

TONY & PATTY SWINIMER

P. O. Box 66, Eaglesham, AB T0H 1H0
Tel. (780) 359-0006 Fax (780) 359-0007
Email: tpga@wispernet.ca

February 3, 2012

VIA FAX TO: (780) 694-3788

Birch Hills County
P. O. Box 157
Wanham, AB T0H 3P0

Attention: Mr. Doug Plamping, Interim CAO

Dear Sirs:

I would like to share my thoughts and issues with the proposed Unsightly Premises Bylaw at the upcoming meeting on February 14, 2012, but am unable to attend the live session due to the fact that the Council chambers are inaccessible to me as a handicapped person – it's impossible for me to negotiate that set of stairs and for many other people in this community as well. I understand that issue is being rectified by a budget inclusion for an elevator to be built within the building in the upcoming fiscal year.

I have very carefully read the UPB handout prepared by the County. I understand that its wording is based on a generic bylaw in use in many other parts of the province. I also understand, however, that what is useful in an urban setting is perhaps not so useful in a rural setting such as ours, and not just specifically in Eaglesham, where I live, but in the County in general.

Allow me to start with Section 2 (i), the definition of "Unsightly Property" or "Unsightly Condition". Without repeating the entire section verbatim herein, I would suggest that this section describes virtually every single property, in one way or another, in the entire County. Tall grass? Smoke? Dilapidated buildings? Rusty vehicles? Holes? Yep, we have them all – and that's just in the hamlet of Eaglesham itself. I am sure that I don't need to bring up how this applies to many farm properties in the County as well, I notice that "Smell" isn't amongst the items listed here, but I imagine that Council is aware of the hog aroma from CFO's, and the smell of sour/sweet gas, that infuses our communities on a regular basis.

Going further to Section 3, it is worded to appear to mean that in the FUTURE, nobody will allow anything to become unsightly and I'm wondering if that implies that existing questionable properties are "grandfathered". I would think this follows in a similar manner to the changes in the Land Use Bylaw in regards to not allowing mobile homes more than 15 years old in hamlet areas from the date the new Land Use Bylaw came into effect – and that it reflects that the dilapidated mobile homes that were already in

place prior to that effective date are protected by the same “grandfathering” principle. How, then, would you deal with a rundown mobile home, which is protected by the Land Use Bylaw, which would now be in violation of an Unsightly Premises Bylaw – which would have prior effect? And who is going to argue this in a court of law? And more importantly, on whose nickel?

Section 3.02 also states that ...”An unsightly Property shall be considered relevant to adjacent lands and land uses or relevant to other lands and land uses that could reasonably be considered to be in the neighbourhood.” The key word here is “reasonably”. What part of this community is NOT considered to be in the neighbourhood? Speaking in regards to Eaglesham alone, the entire community is less than 6 blocks wide from end to end – is there somewhere in that 6-block radius that would be considered NOT in the neighbourhood?

Section 4, the Complaint Process, is also problematic to me. It only specifies that a complaint needs to be made to Council in writing. I know that Section 1 specifies only “means and includes any use of, or activity upon any premises which is offensive to any person acting reasonably, or has or may be reasonably expected to have a detrimental impact upon any person or other premises in the neighbourhood or is dangerous or an imminent danger to public health or safety, or materially depreciates the value of other land or improvements on adjacent land...etc. etc.” The underlined emphasis is mine. At first, this section specifies that any person acting reasonably may make a complaint. Notice the subsequent wording only refers to adjacent land – adjacent to what land? The complainant’s land? There’s no definition of whose land “adjacent” refers to. So I am making the supposition that, being a reasonable person, I can make a complaint about anybody’s premises because, in a broad interpretation of the wording, the entire County is my neighbourhood, and anybody’s junk-laden yard will negatively affect my property values whether that problem land is adjacent to my land or not – is that correct? Does that mean that I can make a legitimate claim that the Hutterite CFO’s, both north of town and at Codesa, negatively affect my property values because they make the entire area smell bad?? What about crop spraying right next to the public schools, and on other farm properties adjacent to hamlet properties? That chemical use is certainly a public hazard. Can I make a complaint against property owners whose agricultural lands abut Fox Creek, whose chemical runoff affects my drinking water as supplied by the County? Can you see how wide open this leaves the field for interpretation?

