



Federation of Urban Neighbourhoods

Community Counts. Civic Matters.

January 29, 2021

Hon. Steve Clark
Minister of Municipal Affairs and Housing
17th Floor
777 Bay St.
Toronto, ON M5G 2E5

RE: Proposed implementation of provisions in the Planning Act that provide the Minister of Municipal Affairs and Housing enhanced authority to address certain matters as part of a zoning order (MZO) (ERO Number: 019-2811)

Dear Minister Clark,

Here are the **Federation of Urban Neighbourhoods (FUN)** comments concerning changes to certain legislative provisions in the *Planning Act* now in force with the enactment of Bill 197, the *COVID-19 Economic Recovery Act, 2020* that enable the Minister to address site plan matters and apply inclusionary zoning as part of a zoning order.

The recently enacted legislative changes to the *Planning Act* enhance the Minister's authority for zoning orders ("MZOs") across the province. This enhanced authority does not apply to lands within the Greenbelt Area. The enhanced authority allows the Minister to:

- require inclusionary zoning for affordable housing (inclusionary zoning),
- remove municipal use of site plan control and require agreements between the municipality and development proponent (or landowner) concerning site plan matters, and;
- make amendments to Minister's Zoning Orders that use any of these enhanced authorities without first giving public notice.

ERO Posting 019-2811 ("ERA Posting") indicates that the consultation is in relation to

1. whether legislative changes relating to enhanced powers regarding site plan control and inclusionary zoning in MZOs made by Bill 197, the *COVID-19 Economic Recovery Act, 2020*, should be expanded, repealed or otherwise adjusted, and
2. how this enhanced authority, subject to any potential changes that might be made to it, ought to be used.

Our comments on the ERO Posting are as follows:

1. **The ERO Posting does not conform to the requirements of the *Environmental Bill of Rights, 1993***



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The ERO Posting is for a “proposal” pursuant to s. 15 (1) of the *Environmental Bill of Rights, 1993* (“EBR”), which provides as follows:

Proposals for policies and Acts

15 (1) If a minister considers that a proposal under consideration in his or her ministry for a policy or an Act, if implemented, have a significant effect on the environment, and the minister considers that the public should have an opportunity to comment on the proposal before implementation, the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented. (emphasis added)

It is not clear whether the ERO posting is for a proposal for an Act (i.e., if it relates to whether amendments to the *Planning Act* made under Bill 197 should be expanded, repealed or otherwise changed) or for a policy (i.e., if it relates to the use of enhanced powers in respect of MZO’s resulting from the amendments to the *Planning Act* made under Bill 197), or both.

In neither case, however, does the posting specify a proposed policy or change to legislation which is under consideration in the Ministry, as is required under s. 15 (1) of the EBR.

The ERO Posting is, in fact, entirely silent on any changes to the legislation that the Ministry is considering, and merely engages in speculation about possible uses for the enhanced MZO powers:

... the Ministry is interested in feedback as to how this enhanced authority, subject to any potential changes that might be made to it, ought to be used. As noted above the new authority could be used to support the development of transit-oriented communities, the development of projects of strategic importance, the optimization of surplus lands (e.g., affordable housing, long term care homes and other health care facilities) or other recovery efforts (e.g., economic development and job creation). The Ministry is interested in feedback regarding circumstances where this enhanced authority could be particularly helpful and circumstances where it might be better not used. (emphasis added)

Rather than consulting the public on proposals under consideration in the Ministry, the ERO Posting is actually *seeking proposals* from the public which it can then consider.

In summary, the ERO Posting is premature, as it does not disclose any proposals for an Act or policy under consideration in the Ministry.

The Ministry should decide (through consultation or otherwise) which proposals for an Act or policy it is considering for implementation. Only after having done so should the Ministry make an ERO posting to provide the public with an opportunity to comment, as required by s. 15 (1) of the EBR.

2. Lack of consultation with Bill 197 – will the province listen to this round?

Part of the consultation contemplated by the ERO Posting relates to amendments to the *Planning Act* made under the omnibus Bill 197, which went through the entire legislative process in **14 days** (1st reading on July 8, 2020; Royal Assent on July 21, 2020).



