

May 9, 2024

Provincial Planning Policy Branch
777 Bay Street 13th floor
Toronto, ON M7A 2J3

Via email: PlanningConsultation@ontario.ca

Re: ERO # 019-8369 Proposed Bill 185, Cutting Red Tape to Build More Homes Act, 2024

The Canadian Environmental Law Association (CELA) makes the following recommendations to amend the proposed Bill 185, Schedule 12. As a legal aid clinic with a very long history of representing local citizens at the Ontario Land Tribunal on serious issues of local environmental impact, we are strongly opposed to the proposal to remove the public's appeal rights for the adoption or amendment of Official Plans and Zoning By-Laws. These amendments fundamentally undermine access to justice and sound environmental decision-making.

We are also opposed to amendments in Bill 185, and related amendments to the *Provincial Planning Statement*, which will encourage sprawl development. These amendments will worsen the climate crisis and cause further loss of natural heritage features and agricultural lands.¹ CELA notes that the Report of the Ontario Housing Affordability Task Force explicitly stated that a “shortage of land isn't the cause of the [housing availability] problem.”²

We support amendments to remove parking requirements around existing or planned major transit areas and removal of fee refund requirements for various development applications. We also support new provisions which would allow for site plan approvals and draft plans of subdivision to lapse.

A. Canadian Environmental Law Association

CELA is a specialty legal aid clinic that works toward protecting public health and the environment by seeking justice for those harmed by pollution or poor decision-making and by advocating for improvements to laws and policies to prevent problems in the first place. Since 1970, CELA has used legal tools, conducted public legal education, undertaken ground-breaking research, and advocated for increased environmental protection and to safeguard communities. As a specialty legal aid clinic funded by Legal Aid Ontario, our primary focus is on assisting and empowering

¹ Dianne Saxe, “Why Urban Sprawl is Ontario’s Oil Sands”, Ontario Professional Planners Institute (February 3, 2020). See also Environmental Commissioner of Ontario, “Urban Sprawl: The Road to Gridlock,” in Energy Conservation Progress Report (2019) at 130-173.

² Report of the Ontario Housing Affordability Task Force, (February 8, 2022) at 10, online: < [Report of the Ontario Housing Affordability Task Force](#)>

low-income, disproportionately impacted, and vulnerable communities to further access to environmental justice.

Since our inception, CELA's casework, law reform and public outreach activities have included work on behalf of our client communities on land use planning matters at the provincial, regional and local levels in Ontario. For example, CELA lawyers provide summary advice and represent low-income persons and vulnerable communities involved in disputes under the *Planning Act* in relation to official plans and zoning by-laws.

B. Analysis of Bill 185, Schedule 12

On the basis of CELA's decades-long experience in land use planning matters throughout Ontario, CELA has carefully considered Bill 185, Schedule 12 from the public interest perspective of our client communities and makes the following recommendations. In particular, we are strongly opposed to the proposed amendments to the *Planning Act* that would prevent the public from appealing local land use decisions on Official Plans and Zoning By-Laws to the Ontario Land Tribunal.

1. CELA RECOMMENDS REMOVING THE FOLLOWING PROPOSED AMENDMENTS FROM BILL 185, SCHEDULE 12

(1) Revocation of the public's right to appeal the adoption and amendment of Official Plans and Zoning By-Laws

CELA strongly opposes the proposed amendments to the *Planning Act* that would prevent the public from appealing the adoption and amendment of Official Plans and Zoning By-Laws to the Ontario Land Tribunal. We recommend deleting sections 3(1), 3(3) and 5(7) of Schedule 12.

The proposed amendments would limit appeals to "specified persons", which is narrowly defined in section 1(1) of the *Planning Act*, and which does not include members of the public even if they have participated in the municipality's decision-making process. The proposed amendments and this narrow definition of specified persons removes very long-standing appeal rights from members of the public.

The proposed amendments would cause serious unfairness. Private developers maintain their rights to appeal. If a municipality does not accept an application for an Official Plan or Zoning By-Law amendment, private developers may still appeal that decision to the OLT. However, if a municipality does approve a development application, even if the proposal is environmentally damaging or may cause public health impacts to the local community, the public would no longer be able to challenge the municipality's decision at the OLT.

CELA notes that cross-examination on the evidence filed in support of a development application does not occur until the independent tribunal review hearing.

