

PROVINCIAL GOVERNMENT TELLING DEVELOPERS TO “USE IT OR LOSE IT” IN RESPECT OF CERTAIN MINISTERIAL ZONING ORDERS, AND CONSULTING ON NEW MZO APPROVALS PROCESS

Posted on January 10, 2024

Categories: [Insights](#), [Publications](#)

On December 13, 2023, the Ontario Ministry of Municipal Affairs and Housing (the “**Ministry**”) [announced](#) that it would be taking a critical eye to a number of existing ministerial zoning orders (“**MZOs**”) made pursuant to the *Planning Act*, and proposing revocations and amendments in support of a new “use it or lose it” approach to such orders. It will also be consulting with stakeholders on a new “go-forward framework” in respect of MZO requests and approvals.

This is not the first time in recent years that the province has amended the MZO framework. Such amendments to date have generally resulted in expansion of the Minister’s powers to issue an MZO, including under [Bill 139](#) (the *Building Better Communities and Conserving Watersheds Act, 2017*)^[1] which limited the role of the Ontario Land Tribunal in adjudicating requests for referrals to amend or revoke an MZO, and under [Bill 197](#) (the *COVID-19 Economic Recovery Act, 2020*)^[2] which introduced “enhanced MZOs”.

According to the Ministry, its review of existing MZOs and the approvals process is intended “to increase transparency and support government priorities,” and is a “response to municipal and community feedback” through which it intends to “support improved municipal planning and resourcing while holding builders to account”.^[3] Of note, this move follows [confirmation by the Office of the Auditor General of Ontario](#) that, on August 30, 2023, it had commenced an audit of the province’s MZO selection and approval process. It is understood that, as of the date of this publication, the audit remains underway.

The “Substantial Progress” Test

In reaching its decisions to propose revocation or amendment of certain MZOs, or to more closely monitor certain projects subject to MZOs, the province has considered whether each project has made “substantial progress” on all or part of the lands subject to the MZO in respect of:^[4]

- Additional downstream approvals needed for project development and implementation; and
- Addressing water and wastewater servicing within a reasonable timeframe.

Not all existing MZOs are under scrutiny at this time – only those issued since 2018 are being considered, and certain of these are exempt, such as orders that were requested by a Government of Ontario ministry in order to deliver on provincial priorities (e.g., long-term care facilities), or orders that had been made in the last year (after December 1, 2022), because they may not have had enough time yet to demonstrate “significant progress.”^[5] While housing-related MZOs are not automatically safe from this review, the Ministry appears to have considered these projects separately and with slightly more leeway, aligning with this government’s stated housing objectives.

Notably, the materials published by the Ministry relating to this review do not expand on what it means to make “substantial progress”, what a “reasonable timeframe” might be, or from whom or where the Ministry is obtaining details to make assessments of the progress of these projects. Nevertheless, the Minister of Municipal Affairs and Housing, Paul Calandra (the “**Minister**”), stated in the December 13th announcement that the government “will not hesitate to amend or revoke” an MZO if they “do not see the results [they] expect”.

The Subject MZOs and Comment Period

Of over 100 MZOs issued to date, the Ministry has identified 22 project sites subject to such MZOs as not yet having made “significant progress”.

Of these 22 projects, the Ministry lists 7 non-housing-related MZOs it is considering for potential revocation, and only 1 for potential amendment (see [ERO bulletin # 019-8001](#)). Details of the consultation for each MZO can be found on the relevant notice in the ERO bulletin.

The Ministry also lists 14 housing-related projects with lands subject to MZOs that it says have made limited progress, and which will be monitored closely over the next year and a half for significant progress (see [ERO bulletin #019-8020](#)). While these projects may only be subject to “enhanced monitoring” for now, the province has noted that, should there be a lack of significant progress over this period, they “will potentially be considered for future revocation or amendment, or to add an expiry date in the future”.^[6]

In each case, the Ministry invites stakeholders (including members of the public, municipalities, proponents and landowners) to share feedback to help inform their decisions on the proposals. **The comment period is open until January 27, 2024.**

Consulting on a New MZO Process

In addition to its consideration of the 22 identified MZOs, the province also plans to consult with stakeholders

on a “go-forward framework” for dealing with MZO requests. Per the December 13th announcement, the intent is to make the process “more open and transparent while maintaining this important tool to cut through red tape to get shovels in the ground sooner”.

