Landowners Beware!

Property Rights v. Environmentalism

Presentation to the Policy Subcommittee of the Rural Summit
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It feels like rural landowners are under a concerted assault from intrusive, inappropriate, and badly designed legislation that threatens our basic property rights and lifestyles. For example, the Department of Fisheries and Oceans regulations relating to streams and drainage, the recent health regulations concerning farmers markets, and City of Ottawa's tree cutting by-law. While few people would argue that some regulation of rural life is required, there are too many examples of regulation that is ill-thought-out, inappropriate, and abusive of rural residents' rights.

The wetlands designations are an excellent example of intrusive, inappropriate, and badly designed legislation. I'm going to talk about this issue and the way it has affected my group, the Goulbourn Landowners Group. (We prefer the short form, the GuLaG as it seems to be indicative of how we are perceived by the City.) There are many other aspects to the property rights problem, and the proponents for those aspects are capable of speaking for themselves.

There is a perception that because we oppose the wetlands designations, the Goulbourn Landowners Group is anti-environment. Nothing could be further from the truth. The Goulbourn Landowners Group is not against the environment or against the preservation of real wetlands. Most of us who make our homes in rural areas are environmentalists. That's why we choose to live in a rural environment. But because we live in and with the environment, we tend to be more practical than some urban armchair environmentalists, who specialize in telling other people how to live without applying it to themselves. I could, for instance, point to a certain councilor who proclaims herself to be an environmentalist and protector of wetlands, but lives in a house built on wetland in a subdivision built on wetland.

The Goulbourn Landowners Group does not see this issue as property rights versus the environment. **The main reasons we oppose the wetlands designation are because they devalue and freeze our properties and erase our equity.** This is a problem with the process that the City is using, not with the environment.

<u>Background:</u>

The City of Ottawa and the Province of Ontario have a program to protect Provincially Significant Wetland. Once a property is designated Provincially Significant in the City's Official Plan, the owner is severely constrained as to what he can do with his wetland, and his property is devalued. There is another form of wetland, basic wetland, that does not require a zoning amendment and has little effect on the value of the property or the landowner's use of his property. The wetland regulations permit a process called complexing, which allows basic wetland to be designated Provincially Significant if it is within 750 metres of an existing Provincially Significant Wetland.

In 2004, the Ministry of Natural Resources (MNR) and the City of Ottawa initiated a study "to identify wetlands and determine their potential to complex with the Goulbourn Wetland Complex". A letter was sent to the affected landowners indicating a study was underway and requesting permission to come onto their properties to evaluate their wetland status. The letter did not discuss the process, warn of the potential for designation as a Provincially Significant Wetland or of the effects on property value, etc. Most landowners figured nothing good could come of this and ignored the letter.

The city then used aerial photographs from 2002 to identify potential wetlands. In September 2004, the City's biologist flew over the target properties to identify wetland plants and supplemented this with roadside surveys. In February 2005, the City sent the completed study to MNR, which designated the wetland areas as Provincially Significant Wetland based on their proximity to the existing Goulbourn Wetland Complex and the complexing regulations. Altogether 262 hectares (about 650 acres) were designated. **At this point the landowners knew nothing of this and had no chance to object or comment. So far as we have been able to ascertain, there is no way to appeal MNR's decision.**

In April 2005, the City of Ottawa informed the landowners that their land had been designated by MNR, and of the City's intent to update its official plan to re-zone the affected properties as Provincially Significant Wetlands. This was an information meeting; landowners were permitted to ask questions but their input was not required or requested. The city outlined the history and their ongoing plans to re-zone the affected properties. At no point in the process do the landowners have an opportunity to have their concerns addressed or to object to what is taking place. The landowners can only appeal the Official Plan Amendment to the Ontario Municipal Board (OMB) at their own substantial expense, but this will not affect the provincial designation. There is also a buffer zone of up to 120 metres around all designated wetlands, where land use is severely restricted. **Affected landowners were not informed that they are in the buffer zone, or of the restrictions on their property.** The City has stated that it does not intend to compensate landowners for the devaluation of their properties. **The effect of these designations is to devalue and freeze private property.**

The wetlands designations have raised so many issues that it's hard to keep track of them all. Even where they are not specifically labeled as property rights, all these issues impinge on the common law citizen right to own and enjoy private property. They include:

<u>Process:</u>

* Affected landowners were not informed of the project until the results of the evaluation had been sent to MNR and MNR had designated the properties. Further, there is no provision for landowner consultation or negotiation.
* The landowners in the buffer area were never informed of an impending designation.
* Area wetlands evaluations were prompted by an application for a subdivision that involved property that was not classified as wetland at the time of the application. The City was therefore unable to prevent that development but arbitrarily moved to wetland designation of additional properties as a pre-emptive strike to prohibit other landowners from doing the same thing. Thus one developer will benefit but neighboring rural residents and farmers, deprived of full and proper disclosure, will see market value of their property plummet.

Ethics:

* The City did not inform the landowners of the wetlands process at the start, and gave the the landowners no opportunity for input or negotiation. However, a local environmental group was apparently fully informed throughout the process.
* The hallmark of the City's and Province's dealings with landowners has been deception and misdirection.
* The City does not intend to compensate landowners for the devaluation of their properties and appears to consider only its legal obligations while ignoring issues of ethics and justice.
* Wetlands, real or contrived, are of no value to the owner. Wetlands are a communal value, and if the community insists on devaluing private assets, the community must compensate owners of such assets for all losses thereby incurred.
* Wetlands are evaluated using the Ontario Wetland Evaluation System manual, Southern Edition (OWES). This manual is a complete disaster. Its definitions of wetland are nonsense, and it contains provisions for 'complexing' that allow the City to designate further properties with only the most minimal observations.
* The application of wetlands regulations is applied very unevenly. Wetland adjacent to the suburban core is released for development at the same time rural 'wetlands' are being designated to protect them from development.
* Given the City's abysmal record in defining wetlands, its unilateral assault on the common law rights of private landowners to that end is fraudulent.

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