The Importance of Public Participation and Access to Justice

CELA is opposed to the proposed elimination of the public's appeal rights because it would significantly impede access to justice for members of the public. The revocation of the longstanding right of the public to appeal the adoption or amendment of Official Plans and Zoning By-laws is of serious concern because land use planning decisions often disproportionately impact low-income, under-served and under-resourced communities, and have direct adverse impacts on the environment and the health and safety of the public.

The importance of citizen engagement at the Tribunal has been reiterated for decades. As J.A. Kennedy, Chairman of the Ontario Municipal Board from 1960-1972 stated:

“The Municipal Board ... allows any citizen who wishes to take the time and trouble to present an argument before the board to do so. This has not in any way come close to paralysing the board, nor has it resulted in, for example, a developer being subject to multiple board proceedings, each dealing with the same proposal. If there are several persons interested in having the board rule on a particular issue or project, the board has developed procedures to ensure fairness to the person or government department whose project is under scrutiny.”³

J.A. Kennedy also pointed out that the public plays an important role in land use planning:

“Public participation is an important feature of the Planning Act, and it has served this province well. The administration of the natural environment is also public business and **there is no logical reason to deny the public an opportunity not only to protect its own property and neighbourhoods, but also to have a voice in the formulation of plans and policies.** The citizen should not be forced to oppose such a project after it is presented as a fait accompli.”⁴ [emphasis added]

In 2003, David J. Johnson, Chairman of the Ontario Municipal Board stated:

“At the OMB, the impact of decisions can be far-reaching. People rightly hold strong opinions on questions of planning and development in their communities. Given such diverse viewpoints, making decisions on matters affecting people and their neighbourhoods is a significant challenge. Debate and media reports on the OMB tend to focus on large-scale development, sometimes questioning the very existence of the Board. This debate and coverage is healthy, articulating and reinforcing the importance people place on the future of their communities.”⁵

³ David Estrin and John Swaigen, “Environment on Trial – A Guide to Ontario Environmental Law and Policy”, 1993, p xix Foreword to the First edition by J.A. Kennedy (1973).

⁴ David Estrin and John Swaigen, “Environment on Trial – A Guide to Ontario Environmental Law and Policy”, 1993, p xviii Foreword to the First edition by J.A. Kennedy (1973).

⁵ David J. Johnson, Chairman of the Ontario Municipal Board and Board of Negotiation 2003, “Ontario Municipal Board and Board of Negotiation Annual Report 2001-2002”, June 2003.

The revocation of the public's appeal rights is contrary to principles of good land-use planning, procedural fairness and natural justice, as persons interested in or affected by land-use decisions should be able to fully participate in and influence such decision-making. It is advisable to ensure that the OLT has a robust appeal authority and the public is not excluded from appealing to the OLT on important land use planning matters.

In addition, restricting access to the OLT is contrary to sound, participatory decision-making and will likely result in more issues being litigated in the Ontario court system, which lacks the planning expertise of the OLT. A move to a court-based system for challenging these types of decisions will also have unanticipated consequences, including delays and high costs for all parties.

CELA would also like to point out that there will likely be a large increase in court actions relating to the impacts of development after they have been approved. Thus, for instance, neighbours with concerns about noise impacts or environmental impacts from a nearby development may turn to civil causes of action in Court, such as nuisance claims, which would otherwise have been resolved through the administrative tribunal process. Court actions are a reactive way of addressing environmental impacts, whereas a hearing before the OLT would allow the tribunal to take proactive measures through the imposition of terms and conditions to prevent potential adverse environmental impacts. For example, a community group represented by CELA was able to settle a recent appeal at the OLT because of an agreement that a proponent would line an aggregate pit to protect local groundwater.

Finally, public appeal rights have been a long-standing feature of the *Planning Act*, and there has been no persuasive evidence-based reasons put forward by the provincial government to demonstrate that such appeals should now be wholly abolished both retroactively and prospectively. There is no evidence that any housing supply issues are being caused by the public appealing Official Plan or Zoning By-law decisions. The narrative that concerned citizens who want to be involved in their community's future growth are the ones creating a housing shortage is misleading and false. The proposed elimination of public appeal rights is not limited to housing matters and would apply to every other type of land use or development requiring *Planning Act* approval, for instance landfills, incinerators, quarries, or other industrial facilities that may cause off-site adverse impacts to the environment and the health and safety of site neighbours.

Case Examples of Public Appeals and their Contribution to Protecting the Local Environment

CELA has a long history of representing community groups all over the province who are seeking to protect their local environments. Community groups have used the appeal rights under s.17(24), 17(36) and 34(19) of the *Planning Act* to challenge problematic municipal or planning board decisions.

