

November 24, 2020

Dear Honourable Simcoe County Mayors and Councillors,

RE: Concern about MZO applications across Simcoe County

Like you, the undersigned want to ensure that Simcoe County is home to a prosperous economy, with jobs close to home and housing that is attainable for all. At the root of that goal is an understanding that we cannot achieve our ambitions without a healthy environment, nor without full participation by and consultation with community members including First Nations. As outlined in a government briefing document about the Planning Act, the purpose of the act is “to promote sustainable economic development in a healthy natural environment within a provincial policy framework, provide for planning processes that are fair by making them open, accessible, timely and efficient, and to encourage co-operation and coordination among various interests.”¹

However, changes to the Planning Act, brought about through Bill 197, have turned a once rarely used tool, a Minister’s Zoning Order (MZO), into a supposed fix-all that expedites development applications and changes to zoning. The concern we have is the use of such a tool in places like Simcoe County where there are robust local planning controls and bylaws and where the application of it reduces or eliminates the open and accessible goals of the planning process outlined above. We believe that municipal councils need to be fully aware of how this blunt tool impacts key issues such as municipal control, public consultation and impacts to existing economies.

Minister Zoning Orders Reduce Municipal Influence and Control

MZOs essentially take a short cut by imposing zoning controls that override any municipal policy that could conflict with the new zoning. This means that bylaws that were put in place to protect local economies, water resources or sustainable planning can now be overridden. This is not a nuanced tool where you can keep some things in force while others will be ignored. Whatever policy would prevent said zoning is now moot. Some may consider this to be advantageous as it could streamline the process, but it is problematic when it overrides those policies which were put in place to prevent flooding, minimize impacts to local agricultural operations or protect sensitive habitats.

Furthermore, if a MZO involves a settlement boundary expansion, the underlying studies to ensure consideration of need, proper location, water resources and supporting infrastructure do not seem to be required at least until after the MZO is granted. This is akin to the municipality making a decision virtually in the dark and hoping for the best. How can municipalities assure their constituents and other landowners that due process has been followed and that the

¹ <https://www.ontario.ca/document/citizens-guide-land-use-planning/planning-act>

boundary adjustment is in the public interest when, in fact, there is virtually no evidence to support that position? If a council is concerned about climate action, which 92% of residents in Simcoe-Muskoka are, then settlement boundary expansions are already a controversial decision under current conditions.² To then proceed with removing more farmland and green spaces without substantive evidence of the need and impacts is both irresponsible and negligent.

Once a MZO is issued, the municipality is relegated to site specific approvals to implement the MZO. The larger, public interest topics are deemed satisfied and now it becomes an exercise to move around the deck chairs. In some cases, like for larger GO transit projects, the proponent would enter into a direct contract with the Province, with the municipality again relegated to bystander status. Site specific bylaws can be enforced but these are not comparable to proper environmental, archeological or other technical studies.

It leaves municipal councils without much recourse or ways to adjust course. If a large public concern comes forward, councils cannot revoke the MZO once it has been issued. There is no opportunity to request further studies or to reject the work underway beyond site plan control and permitting. So when councils use or support an MZO, they need to be aware that, come what may, they are forfeiting a lot of control which is normally there to address public concerns.

From conversations and research we have done with planners within MMAH and across the province, MZOs are not conditional - they are either approved or not. The idea that it will be granted once certain conditions are met is a falsehood. Further, placing a holding symbol on the site is also not permissible under a MZO. It is unclear to us why municipal councils, who are directly answerable to their constituents, would willingly surrender so much of their authority and control to a higher level of government.

Minister Zoning Orders Eliminate Genuine Public Consultation

Public consultation is a statutory requirement under the Planning Act when engaging in certain activities such as official plans and official plan amendments. It is expected that the public consultation process allows residents to share their concerns and vision for the project or ask questions of technical experts. However, once a MZO is issued, the components that are generally a public concern (water, land use, environmental concerns, traffic, archeological concerns, impacts on neighbouring properties or businesses), and are guided by a statutory consultation process, are considered settled. A municipality may choose to still engage the public, but the impacts of that consultation are quite limited and mostly irrelevant under a MZO.

