Minister’s zoning orders come to the fore in a pandemic

November 20, 2020

Introduction

Section 47 of the *Planning Act*[1] allows the Minister of Municipal Affairs and Housing (Minister) 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. Despite being a rarely or judiciously used power for decades, the making of MZOs is a frequent occurrence in 2020. This order is a necessary tool for emergency response and economic recovery or an unprecedented circumvention of local planning processes, depending on who is assessing the situation.

The *Planning Act* has long afforded the Minister significant discretionary authority to directly zone land; however, the use of this extraordinary power was often limited to areas without municipal organization, cases of emergency or where there was a pressing provincial objective at stake.

Typically, a person or municipality seeking to change a zoning by-law must adhere to the process set out in section 34 of the *Planning Act* and O. Reg. 545/06. This process provides for notice of the proposed amendment, public consultation and, generally, a right of appeal to the Local Planning Appeal Tribunal (the Tribunal).

In the case of an MZO, the Minister does not need to give notice or hold a hearing before issuing an order. The Minister must give notice within 30 days of the decision in the manner the Minster deems appropriate. MZOs are enacted as regulations under the *Planning Act* and thus published in the Ontario Gazette. Notice of the decision must be lodged in the office of the clerk of the municipality(ies) in which the lands are situated, or the land registry office in territories without municipal organization.

Recent legislative history – the MZO gets stronger

In April 2017, the former Liberal Government introduced and passed Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*,[2] making sweeping changes to the land-use planning regime in Ontario. Among the many changes,

including to the *Planning Act* in particular, Bill 139 introduced significant changes to section 47 of the *Planning Act*.

Previously, where an application was made to the Minister to amend or revoke an MZO, a person or public body could request that the application be referred to the former Ontario Municipal Board (OMB). In such a case, the Minister was required to refer the application to the OMB to hold a hearing, and the OMB had the authority to amend or revoke the MZO, or refuse to do so. The Minister had some authority to refuse a referral request, akin to the statutory bases for dismissing an appeal without hearing, such as there being no apparent land use planning grounds for the request, or the request being deemed frivolous, vexatious or for delay.

After the Bill 139 amendments, a person or public body had no right to request the referral, while the Minister maintained their discretionary power to do so.

The Bill 139 amendments also changed the powers of the Tribunal, where the Minister referred the application to amend or revoke. Previously, the Tribunal was empowered to make a "decision" on the matter (subject to Cabinet's ability to confirm, vary or rescind the decision where the Minister had notified the OMB of a provincial interest[3]). Following Bill 139, the Tribunal could provide a "written recommendation" to the Minister, supported by reasons but the ultimate decision rested with the Minister.

When making changes to the *Planning Act* in Bill 108, the *More Homes, More Choice Act, 2019,*[4] the current Conservative government did not make any amendments to the MZO power. However, the government did propose a new planning instrument in December 2018– the Open-for-Business Planning By-law – when it introduced Bill 66, *Restoring Ontario's Competitiveness Act, 2019,* for first reading in the legislature.

Although Bill 66 was ultimately amended by the Standing Committee on General Government to remove this power, there are parallels between this proposed local planning tool and MZOs that foreshadow the Minister's recent willingness to use MZOs more frequently than in the past (especially in cases where local municipalities make a request to the Minister to exercise this power).

One key distinction is that the Open-for-Business Planning By-law would have been exempt from a number of Acts, including section 3(5) of the *Planning Act*, the *Greenbelt Act, 2005*, the *Places to Grow Act, 2005*, and the *Clean Water Act, 2006.* Unlike the Open-for-Business Planning By-law, a decision to make an MZO must be consistent with the Provincial Policy Statement, and have regard to matters of provincial interest;[5] obligations to conform to certain provincial plans, such as the Greenbelt Plan, vary.[6] Notably, an MZO does not have to conform to a growth plan issued pursuant to the *Places to Grow Act, 2005*,[7] or the Oak Ridges Moraine Conservation Plan[8] and relevant official plan policies.

Bill 197 and the "Enhanced MZO"

In addition to MZOs governing zoning, section 47 has previously (and continues to) allow MZOs respecting interim control by-laws, temporary use provisions, and minor variances.

