

TALES FROM THE TRENCHES

BY BARRY C. MCGUIRE

October, 2011

Fourplex Diligence

I got a call from one of my favourite realtors. His client was looking at a building that contained four suites. The City of Edmonton website described it as a side-by-side duplex with two basement suites. The selling realtor's highlight sheet described it as a fourplex. It looked good, was well located, had great cash flow and so they prepared an offer to purchase.

Now, the prospective buyer was a very cautious person and his biggest concern was that he was getting four legal suites. He didn't really care if it was a side-by-side duplex with two suites in the basement or a fourplex (these are common—but not legal—terms). The important thing was that all the suites were legal. So, they put together an offer to purchase and added a clause that says, "Seller warrants this property is a legal fourplex." The seller crossed out this clause when he signed the offer. Questions of the seller's realtor didn't get any firm answers.

However, the property was attractive enough that the realtor and his client decided to do a little more digging. In fact, they did lots of diligence. They searched and sent me copies of the title, historical titles, all the encumbrances on title, the offer to purchase, the realtors highlight sheet, zoning information and other zoning comments from the city as well as tax assessment information.

I reviewed all that information and this was my response: "By way of preliminary comment, there is no legal category of, 'fourplex' in the zoning bylaw. The zoning for this property is RF3 so let's take a look at what is allowed under RF3 zoning."

Following is an excerpt from the City of Edmonton zoning bylaw.

EDMONTON ZONING BYLAW 12800

140 (RF3) Low Density Development Zone

140.1 GENERAL PURPOSE

*Bylaw 14750
December 12, 2007*

The purpose of this Zone is to provide primarily for Single Detached and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to housing forms containing up to four Dwellings per building, and including Secondary Suites under certain conditions.

140.2 PERMITTED USES

*Bylaw 14750
December 12, 2007*

1. Duplex Housing where a Side Lot Line abuts a lot in an Industrial, Commercial, Row Housing, or Apartment Zone, or is not separated from it by a public roadway more than 10.0 m wide.
2. Limited Group Homes
3. Minor Home Based Business

Bylaw 14750

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December 12, 2007

Bylaw 14757

March 10, 2008

Bylaw 15036

February 2, 2009

4. Secondary Suites
5. Semi-detached Housing
6. Single Detached Housing
7. Fascia On-premises Signs

140.3 DISCRETIONARY USES

1. Apartment Housing or Stacked Row Housing, provided that each building contain not more than four Dwellings

In understanding the terms, the permitted uses allow a 'duplex,' which means a suite upstairs and another downstairs, as well as 'semi-detached,' which means two suites side-by-side. Both of these uses are commonly referred to as 'a duplex.' Therefore, since we are looking at four suites, the question is, can we get any help from the discretionary portion of the bylaw? The answer is yes, because under discretionary uses it indicates that you can have 'apartment housing or stacked row housing' as long as neither category contains more than four dwellings. So, when anybody refers to a fourplex they're really talking about either apartment housing or stacked row housing.

Now getting back to the offer to purchase, if the seller crossed out the clause about it being a legal fourplex, then there is a good chance it is a side by side duplex with two illegal suites in the basement. That's what my review of the attachments will focus on. If that is the case, you will have to decide whether or not you want to drop the property or investigate further as to whether or not those illegal suites can be legalized and, how much time that would take and at what/whose expense?

After review of the attached documentation I commented again: "A review of the attached documentation does not definitively answer the question as to whether the fourplex is legal or illegal." I note that the legal description includes lots four and five and the westerly 6 feet of lot six which may mean there was an agreement between neighbours to provide an extra 6 feet of property from Lot 6 that may or may not be required to build a duplex or a fourplex.

The bottom line is that the only way to tell for sure if the fourplex is legal is to go in to the City of Edmonton and check with them in order to confirm that the zoning allows for a fourplex. When the building was built, did they apply for their development and building permits to build a fourplex or a duplex? For certainty, you have to check further. But, it's worth checking.

One of the things that made our realtor want to check further was that the picture of the property on the realtors highlight sheet showed the building style to be semi-detached (side-by-side) with a single, apartment style entrance allowing access to all four suites. Typical semi-detached buildings with illegal suites in the basement all have separate entrances. So, this was a good sign.

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The happy ending to this Tale is that further investigation by our realtor found that building and development permits had been issued under the discretionary category of RF3 zoning for an apartment building of four units or less. It was in fact a legal fourplex! Perhaps the seller crossed out the warranty regarding four legal suites because he didn't really check when he bought.

LESSONS LEARNED:

1. Sellers warranties about legality of suites are useful but not definitive. You must check further.
 2. Check your local zoning bylaw for any property's zoning category. Understand the descriptive terms. Distinguish between 'permitted' and 'discretionary.'
 3. The zoning must allow the type of building you propose to purchase. Lastly, check to see that development and building permits have been issued and that the records show the property has been inspected and approved by the municipality.
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