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File No. 20023

January 18, 2010

The Corporation of the Township of Melancthon
157101 Highway 10
R.R.#6
Shelburne, Ontario L0N 1S9

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Confidential Legal Advice

Dear Mesdames & Sirs:

Re: TOWNSHIP OF MELANCTHON - Demolition control By-law

You have asked me about the interplay of the proposed demolition control by-law and permits and requirements under the Building Code Act, 1992.

Building Code Act, 1992

Under the Building Code Act, 1992, s. 8, a permit is required throughout Ontario for the construction or demolition of a building. From this general requirement there are some exemptions. Pursuant to the Building Code s.1.3.1.1 "A person is exempt from the requirement to obtain a permit under section 8 of the Act, (a) for the demolition of a building located on a farm."

Therefore, under the provisions of the Building Code Act, no permit is required for the demolition of a residence on a farm.

Planning Act

The proposed demolition control by-law is not under the Building Code Act, 1992. It is under the Planning Act, s. 33. This is an additional layer of control that puts Council into the driver's seat to determine whether, in good planning exercise, the demolition of residential property should be permitted. For your convenience, I am setting out the most important relevant provisions:

33. (2) When a by-law under section 15.1 of the Building Code Act, 1992 or a predecessor thereof is in force in a municipality or

when a by-law prescribing standards for the maintenance and occupancy of property under any special Act is in force in a municipality, the council of the local municipality may by by-law designate any area within the municipality to which the standards of maintenance and occupancy by-law applies as an area of demolition control and thereafter no person shall demolish the whole or any part of any residential property in the area of demolition control unless the person is the holder of a demolition permit issued by the council under this section.

(3) Subject to subsection (6), where application is made to the council for a permit to demolish residential property, the council may issue the permit or refuse to issue the permit.

There are many other provisions, dealing with the process, etc. You will note that in this case the permit comes from Council, not from the Chief Building Official. There are various appeal provisions to the OMB, penalties, powers of Council in dealing with the application and an exemption from the requirements of the Building Code Act, 1992, s. 8. The entire section is set out for you on a separate document for your convenience.

It is my opinion that the exemptions under the Building Code do not exempt "residential properties" (which include residential buildings on farms) from the requirement of a permit under the proposed demolition control by-law, pursuant to the authority of the Planning Act.

And this is what must be kept in mind in considering the by-law. It is a planning measure. You need the input from the planners as to the appropriateness of such a by-law in the circumstances, having regard to the character of the Township, the requirements and abilities to comply with the Places to Grow Act, and the other usual planning factors. At the end of the day, you must make a planning decision.

The consideration of this by-law has been triggered by what appears to be an unusually high number of residential demolitions. To bring in a by-law to simply try to "stop" the Highland Companies is not a proper planning exercise. Similarly, to refuse to pass the by-law because it may impact on a specific landowner is also not a proper planning exercise. You have to look at the big picture and determine if the protection of residential housing is an issue that needs Council's action. Incidentally, it is possible to allow the demolition of residential housing, if it is replaced with residential housing elsewhere.


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Please let me know if there are any further questions in regard to the above. Although this letter is marked "Confidential Legal Advice", you may, in your discretion, make it public, if you so wish. Because this letter impacts on planning matters, a copy of this letter is being provided to the Township Planner, but only in the context of the exemptions under the MFOI Act.

Yours very truly,
SHEPHERD, OSYANY & KING, LLP
per:



Andrew Osyany

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AO/ofa

cc. Township Planner