The Corporation of the Town of Midland

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May 10, 2024

Attn:

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

VIA EMAIL

RE: *Proposed Planning Act, 1990*, *City of Toronto Act, 2006*, and *Municipal Act, 2001* Changes via Schedules 4, 9, and 12 of *Bill 185 - Cutting Red Tape to Build More Homes Act, 2024* (Environmental Registry of Ontario Proposal No. 019-8369)

To Whom It May Concern,

Please accept this comment letter in response to the above noted Environmental Registry of Ontario (ERO) proposal. The comments provided in this letter were presented to and endorsed by Town of Midland Council on May 1, 2024. The comments in this letter are organized according to changes proposed to the *Planning Act, 1990* via Schedule 12 to *Bill 185 - Cutting Red Tape to Build More Homes Act, 2024* ('Bill 185').

1. *Removing Upper-Tier Planning Responsibilities – Section 1 of Schedule 12 to Bill 185*

   The County of Simcoe Official Plan provides a critical framework and mechanism to ensure the coordination of cross-boundary infrastructure delivery to service growth, some of which may be outlined through master plans (including waste management, transportation infrastructure, natural infrastructure such as County Forests, social services, etc.). By removing the County's "planning responsibilities", Bill 185 has the potential to eliminate the critical coordination function that the County currently manages for the local municipalities within Simcoe. Failure to properly coordinate infrastructure delivery could have unintended and costly consequences from both a planning and financial perspective.

   Further, the Town is unclear about how the costs of taking on the County's planning responsibilities will be addressed. Specifically, no further information provided to show how lower-tier municipalities will be funded with the additional responsibilities from the County should they be downloaded. If there is no additional funding sources from the Province, the increased responsibilities being given to lower-tier municipalities would leave them no choice but to fund from property taxes, and/or pass on the cost to developers through planning application processing and approvals, both of which would be counter-intuitive to the Province's goal to cut costs and make housing more affordable.

   Therefore, the Town is not supportive of eliminating the County of Simcoe's planning responsibilities.

2. *Elimination of Third Party Appeals – Section 3 of Schedule 12 to Bill 185*

   The further elimination of third-party appeals to the Ontario Land Tribunal (OLT), with respect to other development applications, such as official plans, official plan amendments, zoning by-laws and zoning by-law amendments, constrains the ability for residents, landowners, and business operators to actively participate in the very processes that affect and shape their community, effectively curbing their ability to enact their substantive citizenship. As a result, residents will now need to present as much information as possible to their Councils prior to a decision being made. The problem is further compounded by the compressed approval timelines. That is, the requirement for municipalities to

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make quick decisions already makes many residents feel purposefully excluded from the process. Despite this, residents had the opportunity to appeal a decision, allowing them to participate in the process, by filing an appeal. A filing of an appeal, of course, does not mean that the appeal will be heard by the OLT. Rather, the appeal must first be evaluated for merit. It is at this time that NIMBY and frivolous appeals are identified and disallowed. It is therefore unclear why, with the merit evaluation process in place, the elimination of appeal rights, in their entirety, is appropriate or required. Rather, there are other avenues in place for addressing NIMBY and frivolous appeals, such as:

- revising the appeal merit evaluation process,
- eliminating appeals to decisions that are supported by a unanimous vote from a Council,
- eliminating appeals to development applications, such as draft plans of subdivision, should they not require any policy or regulatory approvals (e.g. no Official Plan or zoning by-law amendments are required).

Given the above, the Town recommends that the Ministry thoroughly consider alternatives to outright elimination of appeals rights.

Settlement Area Boundary Expansion Appeals

While Bill 185 proposes to eliminate third party appeals it also proposes to allow applicants to appeal a municipality's decision to refuse an application to expand a Settlement Area boundary. The Town understand that these proposes changes will ostensibly give developers some certainty that their development applications will proceed or that, at the very least, the OLT can review a municipality's decision to ensure it is in line with Provincial policy and 'good planning'. The Ministry must carefully examine and understand the impacts of allowing appeals to Settlement Area boundary decisions, which, of course, are currently not subject to appeal.

Specifically, the Ministry must recognize that it is municipalities that maintain infrastructure, deliver services, and ensure a high quality of life for Ontarians. Developers have no such obligations. Rather, developers are driven by generating profit for shareholders by selling a product, being forms of housing. While developers may be concerned by lack of infrastructure capacity or the state of municipal finances, these concerns are not driven by interest for the municipality or its residents. Rather, their concern is driven by ability of the municipality to accommodate growth, which, if possible, allows a developer to build and sell its product. Municipalities, on the other hand, are driven by the need to deliver services to residents who pay for same via their property taxes. If a municipality determines that it is not in financial position to manage the long-term costs associated with a Settlement Boundary expansion, a developer ought not to have the right to challenge same. This is because, as stated above, a developer's role ends once homes are built and infrastructure is assumed by the municipality. It is the municipality, and by extension its ratepayers, that take on the financial burden of any development that has occurred on land added to a Settlement Area.

Given this imbalance of long-term responsibilities, its unclear why a developer should have the opportunity to challenge a municipality's decision to refuse an expansion. The Town recommends removing the ability for a developer to challenge a municipality's decision regarding settlement expansion. Further, it is recommended that a municipality's decision regarding settlement area boundaries continued to be sheltered from appeal.

