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Hon. Paul Calandra
Minister of Municipal Affairs and Housing
777 Bay Street - 17th Floor
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Dear Minister Calandra;

Re: Bill 185 - Cutting Red Tape to Build More Homes Act
ERO Number 019-8369

Need to Establish Appeal Rights for Refusals/Non-Decisions on Conversions
Need to Retain Third Party Appeal Rights

We act for Belmont Equity Partners Inc. We are writing to provide comment respecting Bill 185, and to recommend some changes that are necessary if the Bill is to properly achieve its stated objective: that of "cutting red tape to build more homes".

The current Provincial initiatives represent a positive step forward to make the planning process more flexible and responsive to market realities, in order to deliver more housing and economic growth. The Provincial Planning Statement proposes to make it possible for employment conversions to be approved at any time (not just during municipal comprehensive reviews), and the definition of employment areas is being more correctly focused. But Bill 185 is missing the necessary companion provisions to make these changes effective. Without the ability to appeal refusals/non-decisions of conversion requests, the change in policy will be of little value. There will be no practical mechanism to ensure planning authority decisions are made consistent with the Provincial Planning Statement.

The Planning Act should be amended, in companion with the new Provincial Planning Statement policies, to permit landowner appeals to the Ontario Land Tribunal when a municipality refuses, or fails to make a decision with respect to an employment conversion request.

In addition, Bill 185 proposes to remove third party appeal rights. This is a misguided proposal, that will reduce public confidence that our land use planning system operates in a fair and balanced way. It also will, if passed, actually have the opposite of the result intended by the Government - the repeal of third party appeal rights will result in a significant reduction of new housing supply - especially in the medium and long term - as municipalities become accustomed to the inability for people to hold them accountable for the decisions being made.

We are recommending that Bill 185 be amended to retain the existing Planning Act third party appeal rights.

Planning Act Should be Amended to Establish Owner Appeal Rights for Refusals of Employment Conversions to Ensure Municipalities Follow New Provincial Policy

The Province is proposing a range of important policy changes to cut red tape and ensure the delivery of more housing. These changes include the flexibility to request conversions at any time (not just during municipal comprehensive reviews, which may be spaced as much as 15 years apart in recent experience). Other changes include a new definition of employment areas, to ensure that they are focussed on manufacturing and warehousing, and more practical tests for employment conversions. All of these are designed to clarify Provincial policy, inject flexibility into a previously excessively rigid planning system, and consequently, to deliver more housing.

However, all of these policy changes can be rendered meaningless if there is no companion change to the Planning Act establishing (restoring, actually) a right for landowners to appeal to the Ontario Land Tribunal in cases where municipalities refuse conversion requests, or simply fail to make a decision.

Right of Appeal is Essential to Ensure New Provincial Policies are Given Force and Effect

Without a right of appeal for refusal of conversions, there is no mechanism available to ensure that municipal decisions are made consistent with the requirements of Provincial policy. Municipalities can, if they wish, simply refuse a conversion request - even where it is obvious to all that the request is in conformity with Provincial policy, and that refusal would be contrary to policy.

Section three of the Planning Act requires that all Planning Authorities, when making decisions, must do so in conformity with provincial Plans, and consistent with provincial policy statements. The new proposed Provincial Planning Statement is such a section 3 provincial policy statement - planning authority decisions must be consistent with it.

However, there needs to be some mechanism to ensure municipalities are held accountable for their decisions on conversions, to ensure that those decisions follow the new Provincial policy. This is where appeal rights come in.

If a landowner can appeal an unreasonable municipal refusal of a conversion request to the Ontario Land Tribunal, the decision will be reviewed and considered, based upon expert planning and other evidence, to determine if it is consistent with the Provincial Planning Statement, as required by section 3 of the Planning Act. There is an effective mechanism to enforce Provincial policy - and it is being done at minimal cost to the taxpayer, with the enforcement is being funded and carried out by a private landowner.

However, if the Planning Act provision prohibiting appeals of conversion refusals to the Tribunal remains in place, there is no mechanism for accountability. Municipalities will know that they can ignore the requirements of Provincial policy, safe in the knowledge that their decisions cannot be appealed. The Municipality cannot be held accountable, and can behave with impunity - and the requirements of section 3 to make decisions which follow Provincial policy, can be safely ignored.