We have seen MZO proposals by private landowners requesting municipal endorsement with cursory reports and generalized technical documents, but none that are thorough and detailed

² Simcoe Muskoka District Health Unit (2017). Vulnerability Assessment. Available At: <http://www.simcoemuskokahealth.org/Topics/ClimateChange/Reports-on-climate-change-in-Simcoe-Muskoka>

enough to quell public concern or to advocate in the public's best interest. We have also witnessed MZO applications get endorsed by a council without an accompanying staff report to help guide council's decision making. How can local politicians answer public concerns when they don't have the studies or guidance to ensure that the proposal is in the community's best interest?

Finally, in a time when a majority of the public is concerned about climate change, racial justice and equity in their communities, how does eliminating the public voice contribute to building a more inclusive, sustainable and transparent government? In fact, the use of MZOs simply reinforces the growing belief that the public concerns and input are not welcomed. This will be a hard policy direction to stand behind come next election and it erodes trust in our public service and local government.

Minister Zoning Orders Do Not Consider Impacts to Local Economies

As previously mentioned, MZOs do not require fulsome study or technical reports for approval. That level of detail is at the behest of the municipality. It seems to make little sense to ensure full protocol is followed under a MZO when the tool is there simply to bypass and overrun the standard planning process. As a result, MZOs can be issued without any clear understanding of the impact that they have on existing economies.

Of note, the Ontario Federation of Agriculture (OFA) has been outspoken about the use of MZOs and how they impact agriculture. "...OFA expresses its deep-seated concerns with the recent proliferation of Municipal Zoning Orders (MZOs) issued for municipalities with robust planning systems, Official Plans and Zoning By-laws. We are seeing MZOs issued for municipalities with robust planning systems at a frequency never-before seen. This frequent use undermines Ontario's long-established system of land use planning under the Planning Act, Provincial Policy Statement (PPS) and municipal Official Plans and Zoning By-laws."³

OFA is not the only farming body that opposes the use of MZOs. Ontario Farmland Trust and the Christian Farmers' Federation of Ontario (CFFO) have also made public statements and written letters to the province outlining their concern about MZOs and their impact on agriculture for good reasons. Since agriculture is a key component of our rural economies and the provision of our food, it should make councils pause to know voices concerned about food security and our agricultural community have expressed such opposition to MZOs.

Simply put, MZOs erase the requirement for fulsome study and careful thought about impacts to agriculture whether that be through Agricultural Impact Studies or the calculation of Minimum Distance Separation (MDS) formulae from new developments. Once a development is given a MZO, how does a municipality intend to control the development to reduce or mitigate impacts to agriculture, especially if it doesn't even know what those impacts are? How will the municipality enforce MDS when the zoning and location is already determined?

³ <https://ofa.on.ca/resources/ofa-letter-to-minister-clark-regarding-use-of-municipal-zoning-orders/>

We must not also forget how our environment significantly supports our local economy. From Lake Simcoe to Georgian Bay and the Nottawasaga River, to our myriad of trails and wetlands, these features draw people to our area and support local jobs. Once COVID restrictions ease, these assets will still be in high demand, especially as international tourism may still be lagging. These are not features that are replaceable and they set our area apart from most of Ontario. It is inconceivable that any municipality in Simcoe County should jeopardize the health of these features to shave some time off of development approvals. By forgoing the standard planning process, the municipality can only hope that the impact of the application will be minimal. Without the studies and consultation, no one will really know until it's too late.

Minister's Zoning Orders Do Not Include Thorough Study of Environmental Impacts

It is our understanding that a MZO is determined to be in conformity with the host municipality's Official Plan since there is no appeal process to deem it in conformity outside of minor variances. Without the necessary study to determine and ensure conformity with local, regional and provincial policies, what levers will the municipality have to ensure conformity? How will a municipality protect biodiversity with a MZO? How will a municipality enact provincial legislation on a site when those policies have virtually been ruled moot? How will a municipality assuage concern about water quantity and quality when it doesn't have a proper assessment of site specific impacts to contemplate? How does a municipality reconcile climate action when it removes arable lands, forests and wetlands - key elements to help prevent flooding and mitigate the impacts of climate change? What sort of liability will the municipality face when it does not have the necessary studies to ensure that its decision making is consistent with protecting public health and our shared environment?

