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Something Old, Something New: Bill 185 Cuts Red Tape to Build More Homes

The latest round of changes to municipal and planning legislation in Ontario has been enacted and is aimed at facilitating more development in the Province.

Bill 185, *Cutting Red Tape to Build More Homes Act, 2024* ("**Bill 185**") received Royal Assent on June 6, 2024, amending 15 pieces of legislation, including the *Planning Act,* the *Municipal Act,* the *City of Toronto Act* and the *Development Charges Act*.

Below is an overview of several significant changes imposed by Bill 185 as they relate to planning, housing, development and infrastructure matters. The bulk of the amendments come into force immediately.

Third-Party Appeals

Key Takeaways

Third-party appeal rights related to official plan amendments ("**OPA**") and zoning by-law amendments ("**ZBLA**") are now limited to key stakeholders only

Amendments to the definition of “specified person” in the *Planning Act* will allow for broader appeals by certain public and private bodies

Owners may no longer have a right to appeal OPAs and ZBLAs for neighbouring parcels

Certain third-party appeals filed prior to the enactment of Bill 185 are dismissed where a hearing of the merits was not scheduled prior to April 10, 2024, except where a statutory exception applies

Overview

Bill 185 amends the *Planning Act* to allow only certain persons to appeal approved OPAs and ZBLAs, including the applicant, the Minister, public bodies (as defined in the *Planning Act*), a “specified person” and/or the registered owner(s) of any land to which the OPA or ZBLA would apply. As required by the previous iterations of the *Planning Act,* in order to secure a right to appeal, third parties must have made an oral or written submission to the respective municipal council prior to adoption of the OPA or ZBLA.

Specified Person

Bill 185 expands the definition of “specified person” in section 1(1) of the *Planning Act* to include other private and public bodies such as holders of an environmental compliance approval (under the *Environmental Protection Act*) undertaking activity on lands within an area of employment if any part of their site is within 300 metres of the area to which the planning matter would apply, aggregate licensees or permittees undertaking activity on lands within an area of employment if any part of their site is within 300 metres of the area to which the planning matter would apply, owners or operators of an airport and/or a person who has registered an activity on the Environmental Activity and Sector Registry. This amendment broadens the list of persons entitled to file appeals.

Other Third-Party Appeals

One of the most significant amendments to the *Planning Act* is the complete elimination of the right for third parties, such as neighbouring owners, to file appeals of OPAs or ZBLAs if they do not fall under the amended definition of “specified person” or if they are not the applicant. For a third party to appeal a newly approved OPA or ZBLA, the respective OPA or ZBLA must apply to that appellant’s lands. In other words, if a ZBLA is passed to permit a new development on a parcel, the owner of the neighbouring parcel may not have any right to appeal the approved ZBLA to the Ontario Land Tribunal. As a

consequence, landowners facing applications for new development on neighbouring parcels will need to be proactive in addressing potential impacts and issues as there may not be an opportunity to do so in the future.

The amendments are intended to reduce delays and have the potential to accelerate project timelines by protecting applicants from appeals that may be vexatious or frivolous.

However, the amendments may also give rise to additional court applications as a response to unappealable municipal decisions – particularly where the decision to approve an OPA or a ZBLA would impact a neighbouring owner's property or development potential.

Settlement Area Boundary Expansions

Key Takeaway

Owners can appeal a refusal or non-decision of an owner-initiated application for a settlement area boundary expansion

Overview

Bill 185 amends the *Planning Act* by permitting appeals of OPA or ZBLA applications that alter settlement area boundaries, except where the proposed lands to be added are in the Greenbelt. This change will allow applicants greater opportunities to move settlement area boundary expansion applications forward in a timely manner.

Application Process

Key Takeaways

Pre-application consultations with municipalities are no longer mandatory and are now at the discretion of the applicant

Fee refund requirements for planning applications are repealed

Overview

Bill 185 removes the authority for a council or a planning board to pass a by-law imposing mandatory pre-application consultation meetings with the municipality or planning board before the submission of a development application.

The elimination of the mandatory pre-application consultation allows an applicant to challenge complete application requirements to the Ontario Land Tribunal at any time, rather than only having a limited window of opportunity to do so once a municipality rejects an application as not "complete".

Further, Bill 185 repeals the requirement for municipalities to refund development application fees where a decision was not made during the statutory timeframe. (These requirements were previously introduced by Bill 109, the *More Homes for Everyone Act, 2022*.)

