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MEMORANDUM

Bill 185: The Cutting Red Tape to Build More Homes Act, 2024 (Update)

Date: June 13, 2024

By: Stephanie Fleming

Please be advised that Bill 185, the Cutting Red Tape to Build More Homes Act received Royal Assent on June 6, 2024. As you have undoubtably heard, the provincial Legislature has now risen for its summer break and will be returning on October 21, 2024. Following our initial memo, dated April 10, 2024, certain changes were made to the Bill during Second Reading. We have provided a summary below of all the changes proposed by the *Cutting Red Tape Act*, including those amendments

As stated in our earlier memo, this is an omnibus piece of legislation and will amend the following Acts, among others:

- The *Planning Act*
- The *Municipal Act, 2021*;
- the *City of Toronto Act, 2006,*
- the *Development Charges Act, 1997*, and
- the *Hazel McCallion Act (Peel Dissolution), 2023*

The majority of the changes set out in the *Cutting Red Tape Act* will come into effect on the day that this Act received Royal Assent. This would mean that most are in effect as of June 6, 2024, save the exceptions set out below:

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- The changes to the *Planning Act* pertaining to the removal of planning responsibilities from the Regional Municipality of Halton, Peel, and York (being s.1(1), 1(4.4), and 70.3) will come into force on July 1, 2024;
- The changes to the *Planning Act* pertaining to the removal of planning responsibilities from the County Simcoe, the Regional Municipality of Durham, The Regional Municipality of Niagara, and the Regional Municipality of Waterloo will come in force on a date proclaimed by the Lieutenant Governor.
- The changes related to the application of land use controls to limit an additional residential unit within a detached or semi-detached house or rowhouse or ancillary structure to such a building will not be permitted where it meets "such criteria as may be prescribed", save to those lands within the Greenbelt, will also come into force after a date proclaimed by the LG:

I would note that the online version of the *Planning Act* available on ontario.ca has not yet been updated to include these changes or even include the amendments.

Rights of Appeal under the *Planning Act*

The first draft of this Act proposed the entire removal of the right to appeal by an individual or corporation that was not a "specified person" as per s.1 of the Planning Act or a "public body". This has been revised, however.

In my view, the most important change made was the addition of a section to s.17(36) and 34(19) of the Planning Act which permits the *registered owner* of land affected by a proposed zoning by-law or official plan to appeal same, provided the owner has made oral submissions to council at the public meeting for said amendments or make written submissions to council prior to same. Registered landowners will also still be entitled to appeal municipality-wide Official Plans or Zoning By-laws, save and except where the Minister has made the decision in respect of the Official Plan. Third parties, including neighbouring landowners, are not permitted to appeal any such decisions.

I would note that this revision specifies the "registered owner"- this may require review of any agreements of purchase and sale where an appeal is contemplated or if an appeal (or possibly submissions to council) has been or will be launched under the name of a parent company, etc. rather than the specified registered owner.

The Cutting Red Tape Act has also added to the definition of a "specified person" in the Planning Act. As stated above, this is a defined term found at s.1 of the Planning Act and includes the following individuals:

a) "a corporation operating an electric utility in the local municipality or planning area to which the relevant planning matter would apply,
b) Ontario Power Generation Inc.,
c) Hydro One Inc.,
d) a company operating a natural gas utility in the local municipality or planning area to which the relevant planning matter would apply,

e) a company operating an oil or natural gas pipeline in the local municipality or planning area to which the relevant planning matter would apply,
f) a person required to prepare a risk and safety management plan in respect of an operation under Ontario Regulation 211/01 (Propane Storage and Handling) made under the *Technical Standards and Safety Act, 2000*, if any part of the distance established as the hazard distance applicable to the operation and referenced in the risk and safety management plan is within the area to which the relevant planning matter would apply,
g) a company operating a railway line any part of which is located within 300 metres of any part of the area to which the relevant planning matter would apply, or
h) a company operating as a telecommunication infrastructure provider in the area to which the relevant planning matter would apply;"

Bill 185 will add the following to the definition of "specified person"

i) NAV Canada,
j) the owner or operator of an airport as set out in the *Aeronautics Act*,
k) a licensee or permittee under the *Aggregates Resources Act*, provided any part of the site is within 300m of an area where the planning matter in question would apply;
l) the holder of an environmental compliance approval issued under s.9(1) of the *Environmental Protection Act* for lands within an area of employment and within 300m of an area to which the planning matter in question would apply. Such holders are only permitted to appeal relevant decisions or conditions on the basis of any inconsistency with land use compatibility policies set out in provincial policy documents;
m) A person who has registered
n) The owner of any land as described in the above-referenced clauses at (k), (l), or (m).

The "specified person" will also be required to make oral submissions at a public meeting or written submissions to council before they can exercise this right to appeal.

