Expropriation by Designation

GOULBOURN LANDOWNERS GROUP
speak out about
WETLAND DESIGNATIONS

SUMMARY:

The Goulbourn Landowners Group represents rural landowners in the Goulbourn Ward of the City of Ottawa.

The issue addressed in this report is the designation of properties as Provincially Significant Wetlands by the Ontario Ministry of Natural Resources (MNR) and the City of Ottawa. This designation directly affects approximately 60 landowners in rural Goulbourn. A number of additional landowners are also affected as their property lies in the wetland buffer area. To date, the Province and City have not notified these landowners in the buffer area of the impending restrictions that will have a negative impact on their property values and property rights.

We would like to make it clear that the Goulbourn Landowners Group are supporters of the environment and the preservation of wetlands.

Our concerns and objections are with the procedures, methodology and regulatory aspects of wetlands designation.

OVERVIEW:

The present regulatory environment has four major problems:

- No consultation. Landowners were not informed of the process until their property had been designated by the Province. No opportunity for input in the City's process.
- It over-designates. Properties are designated as wetlands that bear no resemblance to the normal concept of wetland.
- It ignores property rights. Designated properties are devalued. Wetlands are a communal good, and are of no particular value to the individual owner, yet the owner is expected to absorb the cost when his / her land is devalued.
- Designated properties and the buffer areas become a regulatory nightmare for the landowner.

Due to the above, the landowner is forced to choose between destroying his wetland and seeing his life savings destroyed. The landowner is therefore forced to become an opponent of the process.

COMMENT:

The solution is to create an environment that no longer pits the landowner's financial security against his / her environmental interests, and to create a process that does not force landowners into an adversarial role.

Province of Ontario

Require consultation with the landowners throughout the process. Require the province to explain to landowners the possible consequences of a wetlands study at the outset, and to inform them of their rights.

Review the evaluation procedures for wetlands to ensure that only real wetlands get designated.

Remove the 'complexing' provisions that allow the bureaucracy to designate property without doing a full Provincially Significant Wetland evaluation.

Require municipalities to provide full and fair compensation when properties are devalued, or to buy them at a fair market price (and with the owner's consent).

Review and simplify the mass of wetland regulations from multiple ministries (see Appendix A) and

- Remove unnecessary regulation.
- Provide a single access point where property owners can get a fast and simple answer and / or permit to make changes.
- Require a 120 metre buffer zone around all residences, that would exclude wetlands (and other) designations and their buffer zones.

Provide a process whereby landowners can appeal the designation simply and easily. Alternatively, require a landowner's permission before his / her property can be rezoned as wetland.

A moratorium on all existing and future designations until the above problems are resolved.

City of Ottawa

Require real consultation with the landowners throughout the process.

Develop a process that is fair to landowners and does not create an adversarial relationship between the city and the landowners.

Provide full and fair compensation when properties are devalued, or to buy them at a fair market price (with the owner's consent). If the City cannot afford to provide compensation, it is completely unethical (but, sadly, not illegal) for the City to proceed with wetland designations.

Provide real incentives for landowners to maintain their wetlands.

Apply wetlands regulation equally to rural and suburban properties.

Move to a system where all aspects of a property are considered at the time of a rezoning application, so that pre-emptive wetland designations are not necessary.

A moratorium on all existing and future designations until the above problems are resolved.

PROBLEMS

In the current attempt to redesignate Goulbourn properties, the problems fall into four main areas that can be summarized as follows:

- Procedural issues:
  - The land was redesignated by MNR before the landowners were even aware of the process.
  - The City has informed the landowners of MNR's designation and the City's intent to revise their Official Plan to reflect the new designations. There is no room for negotiation in this matter; the only points for discussion are the exact boundaries of the wetland areas.
  - The hallmarks of City's and Province's dealings with landowners are deception and misdirection.
  - The motivation for this process appears to be the desire to designate new wetlands to replace existing wetlands in the suburban areas of the city, which the city is failing to protect by allowing development. Designating new wetlands does not create new wetland – it was already there – whereas allowing development of existing wetland will permanently destroy it.
- Methodological and regulatory problems:

- The wetlands classification depends solely on the plants growing on the properties at the time of the evaluation (ref. 1 and Appendix B). It does not take into account any other factors. Nor does it require that the properties even remotely resemble a wetland. The 'indicator species' for wetlands that the evaluation uses are not limited to wetlands.
- The existing evaluation was done by flying over the properties at 1000', and by roadside observation. Only a tiny fraction of the area is visible from the roadside, and the detail visible from 1000 feet is limited, so the result is arbitrary at best.
- The great majority of the affected properties are not Provincially Significant Wetlands in their own right. They are being designated Provincially Significant using a method known as complexing that allows properties to be designated Provincially Significant if they are within 750 metres of an existing Provincially Significant Wetland, using much less demanding criteria. These properties can then be used to complex further properties, and so on. The result is that an existing Provincially Significant Wetland can be used to designate large areas without ever having to justify the Provincially Significant Wetland criteria. The complexing regulation is of doubtful justice in any circumstances, but this use of it is a clear abuse of the concept.
- The wetlands classification system ignores the reasons properties are wet. Many properties in the affected area are growing wetland plants because of spring flooding that is caused by the City's failure to provide and maintain adequate drainage. The City has a clear legal liability not to allow water from City property (particularly roadside ditches) to flood resident's property. **The City has clearly been negligent and could be sued for the loss of property values.**
- The wetlands evaluation system is badly flawed, in that it can easily be manipulated to produce any desired result. Any system that evaluates wetland MUST be fair, objective and limited to what any reasonable person would recognize as wetland. The current system over designates to the point where land does not need to be wet to be wetland!

- A violation of Property Rights:
  - A designation of Provincially Significant Wetland results in a drastic devaluation of the affected properties. The value of general rural land falls by 85% from about $2500 per acre to about $375 per acre. Farms and properties with homes built on them can be much more drastically affected. Neither the City nor the Province is prepared to compensate the landowners for the loss of value. Since wetlands are a communal good, and of no intrinsic value to the landowner, this is inexcusable.
- A regulatory nightmare:
  - Once designated, the owners of Provincially Significant Wetlands, and of all property in a 120 metre (400 foot) buffer zone, enter a bureaucratic nightmare where an environmental impact study may be required for **any** change to the property, no matter how trivial. This can involve the Ministry of Natural Resources, Ministry of the Environment, Dept. of Fisheries and Oceans, Ministry of Agriculture, and possibly others (see Appendix A). The costs can easily run into tens of thousands of dollars and take years to complete.

Finally, we should point out that the good intentions of the city and provincial bureaucrats are likely to result in exactly the opposite of what they are trying to achieve.

Rural landowners were, and are, good stewards of their properties. Rural landowners are, on the whole, very much environmentalists, albeit of the practical rather than the armchair variety. We have a direct interest in the welfare of our properties. We have to drink our own water, dispose of our own sewage, and therefore cannot afford to abuse our environment. In fact, rural landowners have a much better record of protecting wetlands than does the City and Province, which allow wetlands near suburban areas to be developed wholesale.

Unfortunately, the consequences of a Provincially Significant Wetland designation are nothing short of draconian. Landowners are so concerned about the restrictions that some are prepared to destroy their designated 'wetlands' rather than allow their life savings to be destroyed and their rights to enjoyment and management of their own properties to be usurped.