



Federation of Rental-housing
Providers of Ontario



FRPO Response to Bill 139 Changes to OMB

August 2017

About FRPO

The Federation of Rental-Housing Providers of Ontario (FRPO) is the largest association in Ontario representing those who own, manage, build, finance, service and supply residential rental homes. Our membership includes a diverse group of rental property owners and managers, from those with one small building or a single rental unit, up to the largest property management firms and institutional owners. Today, we represent more than 2,200 members who own or manage over 350,000 units across Ontario.

Introduction

FRPO welcomes the opportunity to provide comments on *Bill 139 – Building Better Communities and Conserving Watersheds Act, 2017* as introduced by the Minister of Municipal Affairs on May 30th of this year.

Our interest is focused specifically on changes to the Ontario Municipal Board (OMB) and the effect that they will have on the overall land use planning approvals system, and the impact that such change could have on the supply of rental housing in Ontario.

Current State of Rental Housing

The lack of an adequate supply of housing is a serious problem in Ontario. In particular, there is a shortage of purpose-built, rental housing in many of Ontario's larger communities.

Canada Mortgage Housing Corporation's 2016 figures showed a vacancy rate of 2.1 per cent for the province as a whole with the City of Toronto facing an even worse situation with vacancies representing 1.3 per cent of total stock. Vacancy rates in the broader Greater Toronto Area have decreased from an average of 3.2 per cent to 1.4 per cent since 2007.

The situation in the newer stock, built since 2005, is even worse. Results from Urbanation's Q2 2017 survey indicate a vacancy rate of nearly zero, 0.1 per cent to be precise.

These figures represent the lowest vacancy rates in many years. As context, the provinces of Saskatchewan and Alberta both had a vacancy rate exceeding 8 per cent in 2016.

Concerns with Changes

FRPO supports the government's stated overall goal of improving the performance of the land use planning and appeals system.

We are concerned, however, that given the shortage of housing supply, and the supply in the rental housing sector in particular, that any change must be carefully assessed. Our main

concern with the proposed changes are regarding measures that are likely to either delay approvals due to additional complexities or outright reduce the amount of units coming on to the market due to new restrictions on appeals.

1. Restrictions on Appeals

The proposed changes will limit the scope of what can be appealed through the proposed Local Planning Appeal Tribunal (LPAT) and on what basis.

First, Bill 139 includes new subsections of the *Planning Act* restricting appeals concerning the adoption or approval of an official plan to issues of consistency or conformity with provincial plans and policy statements. Similar amendments are made with respect to appeals of refusals and non-decisions on requests to amend official plans and appeals related to zoning by-laws.

In most cases broad-based provincial policies and plans are inadequate to address all of the complexities associated with site-specific issues. Limiting appeals to conformity and consistency with higher level planning documents may result in challenges proceeding with appeals of policies to increase supply of rental housing such as ones that establish maximum heights and densities.

Land use planning is inherently political. The Provincial Policy statements provide a guide to decision makers, but many projects pit the interest of established neighbourhoods against provincial interests such as intensification.

As is well known, local politicians are elected locally. It is well understood that ratepayer groups tend to oppose projects which bring intensification to established neighbourhoods. In the experience of our members, many municipal politicians choose to cater to local resident interests, when confronted with a choice between provincial intensification policy and local politics.

In our view, the OMB has historically provided an essential check on local politics, and has served to ensure that the provincial policy interests are upheld.

Essentially its purpose has been to take the politics out of planning and ensure the primacy of the Provincial Policy interest.

Limiting what can be appealed to the LPAT from the OMB's original scope brings a broad suite of planning decisions back to local politicians driven by well-organized NIMBY groups.

Second, the proposed elimination of "de novo" hearings for a majority of land use planning appeals is also problematic. These hearings allow for the best planning decision to be made.

They ensure that decision makers have the best information. In a “de novo” hearing, the appeal body has the benefit of hearing all arguments from both sides.

The proposal to remove “de novo” hearings will limit the appeal body to simply determining whether the original decision was reasonable given the evidence before the Council at the time. This is a lower standard of review to determine what would be the best outcome, having regard to evidence-based planning, and due considerations of all evidence.

We are concerned that the elimination of “de novo” hearing will reduce the overall quality of the review function offered by the Tribunal, and bias the process in favour of what was before the Council, rather than allowing for a full consideration of how the project, on its merits, fits with provincial policy and the local Official Plan.

2. Additional Complexity

At a time when new housing supply, including rental, is most urgently needed, we are concerned that the new scheme will lead to increased complexity and delay in process, potentially elongating the overall “time to market” of new stock. “Appendix A” contrasts the current appeals process with the appeals process contemplated by Bill 139.

In the current system, a decision of Council can be appealed to the Ontario Municipal Board which has authority to make a final decision on the matter. The proposed Bill 139 scheme would add steps to the process. The mandatory case management conference, if unsuccessful in achieving a settlement, leads to a hearing.

The new system would force a successful appellant to return for a second time to the same Municipal Council, to make the same case on the same issue. If the Council persists in making a reversible error, the Tribunal then has the authority to make a binding order overturning the decision.

In the view of our members, this cumbersome additional step will add time and delay and expense, to no benefit to the functioning of the system.

This would go counter to the efforts made by the Province to proceed with measures to incent the construction of new rental housing units.

Conclusion

FRPO agrees that the land use planning appeals process should be streamlined to ensure faster, fairer and more affordable hearings. However, we are extremely concerned with measures which will either delay approvals or reduce the future supply of rental housing units by limiting what can be appealed and on what basis.

In the current environment, with recent changes to the rent control regime, measures to increase the supply of purpose-built rental units are of utmost importance. The government has taken some action, but other policies including ones mentioned in this submission will further strain new supply from coming to market, impacting affordability.

The government should amend the proposed legislation to remove new restrictions on what can be appealed and continue with “de novo” hearings where decisions are to be made on the basis of all evidence and best planning considerations.

Given the importance of rental housing, if the government proceeds with the current draft of the bill, then special consideration should be given to expedite new purpose-built rental housing projects to avoid potential delays or worse them not proceeding as a result of changes in Bill 139.

The Ministry of Housing is working towards establishing a Housing Supply Team with dedicated provincial employees to identify barriers to specific housing development projects and work with developers and municipalities to find solutions. The government should equip the team with necessary tools and direct them to expedite purpose-built rental house projects in order to address the rental housing crisis that currently exists.

Appendix A