I have another problem with the complaint process. According to this section, a complaint can be lodged by anybody, even anonymously, because it doesn’t specify that the complainant has to identify themselves, and the County can arbitrarily decide whether to start by-law infraction proceedings, but it’s the property owner who is fined and forced to pay an appeal fee if he wants to argue the point. Everything in this section is punitive to the property owner, and gives free rein to anybody who wishes to file a written complain, no matter how baseless or frivolous that complaint may be. What criteria exists to determine if a complaint is valid or not? This by-law specifies that these decisions are to be made by the Development Appeal Board – which in the case

of Birch Hills County means our neighbours, co-workers, and fellow community members which are all appointed, NOT elected, by County council. These people are not professionals and I would have a hard time, if I had a complaint lodged against me, accepting their judgment as being that of experts in their respective fields.

So aside from these questions of law, and interpretation, I have a bit to offer on a positive note. I understand that the main gist of the effect of this by-law has to do with the issue of the two derelict gas stations (one in Wanham, one in Eaglesham), and the derelict Eaglesham Hotel. Instead of enacting a by-law that is more likely to set neighbour against neighbour, the County has the ability to use the provisions of an Area Redevelopment Plan (please refer to Section 634 of the MGA) which says in part:

634 A council may

- (a) Designate an area of the municipality as a redevelopment area for the purpose of any or all of the following:
 - i) Preserving or improving land and buildings in the area;
 - ii) Rehabilitating buildings in the area;
 - iii) Removing buildings from the area;
 - iv) Constructing or replacing buildings in the area;
 - v) Establishing, improving or relocating roads, public utilities or other services in the area;
 - vi) Facilitating any other development in the area;
- (b) Adopt, by bylaw, an area redevelopment plan;
- (c) In accordance with this section and Division 6, provide for the imposition and collection of a levy to be known as a “redevelopment levy” and
- (d) Authorize a designated officer, with or without conditions, to perform any function with respect to the imposition and collection of that redevelopment levy.

I am quite aware of the fact that the ownership and environmental issues of all 3 of these properties are very complex; however, if the actual target of this by-law, is specifically to allow the County to deal with these 3 properties, when why not just deal with these properties? Of course, I agree that there are many other properties which need to be dealt with, but these 3 have been a source of irritation to most of the residents of this County for quite a while.

My other suggestion is this: instead of taking a punitive approach, would it not be in the County’s greater interest to offer an incentive for residents to do their own property improvements? Instead of the County issuing an edict that says, “If you don’t clean up your mess, we’ll nail you with process and penalties”, maybe the County could say, “We’ll offer the use of a County truck and driver to pick up the stuff that you can’t get to the dump, and give you a \$250.00 incentive to boot when you’re all done”, which I am sure would be very attractive to many senior members of the community who simply cannot move a rusty car frame by themselves, or tear down a building, or things of such like. The old saying that you can catch more flies with honey than you can with vinegar holds very true in this situation. I think if the residents were given the opportunity to participate in a positive way, in the cleanup of their communities, instead of having a

sword held over their heads, would be a surer way of accomplishing the same thing, with much better feelings all around. The people of this County have had a far greater number of negative dealings with Council than positive experiences, and this would give the County a terrific opportunity to rebuild community relations.

The question begs to be asked – “Well, if it smells bad here, and there’s too much chemical spraying, and if most of the buildings are derelict anyways, why would you want to live here?” My family and I live here in a spirit of “live and let live”. When I mention problems with the smell from the CFO’s it doesn’t mean that I have a problem tolerating some smell once in a while. It doesn’t mean that if a neighbour cuts and stacks lumber in his front yard, I’m going to want to have it declared unsightly. It doesn’t mean that if someone has a run-down tumbledown shack on their property, I’m going to complain about it, because it’s their sovereign property. The question of maintaining or even improving property values in Birch Hills County is a bit of an oxymoron in itself. I suggest that Council review the Alberta Government statistics on property value trends in the province, and they will find that Birch Hills County is substantially below the provincial average. Having some old buildings torn down is not going to make up for the lack of community services which would push property values up. What I’m saying is that if you are going to apply this rather unwieldy brush, you must do it in the same manner, and at the same level, across the board. It must be a even playing field for everybody. If it is to be dealt with on that basis, I find it rather an infringement on my rights as a property owner and taxpayer in this County. I am not denying that these issues exist in this County, and I’m not just complaining about them, but I hope that Council accepts my positive suggestions about a different approach to an old problem here in the County.

I repeat that I am truly sorry to be unable to attend the public discussion in person. Perhaps Council may want to reconsider holding the meeting in Council chambers which is inaccessible to a great proportion of senior and handicapped resident, and consider holding a town meeting at Eaglesham Hall or similar facility, that is accessible to all residents without hindrance.

It is my firm belief that this Unsightly Premises By-law, as it is worded in the handout, is unworkable, unfair, and likely impossible to prosecute. I do hope that Council will re-examine this by-law carefully and consider other alternatives before adopting these measures.

Sincerely,

Patty Swinimer