



Ministry of Municipal Affairs and Housing
777 Bay Street, 17th floor
Toronto, Ontario
M7A 2J3

Re: ERO 019-8365

Bill 185, The Proposed Cutting Red Tape to Build More Homes Act, 2024 – Housing Initiatives

Associated EROs:

- *ERO 019-8366 - Proposed Regulatory Changes under the Planning Act Relating to the Cutting Red Tape to Build More Homes Act, 2024 (Bill 185): Removing Barriers for Additional Residential Units*
- *ERO 019-8368 - Proposed Amendments to Ontario Regulation 73/23: Municipal Planning Data Reporting*
- *ERO 019-8369 - Proposed Planning Act, City of Toronto Act, 2006, and Municipal Act, 2001 Changes (Schedules 4, 9, and 12 of Bill 185 - the proposed Bill 185, Cutting Red Tape to Build More Homes Act, 2024)*
- *ERO 019-8370 - Proposed Changes to Regulations under the Planning Act and Development Charges Act, 1997 Relating to the Bill 185, Cutting Red Tape to Build More Homes Act, 2024 (Bill 185): Newspaper Notice Requirements and Consequential Housekeeping Changes*
- *ERO 019-8371 - Changes to the Development Charges Act, 1997 to Enhance Municipalities' Ability to Invest in Housing-Enabling Infrastructure*

The Ontario Home Builders' Association

The Ontario Home Builders' Association (OHBA) is the voice of the residential construction industry in Ontario, representing 4,000 member companies organized into 27 local associations across the province. Members include builders, developers, professional renovators, trade contractors, suppliers, and manufacturers serving the residential construction industry.

Environmental Registry Background

The government is seeking feedback on potential legislative changes, regulatory changes, policy, and other matters to help the government achieve its goal of building 1.5 million homes by 2031 as part of the proposed Bill 185, Cutting Red Tape to Build More Homes Act, 2024.

As part of the bill and the broader Spring 2024 Red Tape Reduction Package, the Ministry of Municipal Affairs and Housing is proposing a suite of legislative, regulatory and policy initiatives, which includes initiatives to:

- build homes cheaper and faster;
- prioritize infrastructure for housing projects that are ready to go;
- improve consultation processes and provide greater certainty once a decision is made; and
- build more types of homes for more people.

OHBA Response

Please accept the below as our submission to the government's request for feedback on the proposed "*Cutting Red Tape to Build More Homes Act, 2024 – Housing Initiatives*" (ERO 019-8365), which is being submitted on behalf of the local associations of OHBA.

Cutting Red Tape to Build More Homes Act, 2024 – Housing Initiatives

The Ontario Home Builders' Association is in favour of continuous efforts by the Province of Ontario to get more housing built and to lower the cost of housing for all Ontarians.

The facts are simple and clear. The consensus opinion from experts, industry, economists, academics, and the province's Housing Affordability Task Force is that to combat the housing crisis in the province, more supply will assist in lowering the cost of housing.

Policy and legislation must be coordinated to work in conjunction with each other, along with being mindful of the dynamic forces at play within the marketplace.

The introduction of new legislation, such as the *Cutting Red Tape to Build More Homes Act, 2024*, has multiple objectives, including but not limited to a focus on building homes more affordably and faster, prioritizing infrastructure for ready-to-go housing projects, improving certainty in the approval process, and promoting housing choices. Further reducing barriers to increasing housing supply is something the industry and municipalities alike look forward to with anticipation and enthusiasm. Bill 185, while an omnibus red tape reduction bill, contains the next series of proposed policy changes that form part of the housing supply action plans that the government has committed to releasing at least once per year.

While we appreciate that a significant number of influential and progressive policy changes have been introduced over the last several years by the Ministry of Municipal Affairs and Housing ("MMAH") in an effort to address the ever-present housing crisis in Ontario, the OHBA must continue to stress that the theme of any current and future housing legislation should focus on stability, consistency and predictability, combined with proper transition provisions to mitigate adverse effects. This is to ensure that the measures that have been previously introduced not only have the chance to have their impacts realized and allow for the development industry – who has been making great strides to capitalize on those measures – can properly plan for their use so that they can have the impact on increasing housing supply that they were meant to. This comment applies not only to the development industry but should equally apply to homebuyers who also need certainty when purchasing a home and are not affected by sudden policy changes that may have a material impact on their transactions with builders.

We would like to highlight that there are some policy changes that have been introduced through Bill 185 that are inconsistent with those themes and cause significant concern within the industry that we would like to provide feedback and recommendations on through the remainder of this submission.