3. *Eliminating Authority to Require Pre-consultation – Subsections 2 & 3 of Section 4, Subsections 3 & 4 of Section 5, Subsections 1 & 2 of Section 8, and Subsections 1 & 2 of Section 10 of Schedule 12 to Bill 185*

The Town supports innovative ways to decrease review times to have developments get shovels in the ground faster. However, the Town is not in support of the Province making this change as it is

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anticipated that it has the potential to increase appeals to the OLT and will slow down the approvals process.

The Town has spent significant time and resources to ensure that when a development exits the pre-consultation process, there a very clear understanding, between all parties, of the required supporting documents, the anticipated approvals timeline, the potential obstacles that may arise, the applicable fees, development charges, as well as any financial incentives for which a development proposal may be eligible. By no longer requiring this important step in the development review process, there is potential for applicants and municipalities to spend unnecessary time, money and resources on a proposal that does not have a clear path to obtaining an approval, creating friction between municipalities and the development industry.

Further, as per the in-effect *Planning Act*, applicants have 30 days to make a motion to the OLT to dispute a municipality's decision to deem an application incomplete. Bill 185 proposes to remove this deadline. Instead, Bill 185 proposes to allow applicants to bring a motion to the OLT to determine the requirements for a complete application at any time after the application fee has been paid or pre-consultation has begun. The Town does not see any benefit to allowing an applicant to appeal to the OLT immediately after pre-consultation has begun. Rather, such appeal rights are likely to only slow down the approvals process and increase the number of appeals to the OLT. Further, such appeal rights create an unnecessarily adversarial environment, straining relationship between municipal staff and developers.

The Town recommends that the right to appeal a municipality's decision to deem an application incomplete be maintained. Further, staff recommend that the ability to appeal to the OLT to determine complete application requirements be removed from Bill 185.

4. *Use it or Loose it Tools – Section 1 of Schedule 9, Subsection 3 of Section 8 and Subsection 3 & 4 of Section 10 of Schedule 12 to Bill 185*

   The Town presently imposes a lapsing date on all existing draft plan approved plans of subdivision. However, the ability to apply a lapsing date to approved site plan application is something that staff support. The Town has several site plan applications in which site plan approval is at the finish line, and the applicant is refusing to sign the site plan agreement for unknown reasons, taking up infrastructure allocation and impacting other municipal decisions (e.g. capital infrastructure planning) without certainty that the development will materialize. Having a time period set by regulation, being no less than three years, would allow municipalities to ensure that developers proceed with their development in a timely manner.

   The Town also support the proposal to allow municipalities to enact by-laws under the *Municipal Act* to track water supply and sewage capacity, and to set criteria for when an approved development can have their allocation withdrawn.

5. *Eliminating Fee Refund Requirements – Subsection 5 of Section 5 of Schedule 12 to Bill 185*

   The Town supports this change as it would allow for a more collaborative approach with applicants and would reduce the number of appeals the OLT.

   The Town is of the opinion that the intended outcome of Bill 109, when this legislative change was made, was not achieved. Rather, the change required municipalities to address the shortened approval timelines by implementing new measures. Further, Bill 109 provided less time for staff to review applications and for applicants to respond to unresolved issues, which then reduced the ability for staff and applicants to work together to resolve matters. This, in turn, created an adversarial and less productive environment.

   The Town supports eliminating the requirement for fee refunds as proposed by Bill 185.

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6. *Exempting Accessory Residential Units (ARUs) from Planning Act Requirements – Section 7 of Schedule 12 to Bill 185*

   The Town is of the opinion that more time is needed to fully understand what the proposed changes would mean for the Midland. Further, without draft regulation being released for consultation, the Town is unable to determine if the proposed regulation would have the desired effect of creating additional residential units within the Town. At this time, the province has provided insufficient information about which zoning standards are proposed to be restricted/addressed by proposed regulations; the only two standards directly referenced in the consultation material are minimum lot area and number of bedrooms per lot.

   The Town may be in a position to support the changes, but without additional information, staff prefer the status quo, being the application of all zoning standards to ARUs. Further, the Town prefers allowing locally elected officials or their committees to make decisions on whether it is appropriate to provide relief from zoning standards for development within the community.

7. *Eliminating Community Infrastructure and Housing Accelerator / New Framework for Ministerial Zoning Order (MZO) – Section 6 of Schedule 12 to Bill 185*

   The Town are in support of this proposed change as it removes duplication and provides clarity on the MZO process, being how an MZO can be requested and what criteria are considered by the Minister for reviewing same.

8. *Repeal the Mandatory fire-year phase-in of DC Rates – Section 1 of Schedule 6 to Bill 185*

   Bill 185 is proposing to eliminate the five-year phase-in of development charge rates for development charge by-laws passed on and after January 1, 2022. Further, Bill 185 indicates that the Province intends, on June 1, 2024, to bring into force municipal development-related charge exemptions and discounts for affordable residential units to provide incentives for the development of affordable housing across the province. Proposed changes to the Development Charges Act, 1997 would also reduce the time that a development charge rate would be frozen from two years to 18 months after approval of the relevant application. Furthermore, studies such as Master Servicing Plans, Development Charge Background Studies, Growth Management Studies that are needed to facilitate growth/development would need to be absorbed by the tax base as these studies are now exempt from development charges moving forward, which is not consistent with the concept of development pays for development.

The Town thanks the Ministry for the opportunity to comment on this important legislative initiative.

Yours truly,

The Corporation of the Town of Midland

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