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## Country dream washed away

### Couple's home was built on top of underground river

From a legal point of view, there are important differences between buying a home in the city and buying a place to live in the country.

For the most part, buyers of city properties do not have to worry about things such as water quality and quantity, well construction, septic systems, road access and encroachments from fences or neighbouring buildings.

When Jeff and Krista Strachan purchased their rural home in Palgrave in December 2000, they found out the hard way that, in addition to the usual checks, it's also necessary to verify zoning for country homes even if their title insurance company, real estate agent or lawyer says a zoning verification is not necessary.

Within weeks of moving in, the Strachans' \$270,000 dream home turned into a legal nightmare and they are still nowhere close to a solution.

After closing, the Strachans received a reporting letter from their lawyer. In it, they discovered for the first time that the house had been built on a property zoned "hazard land" in 1987.

The property had been advertised on the Multiple Listing Service as rural residential, and no mention was made that the property was zoned hazard land.

Typically, hazard-land zoning is attached to a property where the municipality decides it is dangerous to build for any number of reasons. These might include the fact the property is subject to erosion or flood, or it is on a dangerous slope or consists of swampland.

In the Strachans' case, the land is swampy, subject to flooding and has a river running underneath it. None of these factors was visible when the one-acre property was originally inspected because it was entirely snow-covered. There was nothing to raise any suspicions of the problems they would later have with the property.

Despite the 1987 hazard zoning, the Town of Caledon in 1992 had given its permission to legalize existence of the dwelling (which was built before the hazard zoning), subject to the terms of an agreement to be registered on title. Unfortunately, that agreement was never registered on title to give notice of the hazard designation to future owners, and the Strachans' lawyer did not discover its existence until after closing.

The lawyer was retained by the Strachans on the recommendation of the CIBC branch where they arranged their mortgage. On the lawyer's recommendation, the Strachans purchased a title insurance policy for \$270 from First Canadian Title.

Last August, the Strachans applied to Caledon for permission to vary the zoning bylaw so they could build a separate apartment in the house for Krista's parents.

Three days after the Strachans paid the \$500 application fee, two representatives from the town visited the house and told Jeff that because the property was zoned hazard land, they would never be able to build an addition on to the house.

Jeff then turned to his title insurer to file a claim under the title insurance policy. They advised him they would have the house appraised and would cover the difference between the value of the house if it were zoned rural recreational and its value with a hazard land designation.

In December, an appraiser came to inspect the house for First Canadian, but four weeks later he was replaced.

Susan Leslie, First Canadian's director of claims, told me in February they had retained a second appraiser and would pay the Strachans "the amount of their loss" to resolve the claim. She also noted that where homebuyers intend to make alterations or additions to their property, they should obtain a survey and make advance zoning inquiries in addition to buying title insurance. That's always good advice.

Since then, two appraisals of the property have been completed. First Canadian's appraisal showed no reduction in the value of the property as a result of the hazard designation, and the insurer says there is no loss for which the Strachans can be compensated under the policy.

The Strachans had their own appraisal done. Lois Hicks, of Lebow, Hicks & Katchen, appraisers, said the property would be worth \$330,000 on non-hazard land, but is worth between \$112,000 and \$198,000 at most under its current zoning.

All of this for a property that cost the Strachans \$270,000, plus another \$50,000 in renovations.

Jeff Strachan has retained Toronto lawyer Morris Cooper to sue the vendor, the real estate agents, the title insurer, his own real estate lawyer and the bank.

Usually, lawyers who protect their clients with a title insurance policy are personally protected from negligence claims by the title insurance policy.

Jeff told me recently that the house needs major repairs, but he is afraid to spend any money on it.

"I can't build on it, I can't add to it, I can't sell it except for all cash because no one will finance it, and it's difficult to insure."

When and if the problem gets resolved, the Strachans will sell the property, but, says Jeff, "no amount of money will make up for all the heartache, (and) loss of time and money we have put into this home."

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