The amendments introduced by Bill 185 address the unintended implementation issues that developers and municipalities indicated slowed the approval process as a result of the perceived need to "front-end" the application process so that applications could be reviewed and approved before a refund was due.

Community Infrastructure and Housing Accelerator and MZOs

Key Takeaway

> The Community Infrastructure and Housing Accelerator ("**CIHA**") framework introduced in 2022 is removed

Overview

Bill 185 removes CIHA from the *Planning Act* and replaces it with a new Minister's Zoning Order ("**MZO**") framework, which will require more detailed information from applicants. This is not a significant change and largely represents a consolidation of authority under one framework. While the new MZO framework involves increased transparency, the substance of the MZO mechanism remains unchanged.

Parking Requirements

Key Takeaway

- Municipalities can no longer require owners to provide parking facilities near major transit stations

Overview

Bill 185 limits the ability of municipalities to require an owner to provide or maintain parking facilities (other than for bicycles) within protected major transit station areas, major transit areas, and certain other prescribed lands. The market will now dictate the number of parking spaces required in these areas.

Development Charges

Key Takeaways

- Development charges imposed under a by-law passed after the enactment of Bill 185 are no longer subject to the five-year phase-in requirements
- Development charge background studies are reinstated as a development charge-eligible capital cost
- Development charge freeze timeframes are reduced from two years to 18 months

Overview

Bill 185 repeals the statutory five-year phase-in of development charges, except in specific circumstances, including where a development is already subject to the development charges freeze under the *Development Charges Act*.

Bill 185 also reverses prior amendments to the *Development Charges Act* by reinstating the costs of specific studies as an eligible capital cost for development charges.

These changes are in response to municipal concerns related to a municipality's ability to pay for housing-enabling infrastructure to support density and support the "use it or lose it" policy by incentivizing developers to move quickly on housing development projects.

Upper-Tier Municipalities

Key Takeaways

Upper-tier planning responsibilities for seven municipalities, including the Regional Municipalities of Peel, Halton and York, have been removed

The proposed dissolution of the Regional Municipality of Peel is repealed as Bill 185 amends the *Hazel McCallion Act (Peel Dissolution), 2023*, renamed the *Hazel McCallion Act (Peel Restructuring)*

Overview

Bill 185 removes the planning responsibilities from its regional municipalities. This means that upper-tier municipalities will no longer have planning policy responsibilities and will no longer be approval authorities for applications for draft plans of subdivision, OPAs, ZBLAs, consents, or minor variances. This will in turn accelerate the development of housing by removing the extra layer of planning approval that can contribute to delay.

Bill 185 deems the Regional Municipalities of Peel, Halton, and York as upper-tier municipalities without planning responsibilities as of July 1, 2024. Planning responsibilities will be removed for the Regional Municipalities of Durham, Niagara, Peel, Simcoe, and Waterloo on a date to be proclaimed by the Lieutenant Governor.

"Use it or Lose It" Framework

Key Takeaway

Provisions are enacted which encourage developers to begin construction within certain timeframes or risk development approvals lapsing or a withdrawal of approved servicing allocation

Overview

Bill 185 creates a so-called "use it or lose it" framework for development approvals. Under this framework, draft plan of subdivision approvals granted before March 27, 1995 will lapse unless the draft plan conditions are satisfied within three years.

Moving forward, municipalities must provide that all new plan of subdivision or condominium approvals will lapse on a certain date, which may be prescribed in a future regulation under the *Planning Act*. However, in the absence of any relevant regulations, the relevant time period is to be not less than three years.

Subject to the future regulation, Bill 185 also allows for an “authorized person” to apply a lapsing condition when approving new site plan control applications.

The above amendments to the *Planning Act* coincide with changes to the *Municipal Act* and *City of Toronto Act*, which further enhance this framework by authorizing municipalities to adopt by-laws providing for the allocation of water and sewage capacity. These amendments allow municipalities to set timeframes and conditions for the allocation or withdrawal of servicing capacity, as well as conditions for how a development can regain a withdrawn allocation.

The above changes do not significantly impact most developments. However, there is potential for future regulations and by-laws to be enacted which could broaden the scope of the framework and have greater impacts on developers.

Final Thoughts

Loopstra Nixon LLP’s **Municipal, Land Use Planning and Development Group** is engaged in all aspects of Ontario’s municipal, land use planning and development law and will provide further legislative updates as they are released. If you have any questions regarding how the Bill 185 changes may impact you or your organization, please do not hesitate to contact a member of our team.

Disclaimer

The information provided above serves as a high-level summary and does not constitute legal advice.

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