



January 28, 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 Steve Clark,

Here are the **Federation of North Toronto Residents' Associations (FoNTRA)** 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 consultation notice indicates that the consultation is in relation to (1) whether certain provisions of Bill 197 (all of 6 months old) should be changed and (2) how they should be used. And on **feedback** as to **whether the legislative changes made in** this regard by **Bill 197 ... should be expanded, repealed or otherwise adjusted**. Further 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**.

The recently enacted legislative changes to the *Planning Act* enhance the Minister's authority for zoning orders 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.

The changes are not helpful. Our issues with the expanded use of MZOs are:

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

We find that the government's consultations on legislation **it has already passed** are a cynical attempt to green-wash legislation that was subject to totally inadequate consultation in the course of the legislative process before it was passed.

Equally concerning is that the government offers no proposal about how legislation it passed "**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?

As an *ex post facto* consultation, this amounts to an attempt to green-wash the legislative process that produced poorly thought out legislation. We are extremely concerned about whether our participation in the consultation helps the government to legitimize its "ram things through" approach to legislation, by allowing it to say "well, we did consult, and many groups participated" when in reality the government is endeavouring to fix a hastily drafted and, apparently, poorly thought out piece of legislation.

The changes being consulted on here were 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).

Surely the government has an obligation in a consultation such as this to provide a proposed implementation strategy?

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

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". As such the Ontario government can extend its control beyond the matter of site specific zoning permission to all site details. Why? 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. Making it easier for developers to build does not mean that what they are doing is needed, will sell or relates to the municipalities' priorities. It results in empty buildings.

In implementing the over 30 Minister's Zoning Orders (MZOs) so far, the Minister 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 instead the Minister feels it necessary to override the due process of local planning by municipalities. Yet MZOs do not require applicants to hold community consultations, or to require them to provide any community benefits.

The overriding question is why and when should they be used in the first place? This government is using MZO's far more often than any government in the past. Why? For example, the lack of building affordable housing has to do with the lack of the provincial funding. Delivery of transit station infrastructure has more to do with the lack of clear planning due to political decisions for needed transit in Toronto. Toronto has a huge number of housing units in approved projects (called the "development pipeline") that are not built. Why? That is the issue. Not approval for more.

3. The government's lack of candour in justifying the use of MZOs

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".

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

Adequate government funding programs is a more effective way to get affordable housing built than forcing use of inclusionary zoning.

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

5. Site Plan Control cannot be administered in an effective at a provincial level as the required site specific knowledge is at the municipal level.

Site plan 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, municipal governments are an optional tool, as the ERO posting says, 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 minimize any negative impacts.”

Of the hierarchy of planning scales, site plan applications represent the most detailed, and most technical tool, requiring application of specialised expertise **and local knowledge**. Does the ministry have the ability to handle such an endeavour, by itself or manage the work of others having the expertise? Given the Ministry's mandate to develop and implement provincial policy and plans, i.e. 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

We recommend that this authority 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, not by intervening in site specific plan applications.

Yours truly,

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

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of over 30 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.