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## Tax records don't always reflect reality Can't trust MPAC for location or value of property

### ***One buyer paid taxes for years on land he didn't own***

Last month's report by Ontario Ombudsman Andr Marin criticizing the Municipal Property Assessment Corp. (MPAC) came as no surprise to the many property owners, builders, real estate lawyers and agents who deal with taxes and assessments on a daily basis.

Marin's report was prepared in the wake of more than 3,700 complaints received by the Ombudsman's office about what Premier Dalton McGinty recognized as the inherent failings of the corporation.

Among the 22 recommendations Marin made were proposals that:

- MPAC should rely more on actual sales figures rather than computer programs to determine property values.
- MPAC should provide more information to property owners.
- Values set on successful appeals should not be tampered with in the following year.
- The onus of proof on appeals should rest with MPAC to prove it is correct rather than the property owner to prove that MPAC is wrong.

One common criticism of MPAC that I was unable to find in Marin's 94-page report is the inordinate delay between the final registration of title to the new owner of a home or condominium and the calculation by MPAC of the assessed value of the property.

Since tax bills cannot be created and sent out without the underlying assessment, buyers of new homes often get hit with a huge retroactive tax bill as much as one or two years after closing. Straightening out whether the builder or owner is responsible for the bill can be confusing and time-consuming.

In addition, when a property has been resold once or twice before the assessment is issued, dividing responsibility for the supplementary tax bill among the builder and the subsequent owners can be a time-consuming nightmare.

During the last four years, the operations of MPAC have given rise to 40 reported court cases. One of them illustrates that a landowner who relies on inaccurate information supplied by MPAC does so at his or her own risk.

Back in 1998, Albert John Metcalfe bought a parcel of land in the municipality of South Bruce. Not having ordered a land surveyor's report, he examined two tax bills for the property and relied on them for an accurate description of the land he was buying.

For the next several years, Metcalfe paid taxes in good faith on this parcel of land, believing it to be his. He later learned that the description of the property on the tax roll (generated by MPAC) was wrong and the purchase was a nullity even though taxes had been charged on the property with the wrong description since 1977.

In January 2003, Metcalfe was sued by the real owner of the property for trespass. At that time, he obtained a survey of the property, which disclosed the error in the roll number.

The following year, he sued the municipality of South Bruce and MPAC for his losses as a result of what he claimed were the inaccurate and misleading representations made by them.

His claim was for \$35,000 being the value of the land, \$8,000 for legal fees defending the trespass lawsuit, and \$3,600 for the surveyor's costs to detect and document the error.

Metcalfe claimed that the entire portion of the property on which he was paying tax does not exist, and no area inside its boundaries belonged to him. He also argued that the municipality and MPAC owed him a duty of care because he was paying taxes on the non-existent land in good faith.

In June 2004, the defendants asked the court to toss out Metcalfe's claim. Justice Michael Tulloch in Superior Court at Walkerton agreed with them, and struck out the claim, since it failed to disclose a reasonable cause of action.

The judge's reasoning is worth repeating especially as we enter a season of increased activity in rural and cottage properties that are often unsurveyed.

The plaintiff, at the time of the purchase of the land, is expected to conduct his due diligence prior to closing, Justice Tulloch wrote.

"Part of the due diligence is a title search as well as obtaining and reviewing a survey of the parcel of land that was the subject of the transaction."

Metcalfe should have ordered a survey at the time of purchase. Even if there is an error on the mapping produced by MPAC and the assessment records, Metcalfe should not have relied on these documents, as their purpose is not intended to replace the use of surveys in accurately depicting the description of the lands.

For homeowners, some of the lessons to be learned from the Metcalfe case and the Ombudsman's report are:

- You can't necessarily rely on the property location or property value in MPAC records
- If you're buying a new house or condo, prepare to wait up to two years to get your first tax bill. And be prepared, because it will be a big one typically covering more than one year's worth of taxes.
- Never, ever, close a real estate purchase without examining the description in the deed of land and comparing it to a properly prepared land surveyors report and drawing.

