appellants are other landowners concerned about the implications of an approval on adjoining lands. For instance, the approval of a development may not provide for appropriate access to neighbouring lands thereby jeopardizing the contribution of those neighbouring lands to the housing supply.

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The OLT provides an essential check and balance to ensure that one development does not compromise another; and

- ii. The other sources of “third party” appeals are neighbourhood groups and special interest organizations. While their interventions may not be welcome and may occasionally delay approvals, they represent a significant component of the public. For the approvals system to be legitimate, stable and enduring, all stakeholders must see the system as working, however imperfectly, for them. If the OLT appeal process is seen as the exclusive playground of developers, it will not endure. It is essential to the long-term success of the planning system in Ontario that we avoid policy whiplash through successive governments.

Rather than eliminating third party appeals, true third-party appeals should be subject to a rigorous screening process undertaken by a senior member of the OLT within 30 days of the filing of an appeal. Building on the improvements to the OLT that are already part of Bill 23 and previous Government initiatives, this member would review directly with the appellant, the landowner and the municipality the concerns of the appellant expeditiously. The member would be empowered to seek compromise and settlement and where this is not possible, to eliminate all issues for a hearing except those issues that the appellant has convinced the member could have a reasonable chance of success after a hearing. In this way, all frivolous appeals or frivolous issues as part of that appeal would be eliminated.

Case Scenarios:

As an example, recently a client was faced with a true third-party appeal from a neighbourhood group with respect to an apartment project. Eventually the hearing was settled with improved stepbacks to eliminate overview into neighbours’ backyards and contributions to a traffic calming study. Our client was more than willing to make these accommodations, and this served to address some of the concerns of the neighbours. The problem is that it took over a year to achieve this outcome.

With a new streamlined approach to true third-party appeals, this sort of outcome can be achieved in weeks rather than months. In fact, this unique approach to such appeals would be attractive to many neighbourhood groups or special interest groups because the current process is often daunting and costly for these groups.

Proposed Modifications

We are attaching proposed modifications to Bill 23 that would address the Governments’ intent to expedite the approvals process and eliminate frivolous third-party appeals. But it would do so without sacrificing long standing appeal rights essential to a

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Memorandum to Heritage Heights Land Owner Group

workable planning approvals process. These modifications would deliver more homes faster. At the same time, they are fair and balanced to all Ontarians.

Summary

As noted in the Government's **Bill 23 Backgrounder**, the OLT is a "critical part of Ontario's land use planning system". The Government should be commended for recognizing the role of the Tribunal and for strengthening that role through Bill 23. However, strengthening the OLT will not achieve the desired outcomes if there are not appropriate appeal mechanisms to get before the Tribunal. What is proposed by Bill 23 is not what we believe the Government intended in respect of these appeal rights. These can be readily corrected in the legislation.

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THIRD PARTY APPEALS – MODIFICATIONS TO PLANNING ACT

Add to definitions

“privately-initiated” means an official plan amendment, zoning by-law amendment, minor variance or consent that was initiated by a person or public body other than the municipal council that adopted or approved the amendment.

Third Party Appeals

xx. Despite the Statutory Powers Procedure Act and subsections 17(44), 34(24), 45(16) and 53(30) where an appeal of a privately-initiated official plan amendment, zoning by-law amendment, minor variance or consent has been made by a person other than the person that made the request for the amendment, minor variance or consent, the following shall apply:

1. Not later than 60 days after the appeal is received by the Tribunal, the Tribunal shall convene a case management conference to include the person that made the appeal, the person or public body that requested the amendment, variance or consent and the municipality that adopted or approved the amendment, if applicable, and such other persons as the Tribunal may determine, to do the following:
 - i. hear submissions as to which, if any, of the reasons set out in the notice of appeal have a reasonable prospect of success,
 - ii. direct that the hearing proceed on only those issues that the Tribunal determines have a reasonable prospect of success,
 - iii. If there are no issues that the Tribunal determines have a reasonable prospect of success, dismiss the appeal,
 - iv. if a hearing is to proceed, to fix the date, place and length of the hearing, and
 - v. attempt to resolve the dispute including possible use of mediation or other dispute resolution processes.

Modifications to Bill 23

In addition to the modifications noted above, the following amendments in Bill 23 would be abandoned:

- definition of “specified person”;
- ss. 17(24), (24.0.1)- (24.0.4), (36) and (36.0.1)- (36.0.4);
- ss. 34(19) and (19.0.0.1)- (19.0.0.4);
- ss. 45(12) and (12.1)- (12.4); and
- ss. 53(19), (19.1)- (19.4), (27) and (27.0.1)- (27.0.4).

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