

May 10, 2024

Provincial Planning Policy Branch
777 Bay Street, 13th Floor, Toronto, ON M7A 2J3

Via email: PlanningConsultation@ontario.ca

Re: ERO # 019-8369 (proposed changes to Schedules 4, 9, and 12 of Bill 185, Cutting Red Tape to Build More Homes Act, 2024)

On behalf of the Federation of Ontario Cottagers' Associations (FOCA), we are responding to the ERO Posting # 019-8369 to express our concerns regarding the proposed Bill 185, Schedule 12. FOCA represents 250,000 Ontario families who own waterfront property, advocating for sustainable land use planning and public engagement in developing sound policy, especially concerning the protection of Ontario's freshwater and natural resources.

FOCA is strongly opposed to the current proposal to remove the public's appeal rights for the adoption or amendment of Official Plans (OP) and Zoning By-Laws. As FOCA already expressed in [our comments on Bill 23](#), we were deeply concerned by the proposed removal of these rights in November 2022, but were relieved to see these changes rolled back in Bill 97 in April 2023. It is therefore very disheartening to see this issue resurface.

For over 60 years, FOCA members have actively participated in local Official Plan processes and the Ontario Land Tribunal (formerly the Local Planning Appeal Tribunal). We are deeply concerned about the proposed removal of the public's appeal rights for the adoption or amendment of Official Plans (OP) and Zoning By-Laws. These amendments fundamentally undermine access to justice and thoughtful environmental decision-making.

FOCA strongly recommends removing the following proposed amendments from Bill 18, Schedule 12:

- **Remove sections 3(1), 3(3) and 5(7) of Schedule 12** that seek to remove the public's ability to appeal the adoption or amendment of Official Plans and Zoning By-Laws under sections 17(24), 17(36) and 34(19) of the Planning Act.
- **Remove sections 3(2), 3(4) and 5(8) of Schedule 12.** These sections seek to remove the appeal rights of the public retroactively if a hearing on the merits of an Official Plan or Zoning By-Law has not been scheduled by April 10, 2024.
- **Remove section 34.1 of the Planning Act**, pursuant to section 6 of Schedule 12.
- **Remove or restrict the use of section 47 Ministerial Zoning Orders** to only rare cases and to ensure that there is an evidentiary basis for land use decisions and that the public may participate in local land use planning decisions.
- **Remove sections 4(2), 5(3), 8(1) and 10(1) of Schedule 12, and sections 4(3), 5(4), 8(2) and 10(2) of Schedule 12** that would remove the power of municipalities to require pre-consultation on applications for OP amendments, Zoning By-law amendments, site plan control areas, and plans of subdivision.
- **We support the proposed amendments in sections 8(3) and 10(3) of Schedule 12** which would allow site plan approvals and draft plans of subdivision to lapse.

Our reasoning is outlined on the following pages.

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Revocation of the public's right to appeal the adoption and amendment of Official Plans and Zoning By-Laws:

FOCA opposes the proposed amendments to the Planning Act that would prevent the public from appealing the adoption and amendment of OP and Zoning By-Laws to the Ontario Land Tribunal (OLT).

First, we recommend deleting sections 3(1), 3(3) and 5(7) of Schedule 12. The proposed amendments would limit appeals to “specified persons”, which is narrowly defined in section 1(1) of the Planning Act, and does not include members of the public even if they have participated in the municipality's decision-making process. The proposed amendments, and this narrow definition of specified persons, removes long-standing appeal rights from members of the public.

The proposed amendments would cause serious unfairness, as private developers maintain their rights to appeal. If a municipality does not accept an application for an OP or Zoning By-Law amendment, private developers may still appeal that decision to the OLT. However, if a municipality does approve a development application, even if the proposal is environmentally damaging or may cause public health impacts to the local community, the public would no longer be able to challenge the municipality's decision at the OLT.

FOCA notes that cross-examination on the evidence filed in support of a development application does not occur until the independent tribunal review hearing.

FOCA is opposed to the proposed elimination of the public's appeal rights because this would significantly impede access to justice for members of the public. The revocation of the longstanding right of the public to appeal the adoption or amendment of Official Plans and Zoning By-laws is of serious concern because land use planning decisions often disproportionately impact under-resourced communities and have direct adverse impacts on the environment and the health and safety of the public.

The revocation of the public's appeal rights is contrary to principles of good land-use planning, procedural fairness and natural justice, as persons interested in or affected by land-use decisions should be able to fully participate in and influence such decision-making. It is advisable to ensure that the OLT has a robust appeal authority, and the public is not excluded from appealing to the OLT on important land use planning matters.

In addition, restricting access to the OLT is contrary to sound, participatory decision-making and will likely result in more issues being litigated in the Ontario court system, which lacks the planning expertise of the OLT. **A move to a court-based system for challenging these types of decisions will also have unanticipated consequences, including delays and high costs for all parties.** FOCA is concerned that there could be an increase in court actions relating to the impacts of development after they have been approved. Thus, for instance, neighbours with concerns about noise impacts or environmental impacts from a nearby development may turn to civil causes of action in Court, such as nuisance claims, which would otherwise have been resolved through the administrative tribunal process.