Recent examples of MZOs issued in the province demonstrate that even Provincially Significant Wetlands (PSW) - one of the last ecological features that were strongly protected from site alteration, are now viable locations for warehouses and housing. Through MZOs, we have lost at least 6 PSWs within the last year. Most of Ontario's ecological features are much less protected in policy than PSWs. So if we know that MZOs can override these provincial treasures, what hope is there to protect our forests, unevaluated wetlands, river valleys or other sensitive habitats?

A MZO sends a very clear message to the public - private interests override the public interest. Without the due process to demonstrate that proper studies have assured it is a net benefit to the community and without ensuring that local concerns are heard in a meaningful way, it's easy to come to that conclusion. Moreover, knowing the high level of public concern about climate change and environmental protection, choosing sprawl and infrastructure over nature may well backfire on councils who are under the assumption that housing is their constituents' main concern.

Minister Zoning Orders Remove the Certainty from Phased Development and Planned Infrastructure Investments

Although the province had once said that the MZO was only eligible for “shovel-ready” projects, the reality is that many of the MZOs considered or requested are far from “shovel-ready”. In some cases, new applications without proper technical study are jumping the queue in the approval process. This disrupts the certainty that landowners, who have been following the process, were promised. The message that gets sent is that there is no advantage to following the process. How does a municipality assuage landowner concerns about timelines for planned infrastructure investments if now they’re competing against new developments that have hopped over them in the approval process? If the result is that they still have to wait behind others in line, then what is the municipality's purpose of supporting a MZO?

Moreover, what is the regional impact of MZOs to your municipality? Recent changes to the Growth Plan virtually eliminated the limitation of population allocations. Treating them now as minimum runs the risk that many municipalities will exceed what is reasonably expected and what the market can sustain. The MZO application in Innisfil brings 20,000 population within short order and up to 150,000 upon full build out. Without a regional planning approach that includes directing and limiting growth, one municipality's desire to grow could dilute opportunities to attract new developments and residents to other parts of the county. While the County clearly will be experiencing additional growth, where it gets directed should be a well-considered conversation at the County level. Without that planning approach, there is the financial liability of overapproving land for urban use, overinvesting in infrastructure and community services without the growth to offset the costs and investments through development charges and increased tax revenue. No amount of MZOs will be able to fix that.

It seems that most municipal leaders agree that MZOs should be used sparingly and only in exceptional circumstances - a very subjective threshold. By our count, there have been 15 requests for these ‘exceptional circumstances’ across Simcoe County in just over a year. Further, some municipalities have had more than their fair share of ‘exceptional circumstances’. The gold rush mentality will take over and the weakening of what is considered ‘exceptional’ will occur. It already is. How many more ‘exceptional’ circumstances will be granted in this rush to the bottom? When those situations present themselves, what influence will neighbouring municipalities have on MZO applications that impact their watershed, their economies and aspirations to attract talent and employers? Using MZOs may bring certainty for the affected landowner and help realize infrastructure and DCs quicker, but wreaks havoc on the citizens that are blocked out of the process, neighbouring municipalities and their vision, neighbouring landowners and the environmental and agricultural impacts that are supposed to be understood and mitigated or minimized.

As a collective we are asking your municipality to not approve any MZO that comes before your council. We feel the cost to local democracy, regional planning, environmental protection and smart growth is too great. MZOs breed chaos, not prudent planning.

However, we recognize that municipalities are limited in their power with MZO's, not only from the policy gaps as outlined previously, but also when it comes to local consent. We have observed several MZO's across the province get approved despite local council opposing the proposals. Evidently, there is a need to work with provincial representatives to encourage them to narrow the scope of how and where MZO's can be used and to affirm in policy that municipal consent is a requirement. After all, it is the municipality that will bear the impacts, financially, socially and politically, of any MZO granted. If municipalities are seen as an equal partner in planning, then using MZO's that would override local bylaws and planning policies as well as the potential to go against local decision making should be a non-starter.

We look forward to working with our local councils and provincial representatives to ensure that we build a prosperous, healthy and sustainable Simcoe County.

Sincerely,

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Simcoe County Greenbelt Coalition

Mike Douglas
Concerned Citizens of Ramara

Mario Nobrega
Protect Wasaga Beach Wetlands

Alyssa Wright
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Dana Tuju
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CC:
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Minister Steve Clark
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