As of July 21, 2020, and pursuant to Bill 197, the *COVID-19 Economic Recovery Act, 2020*,[9] the Minister can now make what are becoming known as "Enhanced MZOs"[10] relating to any "specified land" to,

- Provide that traditional site plan control in respect of all or part of the specified land does not apply;
- Require a form of site plan agreement between the landowner and the municipality, and impose directions in respect of the agreement, including specified matters that shall not be dealt with in the agreement, or how certain matters shall be addressed; and/or
- Exercise inclusionary zoning (affordable housing) powers, which could direct that a specified building or development of specified lands include a prescribed number of affordable housing units, the term for which such units shall be affordable, and a host of other powers under subsection 35.2(2). This power resides in the Minister regardless of whether the host municipality has an official plan with policies addressing inclusionary zoning.

All of the above powers were previously limited to municipalities, and were beyond the scope of the pre-Bill 197 MZO regime and the Minister's powers.

"Specified land" refers to any land in Ontario outside of the Greenbelt Area, including those parts covered by the Oak Ridges Moraine Conservation Plan area, Niagara Escarpment Plan area, and *Greenbelt Act* regulations.

Significant increase in MZOs Province-wide and in developed municipalities

Traditionally, the MZO power was used sparingly and perhaps less frequently in more urbanized areas with mature planning regimes. With Bill 197's expansion of the utility of MZOs, they are now being made most frequently for lands in municipalities that have well-established planning policies and protocols approved locally pursuant to the *Planning Act*, especially across southern Ontario.

The following table lists all MZOs made in 2020 as of the date of writing. As of mid-November 2020, 31 MZOs have been issued, compared to 0 in 2017 and 2018, and just over 70 cumulatively since 1990. Another source, a submission to the Minister authored by the Federation of North Toronto Residents' Associations, reports that from 1969 to 2000, there were 49 MZOs issued.[11]

The subject matter of MZOs is evolving rapidly, even over the course of this year. 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. During 2020, the earliest MZOs dealt with a variety of residential and non-residential matters. As the summer progressed and the Provincial government began responding to the extraordinary impact of COVID-19 on long-term care and retirement homes, many of the MZOs facilitated development of new facilities. More recently, we have seen a variety of priorities manifested in the MZOs, from supply logistics to provision of housing to general economic stimulation through significant levels of construction activity.

While some of the 2020 MZOs have been in response to municipal requests and in relation to current emergency response priorities, such as long-term care homes, others may be said to facilitate traditional residential, mixed-use or non-residential development. According to media reports, some of these MZOs were issued without full local municipal support. Given the breadth of purpose now apparent in the steady stream of MZOs being issued, lack of local support will make the use of the power far more contentious.

Minister's Zoning Orders – 2020

Listed from earliest in 2020 to most recent
Last Updated: Nov. 18, 2020

MZO Number	Municipality	Purpose and Uses Permitted
O. Reg. 170/20	City of Toronto	To set maximum GFA of all buildings on the Sunnybrook Health Sciences Centre lands.
O. Reg. 171/20	City of Brampton	To facilitate development of single detached homes, townhouse blocks, a high-density mixed-use residential/commercial block, an employment/office block, and preserves open space and natural heritage system areas.
O. Reg. 172/20	Town of Whitchurch-Stouffville and City of Markham	To facilitate a proposed housing development (townhouses, apartments, and retirement units) along with associated commercial development.
O. Reg. 173/20	City of Vaughan	Permits a distribution facility, outdoor storage, and uses described in Section 6.3.1, General Employment Area (EM2) Zone of the Zoning By-law.
O. Reg. 343/20	City of Toronto	To permit an apartment building, provide relief from certain zoning requirements. Permits 56 dwelling units in the form of modular supportive housing.

O. Reg. 354/20	City of Toronto	Provides relief from certain zoning requirements. Permits 44 dwelling units in the form of modular supportive housing.
O. Reg. 355/20	City of Kawartha Lakes	To facilitate a proposed development of 563 new residential dwellings consisting of a mix of housing types, including single and semi- detached homes, duplex, triplex, fourplex dwellings, and townhouse blocks.
O. Reg. 356/20	Township of Perth South	Permits manufacturing, processing, fabrication, assembly, distribution and storage of raw materials relating to the manufacturing of float glass, and accessory uses.
O. Reg. 358/20	City of Toronto	Permit an outdoor patio to be used in combination with an eating establishment that is permitted on a lot by a zoning by-law.
O. Reg. 362/20	Town of Caledon	To facilitate the development of townhouses, mixed-use residential/commercial uses and associated storm water management facilities.
O. Reg. 438/20	Town of Ajax	To permit a 192-bed long-term care home and 320-unit retirement home.
O. Reg. 445/20	City of Vaughan	To facilitate the development of long-term care homes, together with accessory buildings, uses and structures.

