

November 17, 2022

Ministry of the Attorney General
Corporate Policy Unit
720 Bay Street, 3rd Floor
Toronto, ON M7A 2S9

Submitted via email and online through Ontario's Regulatory Registry

Dear Ministry of the Attorney General:

RE: Proposal #22-MAG011 – Proposed Amendments to the *Ontario Land Tribunal Act, 2021* (Schedule 7 of Bill 23, *More Homes Built Faster Act, 2022*).

The Ontario Federation of Agriculture (OFA) is the largest general farm organization in Ontario, proudly representing more than 38,000 farm family members across the province. OFA has a strong voice for our members and the agri-food industry on issues, legislation and regulations governed by all levels of government. We are passionate and dedicated to ensuring the agri-food sector and our rural communities are included, consulted, and considered in any new and changing legislation that impacts the sustainability and growth of our farm businesses.

The Ontario Land Tribunal (the "Tribunal") has been an essential mechanism for many of our members to appeal and resolve disputes related to land use matters as they pertain to their farm properties, operations, and agriculture more broadly. As such, OFA appreciates this opportunity to provide input to #22-MAH011, the Proposed Amendments to the *Ontario Land Tribunal Act* (the "Act"), as per Schedule 7 in the *More Homes Built Faster Act, 2022* proposes several amendments to the Act. These mainly deal with clarifications regarding the process of an appeal and related rules.

Dismissal of Proceedings due to an Undue Delay

Proposed changes to the Act would provide that the Tribunal may dismiss a proceeding without a hearing if the Tribunal believes that the party who brought the proceeding has contributed to the "undue delay" of the proceeding. The Tribunal may not dismiss a proceeding under these proposed provisions until it has given notice and considered any parties' submissions.

OFA agrees that proceedings at the Tribunal should advance promptly and efficiently. The dismissal of proceedings because of undue delay may be necessary, and notice and consideration of submissions from parties before doing so is essential. However, there is little clarity around what would constitute an "undue delay." OFA requests that the Ministry make these

criteria for classifying an "undue delay" clear in any regulation, rules of practice and procedures, and guidance material related to the Tribunal.

Cost Awards

Currently, s. 20 of the Act provides that the Tribunal may, subject to any other Act, fix the costs of and incidental to any proceeding, and order a party to the proceeding to pay the costs, in accordance with the rules. The proposed change would include additional language in the statute to clarify that the Tribunal has the power to order an unsuccessful party in an appeal to pay a successful party's costs.

Historically, costs are not automatically awarded to a successful party at the Tribunal, but the winning party may make a motion to do so. Such a "loser pays" model is common in civil court proceedings but has not historically been used in land use planning matters at the Tribunal. Usually, cost orders are rare and generally limited to circumstances where it has been proven that the party has demonstrated unreasonable, frivolous, vexatious, or bad-faith conduct, such as deliberately attempting to delay a development project.

Matters appealed to the Board tended to be of broader community interest, such as the preservation of agricultural land from development, rather than disputes between neighbouring property owners. Allocating cost awards has exposed farmers to risks in bringing cases involving agricultural land use matters to the Tribunal. The risk of facing a cost order may incentivize settlement or deter them from appealing altogether. OFA is concerned about upholding a "loser pays" model at the Tribunal, as it is unclear when a cost awards order may be considered.

To protect Ontario's farmers as citizens who wish to appeal developments threatening the loss of farmland and agricultural viability in their communities (as protected by the PPS), OFA would like to see cost awards eliminated altogether. Should cost awards remain an option, we urge that cost awards be stringently outlined in legislation. For example, there should be strict limits on these awards, and procedural safeguards must be in place to limit the circumstances that may give rise to costs. If costs are awarded from a hearing, the claims for expenses incurred by the winning party are substantiated through studies, reports, or other forms of evidence submitted to the Tribunal during a hearing.

Regulation-Making Authority – Addressing Backlog, Priority Projects, and Resourcing

Proposed changes would allow for regulations requiring the Tribunal to prioritize the resolution of specific projects or proceedings, such as those related to housing development. Further, the consultation states, "the government would also invest in more adjudicators and other resources for the OLT to speed up proceedings, resolve cases faster, hear priority projects sooner, and reduce the number of outstanding cases so that more housing can be created." While OFA sees these changes as improvements, we see a greater need to reassess the Tribunal and reform it altogether.

