BILL 185: THE PROPOSED RESTRICTION OF THIRD-PARTY PLANNING APPEALS – BRAVE NEW WORLD, OR PANDORA'S BOX?

- *May 13, 2024*
- Robert Miller, Grace O'Brien and Nikolas Koschany, Davies Howe LLP

On April 10th, 2024, the Provincial Government introduced Bill 185, the *Cutting Red Tape to Build More Homes Act, 2024*. Currently in its second reading, the stated goals of the Bill include expediting housing construction by cutting red tape and streamlining approvals. Bill 185 proposes to amend fifteen different statutes in pursuit of these goals, but perhaps most notable for the municipal bar will be the removal of third-party appeals to the Ontario Land Tribunal ("**OLT**") regarding certain planning matters.

Should Bill 185 be enacted as currently proposed, the right to appeal municipal decisions regarding the adoption of official plans and the passing of zoning by-laws to the OLT would be restricted to: "public bodies" or "specified persons" who made oral or written submissions to Council prior to a decision being made; the Minister; and the appropriate approval authority. In the case of amendments to official plans and zoning by-laws, the appeal rights to the OLT would be restricted to: the applicant; "public bodies" or "specified persons" who made oral or written submissions to Council prior to a decision being made; and the Minister. "Public Bodies" and "Specified Persons" are defined in the *Planning Act* and generally include government, utility boards and agencies. Importantly, the restriction would apply universally to all planning instruments, regardless of whether they are initiated by a private applicant or a municipality.

The proposed amendments purport to apply retroactively. All existing third-party appeals at the OLT which did not have a hearing on the merits scheduled before April 10th, 2024, would be automatically dismissed. This would include matters where a mediation, case management conference or any other step in the appeal process, including a contested motion, has been scheduled, but a date for a merit-hearing has not yet been granted.

This removal of third-party appeal rights follows an earlier attempt of same in Bill 23, the *More Homes Built Faster Act, 2022*. Introduced on October 25, 2022, Bill 23 first proposed substantively identical third-party appeal restrictions to those proposed in Bill 185, except that it also restricted third party appeals of minor variance and consent applications, and the retroactive date was for a hearing on the merits scheduled before October 25, 2022. However, except for the removal of third-party appeals for minor variance and consent applications, for which appeals are not permitted today, these proposed amendments were struck by the standing committee and removed from the Bill before it received royal assent. Notably, Bill 185 is currently before the standing committee, and it remains to be seen whether the proposed appeal restrictions will be enacted as currently drafted.

While third parties involved in minor variance and consent applications were typically limited to adjacent residents, official plan amendments ("**OPAs**") and zoning bylaw amendments ("**ZBAs**") often have a broader impact, affecting larger populations and areas. This, in combination with Bill 185's retroactive application, means the proposed removal of third-party appeals will have significant implications on the rights of interested parties and the development process overall.

IMPLICATIONS FOR MUNICIPALLY INITIATED PLANNING INSTRUMENTS

When it comes to municipally initiated updates to comprehensive zoning bylaws or official plans, Bill 185 may curb notorious “not-in-my-backyard” appeals, thereby facilitating quicker implementation of the density-improving measures that many municipalities are enacting. However, to achieve the stated goals of Bill 185 - expediting housing construction and streamlining approvals - it will be up to municipalities to ensure that their official plan and comprehensive zoning by-laws contain these density-improving measures and follow the Provincial direction set out in the Growth Plan that density targets are minimums, not maximums.

Critics may argue that lack of third-party appeal rights for municipally initiated planning instruments will lead to downzoning some properties, or further restrictions on development, with no recourse. For instance, “secondary plans”, as implemented through OPAs, often face appeals related to height and density limits that can hinder housing production. New comprehensive zoning by-laws may result in inadvertent downzoning of properties that had previously secured development rights under a previously enacted zoning bylaw. Consequently, landowners may find themselves navigating lengthy and expensive OPA or ZBA application processes to regain these rights where a third-party appeal existed beforehand.