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Fundamental changes made to Planning Act appeals as Bill 185 receives royal assent

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On June 6, 2024, the *Cutting Red Tape to Build More Homes Act, 2024* (Bill 185), was given royal assent, bringing into force sweeping changes to the ability to file appeals of *Planning Act* decisions to the Ontario Land Tribunal. As set out in more detail below, with limited exceptions generally related to industries protecting against encroaching residential development, no appeals can be filed by third parties with the Tribunal — meaning neighbours, individuals, companies and ratepayer groups can no longer appeal development approvals.

Landowners will continue to have the right to file appeals of *Planning Act* decisions that affect land they own.

Bill 185 also rolls back the phase-in of development charge increases that had been introduced in Bill 23, as well as the fee refund regime that had been introduced into the *Planning Act* by Bill 109.

Bill 200 has also received royal assent, which makes changes to the *Ontario Heritage Act*, giving municipalities two more years to review properties on their heritage registers to determine if they wish to designate those properties under Part IV of that act.

Blackline copies of the amended acts can be downloaded from the links below, and a more detailed summary of the key changes follows:

Planning Act [PDF]

Development Charges Act [PDF]

Ontario Heritage Act [PDF]

CHANGES TO APPEAL RIGHTS

Third-party appeals are no longer allowed. Appeals can only be filed by

- "specified persons," which Bill 185 expanded the definition of to include the following (provided they made submissions to council before the decision is made):
    - NAV Canada, and airport authorities with airport zoning regulations, but only for lands covered by those regulations
    - holders of *Aggregate Resources Act* permits, but only for lands within 300 metres of the licensed area

    - holders of certain *Environmental Protection Act* approvals that are within an area of employment, but only for lands within 300 metres and only on the basis of inconsistency with the land use compatibility policies in the Provincial Policy Statement
    - the owners of the land in (ii) and (iii), above
- the registered owners of land that an official plan or re-zoning applies to, provided submissions were made
- the minister and (where applicable) the approval authority

Third-party appeals that had been filed prior to Bill 185, and for which no hearing on the merits had been scheduled before April 10, 2024, are deemed to have been dismissed as of June 6, 2024.

ABILITY TO APPEAL SETTLEMENT AREA BOUNDARY EXPANSIONS

Applications for official plan and zoning bylaw amendments that propose to add land to an area of settlement can now be appealed to the Tribunal, provided none of the land proposed to be added is in the Greenbelt.

FEE REFUND ROLL BACK

The government had introduced (in Bill 109) the requirement for municipalities to refund escalating portions of application fees based on how long beyond the statutory appeals period municipalities took to make a decision on an application for zoning bylaw amendments or site plan approvals.

These provisions are now repealed. They still apply to applications filed before June 6, 2024, but the amount of a fee refund that is to be paid is based on the municipality having been deemed to have made a decision as of June 6, 2024.

PRE-APPLICATION CONSULTATIONS VOLUNTARY

One of the responses to the now-defunct fee refund provisions was that many municipalities increased the requirements for pre-application consultations to defer the time when an application was deemed complete. Bill 185 now makes pre-application consultations voluntary, repealing the sections that allowed a bylaw to be passed that made such consultations mandatory.

Applicants can also bring motions to the Ontario Land Tribunal before filing an application, which can decide whether a requirement to provide certain information as part of a complete application is reasonable.

PARKING RATES

Official plans (OPs) and zoning bylaws are no longer permitted to require car-parking facilities within protected major transit station areas (PMTSAs) or areas designated in official plans for planned higher-order transit where there is a requirement for minimum densities. The minister can also designate other

areas where no minimum parking can be required, and can also make regulations prescribing a required number of parking spaces. No such regulations have been publicly proposed as of June 6, 2024.

'USE IT OR LOSE IT'

Municipalities can impose lapsing provisions on site plans and plans of subdivision if a building permit is not issued within a prescribed period of time, which (until there is a regulation setting out time frames) can be no less than three years.

UPPER TIERS WITHOUT PLANNING RESPONSIBILITIES

Effective July 1, 2024, York, Peel and Halton regions will no longer have planning responsibilities under the *Planning Act*. Their official plans will be deemed to be official plans of each of their lower tier municipalities. Simcoe, Durham, Niagara and Waterloo are also proposed to no longer have planning responsibilities, but no date has been set for that to occur.