Public bodies are also still entitled to appeal under s.17(24), 17(36), and/or 34(19), provided they also made oral submissions to council at a public meeting or written submissions. I would note that the Cutting Red Tape Act also amends the definition of a "public body" under s.1 of the *Planning Act* to be "a local board, a hospital as defined in s.1 of the *Public Hospitals Act*, a ministry".

Dismissal of Appeals
Another of the important changes made to the *Planning Act* was the dismissal of any appeals launched by a third party if the hearing for said appeal had not been set down by April 10, 2024. However, if the matter was set down

Therefore, any appeal launched by a third party where the hearing was not set by April 10, 2024 will be dismissed. There is also a possibility that appeals were not launched by the registered owner could, in theory, be dismissed. I do not know if they will go so far to dismiss ones that were launched under the name of a parent corporation rather than the registered owner; however; it is possible they may permit existing appeals by owners to continue if no objections are raised by an opposing party.

Upper Tier Municipality's Planning Responsibilities

The *Cutting Red Tape Act* will remove planning responsibilities from certain upper-tier municipalities, starting with the Regional Municipality of Peel (which will no longer be dissolved, as discussed further below), Halton, and York. These municipalities will retain their powers over regional roads and services. These entities will lose these responsibilities as of July 1, 2024.

The County of Simcoe, the Regional Municipality of Durham, the Regional Municipality of Niagara, and the Regional Municipality of Waterloo will also have their planning responsibilities removed, but on a date to be named by proclamation of the Lieutenant Governor of Ontario.

According to a notice posted on the Ontario Regulatory Registry, the provincial government intends to put this into place through amendments to O. Reg. 525/97 (Exemption from Approval – Official Plan Amendments). This will exempt the following municipalities from the requirement to obtain approval from the Minister for most official plan amendments adopted after July 1, 2024:

- Halton: City of Burlington, Town of Halton Hills, Town of Milton, Town of Oakville
- Peel: City of Brampton, City of Mississauga, Town of Caledon
- York: City of Markham, City of Richmond Hill, City of Vaughan, Town of Aurora, Town of East Gwillimbury, Town of Georgina, Town of Newmarket, Town of Whitchurch-Stouffville, Township of King

However, these municipalities would still need approval from the Minister in the following circumstances:

- New official plans
- Amendments passed in accordance with municipal comprehensive review process set out at s.26 of the *Planning Act*; and
- Any amendments addressing policies required in accordance with a protected major transit station area.

This release notes that the Minister would retain the authority under the *Planning Act* to intervene if necessary to ensure that any proposed official plan amendments are in accordance with provincial policy.

These lower-tier municipalities would also be responsible for any decisions on land division, including plans of subdivision and consents.

The Ministry states they are seeking feedback on this proposal as well as whether other official plan matters should require ministerial approval, including secondary plans or site-specific official plans. This proposal was posted on May 27, 2024 and the last date for comment is June 26, 2024. Any comments should be delivered by email. Please find the link below to the Registry (https://www.ontariocanada.com/registry/view.do?postingId=47654&language=en)

Area of Settlement
Landowners will be permitted to apply for an expansion of a municipality's area of settlement and appeal decisions on same to the OLT, provided that land does not include land within the Greenbelt under s.22(7.2)(a) and s.34(11.0.4)(a).

The *Development Charges Act, 1997*
This Act will revoke the five-year phase-in of increased development charges that was introduced in Bill 23.

It will also permit municipalities to add the cost of certain development charge background studies as capital costs as development charges.

Parking Facilities
Minimum parking standards can no longer be required by municipalities in certain areas, including any land within an identified protected major transit area, any area in an official plan that surrounds an existing or planned higher order transit station or stop that has certain policies associated with same, or any other area prescribed under this clause. If there is such a parking policy within an existing official plan or zoning by-law, it will be held to be of no effect.

Refund of Fees
This repeals the sections requiring the municipality to refund the application fees of certain planning instruments if the municipality failed to make a final decision on same within 120 days of the application being deemed complete. These sections have been repealed as of June 6, 2024, which was when the Bill received Royal Assent.

If a final decision in respect of a current application has not been made, any refund of fees will be determined as though a decision was made on the day this Bill comes into force, which means no refund will be due.

Motion for Directions on Application
Previously, a landowner was only entitled to make a motion for directions to the Tribunal to determine if sufficient information for an amendment to a zoning by-law, amendment to an official plan, application for site plan control, or an application approval of a plan of subdivision had been provided or if a requirement for said application is reasonable once a decision on same has been provided by the municipality. This bill will permit landowners to make this motion *at any time* after the person or municipality has begun to consult with the municipality in respect of said application. This includes during the pre-consultation stage (as discussed below).

Pre-Consultation
The new Act has now made pre-application consultations voluntary, repealing the previous sections that made this mandatory. Further to the above-noted section, an applicant can also apply to the OLT for directions in the event that the proposed requirements for the pre-consultation does not appear to be reasonable.

