

Environmental and residents groups call new provincial rules barring OLT third-party appeals an attack on ‘citizen rights’

The Ford government’s legislation restricting the appeals of development decisions was passed last month.

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Suzi Recine, left, and Uzzo Calderaro stand near a planned development in Kleinburg. Their residents group was appealing a development adjacent and abutting the Greenbelt, but that right was taken away from them with the passing of Bill 185.

R.J. Johnston Toronto Star

A provincial law change that curtailed third-party groups' ability to appeal development decisions has left environmental and ratepayer groups saying they've been silenced in a move that puts developer interests ahead of citizen concerns.

Ontario residents can no longer appeal development decisions at the Ontario Land Tribunal — a quasi-judicial body designed to adjudicate planning and other land disputes — after the Doug Ford government introduced legislation that removes the ability of third-parties such as ratepayer groups or environmental groups to do so.

The province says the changes to the third-party appeal rights in the [Cutting Red Tape to Build More Homes Act \(Bill 185\)](#), which passed in June, will “help communities get quicker planning approvals for housing projects.”

But critics say the legislation is another attack on “citizen rights” and the public's participation in the development process and will ultimately lead to poorly planned and less safe communities across the province.

“This is the loss of an important mechanism for the public to make sure that environmental and public health concerns were raised and properly considered in development decisions across the province,” said Jacqueline Wilson, counsel for the Canadian Environmental Law Association, who says the organization has been part of local resident appeals for decades.

“It's really a problem to cut out active engaged citizens, who deeply care about their communities, from the equation.”

According to the OLT, between April 1, 2022, to March 31, 2023, the Tribunal handled 1,422 cases, totalling 2,161 appeals. The OLT said they don't track the number of appeals made by developers versus individuals or third-party groups. However, since the law came into effect in June, 62

third-party appeals that didn't "meet the transition provisions," which include a hearing date scheduled before April 10, 2024, were dismissed, a spokesperson for the OLT said.

The new legislation places restrictions on the ability of the public to appeal amendments to official plans and zoning bylaws made through development applications. The only groups who can appeal are "public bodies," specified persons who are defined as government, utility boards, and agencies. Landowners and developers can also appeal municipal development decisions they don't agree with.

Justine Teplycky, a spokesperson for Housing Minister Paul Calandra, says the changes to the legislation "provide the appropriate balance between speeding up planning approvals and maintaining an avenue for impacted landowners to voice their concerns."

She says between 2021 and 2023, approximately 67,000 housing units were subject to third-party appeals of official plans and rezoning.

Teplycky says "the public still has opportunities to provide full input in the planning process to their locally elected councils, who are best positioned to make decisions that reflect the needs of their communities."

Environmental lawyer David Donnelly says in his research of third-party appeals, he believes just a handful of appeals in the GTA have hindered or slowed down the process.

Some residents whose cases have been dismissed this past month also disagree with the notion their voices are better heard at the municipal level.

Suzi Recine, with the group Friends to Conserve Kleinburg, who had filed an appeal at the OLT against plans to build about 800 single-detached

homes and townhomes on part of the Copper Creek golf club in Vaughan, said the community turned to the OLT once they realized they had no support from the city and there was a “lack of consideration of their concerns.”

“This was a way for residents to have a voice. Why are we being silenced?” said Recine. “Bills like Bill 185 ... give more powers to the government and developers, while taking away the public’s opportunity to be heard.”

The Copper Creek community is owned by both Fieldgate Developments and by TACC Developments, development companies run by Jack Eisenberger and Silvio De Gasperis. The development is being built by Block 55 Northwest Landowners Group Inc., which consists of three landowners, said Alana De Gasperis, a spokesperson for TACC Developments.

Recine says the residents appealed the development to the OLT amidst concerns of overdevelopment of the pristine area, and environmental degradation of an area that borders the Greenbelt and the Humber River watershed.