Housing Actions and Consultation

OHBA welcomes initiatives that contribute to building homes affordably and prioritizing service-ready, housing-enabling infrastructure to incent “shovel ready” housing supply. We especially commend the suite of changes that if passed, will:

- reverse the fee refund regime introduced through Bill 109 and allow for pre-consultation to be **voluntary**;
- eliminates parking minimums in proximity of higher order transit stations (PMTSA/MTSA);
- allows for mass timber up to 18 storeys and permits single stair egress in small residential buildings to promote higher density;
- re-institution of the ability to appeal privately initiated settlement area boundary expansions;
- opportunities for the allocation and re-allocation of servicing capacity to developments ready to proceed;
- forward movement on the devolving of planning authority from upper to lower tiers introduced through Bill 23;
- further consideration of additional instruments like surety bonds to secure obligations for municipal conditions of planning approvals; and,
- the release of an updated Provincial Planning Statement to focus on housing outcomes related to the availability of land for residential development, increasing density and intensification around transit and along corridors, and facilitating redevelopment of underutilized plazas and strip malls.

During the lead up to the Bill, Ministry staff held extensive consultations with OHBA on various measures that could be considered to further their housing supply action plan work, but particularly related to the fee refund provisions in Bill 109 and the introduction of a Use it or Lose It framework. OHBA appreciates the dialogue and solutions that were arrived at in the Bill to ensure that these provisions will deliver greater certainty in planning approval timeframes without financial recourse to municipalities.

We also value that these conversations resulted in a scoped Use it or Lose It framework that addresses our expectations to consider the extent of lapsing provisions available in the *Planning Act* to optimize infrastructure while delivering critical housing supply. We look forward to further conversations related to both items while we work with MMAH to define and scope the parameters of both, as well as other aspects of Bill 185, that will undoubtedly benefit from additional focused collaboration and considerations to ensure they are properly developed and implemented.

The above being said, Bill 185, as drafted, contains some policy items that are very concerning to the residential home building industry. This includes the elimination of 3rd party appeals for official plans (OPs) and amendments (OPAs), zoning by-laws (ZBLs) and amendments (ZBLAs), and the elimination of the mandatory five (5) year development charge (DC) rate phase-in and reinstating studies as an eligible DC capital cost, partnered with amending the provisions for the DC freeze to reduce the timeframe from two (2) years to eighteen (18) months to obtain a building permit and benefit from frozen DC rates.

Removal of 3rd Party Appeal Rights

While OHBA understands the intention of introducing this policy change, specifically restricting frivolous and vexatious appeals, the manner in which it has been drafted has significant unintended consequences.

In this instance, it is necessary to distinguish between municipally initiated Official Plans (and amendments) and municipally initiated Zoning By-laws (and amendments), versus site-specific Official Plan Amendments and Zoning By-law Amendments, which are landowner initiated. It is the latter type of application that directly proposes to build housing, and only the latter that are vulnerable to true 3rd party appeals.

Limits on 3rd party appeals where it would prevent the appeal of private applications by neighbouring landowners where the private application is supported by Council is applauded. In such cases, municipal staff will have reviewed potential impacts on neighbouring lands and received their comments before preparing a final staff report for Council. These municipal approvals should not be subject to appeal.

However, as drafted, the limitation on 3rd party appeals will effectively give municipalities the ability to adopt and pass any official plan and zoning bylaw (or amendments), knowing that such instruments will not be subject to public scrutiny through an appeal to the OLT.

Based on historical experiences with some examples of municipally initiated OPA's and ZBA's put forward by the City of Toronto and other municipalities that we know of, eliminating the appeal rights of valuable associations and development industry is a very dangerous move.

Another example to highlight is where a municipality undertakes a comprehensive ZBL and how such a process (under the Bill as is) would not serve the best interest of the municipal planning system nor landowners.

In October 2021, the City of Vaughan consolidated several old ZBLs into a single comprehensive document. This was a good idea; however, it was a daunting task, and many mistakes were made. Landowners (i.e. 2nd parties) appealed the ZBL to the Ontario Land Tribunal (OLT), and the City used those appeals as the vehicle to fix the mistakes. In some cases, the City had previously (mere months before for some) approved a site-specific development application (i.e. re-zoning) but forgot to reflect that re-zoning in the new comprehensive ZBL. That mistake prevented, at law, building permits from being issued.

But for the ability of the landowner to appeal the comprehensive ZBL, the project would have been significantly delayed. The landowner would have had to file yet another re-zoning application, pay the fees, update the studies, go through another public meeting, wait for staff reports to be filed, and then await a council decision. This adds time and cost to the projects, which are ultimately borne by the end user (the home purchaser).

