

January 30, 2021

Planning Consultation
Provincial Planning Policy Branch
Ministry of Municipal Affairs
777 Bay Street
13th floor
Toronto, ON
M7A 2J3

Dear Planning Consultation team,

Re: ERO# 019-2811: *Planning Act* provisions regarding enhanced Ministerial authority as part of a Minister's Zoning Order

We, the 70 undersigned organizations, are deeply concerned about both the “sharp increase”¹ in the use of Minister's Zoning Orders (MZOs) over the past year and the enhanced powers granted to the Minister of Municipal Affairs and Housing through amendments to the *Planning Act*, without public consultation, through Schedule 17 of Bill 197. As noted by the Canadian Environmental Law Association (CELA), public consultation now, six months after the legislation was amended, makes a mockery of the public participation rights established under Ontario's *Environmental Bill of Rights* (EBR).² **We agree with CELA that the amendments to the *Planning Act* that were enacted through Schedule 17 of Bill 197 should be immediately repealed.**

Inappropriate use of MZOs

MZOs allow the Minister to directly zone land for particular purposes without public notice or consultation or the right to appeal. Given the lack of opportunity for public input, it is appropriate that zoning orders be used rarely and judiciously. Ontarians can and should have meaningful opportunities to participate in planning decisions affecting their communities now and in the future.

In the past, MZOs were seldom used except in locations where there weren't municipal plans or bylaws in place (unorganized townships without land use planning controls), or where the government wanted to advance a provincial interest (e.g., preservation of farmland, protection of natural heritage).³ For example, in 2009, an MZO was used to give effect to the Lake Simcoe Protection Plan, stipulating that there was to be no development on lands set aside for agriculture, nature conservation, flood control and outdoor recreation.

Recently, however, there has been a flurry of activity around MZOs, for very different purposes. According to the Auditor General of Ontario, the Minister issued 29 MZOs between January 1st,

¹ Auditor General of Ontario, November 2020, *Operation of the Environmental Bill of Rights*, p. 18.

² Canadian Environmental Law Association, Letter re. ERO# 019-2811, submitted to Planning Consultation, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing on January 19, 2021, p. 1.
<https://cela.ca/schedule-17-of-bill-197-amendments-to-the-planning-act/>

³ CELA, p. 6.

2020 and October 31st, 2020, whereas none were issued in 2017 or 2018.⁴ There have been several more since then. Further, CELA notes that most if not all of the recent MZOs “have applied in municipalities that already have official plans and zoning by-laws in place,” opening the door to controversial developments on agricultural lands and significant natural areas.⁵ On October 30th, 2020, for example, the Minister issued an MZO permitting the rezoning of lands to allow a number of land uses, including warehousing facilities and an entertainment zone that will lead to the destruction of over 20 hectares of Provincially Significant Wetland in Pickering.⁶ The MZO is unlawful as it is not consistent with the Provincial Policy Statement, 2020 (PPS) that strictly prohibits development on significant wetlands and other natural heritage and water features.⁷ The MZO also does not conform to the applicable official plan policies which implement the polices of the PPS. The Minister issued this MZO even though there are serviced vacant and underutilized employment lands close by which could have accommodated the warehousing facilities.

We agree with CELA that the government should return to the historic practice of using MZOs in Ontario only on a limited basis; it should amend section 47 of the *Planning Act* so that the Minister may issue MZOs only in areas lacking planning controls or to prohibit development that would adversely affect matters of provincial interest.⁸ MZOs conform to or should be consistent with applicable official plans, provincial plans and the PPS.

Inappropriate enhancement of Minister’s powers

Schedule 17 of Bill 197 conferred new power on the Minister to remove municipal use of site plan control through MZOs. No criteria were set out in the amended law to structure the use of this new open-ended power. As explained by CELA, “there is no certainty, accountability or predictability as to when the Minister will – or will not – issue an MZO on his/her own initiative, or upon request by a municipal council, developer, or any other person or authority.”⁹

According to Environmental Defence, municipal site plan control is “an essential tool for environmental protection.” It brings a finer lens to considerations of the potential social, environmental and logistical consequences of a proposed development which require familiarity, knowledge and expertise about the specific site and the local planning context.¹⁰ In other words, municipal site plan control is for detailed and complex matters not suited to decision-making through MZOs by a Minister and ministry staff who lack site-specific knowledge. Again, amendments to the *Planning Act* through Schedule 17 of Bill 197, which override municipal site plan control, should be immediately repealed.

Public participation continually undermined

Bill 197 was tabled on July 8, 2020 while Ontarians were grappling with a global pandemic. It was rammed through the Legislature and passed on July 21st, 2020, only 13 days after being

⁴ Auditor General of Ontario, p. 18. The Minister issued five MZOs in 2019.

⁵ CELA, p. 6.

⁶ O. Reg. 607/20: ZONING ORDER - CITY OF PICKERING, REGIONAL MUNICIPALITY OF DURHAM.

⁷ Ontario Ministry of Municipal Affairs and Housing, Provincial Policy Statement 2020, sec. 2.1.4.

⁸ CELA, p. 8.

⁹ CELA, p. 7.

¹⁰ Environmental Defence, Letter re. ERO# 019-2811, submitted to Planning Consultation, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing on January 25, 2021.

introduced. Despite a legal obligation under the EBR to provide at least a 30-day consultation on the proposed legislative changes, none was provided, a situation highlighted in the Auditor General's report:

We wrote to the Municipal Affairs Ministry on July 17, 2020 stating that the proposed changes to the *Planning Act* and *More Homes, More Choice Act, 2019* contained in Bill 197 were environmentally significant, and that as a prescribed ministry under the EBR Act the Ministry was required to post the proposed changes on the Registry for public consultation. We stated that the Ministry should do so before the Bill received third reading by the Legislature. The Ministry decided not to post any proposals on the Registry.¹¹

The government moved to limit debate on Bill 197 at second reading to the minimum 6.5 hours required. It provided no opportunity for members of the Legislature or the public to raise concerns or suggest amendments through a Standing Committee hearing. In these multiple ways, the government made a concerted effort to dodge public scrutiny, setting the stage to fast-track development on farmland and natural areas while keeping Ontarians in the dark.