In a statement, Alana De Gasperis said there have been “numerous opportunities for public input” in addition to statutory public hearings. She also said the TACC and the landowners have worked with staff to preserve trees, create a buffer zone between the new and existing communities, and ensure appropriate environmental protections are in place, including the completion of several studies that have been reviewed by the city and the conservation authority.

She said the appeal, which was previously dismissed by the OLT and heard at Divisional Court, has “delayed the project approximately 3 years.”

Recine says her group's case was dismissed by the OLT in July, despite having been given a hearing date prior to the bill's passing.

The Kleinburg group was told on April 10 that their case would be heard in June 2025.

Recine said within hours of their hearing being scheduled, the province introduced Bill 185, which included transition provisions that said any third-party appeal that didn't have a hearing date scheduled prior to April 10, 2024, was immediately dismissed. And even though the law didn't pass until June, this provision was applied retroactively.

"We got our date, and then a short while later, we found out our entire case was dismissed," said Recine. "Where is the fairness to the residents and the community?"

In an email, the province said the law was retroactively applied as that was the day the legislation was introduced, said Teplycky.

Environmental lawyer Donnelly said several groups he is representing have had their cases dismissed as a result of Bill 185.

"It's not just about the rights of one group of residents, it's about the rights of the public to fight for environmental protections for all," he said. "You should care about the fact that developers have all these rights, and citizens have none."

Julie Neves, the chair of Stop Petersburg Sand Pit Inc., says her group's appeal of an aggregate pit in Wilmot, Ont., was dismissed in July as her group was not one of the parties allowed to file an appeal per the new legislation. The group had been opposing an application for an aggregate pit, and had tried to petition their town council to monitor the air quality in the area where six others already operate, to find ways to "clean them up and improve conditions."

When those efforts failed, Neves' group filed an appeal with the OLT. But that appeal route was dismissed before it even began, she said.

“At this point, all our citizen rights have been taken away,” said Neves. “There are no more options left ... and the development always gets its way.”

Justin Sherwood, a spokesperson with the Building Industry and Land Development Association (BILD), said they support “efforts to increase the speed and efficiency of the approvals process” but says it’s too early to know if this move by the province will do just that.

“We understand, and can appreciate, that one of the intentions to limit third party appeals was to eliminate those that were frivolous or vexatious. However, the results and outcome of this are yet to be tested since the legislation was only passed in early June,” said Sherwood.

The OLT is the latest iteration of what has been more commonly known as the Ontario Municipal Board and the Local Planning Appeal Tribunal — administrative tribunals that were created to adjudicate planning matters. The OLT was created in 2021, after the government consolidated several different boards including the Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal.

Donnelly said removing third party appeals — or what he calls “citizen appeals” — at the OLT has little to do with NIMBYs (not-in-my-backyard), a term that refers to those who oppose development in their own neighbourhoods. He fears it will instead remove the ability of concerned citizens and environmental groups who have historically used the OLT (and its predecessors) to push cities and developers to make better planning decisions.

“Nobody has made the case that having residents, neighbours, environmentalists, First Nations involved in the planning process is a bad thing. They have always been the check and the balance in the system, and now that’s being taken away,” Donnelly said.

He cites several cases where appeals led to outcomes in the public interest, including the enactment of the Oak Ridges Moraine Protection Act, which came as the result of a 12-month appeal by a third-party group called Save the Rouge Valley System Inc. to a development on the environmentally sensitive lands. He said other appeals against aggregate quarries and mines have led the projects to be denied, or have a significantly reduced footprint.

CELA lawyer Wilson says that without a place for the public to appeal development decisions, many will have no choice but to turn to the courts by seeking a judicial review of a planning decision, leading to delays and high costs for all parties.

Recine says the Kleinburg group has already spent thousands on legal fees and experts at the OLT. In light of the recent dismissal, she says she’s not sure if the group will continue their fight.

“I don’t know where this leaves us,” she said. “With a dismissal of the entire case, it leaves us without a voice.”



By [Noor Javed](#) - Staff Reporter