



What are third-party appeal rights?

Third-party appeals under the Planning Act (the “Act”) are appeals filed with the Ontario Land Tribunal by an interested member of the public on decisions pertaining to local land use, even if they are not the owners of the land in question.

Concerned citizens who want to be involved in their community’s development are given the opportunity to challenge a decision in a fair and transparent way through a review by an independent tribunal. These rights to appeal were impacted by recent amendments to the Act, following Royal Assent of Bill 23, the More Homes Built Faster Act, 2022 (the “Bill”). The limitations to third-party appeal right are discussed below.

Third-party appeal rights prior to the amended Act

Prior to the amendments, the Act granted extensive appeal rights to third parties with respect to the following matters:

- Local land use and planning decisions and their amendments – s. 17(36) of the Act. These decisions relate to where new housing, industry, offices and shops will be located; what services like roads, watermains, sewers, parks and schools will be needed; community improvement initiatives etc.
- Passing of zoning by-laws and amendments to the by-laws – s. 34(19) of the Act. A zoning bylaw controls the use of land, for example, where buildings and other structures can be located; the types of buildings permitted and how they may be used; the lot sizes and dimensions; building heights and densities; setbacks from the street etc.
- Granting of minor variances – s. 45(12) of the Act. A minor variance is a certificate allowing a property owner to obtain a building permit even though their development proposal does not comply precisely with the zoning by-law.
- Granting of consents – ss. 53(19) and (27) of the Act. A consent is the approval required to subdivide land without the requirement of a plan of subdivision.

Under the Act prior to the amendments, a third party could be “a person” who “had made oral submissions at a public meeting or written submissions to the council” with respect to a specific matter. That means that any interested member of the public could challenge a land-use decision in the four categories listed above, so long as that person was involved in the deliberations prior to the decision being made.

Third-party appeal rights after the amended Act

The Bill limited who can be considered a third party for the last two categories listed above: (i) minor variances and (ii) consents. In these two circumstances, a third party is no longer any person, but a specified person, which is limited to a subset of public bodies involved in power generation, railway operation and telecommunication infrastructure. This specified person is still required to satisfy the oral/written submission requirements to gain standing.

In effect, this means that neighboring property-owners or interested members of the public, who are concerned about the granting of a building permit or property subdivision, have no standing to appeal, irrespective of their involvement in earlier stages of the decision. This restriction is effective immediately. It also applies to existing third-party appeals of minor variance and consent decisions for which no hearing date was set by October 25, 2022.

While these changes curtail some third-party appeal rights, the original Bill 23 proposed to extend these limitations to all four categories of third-party appeal rights. The revised Bill withdrew several restrictions previously proposed, leaving untouched third-party appeal rights of official plans and zoning by-laws. This is significant. Official plans set future directions of communities and community-wide policies, while zoning by-laws establish the specific boundaries of particular types of land use within the community. Developing official plans and zoning by-laws with public input is critically important, as it invites healthy citizen engagement in the fate of their communities and assures that decisions are responsive to local circumstances. Had these appeal rights been curtailed, most of the land use cases in which CELA assists clients would have been precluded from being heard.

The chart below describes current third-party appeal rights.

Section of the Act	What can be appealed?	Who is considered a third-party that can appeal?	Impacted by the Bill?
s. 17(36) "Official Plan"	All or part of a planning decision, or its amendment.	Any person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.	No change
s. 34(19) "Zoning Bylaws"	Zoning by-law or its amendment.	Any person or public body who, before the by-law was passed, made oral submissions at a public meeting or written submissions to the council.	No change
s. 45(12) "Minor Variances"	A decision to grant a minor variance.	A specified person, which is limited to public bodies involved in power generation, railway operation and telecommunication infrastructure. Also subject to having made oral/written submissions at a public meeting before the decision.	Yes – limited scope.
s. 53(19),(27) "Consents"	A decision to grant a consent.	A specified person, limited to public bodies involved in power generation, railway operation and telecommunication infrastructure. Also subject to having made oral/written submissions at a public meeting before the decision.	Yes – limited scope.

For more information, contact info@cela.ca. Information is current as of February 2023.