Expiry of Subdivision and Site Plan Approvals
It has also set out further clarification regarding the expiry of subdivision approval under ss. 41 and 51, stating that these approvals will not lapse if a permit was issued under s.8 of the *Building Code Act, 1992*. In terms of timelines, it permits an authorized person from the municipality to set a time period that cannot be less or exceed the prescribed period applicable to the development; in the event that a prescribed time period is not applicable, the period cannot be less than 3 years. This is meant to act as a "use it or lose it" incentive to landowners seeking to develop the land.

If subdivision approval was granted before March 27, 1995, approval would lapse at the third anniversary of the date that this section of Schedule 12 to this Bill comes into force.

Exemptions from the *Planning Act*
Publicly-assisted universities or colleges and universities associated with same will not be subject to the provisions of the *Planning Act* or ss. 113 and 114 of the *City of Toronto Act, 2006* when carrying out actions for the "objects of the institution". This will apply to both campuses and any land owned otherwise by the university. The only exception is any land within the Greenbelt. In theory, this will

Under s.62.0.3, community service facilities also will not be subject to any provisions of this Act. A "community service facility" will include the undertaking of a school board, a long-term care home, or a hospital.

The *Hazel McCallion Act (Peel Dissolution), 2023*
This has repealed the dissolution of the Regional Municipality of Peel. Instead, the title of the Act will be amended to be the *Hazel McCallion Act (Peel Restructuring), 2023*.

It will require the transition board appointed in respect of the dissolution will instead provide recommendations on the transfer of powers, responsibilities, or jurisdiction from Peel on land use planning, water and wastewater, stormwater, highways, and waste management. If a lower-tier municipality and/or its local boards intends to enter into a transaction, agreement, etc. between May 18, 2023 and January 1, 2025, they must have regard to the possible transfer of powers, responsibilities, or jurisdiction from Peel to the municipalities. This Bill has retained the limitation on any parties seeking to remedy any damages caused as a result of either the Act or this Bill (s.9).

As the *Cutting Red Tape Act* will entirely remove the planning responsibilities for Peel by July 1, 2024, it raises the question of what role this restructuring committee will serve, particularly as none of the other upper-tier municipalities have such a committee in place.

The *Municipal Act, 2001* and the *City of Toronto Act, 2006*
This Bill would permit a municipality to grant assistance to certain businesses, particularly those that are industrial, in manufacturing, or any sort of commercial enterprise, if directed by the Lieutenant Governor in Council through regulations authorizing a municipality to provide such assistance. This is ordinarily barred under s.106 of the current Act, but the proposed s.106.1 in this Bill would permit a municipality to offer certain forms of assistance for a set period as directed by the afore-mentioned Lieutenant Governor. The regulations authorizing this assistance could be constrain same by setting out the form that the assistance may take, placing conditions, restrictions,

or limitations on same, or requiring that certain conditions be met before any assistance be provided.

Another amendment would permit a municipality to adopt a by-law setting out policies for the allocation of water supply and sewage capacity. This can include a system for tracking said capacity to support approved developments as well as criteria to determine the circumstances for when water supply and sewage capacity is allocated to an approved development, when that allocation is withdrawn, and whether reallocation is possible. The Minister would be able to exempt an approved development or class of developments from the provisions of any by-law passed under this section. I believe this section is designed to prioritise those developments that are "ready to go", as if they do not proceed, they will lose their "allocated" water supply and sewage capacity. This would be contained in a new s.86.1 if this Bill is granted Royal Assent.

Requesting a Zoning Order
The *Cutting Red Tape Act* repeals s. 34.1, which permitted municipalities to pass a resolution to (effectively) request a zoning order from the Ministry. This was referred to as a "Community Infrastructure and Housing Accelerator" order in the relevant provincial press releases.

Instead, the Ministry has put in place the "Zoning order framework" to make requests for an MZO under s.47 of the *Planning Act*.

Draft 2024 Provincial Planning Statement
Please note that a new 2024 Provincial Policy Statement has been proposed. The commenting period has now closed.

With this, the Province proposes to combine the PPS with the Growth Plan. A number of policies will be carried over from the PPS, 2020, many of which will be modified to attempt to meet the Province's goal of increased housing and it will also add several new policies and definitions.

Should the Province adopt this policy statement, the existing PPS and A Place to Grow will be revoked.

Bill 200: Homeowner Protection Act, 2024
Please note that Bill 200 was also passed on June 6, 2024.

The most relevant change was the change to the *Ontario Heritage Act*, which extends the deadline for municipalities to complete the review of the properties listed on their heritage registers. Previously, they were required to complete this review by January 1, 2025; this has now been changed to January 1, 2027. Should the municipality fail to designate these properties by this date, the properties will be removed from the heritage register and cannot be re-listed for a period of five years.

If you have any questions, please feel free to reach out to my contact information at the bottom of the first page.

-SAF