

REPORT TO: Conservation Halton Board of Directors

REPORT NO: # CHBD 02 21 05

FROM: Barbara J. Veale, Director, Planning & Watershed Management

DATE: March 25, 2021

SUBJECT: Proposed Planning Act Amendment Regarding Minister's Zoning Orders (MZO) ERO No.: 019-3233 / CH File No.: PPO 062

Recommendation

THAT the Conservation Halton Board of Directors **endorses the submission of comments to the Province recommended in the staff report entitled "Proposed Planning Act Amendment Regarding Minister's Zoning Orders (MZO),**

And

That the Conservation Halton Board of Directors **directs staff to circulate the staff report entitled "Proposed Planning Act Amendment Regarding Minister's Zoning Orders (MZO) to watershed municipalities, Members of Provincial Parliament, and adjacent Conservation Authorities for their information.**

Executive Summary

On March 4, 2021, the Minister of Infrastructure introduced Bill 257, *An Act to enact the Building Broadband Faster Act, 2021* and to make other amendments in respect of infrastructure and land use planning matters, which received First Reading by the Legislative Assembly of Ontario on that same day. Schedule 3 to Bill 257 proposes to amend the *Planning Act* to provide that Minister's Zoning Orders (MZO) "are not required and are deemed to never have been required to be consistent with [provincial] policy statements..." It is proposed that this provision would not have effect on an MZO that applies to land within the Greenbelt Plan Area.

Also, on March 4, 2021, the Ministry of Municipal Affairs and Housing (MMAH) posted a corresponding notice on the *Environmental Registry of Ontario* to implement the above changes to the *Planning Act*. These proposed changes are contrary to the purposes of the *Planning Act* and the principles of land use planning in the Province of Ontario.

CH staff recommend that through Conservation Halton's response to the ERO posting, the provincial government be requested to:

- 1) reconsider and withdraw the proposed change to the *Planning Act*,
- 2) develop criteria for the use of MZOs, and
- 3) work closely with municipalities and other agencies involved in local planning processes to streamline local planning processes to expedite development, while maintaining the integrity of the purposes outlined in section 1.1 of the *Planning Act*.

The following report provides background and rationale for this recommendation.

Report

Section 47 of the *Planning Act* allows the Minister of Municipal Affairs and Housing to make Minister's Zoning Orders (MZOs), to govern land uses within areas subject to the order. An MZO prevails over any other zoning by-law in effect in the area, giving the Minister complete authority to regulate land use on specific lands.

Historically, MZOs were used in special circumstances to address a matter of heightened significance to the Province or to impose controls where local planning instruments did not exist or were insufficient, particularly in areas lacking municipal organization. While MZOs were used sparingly in the past, there has been a significant increase in their use in the past two years, often at the request of municipalities with robust planning systems to expedite certain developments. For example, between 2000-2019, only 5 MZOs were issued. In 2020, 26 MZOs were issued, most within the GTA. In 2021, 7 MZOs have been issued to date. These figures do not include zoning orders that were issued and subsequently revoked.

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Also, on March 4, 2021, the Ministry of Municipal Affairs and Housing (MMAH) posted a corresponding notice on the Environmental Registry of Ontario regarding the proposed changes. The notice states:

The proposed changes would permit the Minister of Municipal Affairs and Housing to take other considerations into account when making decisions to support strong communities, a clean and healthy environment, and the economic vitality of the Province.

The Minister's zoning authority is a critical tool that can be used to support and expedite the delivery of government priorities, including transit-oriented communities, affordable housing, long-term care homes and strategic economic recovery projects by removing potential barriers and delays. These changes would ensure that the Minister, acting at their discretion, has the authority to provide their complete support for these critical projects.

Comments on the proposal must be submitted to the Environmental Registry of Ontario by April 3, 2021.

Background

The *Planning Act* sets out several purposes under section 1.1. The first two purposes are as follows:

- a) To promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act,
- b) To provide for a land use planning system led by provincial policy.

Since 1983, *Planning Act* has enabled the Province to issue policy statements on matters relating to municipal planning that are of provincial interest. Decisions made by municipal councils, local boards, planning boards, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter shall be consistent with the policy statements that are in effect on the date the comments, submissions or advice are provided.

