

Advocates say MZOs not only way to expedite projects

Don Wall September 17, 2021



MUNICIPALITY OF INNISFIL — Last month Minister of Municipal Affairs and Housing Steve Clark issued a Minister’s Zoning Order for the Orbit project in the municipality of Innisfil that included guidelines for how the land within 425 metres of a proposed GO transit station can be used. The proposed development could provide housing for 150,000 people at build-out.

Advocates speaking on opposing sides of the issue in the wake of the latest court ruling on Minister’s Zoning Orders (MZOs) say Ontario’s land use approvals system is due for reforms.

But the agreement stops there.

Theresa McClenaghan, executive director of the Canadian Environmental Law Association, said she has a “very significant concern” that legitimate land-use planning issues are being ignored by the escalating use of MZOs by Minister of Municipal Affairs and Housing Steve Clark, while Residential Construction Council of Ontario president Richard Lyall says opposition raised by project opponents is too often “frivolous” and gets in the way of construction of desperately needed housing.

The Sept. 3 ruling by the Ontario Divisional Court was on a procedural matter relating to lack of notice given by the government on changes to the Planning Act regarding MZOs. The court

determined the government broke the law when it failed to comply with the public consultation requirements in Ontario's Environmental Bill of Rights.

The court agreed with the applicants, Greenpeace Canada, that the minister should have consulted the public better on the amendments.

The only remedy given was a declaration that the minister acted unlawfully with respect to the notice provisions, and the amendments still stand, but McClenaghan said in future the ministry will have to take its obligation to post notice of legislative changes more seriously.

“Normally the public has useful things to say and the minister and everybody else does their best to think about all the various factors. More bright minds on the matter usually provide better input and then a better decision is made,” she said.

But importantly, McClenaghan said, issues continue to be raised about the growing impact of MZOs.

“We do have a significant concern in that Minister's Zoning Orders were always meant to be a safety valve, if I can put it that way, for those cases once in a while where the minister might think that a municipality was ignoring or bypassing significant matters of provincial interest. Then they could step forward to use that tool, but it was quite infrequently used,” she said.

In cases where wetlands are threatened, McClenaghan said, the use of an MZO, even when requested by a local municipality, might take away an opportunity for local citizens to raise issues of local knowledge on the water table, for example. And housing sprawl is a problem from an affordability and infrastructure cost perspective, she said.

“These are all the things that get factored into the decision-making, and those are the kinds of things that need to be considered. So we've kind of put ourselves in Ontario, particularly in the south, in a bit of a jam.”

In such cases, Lyall acknowledged, “People should be able to exert their rights to say, ‘hey, what are you really doing here?’ But some of these things just don't make any sense at all. It's a complete waste of time.”



MUNICIPALITY OF INNISFIL — Innisfil's director for the Orbit project Tim Cane said the MZO could cut years off the timeline for the project and he noted that Innisfil council has expanded its public consultation process to replicate much of the consultation opportunities lost due to the expedited MZO.

Lyall noted the residential housing sector was declared essential during the pandemic and now it is attempting to spur Ontario's economic recovery.

"It's so frustrating," he said. "We're trying to get the recovery going, we've got immigration coming in and we know we've got a housing supply crisis. We've got infrastructure challenges which are being addressed, but we've got some catching up to do there. And then you get stuff like this."

The invocation of an MZO can save years on the development timeline of a major project, Lyall said.

Asked for comment, Clark's director of communications Zoe Knowles wrote that Bill 197 is an important tool in the province's response to COVID-19, introducing an enhanced MZO that cuts red tape and accelerates the development of essential projects that keep Ontarians safe.

"The ministry consulted with the public after Bill 197 was implemented, and continues to do so, with a clear commitment to take the public's input into consideration whenever an enhanced Minister's Zoning Order is used," stated Knowles.

Both Lyall and McClenaghan offered other suggestions for expediting land-use decision-making beyond MZOs.

Lyall said as-of-right zoning would speed up approvals, as would modernizing the system so approvals processes can be undertaken simultaneously rather than sequentially. At times, he said, a verbal approval is given but the approval letter arrives a year later. And digitization of permitting, a process already underway, would be a major time-saver, he said.

McClenaghan said in contentious cases citizens groups could be given upfront intervenor funding so that in a case involving water rights, for example, a hydrologist could be hired early to prepare a report and possibly resolve an issue early.

Also, she said, by expanding mechanisms to hear citizens' concerns, more people would be given an opportunity to be heard.

"It doesn't have to take forever to do, you can do a citizens night and hear from 25 people," McClenaghan said.

In the end, she said, the continued use of MZOs will result in greater citizen pushback.

"If it's a bad proposal, and it's hanging over the community, that's a huge amount of angst," she said. "If it's a proposal that can be modified and made into a good proposal, then that should happen sooner than later."