We provide the following representative examples of the types of appeals that would no longer be available if the proposed amendments are adopted. These appeals raise issues about environmental protection and health and greatly improved land use planning decisions in their communities. They do not relate to housing issues:

- CELA represented Mr. Oliver in an appeal of a City of London Official Plan amendment relating to protections for agricultural lands and the Natural Heritage System, along with issues relating to compact urban form, transportation, servicing and the financing of new development. Mr. Oliver called expert evidence at the Ontario Municipal Board.
- CELA represented the Stop Richmond Dump Expansion: The Citizen's Committee in the County of Hastings relating to an Official Plan amendment on Waste Disposal Assessment Area policies. The Citizens group was concerned about local environmental impacts from a landfill.
- CELA represented Friends Addressing Concerns Together in McNab/Braeside, a group of community members living near a quarry, in a Tribunal appeal in the County of Renfrew. The community members testified about the serious noise and odour impacts of a portable asphalt plant that had been operating close to their homes and their opposition to the installation of a permanent asphalt plant at that location. They also called expert evidence.
- CELA represented the Trout Lake Campers' Association on an appeal of a Lakehead Rural Planning Board decision on a zoning by-law amendment relating to a proposed quarry. The community members have lived and camped in the area since 1929. They raised concerns about the Lakehead Rural Planning Board's narrow interpretation of its planning authority and urged the Board to consider the environmental impacts of the proposed aggregate pit.

Retroactive Effect

CELA is also concerned that the proposed elimination of the public's appeal rights will have retroactive effect, pursuant to sections 3(2), 3(4), 5(8) of Schedule 12. Bill 185 proposes to eliminate public appeals if the hearing on the merits has not been scheduled by April 10, 2024. With long delays to schedule case management conferences at the OLT, this may automatically terminate a significant number of public appeals. This will have a financial impact on members of the public, who will have their appeals dismissed after having potentially spent significant resources on appeal filing fees and retaining experts and lawyers.

Recommendations:

Remove sections 3(1), 3(3) and 5(7) of Schedule 12. These sections seek to remove the public's ability to appeal the adoption or amendment of Official Plans and Zoning By-Laws under sections 17(24), 17(36) and 34(19) of the *Planning Act*.

Remove sections 3(2), 3(4) and 5(8) of Schedule 12. These sections seek to remove the appeal rights of the public retroactively if a hearing on the merits of an Official Plan or Zoning By-Law has not been scheduled by April 10, 2024.

(2) Permission for Proponents to Appeal Boundaries of an Area of Settlement

Poor land use planning and sprawl development is a key driver of climate change in Ontario. CELA opposes the proposal to remove the previous restriction on proponent appeals relating to a refusal of a municipality to adopt an Official Plan or Zoning By-Law amendment to alter all or any part of the boundary of an area of settlement. Bill 185 proposes to allow developers to challenge these decisions except if it would alter the boundary to include land in the Greenbelt Area in the area of settlement.

The *Planning Act*, and corresponding planning policies, should be encouraging in-fill and density development to avoid all of the negative environmental impacts of sprawl development, including worsening the climate crisis. This proposal will encourage sprawl development and should be removed from the bill. It will provide a proponent with appeal rights to the Tribunal which will not be provided to members of the public.

Recommendations

Remove sections 4(4) and 5(6) of Schedule 12, which would allow for developer appeals of Official Plan and Zoning By-Law decisions not to expand the boundary of an area of settlement.

(3) Appeal of Decisions on Land Uses Around Major Transit Areas

Previously, if a major transit station area was identified in an Official Plan, there was a restriction on appeals relating to policies about land uses in the area surrounding the major transit area and minimum density requirements in those areas. These restrictions were put in place to minimize sprawl development and encourage density and appropriate land use surrounding major transit areas.

The proposed amendments would allow for proponent appeals, but not public appeals, on Official Plan policies for single-tier municipalities on (1) the area surrounding and including an existing or planned higher order transit station, including identified minimum numbers of residents and jobs per hectare to be accommodated, (2) authorized uses of land, and (3) minimum densities with respect to buildings and structures.

For upper-tier municipalities, proponent appeals would now be permitted for Official Plan policies on existing or planned higher order transit station areas which required lower-tier municipalities to identify uses of land in the area, and the buildings or structures permitted on lands in the area.

We recommend removal of these proposals to discourage sprawl development.

Recommendations

Remove section 4(1)(2.1.4) of Schedule 12. The *Planning Act* restrictions on appeals on issues surrounding land uses in existing or planned major transit areas should be maintained.