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The ERO Posting could be viewed as cynical attempt, by means of *ex post facto* consultation, to give a patina of legitimacy (i.e., green-wash) to the totally inadequate consultation in the course of the hurried legislative process under which Bill 197 was passed.

3. Lack of any proposal about how the legislation ought to be changed or implemented

It is very concerning that, as noted above, the ERO Posting offers no proposals about how legislation passed by the government six months ago **should be changed** or "**ought to be used**". Are we to understand that the government passed the legislation with no idea about what to do with it once passed?

If Bill 197 was properly thought out, why would the Province ask, barely six months after the Bill was passed, whether it should be amended or repealed? The present consultation gives the impression that the Ministry is endeavouring to fix a hastily drafted and, apparently, poorly thought out piece of legislation.

4. No explanation has been given for the hugely expanded uses of MZOs

The ERO Posting notes that the recent amendments to section 47 of the *Planning Act* "allow the Minister to address site plan matters in areas covered by a zoning order, where needed".

The Ontario government can now extend its control beyond the matter of site specific zoning permission to all site details. Yet the government has not provided a principled rationale for why it has done so. Planning is the responsibility of municipalities within the framework of broad Provincial policies to allow municipalities the flexibility to deal with their issues and priorities.

The overriding question is why and when should MZOs be used in the first place. This government is using MZOs far more often than any government in the past. By making over 30 MZOs since its election in 2018, the current government appears to have decided that municipalities cannot be trusted to implement provincial priorities such as "affordable housing, long term care homes and other health care facilities", and that the government feels it necessary to make decisions unilaterally and override the due process (including community participation) of local planning by municipalities. MZOs do not require community consultations, or to require the provision of any community benefits.

The government's claim that the purpose of MZOs is for uses such as affordable housing and long term care is sloganeering, and not backed up by a publically verifiable commitment. The level of commitment is critical and variable. For example inclusive zoning for affordable housing can range from 5% to 30% (per building, or per project as a whole), and the level of subsidies can range from "shallow" to "deep". And of course the cost implications of the penetration level and depth of affordability for the developer would vary greatly. The government has not been upfront with a public commitment on penetration rates or subsidy level in any MZO project. In our opinion "saying so" is not the same as "showing so".

5. MZOs are not effective ways of getting desperately needed affordable housing



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Adequate government funding programs are a more effective way to encourage construction of affordable housing than forcing use of inclusionary zoning through an MZO.

Witness the amount of construction of affordable housing in the 1970's because of relevant funding programs. Inclusionary zoning is now an available tool. How can MZOs be effective as a tool without funding sources?

6. Site plan control cannot be administered in an effective way at a provincial level as the required site specific knowledge is at the municipal level

Site plan control is an optional tool under the *Planning Act* that allows the council of a local municipality to control certain matters on and around a site proposed for development.

While site plan applications do not currently require public consultation, they are an optional tool, as the ERO posting says, for municipal governments to control:

“...access (for pedestrians and vehicles), walkways, lighting, waste facilities, landscaping, drainage, and exterior design, ensures that a development proposal is properly planned and is designed to fit in with the surrounding uses and to minimizes any negative impacts.”

Of the hierarchy of planning scales, site plan applications represent the most detailed, and most technical, tool, which requires specialized expertise **and local knowledge**. Does the Ministry have the ability to handle such an endeavour, by itself or by engaging others having the expertise? Given the Ministry's mandate to develop and implement provincial policy and plans (i.e. at a strategic and policy level, not an operational level), it seems unlikely. And, we would argue, totally inappropriate.

Consultation with the municipality will be needed in any case.

Recommendation re: site plan control

We recommend that the authority for site plan control should remain with the municipality. The broad strategic uses can and should be encouraged and facilitated by the fiscal, programmatic and broad legislative mandate of the provincial government through policies at the provincial level, not by intervening in site specific plan applications.

Respectfully submitted

Geoff Kettel

Geoff Kettel
President

Cc: Premier Doug Ford, MPP, Andrea Horwath, MPP and Steven Del Duca