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Relying on municipal records too risky

In last week's column, I wrote about a client of mine who signed an agreement to purchase a property on Burgess Ave., in the Beach neighbourhood. The lot size was advertised as 36 feet by 96 feet, but when I pointed out to my client that the real lot size was only 24 feet by 90 feet, he backed out of the deal.

Afterward, the agent who was responsible for the error in the property listing told me, "I didn't know I was supposed to verify it with MPAC (the Municipal Property Assessment Corporation)."

Several readers responded to the column and pointed out that it is actually quite risky to rely on information in the MPAC records, or the municipal tax rolls that are based on the MPAC data.

Mary Balsdon, a real estate broker in Lindsay, wrote, "Sad to say, it's not always correct there. Personally, I have had major problems for clients twice due to incorrect information in the assessment."

Derek G. Graham, a professional land surveyor in Fergus, was more succinct. "Yikes," he wrote, "The MPAC reference is a bit troubling."

They're both right.

My own favourite tale about errors in the municipal taxrolls went all the way to the Supreme Court of Canada in 1994.

The case involved two islands in Georgian Bay. Island 99B is described as Rock Island because it consists of bare rock and Island 99D is described as Cottage Island because it has a cottage on it.

Years ago, the same person owned both islands. She confused them, and referred to Rock Island as 99D instead of 99B. Similarly, she referred to Cottage Island as 99B instead of 99D.

The islands changed hands over a period of 40 years after the first sale in 1954, with succeeding owners unaware that they had title to the "other" island.

Although the tax records of the Municipality of Georgian Bay properly identified the location and owner of each island, they showed the undeveloped property assessed at a higher rate than the developed property. As a result, the owners of Rock Island were taxed as though they had a cottage on it, and the owner of Cottage Island was taxed as if the island was unimproved.

In 1964, Jean Strain bought Cottage Island but believed she owned Rock Island. In the 1990s, she stopped paying taxes on it, presumably in belief that it was undeveloped and without much value.

In response, the municipality conducted a tax sale of Island 99D, Cottage Island. Strain received notice of the sale, but the Zeitel and Henning families, who were actually occupying the island in the belief they owned it, were never notified of the sale.

Had the error been pointed out to the municipality before the sale was concluded, there is no doubt they would have rectified it and not proceeded with selling Cottage Island. But that's not what happened.

Susan Ellscheid and Donald Simmons placed a successful bid for \$999 on the island, and bought it sight unseen, thinking they were the proud new owners of a piece of rock in Georgian Bay. In fact, they became the registered owners of Cottage Island.

When Ellscheid and Simmons arrived to take possession of their island, the mistake came to light and the parties headed off to court. The trial judge declared the sale was void, but in 1991 a split decision of the Ontario Court of Appeal upheld the sale.

The case reached the Supreme Court of Canada in 1994. In a 3-2 decision, the court ruled the sale was valid.

The court said it would refuse to interfere in a tax sale where the municipal records mistakenly confused the property sold with a property occupied by other taxpaying citizens.

The court noted that the legislation provides that a tax deed, once issued, is final and binding.

As well, the court said that a survey certificate of the islands would have removed the possibility of a mistake.

The Zeitel v. Ellscheid case makes clear that it is risky to rely on municipal tax and assessment records to verify land size or location.

The Supreme Court has spoken. Make sure you know which property you are buying. Get a land survey.

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