The Affordable Housing Task Force Report¹ and the Office of the Auditor General of Ontario Value-for-Money Audit² explain that the Tribunal is severely inundated with a backlog of appeals. Many appeals may not be meritorious or otherwise contribute to the supply of 'missing middle' higher-density housing built in *existing* neighbourhoods, settlement areas, and urban boundaries. Specifically, to weed out or prevent appeals launched to delay projects and prioritize and assess appeals worthy of review, such as those which would increase housing quickly and sustainably. Too often, proponents depend on the Tribunal, a quasi-judicial body, to greenlight projects that the municipality should have approved and already conform to municipal requirements, like Official Plans and Zoning By-laws. As a result, the Tribunal currently faces a backlog of more than 1,000 cases – impacting not only housing, but all other matters of provincial interest, such as farmland protection and agricultural viability, employment opportunity, public health and safety, sustainable public transit, and more.

Ontario farmers increasingly need an appeal process for decisions impacting agriculture, rendered by increasingly urbanizing municipalities whose councils may not apply an agricultural lens to their decision-making processes. For greater clarity, OFA respects the rights of citizens to launch appeals to the Tribunal based on procedures and reasons outlined in the *Planning Act*. We support our members and other citizens in participating in the public planning process and providing their input. However, we see an abuse of the Tribunal because of changes to the hearing formats, procedures, and legislation over the years, contributing to frustration amongst all parties in trying to achieve the best planning outcome which addresses the public interest – not just a *single* interest, such as maximizing housing supply as quickly as possible. Ideally, the planning outcome conforms to the Provincial Policy Statement (PPS) and achieves objectives in balancing provincial interests, such as farmland protection and growth management. Concerning Tribunal reform, OFA offers the following comments:

OFA maintains its stance on limiting appeals to exclude municipal decisions that conform to the PPS, provincial plan, or other, preserving the end of de novo hearings as part of the Tribunal hearing format, and limiting hearings to those based on errors in law or procedures. We firmly believed then, and still do, that the sole role of the Tribunal is to determine if the decision under appeal is the "correct" decision based on applicable laws, procedures, and policies in Ontario's land use planning policy framework. Doing so otherwise would revert to a Tribunal hearing format that is too time-consuming and costly, rendering decisions that are subjective and non-compliant with provincial policy. We recommend that decisions of Tribunal be based solely on conformity to the PPS, applicable provincial plan, provincial guidance material (e.g., MDS calculations), or a lower-tier Official Plan's conformity with its upper-tier policies.

Lastly, we continue recommending the provincial government reinstate the 'Local Planning Appeal Support Centre', or a format like its prior operations before its shutdown and provide it with the staff and financial resources to fulfil its intended role. OFA previously opposed this move to end the Support Centre as private citizens need information and guidance on how the Tribunal Hearing formats work, including necessary appeal-related documents and processes behind launching an appeal.

¹ Housing Affordability Task Force, and Ministry of Municipal Affairs and Housing. "Report of the Ontario Housing Affordability Task Force." Queen's Printer for Ontario, February 8, 2022. <https://files.ontario.ca/mmah-housing-affordability-task-force-report-en-2022-02-07-v2.pdf>.

² Office of the Auditor General of Ontario. "Value for Money Audit: Land-Use Planning in the Greater Golden Horseshoe." Value-for-Money Audit. Ontario, 2021. https://auditor.on.ca/en/content/annualreports/arreports/en21/AR_LandUse_en21.pdf.

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OFA appreciates the opportunity to provide our feedback and agricultural perspectives on the proposed changes to the *Ontario Land Tribunal Act*. We look forward to working with the provincial government and our municipal counterparts to sustainably grow our Province's housing supply and communities without sacrificing democratic principles and responsible planning outcomes in the land use decision-making process.

Sincerely,



Peggy Brekveld
President

cc: The Honourable Doug Downey, Minister of the Attorney General
The Honourable Steve Clark, Minister of Municipal Affairs and Housing
The Honourable Lisa Thompson, Minister of Agriculture, Food, and Rural Affairs
OFA Board of Directors