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# Learn about future use of nearby land

## Buyer beware of plans for area

### *Neighbourhood can easily change*

For many purchasers, the use of neighbouring properties is almost as important as the land on which their new homes are built.

An email I received last week underlines how important it is for many buyers to be aware of what, if anything, will be built on the lands next to their new homes.

A new home purchaser I will call Bill emailed to say that before buying in his 905-area subdivision, he and his wife thoroughly researched the community.

"The developer showed us a site plan that had only 50- and 60-foot lots for both our phase and the final phase," Bill wrote. "We were looking for an upscale community and this fit our requirements the best because it was close to the schools.

"My wife went to the town to confirm the zoning of surrounding parks and the development," Bill reports. "Everything checked out, so we bought our dream home."

Later, the developer started the final phase and sold all the lots on the perimeter. It has now applied to rezone the remaining lots from 50 to 40 feet and build cheaper homes "that sell more quickly."

Bill and his wife are upset that the smaller lots and less-expensive houses have changed the "character of the development," he contends.

Bill wants to object to the rezoning, but, he says, if the municipality approves the change, the only recourse for the residents is to appeal to the Ontario Municipal Board. Unfortunately, he says, the OMB "always finds in favour of the developer if they are proposing to increase the density and are supported by the municipality."

As residents, Bill says, "we've been lied to by both the town and the developer; we were shown site plans that had only 50 and 60-foot lots and are now dealing with 40-foot lots."

The same thing happened to clients of mine who bought a house six years ago in another 905-area subdivision. They had paid a significant premium to buy a house on a lot which backs onto a golf course. All the plans and marketing materials clearly show the land behind the home as a golf course.

Now, six years later, they are very unhappy because the builder has applied to rezone the huge parcel of land behind their house to allow more homes rather than a golf course. It turns out that an obscure clause in their original purchase agreement had every purchaser in the subdivision acknowledge that the builder might apply to rezone lands "adjacent to or near the lands in the subdivision."

In each purchase agreement, the buyers consented to any unspecified rezoning applications and agreed that the written consent prevented them from objecting to the applications at a later stage.

Needless to say, my clients and their neighbours, all of whom paid a hefty premium for the golf-course lots, are extremely upset at the development going in behind them.

A similar issue reached the Ontario Court of Appeal in 2001. The developer of the Granite Gates community, in the picturesque Sawmill Valley area of Mississauga, marketed a multi-phase condominium development in the early 1990s. The original concept was a woodland community with a recreation complex nestled among a grove of trees at its centre.

As many as 750 condominium units would surround an outdoor recreation area with four tennis courts, an outdoor pool and a putting green.

The recreation area would be deeded to the various participating condominium corporations when the last condominium was registered.

After the last building was registered, the developer decided to use the outdoor recreation area for another townhouse development.

One day, with little notice, the forest on the recreation lands was razed.

It turns out that buried in the midst of the bulky disclosure materials given to each buyer was a schedule stating that, if the developer did not finish any of the common facilities, it might in future construct another building or buildings on parts of the land. The disclosure also noted that the developer did not warrant that any phase of the development would ever be built.

The agreements of purchase and sale, signed by each condominium buyer, contained a clause similar to the one signed by my clients who live next to the disappearing golf course. It said that each purchaser consented to rezoning of lands within the development.

In June 1999, two of the surrounding condominium corporations took the developer to court, asking for an injunction against the proposed construction, and damages.

The trial judge issued the injunction, but in March 2001, the Court of Appeal reversed the decision and allowed the construction of the townhouses to proceed on the recreation area.

The appeal court ruled that a developer had an obligation to perform a written contract in good faith, but that in law, there is no obligation to bargain in good faith in the pre-contract phase. There are several lessons to be learned from these three examples:

- If you're buying a new home, make sure the contract spells out what the surrounding land will be used for.
- Have your lawyer review the offer in advance to see how much "wiggle room" the developer has with respect to neighbouring land.

Ask whether the next phase of the subdivision will have the same size lots as in the current phase.

- If you're paying a lot premium for a home adjacent to parkland or a golf course, ensure that the municipality owns the land or that there is a restriction on the title preventing future development of those lands.
- Remember, the neighbourhood land is just as important as what's underneath your new house. If the offer allows the developer to redevelop or rezone the area, chances are it won't remain green space forever.