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What recourse do St. Clair W. homebuyers have?

Residents owners upset about slaughterhouse noise, truck traffic

St. Clair West Village is an attractive subdivision of 352 new semi-detached homes near St. Clair Ave. W. and Keele St.

A project of Tribute Communities, the development hogged the publicity spotlight when local residents recently blocked delivery trucks heading to the adjoining slaughterhouse of New York Pork.

Frustrated owners in the newly finished subdivision succeeded in publicizing their complaints against the developer, its sales force, the city and the operators of the slaughterhouse.

The basis of their charges is that the horrifying squealing of the pigs as they are led to slaughter keeps the residents up all night, and the local children have to share the streets with 18-wheeler trucks carrying the noisy critters to the processing plant.

In looking to pinpoint blame, the area residents have targeted everyone involved in the problem. Do the residents have any recourse against:

- The city? When the City of Toronto rezoned the area for residential use, it required the developer to warn purchasers that "sound levels from... neighbouring industrial uses may continue to be of concern, occasionally interfering with some activities of the dwelling occupants."

It seems the city has insulated itself from liability by requiring the builder to provide this bare minimum warning in the agreements of purchase and sale. Unfortunately, the purchasers were not warned just how bad the sounds were.

Ultimately, the city might have to shoulder some financial responsibility if area owners appeal their property assessments on the grounds that the noise has reduced their property values.

- The developer? The same argument applies to the developer. No attempt was made to conceal the existence of the abattoir operation and the purchase agreements did contain the veiled warning. Chances of success are slim here.

- New York Pork? Vince Palletta Sr. is the fourth-generation operator of the New York Pork abattoir, which has been in operation on the site since 1930. He was quoted in The Star as saying he sympathizes with his neighbours, but "I didn't create the problem." Unlike the smelly mushroom farm which was a newcomer to a rural residential area, New York Pork was in operation at Keele and St. Clair before the parents of many of the new purchasers were born. The mushroom farm operation had to pay damages to its neighbours, but that outcome is unlikely in St. Clair West Village.

- The politicians who approved the development? The recourse here is obvious, and will no doubt be an important issue at the next municipal elections. The political bungling which approved the rezoning of the area was compounded by the statement of area Councillor Frances Nunziata.

She was quoted in The Star as saying the city couldn't force New York Pork to move. "We can only make it difficult for him to run his business."

The idea that the city would penalize a private businessman with 70 employees who has been legally operating his business for 71 years is absolutely frightening. The mistake in this case, if there was one, was the city's, not Palletta's. Watch for the Ward 11 results at the ballot box in 2003.

- The sales staff at the site office? This possibility holds out a little more promise for the homeowners.

The Star reported last week that the sales staff at the St. Clair West Village sales site told homeowners that the slaughterhouses would soon be gone. One resident told an area meeting, "This lease is up. That one is moving. That's the information I was told." Jeff Brandwein, vice-president of Tribute Communities, denied that his sales staff ever said the slaughterhouses were closing.

If the sales staff did make any misrepresentations which can be proven in court, they could be held liable to the owners in damages.

Ontario courts have consistently awarded damages against agents for negligent misrepresentations. In the 1986 case of Scholl v. Royal Trust Corp., the real estate agent told the buyers there was no urea formaldehyde in the house. When it turned out that the house did have UFFI, the agent and broker got hit with damages for the removal costs.

Three years later, in Patay v. Hutchings, the purchasers told the agent that they needed a "clean air" property due to the wife's health. The agent assured them that a particular site met their needs, but failed to disclose the fact that a landfill might be put in next door. The agent got hit with damages.

The agent in the 1988 case of Jung v. Ip told the purchasers that there were no termites in the house they were buying. After closing, it turned out that the house was badly infested with the bugs, but the vendors had concealed the fact from the purchasers and the agent. The agents and the vendors each had to pay half the damages, even though the agents had no knowledge of the problem.

One of my favourite horror-story cases is Broumas v. Royal Trust Corp., a 1987 Alberta decision. There were several vacant lots on a street of new houses, and the real estate agent showed the purchasers the wrong one. A year later, the purchasers were well into construction when they found out they were building on the wrong lot. The agent had to pay the costs of trading their real lot with the owner of the lot on which they were building.

If it could be proven that the sales staff at the St. Clair West Village site did tell buyers the slaughterhouse was closing or moving, they could be held responsible in damages, and - if they were licensed agents - subject to possible action on a complaint to the Real Estate Council of Ontario, the governing body of licensed Ontario real estate agents and brokers.

Under current legislation, the sales staff at new home sites are not required to be licensed, trained, educated, regulated or insured. If they make misrepresentations, they have no licences to lose.

In Ontario each year, an estimated 10,000 new homes worth perhaps \$3 billion are sold by unlicensed "in-house" sales staff. Norm Sterling, Ontario's minister of Consumer and

Business Services, has proposed legislative amendments intended to strengthen consumer protection, but he intends to leave the sale of new homes unregulated.

The St. Clair West Village situation illustrates why it's important that new home sales staff be regulated, licensed, educated, trained and insured; and why Sterling's proposals would leave consumer protection in the mess on the abattoir floor.

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