



Bob Aaron bob@aaron.ca

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New home worthless, assessor rules

An interesting decision of the Assessment Review Board last year may be the first Ontario case in which the value of a new home was assessed at zero dollars for tax purposes. As well, it could set a precedent for reducing the assessments and taxes of other new homes with significant construction defects.

The story begins in August 2000, when Karen Somerville and Alan Greenberg purchased their new luxury home on Whitestone Dr. in Ottawa's upscale Central Park subdivision for \$443,500. The 3,488-square-foot home sits on a lot measuring about 50 by 101 feet.

After moving in, the couple noticed several construction defects. They hired experts who compiled a list of 138 problems with the house, including 50 Building Code violations. An engineering firm estimated the repair cost at \$335,000.

In December 2002, Somerville was diagnosed with asthma and sick building syndrome, which was attributed to the indoor air quality in the house. Ten months later, she and Greenberg vacated the house on the advice of her doctor.

Eventually, the couple sued the builder. Shortly before the scheduled trial in August 2004, the builder bought the house back from them for \$550,000, which was the estimated market value at the time, assuming there were no construction defects.

But the story doesn't end there. Somerville and Greenberg had owned the house for all of 2003 and parts of 2002 and 2004. They paid property taxes throughout that period based on the assessed value of the house \$346,000 in 2002 and \$406,000 in 2003. Believing that the house was not really worth that much money, the couple appealed its valuation to the provincial Assessment Review Board.

A hearing was held early last year before board member Brian Coburn, a former MPP for Ottawa-Ontario and parliamentary assistant to the minister of municipal affairs.

In his written decision, Coburn noted that he heard extensive professional evidence identifying and supporting "the deficiencies and lack of structural integrity of the subject property."

"It is significant to the Board," he wrote, "that there were a total of 138 items for repair, 50 of which were Building Code violations, and, in fact, an Occupancy Permit was never issued by the City of Ottawa."

"The Board accepts the evidence provided by the complainants and their claim that the subject property was not a well-built home."

In analyzing the evidence, the board found "the cost to cure (the defects), personal out-of-pocket expense, inconvenience and stress created by the subject property that was not 'constructed in a good and workmanlike manner' to be the best evidence to determine the current value assessment of the subject property."

The board ruled "for the two taxation years under appeal, that the structure on the subject property has no value."

In the end, the board reduced the assessment to \$40,000 for 2002 and \$50,000 for 2003. The figures represent the value of the vacant lot the house was built on.

In July, Ottawa city council agreed to reduce the value of the house for 2004 to land value only. An application for that year had not been made to the Assessment Review Board.

In total, the former owners have received property tax refunds of more than \$14,000.

The house is now on the market for \$625,000. It is advertised as a "fully upgraded model," "ready for occupancy," and "truly one-of-a-kind."

I'm told it has been vacant since Somerville and Greenberg moved out in 2003.

Somerville, meanwhile, went on to form a group called Canadians for Properly Built Homes, which lobbies on behalf of dissatisfied new home buyers.

Bob Aaron is a Toronto real estate lawyer. He can be reached by email at bob@aaron.ca, phone 416-364-9366 or fax 416-364-3818. Visit the column archives at www.aaron.ca/columns/toronto-star-index.htm.

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