This case study is, in our respectful opinion, helpful to illustrate how a poorly drafted Bill 185 3rd party appeals provision would be operationalized and demonstrates how it is not in the interests of an efficient land use planning system and definitively will not deliver housing supply in an optimal and timely manner.

Municipalities will have the unlimited ability to advance policy and zoning changes that can stifle development, adding to the growing costs and further limiting housing supply in Ontario. Ideally, the goal is to prevent only 3rd party appeals of private applications, especially where such applications receive the support of municipal council.

However, the policy as it stands needs to be rethought in its entirety to be able to do that. Interestingly, we would like to stress that not only does the development industry identify the concerns with this policy as written moving forward, but several municipalities have also recently introduced Council reports that express similar concerns and fears regarding this policy and the challenge it presents to the integrity of the public planning system.

Another issue is that all existing 3rd party appeals already filed (even those dealing with municipally initiated OPAs and ZBAs, and particularly those filed by industry associations such as OHBA on behalf of several members) with no scheduled hearing date will be dismissed in their entirety. Some of these have involved significant financial and timing contributions across the industry that will not be recuperated should they be dismissed, nor result in better planning decisions in their respective municipalities.

The initial instance that a policy like this was introduced was in Bill 23 in October 2022. At that time, it was determined that the language went far beyond just blocking what it was meant to be solving. A person whose property is redesignated by a municipally initiated OP or is rezoned by a municipally initiated ZBL must be able to protect their own property by filing an appeal. Moreover, non-government agencies and groups (like home builders' associations or residents' associations) should also be able to appeal municipally initiated OP and ZBLs to protect the rights of their members on blanket policy matters.

The proposed policy in Bill 185 is identical to what was originally reconsidered through Bill 23 and still does not solve the problem identified the first time this policy was introduced. The concern is in a circumstance when a municipality introduces an OP or ZBL, which very often results in restrictions in uses, downzoning and/or imposing significant height or density restrictions, it goes much further than just eliminating 3rd party appeals. Industry legal experts have advised that the implications will mean even more delays and likely far more expensive court proceedings, which has been echoed by our municipal partners.

OHBA recommends that the government work with the industry to properly determine the best path forward for a solution to this language problem. Again, we understand that there was an issue that the government intended to solve for, and while we respect and commend the action to address the backlogs and inappropriate appeals that may, at times, be filed, OHBA remains hopeful that the Ministry and Standing Committee will support and adopt amendments during the clause-by-clause

review of the Bill, to protect 3rd party appeals and distinguish between municipally initiated Official Plan and Zoning By-laws (or amendments) versus land use changes that are landowner driven.

Removal of Development Charge Increase 5-Year Phase-In

The introduction of a significant policy change under Bill 23 required municipalities who wished to make increases to their development charge percentage, while still being permitted to make those increases, albeit stipulated that it must be done over a five-year phase-in of those DC rate increases, beginning with a 20% reduction in the first year, with the reduction decreasing by 5% each year until year five when the full new rate applies. This was proposed to apply to all new DC by-laws passed since January 1, 2022.

However, Bill 185 has introduced the concerning decision to walk back this policy change and remove the requirement for a five-year phase-in of those increases. Eliminating this current discount, which is set to expire on its own in 2026, causes uncertainty and disruptions to project planning and financing, and will ultimately result in added costs to consumers.

The introduction of the “phase-in” provisions of municipal development charge increases in 2022 via Bill 23 was a signal by the government that sought to provide certainty and stability to new home buyers and builders alike, so that any new increases in municipal DCs would be phased in over five years. This measure was meant to simply slow the “pace” of DC increases, while still allowing for those DC increases, but in turn preserving affordability for home buyers of new residential construction and providing certainty for builders to underwrite the financial viability of new housing projects.

Bill 185, if passed, will place undeniable financial hardship on new home buyers during the closing stages of the purchasing process. An analysis of current housing projects in the Greater Toronto Area has identified that DCs could be increasing in the magnitude of \$10,000-\$20,000 when DC increases are levied immediately by a municipality.

OHBA members have unfortunately dramatically pulled back new sales launches; only 4 projects were brought to market thus far in 2024, and builders are being forced to offer a wide array of incentives ranging from free parking spots, reduced deposit structure, and mortgage assistance programs, just to make the market available for potential purchasers. On average, in Ontario, 10 projects per year are cancelled, which results in a significant negative impact on supply and attracts unfavourable media attention. Bill 185 could potentially put a large portion of one year’s supply of new housing at risk of not coming online, which translates to 30,000 to 40,000 units.

This government has historically been recognized for its commitments to bringing more homes to market, ensuring new homes are affordable, and creating a more predictable, stable environment for community builders to build the range and mix of housing types that are so drastically needed. However, given the current interest rates and macroeconomic environment that the market is facing, the government appears to have lost touch with the best means to go about this. This is unfortunately a severe time to be allowing municipalities to make the cost of new home ownership even more unattainable.

