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July 19, 2003

Do neighbours have right to natural light?

Toronto artist Gordon MacNamara is fighting the City of Toronto and Canadian Tire because he's worried about losing sunlight in his historic studio building.

For more than 50 years, 92-year-old MacNamara has lived and worked in the four-storey studio building at 25 Severn St., a cul-de-sac off Rosedale Valley Rd. Since the First World War, the building has been used as a studio by artists, including J.E.H. MacDonald, A.Y. Jackson and Tom Thomson.

In 1920, the artists living in the building held an exhibition at the Art Gallery of Toronto, naming themselves the Group of Seven. MacNamara bought the building from Group of Seven member Lawren Harris in 1948.

Now the City of Toronto has approved plans by Canadian Tire to build twin condominium towers of 18 and 25 storeys on its parking lot at Yonge and Davenport, just west of the studio.

A report to city council last February confirmed that the Canadian Tire development would create "shadow effects" on the MacNamara studio building from approximately 3 p.m. onwards in the spring, summer and fall. As well, the building would be "deeply shadowed" from one of the proposed towers.

For the parties involved, the question is what rights does a citizen have to light travelling over a neighbour's property?

The law on this questions was clearly set out by the Ontario Court of Appeal in 1978. A landowner named Earl Putnam Organization Ltd. sued its neighbour for constructing a fence directly in front of the Putnam window. The argument was that the fence interrupted its right to light.

In tossing out Putnam's case, the Court of Appeal noted "at common law, there is no natural right to lateral light. The law is clear that a landowner may so build on his land so as to prevent any light from reaching his neighbour's window unless the neighbour has acquired an easement" to light by a specific deed or by the passage of time. (Sort of like squatter's rights to sunlight.)

Back in 1880, the Ontario legislature amended the Limitations Act to eliminate the right of a landowner to acquire a right to light or air by 20 years' continuous use. Now, local politicians and planners have the responsibility of ensuring that owners and tenants will not be left in the dark, literally, by nearby property developments.

Municipal zoning bylaws and development agreements often go to considerable lengths to minimize the impact of shadows on adjacent land in order to ensure that light, view and privacy can be enjoyed by everyone.

As a result, right-to-light issues often come before a local Committee of Adjustment or the Ontario Municipal Board (OMB) on an application to vary the strict provisions of a zoning bylaw.

In the Assaraf case in 1994, the OMB denied the right to add on to a building because it would cause a shadow to fall on a neighbouring property.

Two years later, the OMB refused to allow a homeowner named Grant to build an addition on to a home near Avenue Rd. and Bedford Rd. A neighbour, who was a writer, said the room would impact her "experience of place," and would box in her view of the backyard.

One high-profile case in the late 1990s was a squabble between Adrienne Clarkson and her then-neighbour on Hazelton Ave., Katherine Stewart, widow of former Ontario lieutenant-governor John Keiller Mackay.

In an expensive legal and political dispute, Clarkson tried to prevent Stewart from building an addition to her home, saying the renovation would block her sunlight. The dispute was settled out of court just before Clarkson became governor-general.

The Superior Court of Justice in 2001 dealt with a case where neighbours named Olmstead and Greenberg were litigating over construction of a house on Strathearn Rd, which, among other things, allegedly caused "loss of light, privacy and aesthetic enjoyment" of the neighbouring property.

The final outcome has not been reported.

The trick in this type of case is to balance the rights of people like Gordon MacNamara with the right of property owners like Canadian Tire to develop their land. It's not an easy choice.

What do you think? Should Canadian Tire be allowed to build the two towers, or should they be scaled down to protect the traditional light enjoyed by the Group of Seven building?

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