The result of not restoring the appeal right respecting refusal of conversions is to render the very positive policy changes relating to employment areas, and conversions, effectively meaningless.

In order to have the necessary balance in the system, and allow for Provincial policy to be enforced, it is necessary to further amend the Planning Act. Bill 185 should be amended to delete section 22 (7.3) of the Planning Act, which currently prohibits the appeal of conversion request refusal decisions to the Ontario Land Tribunal.

Bill 185 Does Include a Parallel Change Restoring the Right to Appeal Refusals or Non-Decisions Regarding Settlement Area Change Requests to the Tribunal - The Same Should Be Done for Conversion Requests

The prohibitions preventing appeals to the Tribunal of refusals of Settlement Area expansions, of refusals of conversions, were both introduced into the Planning Act at the same time. This was in 2006, in conjunction with the Growth Plan. They were part and parcel of an anti-growth philosophy, designed to restrict new land supply and growth. It was a program of changes that would introduce, by design, significant rigidity in to the planning system,

This 2006 package of Planning Act and policy changes was tremendously successful in achieving its goal of restricting growth - the result is the deep hole of the housing crisis that has taken hold in Ontario, and which is proving so difficult to reverse. Millions of Ontario residents are suffering the consequences of more than a decade of these policies suppressing housing supply.

Now, the Provincial Government is reversing these dangerous anti-housing, and anti-growth policies and laws. The new Provincial Planning Statement will end most of the damaging anti-growth, and anti-housing policies from the Growth Plan. Similarly, amendments to the Planning Act change the definition of Area of Employment to focus it properly, and Bill 185 will restore the pre-2006 right to appeal settlement area matters to the Ontario Land Tribunal.

However, there is no parallel companion change to the Planning Act to restore rights of appeal regarding conversion refusals. Such appeal rights are the essential, yet missing, element of the positive Provincial reversals of the disastrous 2006 framework. To make the entire package of policy changes effective and meaningful, it is essential to restore appeal rights and repeal section 22 (7.3) of the Planning Act.

Belmont Equity's Experience Demonstrates the Need for Appeal Rights

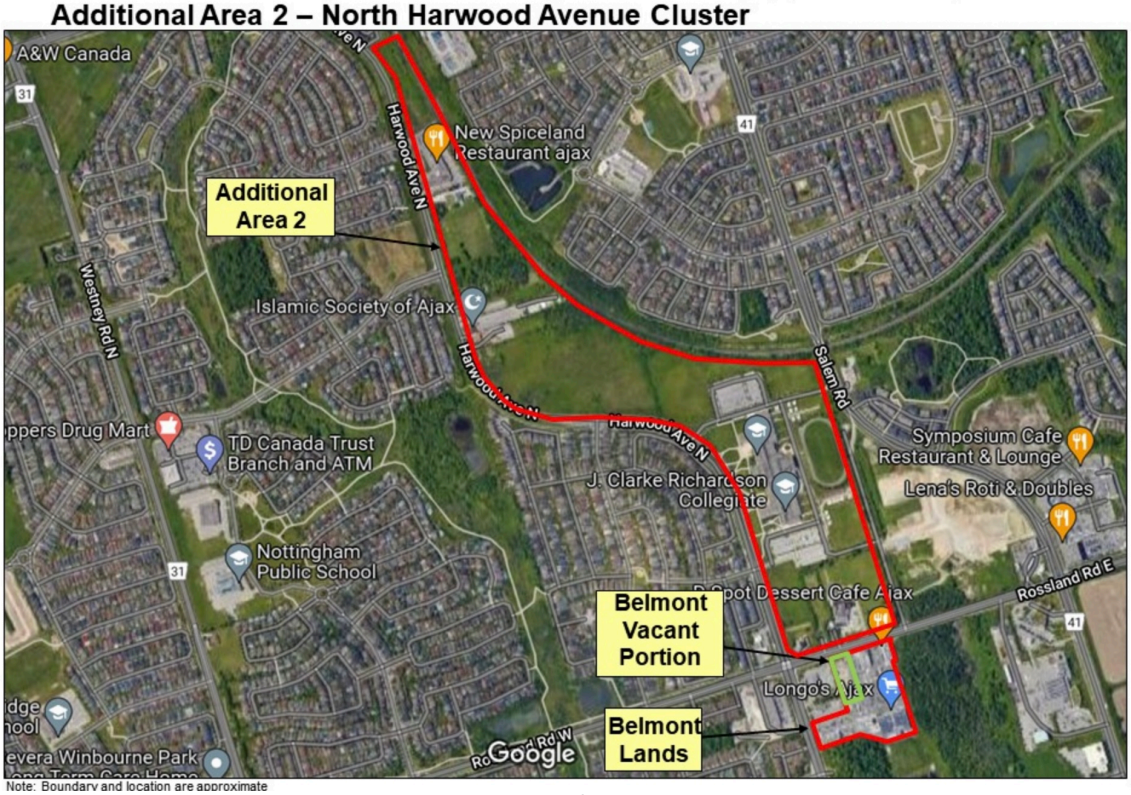
Belmont Equity is the owner of a property at Rossland Road and Harwood Avenue in Ajax. The site, although designated employment, is actually a shopping centre anchored by a Longo's supermarket. The site includes a parcel that has not been able to develop for retail uses due to the lack of demand in the changing retail marketplace - it is simply not viable for retail. The owners propose instead, to develop the piece for residential, mirroring a building across Harwood Avenue to the west.