O. Reg. 446/20	Town of Oakville	To facilitate the development of long-term care homes, together with accessory buildings, uses and structures.
O. Reg. 447/20	City of Hamilton	To facilitate the development of a range of residential uses including single family dwellings, semi-detached dwellings, townhouse dwellings and multiple dwellings (apartments).
O. Reg. 448/20	City of Mississauga	To facilitate the development of long-term care homes, together with accessory buildings, uses and structures, and a range of residential uses including detached dwellings, semi-detached dwellings, townhouses and apartments.
O. Reg. 449/20	Town of Aurora	To facilitate the development of residential uses, including detached dwellings.
O. Reg. 450/20	City of Toronto	To facilitate the development of long-term care homes, together with accessory buildings, uses and structures, and a range of residential uses including detached houses, semi-detached houses, duplexes, triplexes, fourplexes, townhouses and apartment buildings.
O. Reg. 451/20	Town of East Gwillimbury	To permit automotive sales and rental establishments.
O. Reg. 474/20	City of Toronto	To permit a 320-bed long-term care home.
O. Reg. 475/20	Town of Ajax	To permit the development of a 320-bed capacity long-term care facility and related uses including

		retirement residences as part of the continuum of care, community facilities, administrative offices and gardens, in addition to food, retail and personal service uses operating in conjunction with the long-term care facility.
O. Reg. 477/20	City of Mississauga	To permit one or more long-term care homes with a combined capacity of 640 beds, a retirement home, hospital, hospice facility, adult day care facility for seniors, medical office and accessory uses, buildings and structures.
O. Reg. 594/20	City of Toronto	To permit two mixed-use buildings containing 24,353 m2 of non-residential GFA and 661 residential rental units (198 of which are affordable).
O. Reg. 595/20	City of Toronto	To permit a maximum of three buildings, one of which shall be an apartment building. Maximum residential GFA: 74,810.45m2. Minimum non-residential GFA: 500m2.
O. Reg. 596/20	City of Toronto	To permit three mixed-use buildings containing 3,080m2 of retail space and 839 residential rental units (252 of which are affordable).
O. Reg. 607/20	City of Pickering	To accelerate and expand the Durham Live development. Permits a wide range of uses and provides for zoning requirements.
O. Reg. 608/20	Township of Springwater	To permit a 240 unit retirement home and accessory uses, buildings and structures.

O. Reg. 609/20	Township of Oro-Medonte	To permit the development of an industrial park focusing on the manufacturing of medical products and personal protective equipment.
O. Reg. 610/20	Town of Whitchurch-Stouffville	Permitted uses: Residential (single detached dwellings, semi-detached dwellings, apartments, townhouses), retail, office, institutional, commercial.
O. Reg. 611/20	City of Cambridge	To permit a mixed-use development on a 73- acre property consisting of a variety of residential (townhomes, mid-rise apartments, high-rise towers, approx. 10,000 residential units), retail, office, institutional, and commercial land uses.
O. Reg. 643/20	City of Vaughan	Permitted uses: Residential (apartments, townhouses), retail, office, institutional, commercial.
O. Reg. 644/20	City of Vaughan	Permitted uses: Residential (single detached dwellings, semi-detached dwellings, apartments, townhouses), retail, office, institutional, commercial.

The authors thank student planner Edmund Un for preparing the Minister's Zoning Orders – 2020 table.

[1] R.S.O. 1990, c.P13, as amended.

[2] S.O. 2017, c. 23.

[3] *Ontario (Ministry of Natural Resources), Re,* 2012 CarswellOnt 18208, at para. 3 (OMB).

[4] S.O. 2019, c. 9.

[5] *Seipt, Re*, 2015 CarswellOnt 5336.

[6] See section 16 of the *Greenbelt Act, 2005*, S.O. 2005, c.1.

[7] S.O. 2005, c. 13, subsection 14(3).

[8] *Oak Ridges Moraine Conservation Act, 2001*, S.O. 2001, c. 31, s. 14.

[9] S.O. 2020, c. 18, s. 3 (which came into force on the date of Royal Assent: July 21, 2020).

[10] Enhanced MZO power found at *Planning Act*, subss. 47(4.1 – 4.16).

[11] See: Letter from Federation of North Toronto Residents' Associations, (16 October 2020), "Minister's Zoning Orders", available online.

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