

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

June 2020

“3X3 PERMITS”

This is the third Tale in my recent mini-series on Real Property Reports (RPR), municipal compliance, and building/development permits. Our first two Tales dealt with [the maze of bureaucracy that surrounds permits](#) and the [dangers of not getting a clean RPR with compliance](#) when buying real estate. As per usual, my examples are from Alberta, because that's [where I practise law](#), but these issues are relevant across Canada and beyond. My third and last installment is actually three Tales in one, full of RPR/permit related situations or circumstances that turned up for some of my clients. I'm going to talk about how the City isn't always right, what happens when a seemingly correct compliance is wrong, and why old inspection issues can come back to haunt you...

OK, let's get started.

The City Is Not Always Right

Recently, I acted for a client selling her beautiful home. One of the many attractive features was a large deck on the south side of the lot. My client was a widow, and when I visited her to get documents signed at her long-term care facility, (pre-COVID), she spent some time telling me how much she and her husband and her family enjoyed their times in the backyard on their deck. This was a custom-built home that they lived in for 25 years.

Her husband had passed away, the house was too big, and it was time to sell. Today's standard real estate purchase contract requires the seller to provide the buyer with a current Real Property Report (RPR) and written evidence of municipal compliance. My seller did not have a real property report. Her realtor, having established that when taking the listing, ordered a new RPR from an Alberta Land Surveyor. On receipt, she sent it to the City of Edmonton for compliance.

The Compliance Certificate from the City said that the house and garage were fine, but there were no permits for the deck. The City went on to say how to apply for the permits and what those permits would cost, which is substantial. (I'm not putting that information in this post because the process and the cost changes frequently at the City. Whenever you need to get permits, check in your own municipality for up-to-date information.)

My seller is elderly and was not up to the task of all the things that permit applications require. She definitely did not want to do construction drawings, take pictures, perhaps get an engineer's report, or fill out all the paperwork and pay the substantial fees that the City would require. She said to me, "Barry, this was a new home and the deck was part of our new home built at the same time." She told me the name of her very reputable builder and something didn't seem right.

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I discussed the situation with my client's top-flight realtor and she said, "Barry, I think our client has the blueprints to the property." Guess what? When our realtor looked at the blueprints, there was the deck, part of the original plans.

Back down to the City, roll out the blueprints on the development officer's desk, noting the big, bold, **APPROVED** stamp from the City and voilà! A new compliance certificate was immediately issued fully approving the property, no issues.

LESSONS LEARNED:

No city, town, or county office is perfect. Mistakes are made in the best run municipal offices. Any time you make an inquiry, if the answer doesn't seem right, **it might not be**. Don't be afraid to do a little more digging to see if you can reverse an original, negative answer—especially if you have evidence to support your position.

Compliance Not Correct

Our client had bought a property in 2015. At that time, the seller provided a real property report and compliance letter that said permits were required for a partially covered deck. We required the seller's lawyer to make the permit applications, and, in due course, we received a follow-up letter from the City of Edmonton indicating that the proper permits had been obtained and a final inspection done. We reported on that basis to our client.

In 2019, we heard from our client that the city had given them a violation notice indicating a lack of permits for an addition to the property being a balcony and exterior alterations to provide a separate basement entrance.

Folks, this is four years later, four years after the purchase! Our client has a nice clean compliance letter.

What's going on?

On further examination, it appears that when the seller applied for their deck permits the City bylaw officer told them that they should also apply for the addition and they could do that on the same application as for the deck. The seller didn't do that.

Four years later the City reviewed their file, saw that there had been no application for the addition, sent the bylaw officer out to look and then without any further ado issued a notice that said unless the permits were applied for, work done, and final inspection fully approved in a very short period of time, a **\$1,000 ticket** would be issued. Plus, the compliance officer reminded our client that city would charge **double permit application fees** because the structures existed without permits.

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LESSONS LEARNED:

This is a tough one. If you get a Compliance Certificate saying that a property needs deck permits and then you get proof that permits have been granted, the structure approved, and a new, clean Compliance Certificate, why would you or how would you know to dig deeper?

Maybe you would know that creating a new basement entrance is an exterior alteration requiring a permit. More likely, you would not think of this as a permit situation. But it is—at least in the City of Edmonton.

To be really on your permit diligence game, I think you need to look more closely at any property being purchased. Has anything been done to the exterior? If so, does it need a permit? Some things do and some don't. Remember, the RPR is a two-dimensional drawing of structures located on the property. The Compliance Certificate issued by the municipality is based on the RPR. The RPR doesn't show anything on or about the interior and it wouldn't show or tell you that a new basement entrance had been installed.

One way to help out in this difficult diligence situation is to ask your home inspector if anything has been done to the property that requires a permit. You could also in the negotiation process, ask if the seller has made any changes or done any renovations whatsoever to the interior or the exterior of anything located on the property

Inspections 14 Years Later

Talk about mad!

Our client was absolutely incensed that, 14 years after he purchased a property, he got a notice to remove his addition (rear covered deck enclosure). The City said that, according to their records, no development permit had been issued, and that our client had to get the permits and have the property inspected and approved in one month or face fines starting at \$1,000! (Just so you know, the City of Edmonton is much more aggressive in the lack of permit situations. I have a number of clients who have complained that a fine has been issued without even a warning.)

It was quite a nasty letter from the City.

In response, my client emailed me and said, "I purchased the property in question back in 2006, and have never built any additions to the property. So, I don't know why this is a problem at this time, especially during the coldest time of year and 14 years after my purchase. The property is just like it was when I first purchased it and I never received any notice before regarding any addition or outside structure since I have owned it. Furthermore, they say they have inspected the property, but I am not aware they ever stepped foot on the property and I have no trespassing

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signs at the rear and at the front, so they are either lying or never came onto the property or they totally ignored the signs that would keep them from trespassing. Either way it's not very professional or a safe way to conduct the affairs of the City."

My client went on to say that he believes his neighbour complained, because his neighbour is always complaining.

If someone complains to the City, a bylaw officer usually goes out to have a look. Although my client thinks that the City could not have set foot on his property, they most likely just looked over the fence, saw the deck, checked the records, saw no permits, and then issued their violation notice...

Although I act for this particular client now, I didn't act when he purchased 14 years ago. I asked him about his real property report and compliance. What did the compliance certificate from the City say? Answer, "I didn't get an RPR and compliance, I got title insurance".

The immediate answer to my client's problem with the City was to down and speak to a development officer in person. They agreed that if he would apply for permits right now, he would just have to pay the normal permit application cost and not the double charges that would normally be in place. He got the permits and had a final inspection done, which approved the deck as built. So, this problem is now not an issue and will not cause my client trouble when he sells sometime in the future.

LESSONS LEARNED:

- There is no limitation on the timeline for the requirement to get appropriate permits.
- Title insurance did not assist our client. It only covers enforced removal. Since the deck stayed, there's no help from title insurance.
- When purchasing, a current RPR and clean compliance certificate is your best bet, even if not 100% protection against bylaw and permit problems.

LET US HELP YOU BUY & SELL REAL ESTATE IN ALBERTA!

Barry C. McGuire (BA, LLB)
Field Law
Enbridge Centre
2500 – 10175 101 St. NW
Edmonton, AB, Canada

Phone: 1-780-423-3003
Fax: 1-780-428-9329
Toll Free: 1-800-222-6479
bmcguire@fieldlaw.com