However, because the site is designated employment (although it is a retail centre - without any manufacturing or warehousing), a conversion is required. The conversion was refused, despite the fact that it is already de facto converted as retail, and that it satisfied all the tests under the Growth Plan for a conversion approval. Regional staff noted that the request failed to satisfy one criterion of their's for conversion - support of the local Council. While the Mayor supported conversion, the local/Regional Councillor resisted it, and Council followed suit.

Under the Planning Act, despite conformity of the Conversion request with the Growth Plan conversion policies, there was no ability to appeal the refusal to the Tribunal. The Municipality can act with impunity, knowing that there is no mechanism to ensure that they follow Provincial policy and Plans.

This was done despite the Council, at the same time, approving (without a landowner request) the conversion of all the nearby employment designated lands shown as additional area 2 on the image below. The Belmont lands, despite being retail (not warehousing or manufacturing) were left as the only land designated employment. The vacant portion (green in the image) are left vacant - and a proposed residential intensification project cannot proceed. Because of the lack of conversion, it is not even possible to file an application. The statutory prohibition on conversion appeals ensures that this will remain the situation into the future.

The Belmont Lands, Conversion Request CNR-14 (Approx. 0.6 ha) and Additional Area 2 – North Harwood Avenue Cluster



Note: Boundary and location are approximate

Bill 185 Proposal to Eliminate Third Party Appeals Will Remove Balance from the Planning System, and Will Reduce the Delivery of New Housing - Third Party Appeal Rights Should Be Maintained

The proposal to eliminate third party appeals currently in Bill 185 will have exactly an opposite outcome than the Government intends. Rather than facilitating and speeding the construction of housing, it will result in fewer homes being built. It will allow municipalities to limit growth, ignore provincial policy, and do so with impunity. The municipalities will face no obligation to defend such decisions as good planning before the Tribunal.

One of the most important first major changes of this Government was to restore the role of the Ontario Land Tribunal, and the rights of appeal that were eliminated by the previous Government. Bill 185 properly proposes to restore this right to appeal to now include settlement area expansions (although the parallel prohibition on appeals of employment conversion requests inexplicably is proposed to remain in place).

However, Bill 185 also includes, through the elimination of third party appeals, a back door route for municipalities to make these appeal powers meaningless. Municipalities will be able to, on adoption of their own Official Plans, Official Plan Amendments and Secondary Plans, apply growth forecasts, land use designations, phasing policies, and artificially low density and height limits, such that meaningful growth is blocked (as often happens). Landowners will have lost the power they currently frequently employ of appealing these policies to the Tribunal where they can be judged on evidence.

Bill 185 proposes to resurrect the bad mistakes of the previous Government that were corrected at the outset by the current Government.

The removal of third party appeals is a problem:

- Will allow **municipalities to downzone or regulate, acting without accountability**. Once municipalities are no longer tempered by the cost and professional reputational risk of defending bad decisions, they will be able to act with impunity.

