

SURPLUS STAKEHOLDERS

WATERLOO REGION RECORD - JUNE 10, 2010 Too many stakeholders. Too few stakeowners

My first real job, back in the early 1980s, was renovating an old house in Manotick, Ontario. And the first thing we did was rip off the front porch. I'll never forget my boss — who'd bought the rundown place to fix up and rent out — explaining his hurry: "We need to get that porch off right away, before the heritage nuts show up," he said. Thirty years later, it still seems like good advice.

Local news is awash with examples of the great interest people take in old things that belong to others.

Case one is the well-publicized Lang Tannery renovation in Kitchener. A few derelict outbuildings are fated to become a parking lot to serve the needs of tenants in the main complex. And a small army of heritage advocates is up in arms.

This \$30-million redevelopment scheme fits perfectly within the city's plans for resurrecting the downtown, and the mayor and council are firmly behind it. Cadan Inc., the developer, has gone to great lengths to establish its heritage credentials, including a promise to preserve the distinctive smokestack.

But none of this pleases the bloggers, columnists and assorted noisy activists who seem to demand that every pile of old bricks be protected as an irreplaceable part of our past. Some have argued Kitchener should expropriate the rights of the owners by declaring the buildings officially protected under the Ontario Heritage Act.

Case two may have slipped under the



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radar except for an interesting story by The Record's Terry Pender involving a stand of trees behind an old mansion on Union Street in Waterloo.

A few trees needed to come down to expand the building into a law office. Again the totality of the plan is clearly a net public benefit. Local government has given its approval. But still the neighbours are furious. A Record editorial dutifully chided the city for failing to inform the locals that the trees were coming down.

Of course there's nothing particularly unique about these two incidents. They merely reflect the alarming propensity for people to make claims on the property of others.

"Everybody seems to think they are a stakeholder in everybody else's business — whether they actually own a stake or not," says Karen Selick, litigation director for the Canadian Constitution Foundation, a group that defends Canadians' rights to private property and free speech.

"If you have a piece of property you should have the right to make changes to it and generally do whatever is in your own

best interest as the owner."

Selick is an advocate of enshrining property rights in the Canadian Constitution, or at the very least provincial laws. "The simple fact is that Canadians have very limited protection when it comes to property rights," she says.

Ownership brings with it costs, liabilities and uncertainty. Balanced against all this risk is the (often slim) prospect of success. Profit is never a sure thing, as any developer will tell you. On the other hand, it's easy and costless to complain.

All those stakeholders who would prefer to turn the old Lang buildings into a chi-chi shopping district could have done just that with their own money. They didn't. The same goes for the homeowners who back onto the law office's treed lot. Buy it yourself if it's that important to you. But having risked nothing, why should any "stakeholder" be able to dictate what the real risk-takers can or cannot do?

In each case it appears sanity will ultimately prevail. The derelict Lang buildings seem set for demolition. The Union Street trees have already come down. As Kitchener Mayor Carl Zehr properly noted, changing the rules midway to favour nonowners, however loud, would "send a development chill throughout the property development industry."

Even so, owners must now go to great lengths simply to exercise the privilege of deciding how best to use their own property.

Stakeholders have an apparently insatiable appetite for delaying and blocking and grumbling. Since time is money, what should owners do? Our two examples are again instructive.

The Union Street trees were apparently cut down at 6:30 p.m., after city offices had closed for the day. This seems awfully clever. Official permission had been granted. So why give neighbours an opportunity for any last-minute reprieves? And advertising the exact day and time of the chainsaw rendezvous, as the neighbours seem to have demanded, would only encourage some sort of protest aimed at preventing the activity.

Over at the Lang Tannery, however, the developer appears downright naive. Promising to preserve the smokestack right off the bat was no doubt an honest and neighbourly thing to do. But it was hardly clever. The smart move would have been to declare both the smokestack and outbuildings doomed. Once the inevitable Save Our Smokestack campaign began, the firm could then have proposed a saw-off worthy of Solomon: Keep the smokestack, level the buildings. With a partial victory won, even the heritage folks would have gone home happy.

It's not enough to merely own property these days. Now you've got to out-think the nonowners as well.

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NOTE: The Canadian Law Dictionary defines "stakeholder" as follows

"A person chosen by two others to hold money or property, ownership of which is in dispute and to award such money or property to the disputant identified as its rightful owner in a court of law"

On that definition alone, heavy hitters in the hugely profitable, government-subsidized environmental industry (Examples: Environmental Defense, David Suzuki Foundation, EcoJustice, Ontario Nature, The Nature Conservancy) are NOT stakeholders but rather professional lobbyists with no financial interest, propriety rights or contractual obligations in the vast expanses of privately owned land they constantly pressure the Ontario government to control by legislation.

Self-described as stakeholders and invariably named as such by the Ontario government, these unlicensed interveners are instrumental in bringing about layer upon duplicated layer of provincial legislation. Always presented in the velvet glove of ecological preservation and "the public good" these statutes conceal the mailed fist of state control and excessive regulation without right of appeal or compensation. (Examples: Greenbelt, Endangered Species, Conservation, Source Water Protection and Places to Grow Acts).