CORRA Confederation of Resident & Ratepayer Associations in Toronto

17 November, 2022

To: The Chair and Members of the Standing Committee on Heritage, Infrastructure and Cultural Policy – Bill 23

Re: Bill 23 -More Homes Built Faster Act (2022)

Background

The Confederation of Resident and Ratepayer Associations in Toronto was formed in the late sixties after the amalgamation of the Village of Forest Hill, Village of Swansea and the City of Toronto into the City of Toronto. It was felt there was a need for a collective voice to protect the environment, heritage properties and to encourage participatory planning (i.e. actually involving affected communities in the direction they should be going in) rather than having the Development department and Developers dictate the nature of development.

Bill 23 is a return to the 60's when citizens were allowed to speak and then ignored.

Bill 23 is flawed law on many levels, but CORRA defers to municipalities to discuss in detail the impacts on financing infrastructure, heritage groups to talk about the removal of protections that have existed for decades, and for environmental groups and conservation authorities to set out the literal watering down of environmental protections and the role of conservation authorities.

Removal of Third-Party Appeals from Minor Variance, Consents and Other Matters

I presume the Province of Ontario has considered the ethical and moral issues with removing the ability of neighbours and the community to effectively have a voice in planning matters directly impacting them. No doubt developers and speculators are thrilled at the thought of no longer worrying abut those pesky people whose bottom line is the character of the community not money.

The removal of third-party appeals will actually bog down the Committee of Adjustment process. While CORRA cannot speak for the process used by Committees outside the City of Toronto, we can speak directly to the flawed Hearing process in the City of Toronto. Presently the applicant choses when to file an application. Often, they speak with the City's Development Department, Forestry, Transportation and for the moment TRCA. The applicant then files the

minor variance and/or consent application and the community and neighbours have 15 days to organize, understand the planning issues and perhaps hire a lawyer or planner to help them. The Committee of Adjustment hears between 20 and 60 matters each hearing day taking 5 to 10 minutes for unopposed matters and normally 15 to 30 minutes for opposed matters. It then renders a quick oral decision followed by a boiler plate approval or dismissal with small changes re conditions but no reasoning on the four tests.

This is contrary to the principles of natural justice and fairness; however, the Committee has been allowed to operate this way by the Courts because there was right of appeal to the OMB (now OLT) and now the TLAB (trial de novo) allowing a full Hearing.

See Regina v. London Committee of Adjustment [1960] O. R. 225 (Ontario Court of Appeal) – 1960 Can LII 162 (ON CA). Page 11 the Court ruled that the Committees of Adjustment are given the power to affect the rights of owners and occupants of the lands which are the subject of applications and the rights of ratepayers. On page 12 it found the Committee had a duty to act judicially and, as such, are subject to orders of certiorari and mandamus. Page 14 the Court noted there is a right of appeal to the OMB and as such normally the Court would not rule on the matter until the OMB dealt with it. In the case before it there had been no appeal so the Court stepped in.

By prohibiting third party appeals where there is no ability to have a full hearing by appeal as required by the Judicial Review Act and the Statutory Powers of Procedure Act, this will permit the Courts to step in and require the Committee of Adjustment to conduct a full and fair hearing in accordance with the rules of natural justice.

Sooner or later a third party, who no longer has a right of appeal from the Committee of Adjustment, will go to the Courts since there is no remedy under the two acts.

The 1960 decision remains law. The Judicial Review Act and the Statutory Powers Procedure Act (SPPA) codified common law.

Here are the requirements under the SPPA:

1. s. 10 the right to be represented:

2. S.10.1 the right to call and examine witnesses and present evidence and submissions and to conduct cross-examinations of witnesses at the Hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceedings.

3. S. 16 the Tribunal will give its final decision in writing and will give the reasons in writing therefore if requested by the party.

Based on the case law as set out in Vincent v. De Gasperis (2005)51 O.M.B.R. 1 (Divisional Court) The Committee in its reasons will have to set out the basis for its decision and how granting or refusing the application meets the four tests and not simply a boiler plate recitation of the four tests but a full analysis. I doubt any opposed matter will be resolved in under an hour and most may take half a day or more. The back log at the Committee will become horrendous. At the present moment, most approvals are not appealed because of the costs of going to the TLAB.

Indirectly the removal of third-party appeals may well have a curative impact on the Committee of Adjustment because the odds are a neighbour or a ratepayer group will go to court for a ruling and succeed and the ruling will apply to all Committee of Adjustment throughout the Province of Ontario.

HERITAGE

While CORRA will defer to the Heritage experts on this, the proposal to remove all listed properties which do not have an explanation for them being listed and once removed, prohibiting them from going back on the register for 5 years, is excessive and assumes ill will in the original listing. Given the number of listed properties in Toronto, one year is insufficient time to review and provide grounds for them being listed. A longer time would make sense for the review. Alternatively set out a process whereby an owner can request for the listed property to be removed and give the City of Toronto 45 days to either provide grounds or delist it.

CONSERVATION AUTHORITIES

Again, CORRA will defer to detailed comments that will come from the Authorities but notes the important role the TRCA plays in planning and it is better there be early involvement. In addition, we fail to understand why municipalities are prohibited from relying on the expertise of conservation authorities in their area, especially smaller municipalities which may not have staff with that expertise.

DEVELOPMENT CHARGES, ETC.

Prior to the creation of subdivision agreements, development charges and section 37, a developer appealed to the OMB over the refusal of Oakville to approve his subdivision. The OMB approved it subject to the condition that he connect his development to Oakville sewers some considerable distance away. The developer appealed to the courts which ruled the OMB could not impose the condition. The developer went back to the OMB and this time the OMB refused the development as premature since there were no sewers. The developer then went back to the courts. The courts ruled the OMB was correct, there was no requirement in

law to force the municipal tax payers to support his development. The Developer was told to wait until Oakville extended its trunk sewers to his area in accordance with their 20-year plan.

It is open to the City to refuse development due to lack of infrastructure, unless the government intends to order the general ratepayer to support development from the property tax base.

Thank you for allowing CORRA to make this presentation.

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