- Will raise the **risk of municipal corruption** if municipal planning decisions are final. If there is no appeal from a decision on an application, the finality of the decision makes the Councillor (or municipal planner) very powerful, and the temptation to inappropriate influence very great. The absence of an appeal process makes it unlikely such corruption will be exposed.

- Will **reduce the supply of housing** as anti-growth municipalities take advantage of the lack of landowner appeals to act as they wish in defiance of provincial policy. (Or even good faith municipalities getting it wrong because their work is not checked.)

- Will **erode public confidence in the system** if the public has no meaningful levers, increasing the likelihood that all the **improvements will be reversed** on a change in Government.

- Will **put pressure on the Province to pick politically unpopular fights with municipalities.** This will be the ONLY way to ensure municipalities comply with the Provincial Planning Statement and other policies. The Minister will have the choice of making the politically and financially costly appeals, or fail to appeal, allowing municipalities to defy the Province. Right now, landowners absorb the political and financial costs of such appeals.

- It will **move disputes to the courts**, increasing time delays and costs to delivering housing. Councils will now need to act in a judicial capacity (not just a legislative capacity) which will require Councils to spend as much as several days on an individual application, hearing all the technical evidence, before they can make a decision. This will produce impossible gridlock in Councils in large municipalities.

- This change will particularly affect homeowners in stable neighbourhoods. The change will leave homeowners feeling that the Government is removing their rights to defend their property values and community character. To render them powerless in the system will ultimately **alienate, and reduce confidence in the fairness of the planning system** in Ontario.

To recreate that system across-the-board, in which only Municipalities and the Minister have rights, will produce a similar result, and make it easy to toss out all of the current reforms.

The fact is that third party appeals of municipal policies and by-laws, financed and undertaken by landowners, is the most important component of our planning system in speeding and ensuring the delivery meaningful housing supply in Ontario.

The Government will have been successful only if the planning changes being implemented endure, and a rebalanced system can last for years. But "balance" is the key element.

The following are some example on what one might see:

1) Toronto OPA 536, established rail safety policies governing all development beside rail corridors. It required excessive setbacks and owners to indemnify the City in case of future rail accidents. The original policies were absurd, and would have wiped out thousands of housing units for decades to come. Negotiations of landowners' appeals has allowed a reasonable settlement. But these appeals would have been wiped out by the Bill.
2) Municipal Secondary Plans with unreasonable height limits. Appeals will no longer be permitted.
3) Downzoning of all mainstreets with heritage buildings to ensure there is no financial incentive to redevelop those sites. No appeals.
4) Establishment of 60 metre setbacks from all ravines and woodlots to protect the natural features. No appeal.
5) Zoning that 25% of units in all apartment buildings be 3 bedroom or more, to encourage family housing in an urban context. No appeals.
6) Phasing policies in an Official Plan Amendment that freeze hundreds of acres settlement area from being developed until 2049. No appeals.
7) Municipality wants to force out a long disliked abbatoir, concrete batching plant, or long time food processing plant that produces unpleasant odours. It approves a sensitive use next door. The industry has no right of appeal, loses its environmental approvals as it no longer complies with Ministry of Environment Guidelines, and must shut down or move.

If municipalities can act badly, without being subject to the accountability of an appeal, they will begin to do so with impressive frequency.

Bill 185 Should Be Amended to Restore the Right To Appeal Refusals of Conversions and to Retain the Ability of Third Parties, such as Landowners, to Appeal Municipally Initiated Official Plans and Zoning

The stated intention of the Government for Bill 185 is to "cut red tape to build more homes". This is an appropriate and welcome objective.

However, there are two ways in which the legislation can be improved to actually achieve the objective stated in its title.

Firstly, Bill 185 should be amended to delete section 22 (7.3) of the Planning Act, which currently prohibits the appeal of conversion request refusal decisions to the Ontario Land Tribunal.

Secondly, the proposal to remove third party appeal rights should be withdrawn from the Bill - for the same reasons that the Government removed the proposal in Bill 23.

If these two changes are made, Ontario residents will be able to have confidence that the planning system in the province is fair and balanced. They will be able to expect that the proposed policy changes in the Provincial Planning Statement 2024 will be given a fair chance to deliver the intended results of a greater supply of housing, improved housing affordability, and greater economic growth and prosperity.

Yours sincerely,

Hon. Peter Van Loan P.C., K.C.

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