COMMUNITY INFRASTRUCTURE AND HOUSING ACCELERATOR PROVISIONS REPEALED

While the term never appeared in the Act, Bill 23 had added sections to the Act which put in place a process for councils to request what was effectively a zoning order, which was called "Community Infrastructure and Housing Accelerator" order in Ministry press releases. These sections have now been repealed. The minister continues to have the authority to enact minister's zoning orders. In order to formalize processes around MZOs, the Ministry has put in place a "Zoning Order Framework" which set out process and requirements for requests for such orders.

DEVELOPMENT CHARGE PHASE-IN ROLLED BACK

The phasing in over five years of any increase in development charges that was implemented by Bill 23 has been repealed. Any development charge that was imposed between November 28, 2022, and June 6, 2024, will continue to be subject to the phasing in provisions.

Another Bill 23 change that is being rolled back is the ability to include the costs to undertake the studies (include the development charge background study) in the calculation of the development charge.

Municipalities have six months to amend their bylaws to include the study costs, or to adjust their bylaw rates to account for the removal of the phase-in. Any bylaw amendments to implement these changes passed within six months cannot be appealed to the Tribunal. Bylaw amendments passed after December 6, 2024, will be subject to appeal.

Bylaws can also be amended at any time without appeal if the only amendment is to change the date on which the bylaw expires.

REQUESTS TO AMEND OP POLICIES IN PROTECTED MAJOR TRANSIT STATION AREAS

While most applications to amend OP policies in PMTSAs are not allowed, an exception has been created that allows applications to amend the authorized uses of land in the PMTSA.

EXEMPTIONS FROM THE PLANNING ACT ALTOGETHER

Publicly assisted universities carrying out undertakings for the "objects of the institution" are exempted from the *Planning Act* and the site-plan control provisions of the *City of Toronto Act*. This appears to be an effort to assist the building of student housing.

The minister has also been given the power to make regulations that would exempt "community service facilities" of school boards, long-term care homes and hospitals from all or part of the *Planning Act*.

The minister can also make regulations exempting detached, semi-detached or row houses from either zoning or site plan control, if certain criteria are met.

The minister can also make regulations setting out specific requirements and standards for additional residential units in detached, semi-detached or rowhouses, which would apply instead of any zoning standards.

No regulations for any of these matters have been proposed as of June 6, 2024.

MUNICIPAL ACT AND CITY OF TORONTO ACT CHANGES

Changes have also been made to the *Municipal Act* and *City of Toronto Act* which will allow municipalities to pass bylaws providing for the allocation of water and sewage capacity, which can include criteria for when allocation is to be granted and a requirement that the power to grant allocation be delegated to an individual. The minister will have the power to make regulations exempting approved developments or classes of developments from allocation bylaws.

Many municipalities have allocation systems in place today — these changes will require that allocation decisions are not made by council and can be exempted by the minister.

The minister is also given the power to make regulations permitting a municipality to grant assistance (an exemption from the anti-bonusing provisions) to a specified business or industrial or commercial enterprise.

ONTARIO HERITAGE ACT CHANGES

Bill 200, the *Homeowner Protection Act*, *2024*, also came into force on June 6, 2024.

It makes changes to the *Ontario Heritage Act*, specifically related to the requirements that were made

in Bill 23 that require municipalities to review all properties on their heritage registers by January 1, 2025. Any properties listed on the register as of that date that were not designated under Part IV of the act would be removed from the register and could not be re-listed for a period of five years.

That date has now been changed to January 1, 2027, giving municipalities more time to undertake that review and (where appropriate) designation process.

The act was also changed to address circumstances where municipalities actively remove properties from the heritage register, generally requiring that when this occurs, a property cannot be added back to the register for a period of five years.

TRANSIT-ORIENTED COMMUNITIES ZONING ORDERS EXEMPT FROM LIABILITY RESTRICTIONS

Bill 200 also adds a provision to the *Planning Act* which exempts lands that are designated as a transit-oriented community and that have a minister's zoning order from the limitations in the *Planning Act* that grant the minister immunity from liability for the granting or lifting or a zoning order.

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