(4) Removal of section 34.1 from the *Planning Act*

Previous recent amendments to the *Planning Act* created a new power of the Minister to make zoning orders at the request of municipalities. Section 34.1 of the *Planning Act*, along with section 47 of the *Planning Act*, provides for the Minister to make zoning orders outside of the *Planning Act* process and without requirements for an evidentiary basis and public input. These orders undermine access to justice for CELA's client communities. We therefore support the removal of s.34.1 of the *Planning Act*, but recommend also restricting the use of s.47 orders.

Recommendations

We support amending the *Planning Act* to remove section 34.1, pursuant to section 6 of Schedule 12.

We recommend also removing or amending section 47 of the *Planning Act* to restrict the use of Ministerial Zoning Orders to only rare cases and to ensure that there is an evidentiary basis for land use decisions and that the public may participate in local land use planning decisions.

(5) Exemptions from the *Planning Act*

Bill 185 proposes to exempt a number of decisions from the *Planning Act*, for instance undertakings related to the objects of a post-secondary institution, school board, long-term care home or hospital. CELA opposes removing *Planning Act* oversight from decisions at these institutions, as there may be environmental or health impacts that will no longer be analyzed.

Recommendations

Remove section 11 of Schedule 12, which seeks to add sections 62.0.2 and 62.0.3 to the *Planning Act*, and which would exempt undertakings at post-secondary institutions, school boards, long-term care homes and hospitals from the application of the *Planning Act*.

(6) Removal of Power of Municipalities to Require Consultation

CELA is opposed to proposed amendments to the *Planning Act* that would remove the power of municipalities to require pre-consultation on applications for Official Plan amendments, Zoning By-law amendments, site plan control areas, and plans of subdivision. The proposed amendments now only require that a municipal council "shall permit" applicants to consult prior to filing their applications.

We are concerned about proponents filing incomplete applications. Municipalities have primary authority for making land use planning decisions and need to rely on complete and accurate

information to make strong decisions. These amendments will undermine those efforts, especially in a context where the public is now also being prevented from appealing poor decisions on the adoption or amendment of Official Plans and Zoning By-Law amendments, as discussed above. CELA notes that there is no cross-examination on the evidence filed to support a development application until a Tribunal hearing.

These amendments will also likely cause an increase in Court-based litigation as poor land use planning decisions are challenged by community groups outside of the Tribunal process.

Bill 185 also proposes to allow for appeals to the Tribunal by proponents on the completeness of their applications, rather than requiring a short timetable for review by the municipality before facing such an appeal. The lack of timelines for these proponent appeals will put pressure on municipalities to determine an application is complete to avoid an appeal, even if the evidence and information filed in support of the application is inadequate.

Recommendations:

Remove sections 4(2), 5(3), 8(1) and 10(1) of Schedule 12.

Remove sections 4(3), 5(4), 8(2) and 10(2) of Schedule 12.

2. CELA SUPPORTS THE FOLLOWING PROPOSED AMENDMENTS TO THE PLANNING ACT

(1) Removal of Parking Requirements in Major Transit Station Areas

We support the proposal to prevent an Official Plan or Zoning By-Law from requiring an owner or occupant of a building or structure around major transit station areas and in areas delineated for existing or planned higher order transit stations or stops, to require parking facilities. This amendment may allow for more density of housing in in-fill areas.

Recommendations:

We support the proposed amendments in sections 2 and 5(2) of Schedule 12.

(2) Refund of Fees no Longer Required

CELA also supports the removal of the recently added fee refund requirements for applications for zoning by-law amendments and site plan approvals.

Recommendations:

We support the proposed amendments in sections 5(5) and 8(4), which would remove fee refund provisions.

(3) Site Plan Approvals and Draft Plans of Subdivision Can Lapse

CELA supports new provisions which would allow site plan approvals and draft plans of subdivision to lapse. Environmental conditions and surrounding land uses may change over time. These powers would incent developers to move forward with their plans or lose their approvals.

Recommendations:

We support the proposed amendments in sections 8(3) and 10(3) of Schedule 12.

C. Conclusion

Bill 185, Schedule 12, should not be passed without significant amendments. In CELA's long experience as advocates for local community groups and members of the public at the Ontario Land Tribunal and its predecessor tribunals, we are cognizant of the local expertise and insight that will be lost if those appeal rights are revoked. Land use planning decisions can significantly affect the local water, air shed and health of under-served and under-resourced communities. We urge the Ministry to maintain long-standing appeal rights for the public to protect their communities, health and local environment from poorly conceived development applications.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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