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Court actions are a reactive way of addressing environmental impacts, whereas a hearing before the OLT would allow the tribunal to take proactive measures through the imposition of terms and conditions to prevent potential adverse environmental impacts.

Finally, public appeal rights have been a long-standing feature of the Planning Act, and there has been no persuasive evidence-based reasons put forward by the provincial government to demonstrate that such appeals should now be wholly abolished both retroactively and prospectively. **There is no evidence that any housing supply issues are being caused by the public appealing Official Plan or Zoning By-law decisions.** The narrative that concerned citizens who want to be involved in their community's future growth are the ones creating a housing shortage is misleading and false. The proposed elimination of public appeal rights is not limited to housing matters and would apply to every other type of land use or development requiring Planning Act approval, for instance landfills, incinerators, quarries, or other industrial facilities that may cause off-site adverse impacts to the environment and the health and safety of site neighbours.

FOCA is also concerned that the proposed elimination of the public's appeal rights will have retroactive effect, pursuant to sections 3(2), 3(4), 5(8) of Schedule 12. Bill 185 proposes to eliminate public appeals if the hearing on the merits has not been scheduled by April 10, 2024. With long delays to schedule case management conferences at the OLT, this may automatically terminate a significant number of public appeals. This will have a financial impact on members of the public, who will have their appeals dismissed after having potentially spent significant resources on appeal filing fees and retaining experts and lawyers.

Removal of section 34.1 from the Planning Act:

Previous recent amendments to the Planning Act created a new power of the Minister to make zoning orders at the request of municipalities. Section 34.1 of the Planning Act, along with section 47 of the Planning Act, provides for the Minister to make zoning orders outside of the Planning Act process and without requirements for an evidentiary basis and public input. These orders undermine access to justice for Ontario communities. We therefore support the removal of section 34.1 of the Planning Act. We also recommend removing or amending section 47 of the Planning Act to restrict the use of Ministerial Zoning Orders to only rare cases and to ensure that there is an evidentiary basis for land use decisions and that the public may participate in local land use planning decisions.

Removal of Power of Municipalities to Require Consultation:

FOCA is opposed to proposed amendments to the Planning Act that would remove the power of municipalities to require pre-consultation on applications for OP amendments, Zoning By-law amendments, site plan control areas, and plans of subdivision. The proposed amendments now only require that a municipal council "shall permit" applicants to consult prior to filing their applications. We are concerned about proponents filing incomplete applications. Municipalities have primary authority for making land use planning decisions and need to rely on complete and accurate information to make strong decisions. These amendments will undermine those efforts, especially in a context where the public is now also being prevented from appealing poor decisions on the adoption or amendment of OP and Zoning By-Law amendments, as discussed above.

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FOCA notes that there is no cross-examination on the evidence filed to support a development application until a Tribunal hearing.

These amendments will also likely cause an increase in Court-based litigation as poor land use planning decisions are challenged by community groups outside of the Tribunal process.

Bill 185 also proposes to allow for appeals to the Tribunal by proponents on the completeness of their applications, rather than requiring a short timetable for review by the municipality before facing such an appeal. The lack of timelines for these proponent appeals will put pressure on municipalities to determine an application is complete to avoid an appeal, even if the evidence and information filed in support of the application is inadequate.

We therefore recommend the removal of sections 4(2), 5(3), 8(1) and 10(1) of Schedule 12, and sections 4(3), 5(4), 8(2) and 10(2) of Schedule 12.

Site Plan Approvals and Draft Plans of Subdivision Can Lapse:


FOCA does support new provisions which would allow site plan approvals and draft plans of subdivision to lapse. Environmental conditions and surrounding land uses may change over time. These powers would incent developers to move forward with their plans or lose their approvals. We support the proposed amendments in sections 8(3) and 10(3) of Schedule 12.

In conclusion: Bill 185, Schedule 12, should not be passed without significant amendments.

In FOCA's long experience as advocates for local community groups and as members of the public at the Ontario Land Tribunal and its predecessor tribunals, we are cognizant of the local expertise and insight that will be lost if those appeal rights are revoked.

Land use planning decisions can significantly affect the local watershed, air and health of under-served and under-resourced communities. We urge the Ministry to maintain long-standing appeal rights for the public to protect their communities, health, and the local environment from poorly-conceived development applications.

Respectfully,



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FOCA is a non-profit membership organization representing over 525 lake, cottage, camp, and rural waterfront residents' associations, and the 250,000 families and voters that own waterfront property across Ontario. Waterfront property owners matter to rural Ontario, stewarding 15,000 km of shorelines and 50 hectares of privately-owned waterfront lands from Kenora to Kingston to Lake Erie to north of Temagami. FOCA's 2022 Economic Impact Study confirmed that for every 100 waterfront properties located in a community, 63 jobs are created in Ontario, with 54 of those jobs in the community itself.