Except for 3 requests for MZOs that the Minister intends to approve prior to such consultations (as detailed in the announcement), the province will not be considering or issuing any other MZO requests until the consultations are complete.

While no separate posting has yet been made on the ERO in respect of a “go-forward framework”, [ERO bulletin #019-8020](#) notes that the Ministry

“will be enhancing how it monitors the implementation of all zoning orders on a quarterly basis, with a particular focus on ensuring that all projects are demonstrating reasonable progress towards completion.”

The Community Infrastructure and Housing Accelerator

MZOs are not the only tool available to the Minister for expediting zoning. Introduced under the [More Homes for Everyone Act, 2022](#),^[7] the Community Infrastructure and Housing Accelerator (the “**CIHA**”) powers similarly allow the Minister to amend the existing zoning of a property under ss.34.12(25) of the *Planning Act*. A CIHA Order, however, differs from an MZO in a few ways. The key difference is that a CIHA Order is initiated by a municipality while an MZO is initiated at the Minister’s discretion: the requesting municipality must first pass a resolution requesting the Minister make the CIHA Order^[8], which requires notice to the public and consultation (unlike MZOs).

The province did not mention the CIHA tool in its announcement of its plans for a new “go-forward” MZO framework. Considering its references to “transparency” and supporting “improved municipal planning and resourcing” related to its plans for a new MZO process, however, it will be interesting to see what the differences are between any proposed new framework for MZOs and the existing CIHA tool, which already incorporates a degree of municipal input and public consultation.

Immunity under Bill 150: The Planning Statute Law Amendment Act, 2023

On December 6, 2023, the [Planning Statute Law Amendment Act, 2023](#) received Royal Assent. Amongst other things, this legislation amended s.47 of the *Planning Act* under which the Minister has the power to issue MZOs. The changes to s.47 include establishing an effective “immunity” for the government in exercising any of its powers pursuant to this section, including for “a decision in respect of the exercise of any power under this section, including but not limited to the making, amendment or revocation of orders under this section”.^[9] These changes make clear that the immunity applies retrospectively, and that no such actions constitute an

expropriation or injurious affection for the purposes of the *Expropriations Act*.^[10] Thus, while impacts of this amendment are potentially broad, at the very least, any stakeholders with an interest in the MZOs identified for revocation or amendment will want to consider making submissions as part of the consultation period, as recourse for any losses suffered as a result appears to have been significantly curtailed.

McMillan will continue to monitor and remain apprised of the status of these matters. If you would like to discuss, or you wish to advocate on certain policies to guide the future of Ontario's planning, development, and land use, please contact Mary Flynn-Guglietti, Annik Forristal, Kailey Sutton or Patrick Pinho, and our team would be pleased to discuss with you.

[1] *Building Better Communities and Conserving Watersheds Act, 2017*, S.O. 2017, c. 23

[2] *COVID-19 Economic Recovery Act, 2020*, S.O. 2020, c. 18.

[3] Ontario Newsroom, "[Ontario Taking Action to Support Municipal Partners in Building More Homes and Protecting Taxpayers](#)", accessed on January 8, 2024.

[4] *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

[7] *More Homes for Everyone Act, 2022*, S.O. 2022, c. 12.

[8] *Ibid.*, at section 34.1(1).

[9] *Planning Act*, R.S.O. 1990, c. P. 13 at section.47(20)(a).

[10] *Ibid.*, at sections.47(24) and (26)

by [Kailey Sutton](#) and [Patrick Pinho](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2024