The Minister's frequent use of MZOs over the past year – again, at a time when Ontarians are pre-occupied with the COVID-19 pandemic - reflects an ongoing disregard for public participation in environmental decision-making. As noted above, MZOs are not subject to requirements for public notice or comment under the EBR or the *Planning Act*. Consequently, there is no opportunity for the public to scrutinize or participate in the Minister's decisions before they are made. One of the Schedule 17 changes further entrenches this closed-door approach by allowing the Minister to amend an MZO without providing notice.¹²

It should be noted that Schedule 6 of Bill 229, which contained highly controversial amendments to the *Conservation Authorities Act*, similarly went forward without an opportunity for public comment through the Environmental Registry. Passed in December 2020, it included a last-minute amendment proposed by the government "which compels conservation authorities to permit MZO-authorized development anywhere outside of the Greenbelt Area, even though this would be contrary to the applicable rules."¹³

We agree with CELA that the government's approach constitutes "an objectionable circumvention of long-standing public participation rights in relation to re-zoning proposals under the *Planning Act*."¹⁴ Accordingly, we support CELA's submission that further amendments to the *Planning Act* are needed to ensure that the public receives notice and has an opportunity to comment on proposed MZOs and on proposed amendments to MZOs and that those who comment have the right to appeal the MZO.

It is clear that the Ministry has already made and has acted upon a major shift in policy and practice regarding the use of MZOs. This change in policy includes, for example: a) the

¹¹ Auditor General of Ontario, p. 19.

¹² CELA, p. 8.

¹³ CELA, p. 4.

¹⁴ CELA, p. 8.

government will use MZOs more frequently and more freely than any prior government, and has allocated staffing resources accordingly; b) the government has considered criteria to guide the exercise of its discretion to issue an MZO; c) the government has taken steps to expand the powers to issue MZOs through Schedule 17; and d) the government has taken steps to eliminate other environmental approval processes through Schedule 6 of Bill 229. All of these policy and legislative decisions were made without public consultation under Part II of the EBR. The Ministry never consulted the public, as is required under section 15(1) of the EBR on what is clearly a new policy approach to the issuance of MZOs.

Concluding remarks

In conclusion, we believe that the new *Planning Act* provisions enacted through Schedule 17 of Bill 197 are part of an insidious pattern of environmental deregulation, which not only threatens precious farmland and natural areas, including Provincially Significant Wetlands, but also rides roughshod over our democratic right to participate in environmental decision-making, enshrined in both the *Planning Act* and the EBR. These provisions should be immediately repealed. Further, *the Planning Act* should be amended so that the use of MZOs is restricted to areas lacking planning controls and to matters of provincial interest, and so that the public receives notice and has an opportunity to comment on proposed MZOs and a right to appeal them once they are issued.

We trust that our comments will be taken into account and would welcome an opportunity for further discussion.

Yours truly,

Caroline Schultz

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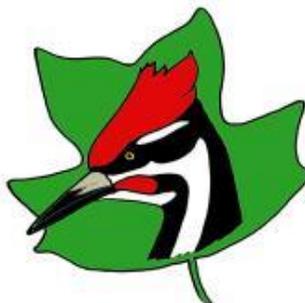
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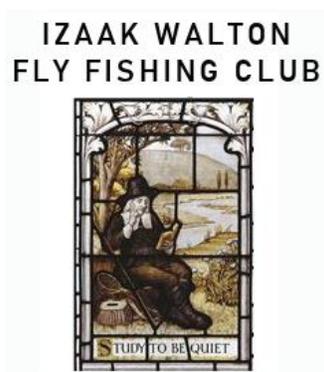


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*Junction Creek
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Lakeshore Eco-Network

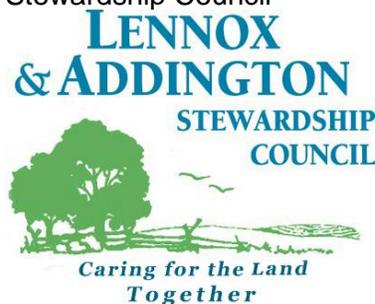
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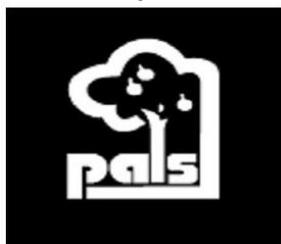
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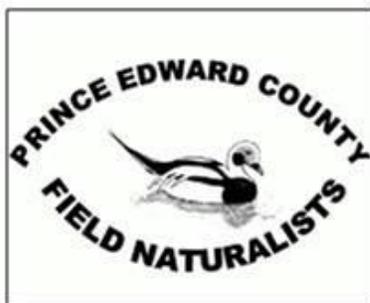


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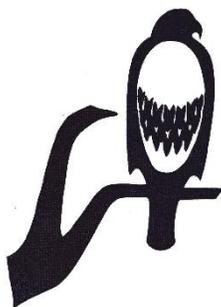
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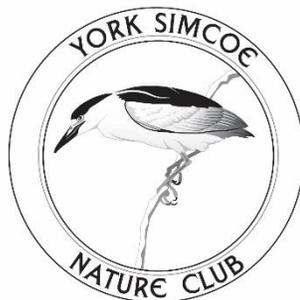
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