The most recent statement of provincial policy is the Provincial Policy Statement, 2020, which came into effect on May 1, 2020. The policies are grouped into three main areas with a statement of purpose for each one that is grounded in the concept of sustainable development and worth recalling in the context of Bill 257:

1) *Building Strong and Healthy Communities*

Ontario's long-term prosperity, environmental health and social well-being depend on wisely managing change and promoting efficient land use and development patterns. Efficient land use and development patterns support sustainability by promoting strong, liveable, healthy and resilient communities, protecting the environment and public health and safety, and facilitating economic growth.

2) *Wise Use and Management of Resources*

Ontario's long-term prosperity, environmental health and social well-being depend on conserving biodiversity, protecting the Great Lakes, and protecting natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources for their economic, environmental and social benefits.

3) *Protecting Public Health and Safety*

Ontario's long-term prosperity, environmental health and social-well-being depend on reducing the potential for public cost or risk to Ontario's residents from natural or human-made hazards.

February 2021, CH Comments

In response to a recent provincial consultation on expanded MZO powers enacted in 2020 (ERO No. 019-2811) CH provided the following comments to the Ministry:

Minister's Zoning Orders that conflict with provincial policies and plans should be enacted sparingly and only in exceptional cases. We recommend that the order include a detailed justification as to why non-compliance with provincial policies and plans is defensible. Otherwise, the integrity of provincial and local planning processes, policies, plans, and intended outcomes may be undermined.

Proposed Changes to the Planning Act

The proposed changes to facilitate the zoning of land through an MZO *that is not required, and deemed to never have been required to be consistent with policy statements*, are contrary to the purposes of the *Planning Act* and the principles of land use planning in the Province of Ontario..

The concepts of building strong and healthy communities, wise use and management of resources and public health and safety enshrined in the *Planning Act* are fundamental and embody public interest considerations that every previous minister entrusted with administration of the *Planning Act* has been bound by since the policy statement concept was enacted in 1983.

It is not reasonable that these considerations should only apply to lands that fall within the Greenbelt Plan Area, or that a Minister should not ensure that there is no conflict with the Province's stated position and policies, as good land use planning outcomes are needed across the entire province. Moreover, there are no public notice or appeal provisions associated with the current MZO power. Since, the MZO power overrides all approved municipal plans and associated public and agency consultation, it is essential that a transparent set of public-interest policies guide the Minister in his decision-making, as is currently required by the Act.

While there may be valid circumstances to expedite certain development through the issuance of an MZO, it should not be at the expense of good planning. The Ontario Professional Planners' Institute (OPPI) (attached) (Appendix B) raised the following concerns in December 2020 regarding the increased use of MZOs and recommended a cautionary approach for three reasons:

- Potential delays as planning approvals are shifted from the local municipality to the Province.
- Uncertainty and risk for real estate markets which would introduce unexpected impacts on neighbouring properties
- Public trust would be undermined as the use of an MZO is not transparent or published.

OPPI provided two recommendations to address the above concerns including the introduction of provincial criteria on the use of MZOs for provincially significant priority projects and more reliance on measures to streamline the overall municipal planning process equitably in the provincial and municipality interests for all projects. CH staff support these recommendations and continue to work closely with member municipalities and the development community to further streamline and harmonize planning and regulatory processes through renewed Memoranda of Agreement and ongoing dialogue.

Based on the above rationale, staff recommend that through Conservation Halton's response to the ERO posting, the provincial government be requested to:

- 1) reconsider and withdraw the proposed change to the *Planning Act*,
- 2) develop criteria for the use of MZOs, and
- 3) work closely with municipalities and other agencies involved in local planning processes to streamline local planning processes to expedite development, while maintaining the integrity of the purposes outlined in section 1.1. of the *Planning Act*.

Impact on Strategic Goals

This report supports the Metamorphosis strategic theme of Protecting our natural, cultural, and scenic assets. The theme is supported by the objective to strengthen conservation, restoration and responsible management of natural resources with a focus on evidence-based programs. It also supports the theme Taking care of our growing communities and the objective to remain dedicated to ecosystem-based watershed planning that contributes to the development of sustainable rural, urban, and suburban communities.

Financial Impact

There is no financial impact to this report.

Signed & respectfully submitted:


Barbara J. Veale
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Approved for circulation:


Hassaan Basit
President & CEO/Secretary-Treasurer

FOR QUESTIONS ON CONTENT:

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