



Bob Aaron bob@aaron.ca

July 3, 2004

When full disclosure could mean no sales

King City neighbourhood has no sewers

Septic tanks work fine, but don't meet standards

Last month, I wrote in this space about a North York resident who unknowingly purchased a house with a buried swimming pool in the backyard. When it rains, the ground doesn't drain properly and the yard becomes a grassy swamp.

In the same column, I wrote about clients of mine who sold their house to a purchaser who found out before closing that there was an underground easement for the Bloor-Danforth subway below the house.

The question I raised in the column was whether there was an obligation on vendors or their agents to disclose obvious or hidden defects. (See <http://www.aaron.ca/columns/2004-06-05.htm> for the June 5 column.)

Among the many responses I received to that column was an interesting e-mail from Kathleen Bell, of King City.

She told me that she has lived in her home since 1968. In her neighbourhood, she told me, all residents have private septic systems, since there are no municipal sewers.

The subdivision homes built in the 1950s, and many of the older homes, were built on lots that are not large enough to meet the present health ministry requirements for weeping-tile beds and septic systems. In fact, Bell's lot does not meet today's standards. To make matters worse for drainage purposes, the soil is mostly clay.

Bell wrote that the political issue of connecting King City to municipal sewers (the "big pipe") has been an ongoing local fight for some years.

"Houses sell every day in my neighbourhood," Bell wrote. "We know that the septic systems are on their last legs or worse."

Many of the people are older or single and without children and therefore use less water, she wrote, but often their apparent usage doesn't present a realistic estimate of needs. Residents may illegally discharge laundry and shower water into the ditches by sump pump to avoid a burden on their septic systems.

In 1990, the Bells had to replace their septic system, but it was not possible to construct a system that could legally meet provincial requirements. Eventually, the family was allowed to add a 4,500-litre plastic septic tank, along with several tonnes of extra sand and gravel. They adjusted the tile-bed pattern, but were cautioned that it did not meet current standards.

"You suggest full disclosure," Bell wrote to me, "but if buyers were educated and if vendors actually gave full disclosure here, there would be no sales. People shut up and get out. New owners shut up and get out. Who knows what is keeping us in King City?"

Now comes the kicker. "We are thinking of selling," Bell added. "What exactly should we disclose? Our septic system is functioning very well (the 1990 job was well done). We have only two retired adults living in the house and, like many others, watch how much water we use. For example, laundry is not done in rainy weather. We have a working sump pump and a clean ditch."

As I read the law of Ontario in 2004, a seller is not technically required to disclose defects. Of course, they can't lie about them, either, if asked a direct question. It's up to the buyer to inspect the home and insert appropriate conditions and warranties.

Back in 1960, professor Bora Laskin (later chief justice of Canada) wrote that the doctrine of buyer beware (caveat emptor) was the law in Ontario. As recently as 1995, an Ontario court ruled that sellers did not have to disclose obvious or hidden defects. Some legal authorities suggest that the practice is moving toward a standard of candid disclosure, but it's not there yet.

In the absence of a requirement of full disclosure, however, it becomes particularly important for buyers to insert clauses in their offers to purchase that carefully consider the issue of septic systems in areas where there may not be municipal sewers.

Computer programs can spit out standard form agreements of purchase and sale in minutes. It takes a lot longer for buyers to understand the requirements of operating a septic system and carefully consider their comfort level when buying a home with a non-compliant system.

What do you think? Should Kathy Bell be required to disclose in advance that her working septic system fails to meet health ministry requirements?

E-mail bob@aaron.ca or fax 416-364-3818.