The *Planning Act* authorizes the sale of homes upon the issuance of draft plan approval by the municipality. In practice, homes are generally sold after the draft plan approval date. There are many projects across major Ontario municipalities that were draft approved after the effective date of Bill 23 and subsequently sold based on the provincial transition policies and the ongoing municipal consultation. These are homes waiting for the start of the construction. The builder potentially is already servicing the lands, has filed building permit applications, but awaits the permitting approval. Consequently, Bill 185's legislative reversal will allow municipalities to levy the full impact of any DC charge increase immediately following the Bill receiving Royal Assent, which is particularly concerning when some municipal DC increases are 40, 50, or even 60% higher than their previous rates.

Because development charges are paid prior to the issuance of a building permit, almost all purchase agreements (between builders and homebuyers) prescribe a threshold increase for DCs that stipulates that if there are increases after the purchase agreement is signed, and if they breach a prescribed cap amount, those DC increases are passed to the homebuyer and would need to be paid by the purchaser at the time the transaction is scheduled to close. And although each project is unique, there are some general market thresholds that are observed across the board.

Unfortunately, it is a well-known fact that these charges are passed (in whole or in part) on to purchasers in the purchase price of a new residential home or condo unit. At the end of the day, the decision to eliminate phasing of the DC by-laws at this time will impact hundreds of buyers and result in significant hardship to those who purchased pre-construction homes. For those buyers who cannot afford to pay these additional municipal fees, they will be unable to close the sale and will lose their purchase deposit.

To address this, **OHBA requests that the proclamation date for this aspect of Bill 185 be deferred until June 1, 2025.** Many projects would have started the process upon Bill 23 introduction, which gave a positive signal to the building industry that DC increases would be measured and predictable, and as such, there are several thousands of units that have been pre-sold but have yet to start construction. Those DC increases stemming from Bill 185 will now ultimately be passed on to the home buyer as per contractual requirements, and we believe a one-year deferment of this provision may allow some of those builders to deliver those units without any increases passed on to the new home buyer.

There is also evidence that several municipalities are bringing forward new DC by-laws to take advantage of the proposed changes in Bill 185 that will only serve to raise the cost of homes. This effort and deliberate strategy by municipalities is poorly timed, given the state of the housing market and will only serve to stunt housing sales, supply, and affordability.

To further illustrate, other material effects of the DC rollback could be as follows:

- The financial shock of these increases will result in higher new home/condo prices; this could place a further chill in the marketplace and impact sales, which will lead to fewer construction starts, ultimately impacting housing supply coming on-line and compromising the 1.5M housing target.

- If these DC increases are unmitigated, they will have a material effect on municipalities achieving their municipal housing targets and their eligibility for future BFF (Building Faster Fund) “rewards” – that are designed to support housing-enabling infrastructure.
- With respect to the multi-residential condominium market, builders with presales who have not yet achieved their financial lender’s pre-construction sales targets may ultimately cancel projects because of stalled sales activity, and the project may no longer meet certain financial feasibility thresholds set by lenders; again, impacting planned housing supply targets.

OHBA and our members are hopeful that our municipal partners, be it staff, mayors, and councillors across Ontario, will exercise constraint in how they proceed to introduce development charge increases once Bill 185 comes into effect.

Conclusion

The Ontario Home Builders’ Association respectfully submits the following two recommendations regarding 3rd party appeals and the development charge phase-in provision, which we encourage the Minister of Municipal Affairs and Housing to take into consideration as the government deliberates any changes that may be needed prior to royal assent:

1. OHBA recommends that the government continue to work with the industry on the intent to restrict 3rd party appeals and to properly determine the best solution together to address the language drafting issue. OHBA is confident that the Ministry and Standing Committee will support and adopt amendments during the clause-by-clause review of the Bill while still upholding the ability for some parties to file appeals but adequately distinguishing between municipally initiated Official Plan and Zoning By-laws (or amendments) versus land use changes that are landowner driven.
2. OHBA also recommends that should the development charge five-year phase in provision removal be ultimately upheld, the proclamation date for that aspect of Bill 185 be deferred to June 1, 2025, to ensure that projects with units that have undergone pre-sale, but not yet construction (pulling of building permits), do not therefore result in those DC increases being borne by the home buyer due to contractual obligations.

We appreciate the opportunity to comment on this proposal. We look forward to continuing our ongoing engagement with the Ministry staff to ensure that our collective efforts are fulfilling our shared goals of delivering on Ontario’s housing supply targets while improving housing attainability for current and future Ontarians.